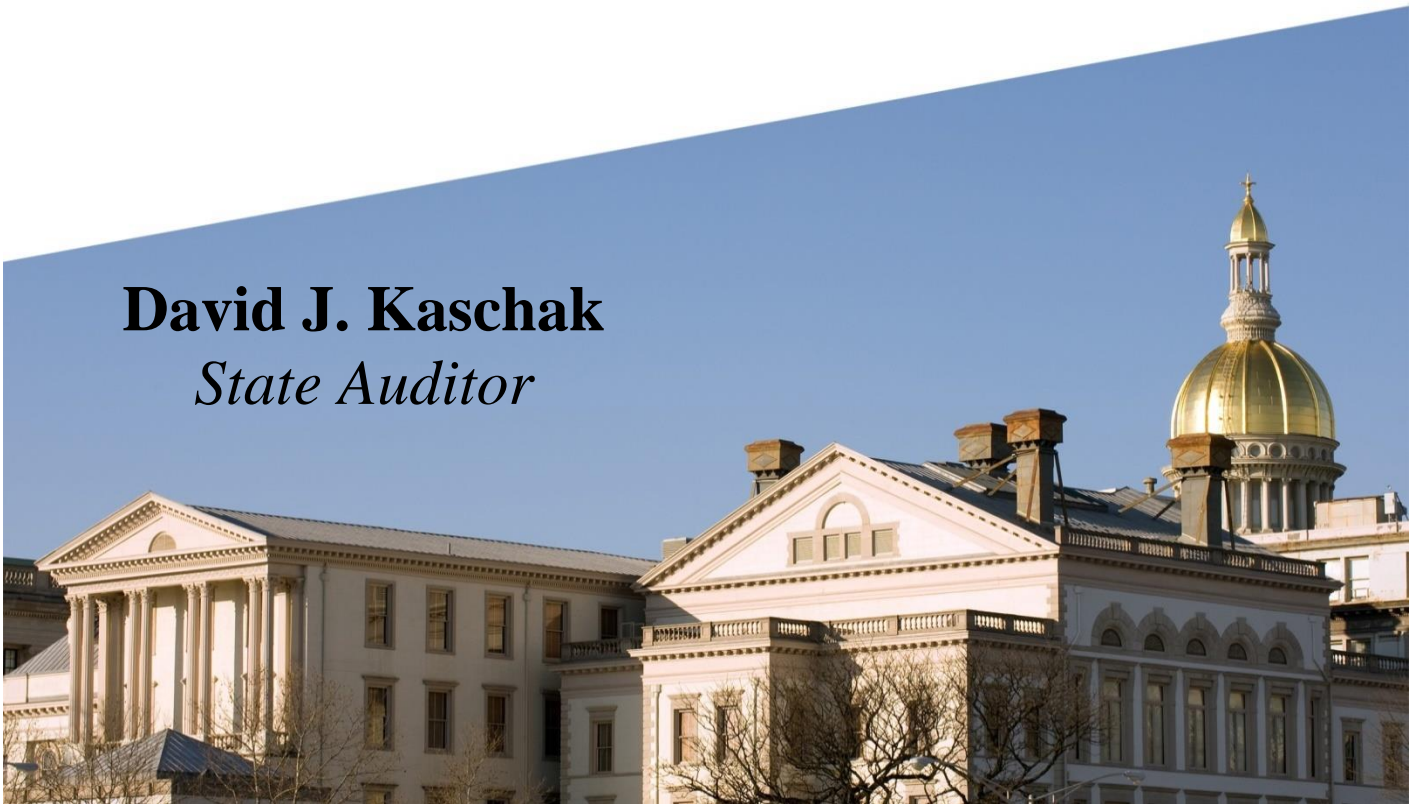


*New Jersey Legislature*  
★ *Office of* LEGISLATIVE SERVICES ★  
**OFFICE OF THE STATE AUDITOR**

Department of Transportation  
Office of Freight Planning

January 1, 2018 through March 31, 2022

**David J. Kaschak**  
*State Auditor*



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125 SOUTH WARREN ST. • P.O. BOX 067 • TRENTON, NJ 08625-0067  
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OFFICE OF THE  
STATE AUDITOR  
609-847-3470  
Fax 609-633-0834

David J. Kaschak  
State Auditor

Brian M. Klingele  
Assistant State Auditor

Thomas Troutman  
Assistant State Auditor

The Honorable Philip D. Murphy  
Governor of New Jersey

The Honorable Nicholas P. Scutari  
President of the Senate

The Honorable Craig J. Coughlin  
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Ms. Maureen McMahon  
Executive Director  
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Enclosed is our report on the audit of the Department of Transportation, Office of Freight Planning for the period of January 1, 2018 to March 31, 2022. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink that reads "David J. Kaschak".

David J. Kaschak  
State Auditor  
April 11, 2023

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## *Scope*

We have completed an audit of the Department of Transportation (department or DOT), Office of Freight Planning (OFP), for the period January 1, 2018 through March 31, 2022. The OFP is responsible for freight planning activities encompassing all modes of freight distribution: highway, rail, water, and aviation. This includes the gathering of data on all modes, especially trucks, to inform the department on the best use of resources for the maintenance of the state's infrastructure. We limited our scope to a review of the four railroad lines owned by the department: Lackawanna Cutoff Railroad (LCRR), Rahway Valley Railroad (RVRR), Staten Island Railroad (SIRR), and Southern Secondary Railroad (SSRR).

One responsibility of the OFP is to oversee the management and maintenance of railroad line rights of way, which are land or property rights held by the DOT. There are three types: (1) lands within a right of way corridor that serve the facility and are neither surplus nor excess to the facility; (2) surplus lands, which are lands that are not currently needed by the facility but which may have a use in the future; and (3) excess lands, which are lands that have been determined to be not needed currently or in the future for the facility and which have been reviewed and approved to be sold or leased. Annual revenue generated by these four railroad lines from property rentals averaged \$164,000 for calendar years 2018 through 2021. Annual maintenance expenses are not separately tracked and could not be determined for the purpose of this audit.

## *Objectives*

The objectives of our audit were to determine whether the four railroad lines were being used for their intended purpose; whether any of these properties could be sold or repurposed; and whether the properties had been properly recorded in the state's Land and Building Asset Management (LBAM) system. An additional objective was to determine if railroad line revenue was properly recorded in the accounting system.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

## *Methodology*

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, circulars promulgated by the Department of the Treasury, and policies of the department. Provisions we considered significant were documented, and compliance with those requirements was verified by interview and observation.

We also read the budget messages and interviewed department personnel to obtain an understanding of the programs and the internal controls. In order to achieve our objectives, we performed various tests and analyses, as we determined necessary. This included a review of lease payments produced from the rental of railroad line properties. Of the 124 rental payments in calendar year 2020, we reviewed 12 payments (the largest payment for each month) to determine whether they were properly collected, recorded, and deposited. When testing resulted in a reportable condition, details on the work performed can be found in the findings section.

A nonstatistical sampling approach was used. Because we used a nonstatistical sampling approach for our tests, we could not project the results to respective populations.

### ***Data Reliability***

We assessed the reliability of the department's PAECETrak lease revenue database by performing electronic testing, comparing revenue data to source documents and electronic images, and by verifying that funds were processed and recorded in the appropriate accounts within the New Jersey Comprehensive Financial System. We determined that the data from the system was sufficiently reliable for the purposes of this report.

Certain other data in our report were used to provide background information. Data that we used for this purpose were obtained from the best available sources. *Government Auditing Standards* do not require us to complete a data reliability assessment for data used for this purpose.

### ***Conclusions***

We found that the four railroad lines were not being used for their intended transportation purpose, and a majority of the tracks are not currently operational. In addition, based on our interviews and our review of documentation, we concluded provisions contained in the original bond act prevent these properties from being sold without a ballot measure. However, the properties may be repurposed for other transportation purposes related to freight or passenger rail services or for recreational use. We also found one railroad line and parcels from the other three railroad lines were missing from the LBAM system, and acquisition costs were also understated. Finally, we found that railroad line rental revenue was properly recorded in the accounting system.

### ***Background***

The DOT was established in 1966 with the responsibility of maintaining and operating the state's highways and public road system. With the passage of the Transportation Act of 1979 (Transportation Act), New Jersey Transit (NJT) was created as part of the DOT. The Transportation Act gave NJT the responsibility to oversee *public transportation* services, while the DOT continues to oversee *freight rail* service.

The LCRR, RVRR, SIRR and one segment of the SSRR were acquired in accordance with the New Jersey Bridge Rehabilitation and Improvement and Railroad Right of Way Preservation Bond Act of 1989, P.L. 1989, c. 180 (Bond Act). According to the Bond Act, the department may construct, reconstruct, improve, rehabilitate, demolish, or renew such property as necessary to preserve the property for transportation services. An analysis of the bonds outstanding was completed by the State of New Jersey, Office of Public Finance, and it was concluded that the bonds issued to purchase these four railroads fully matured on August 1, 2022.

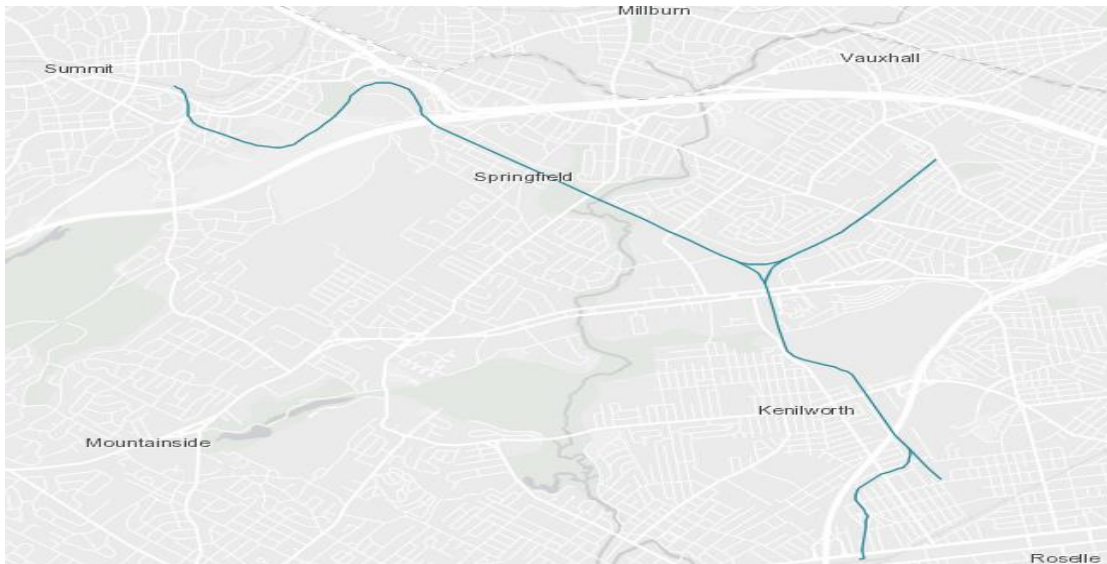
### **Location information**

The LCRR was purchased by the DOT in 2001 and is located in Morris, Sussex, and Warren Counties (approximately 28 miles).



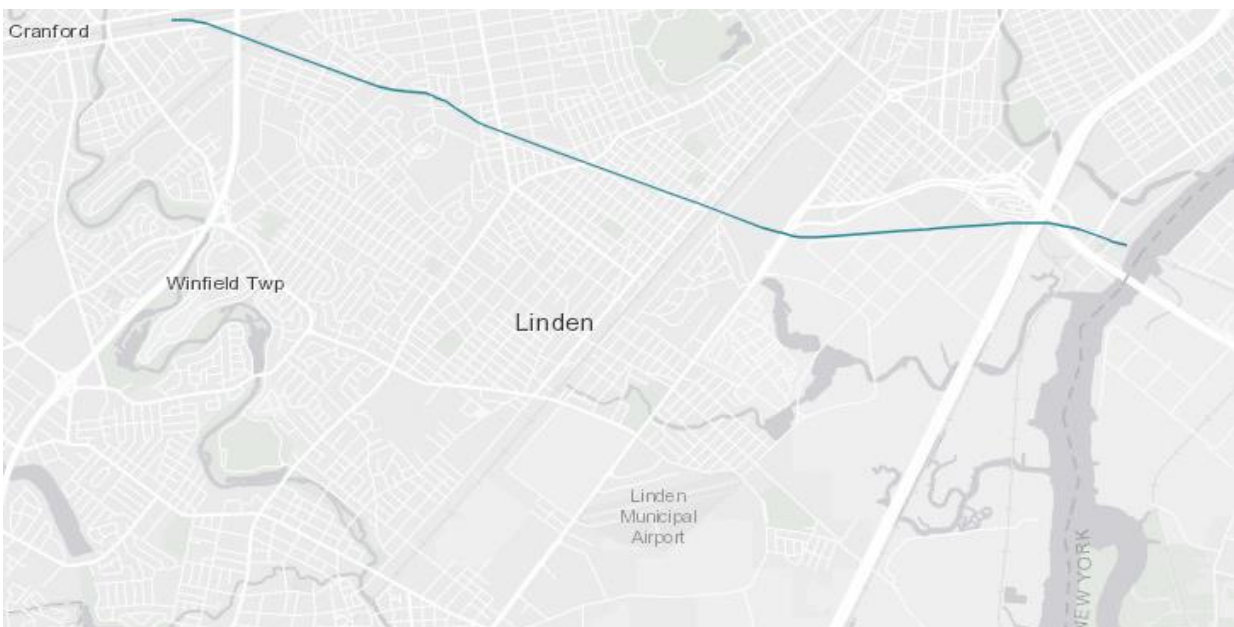
(Source: DOT)

The RVRR was acquired by the DOT in 1995 and is located in Union County (approximately nine miles).



(Source: DOT)

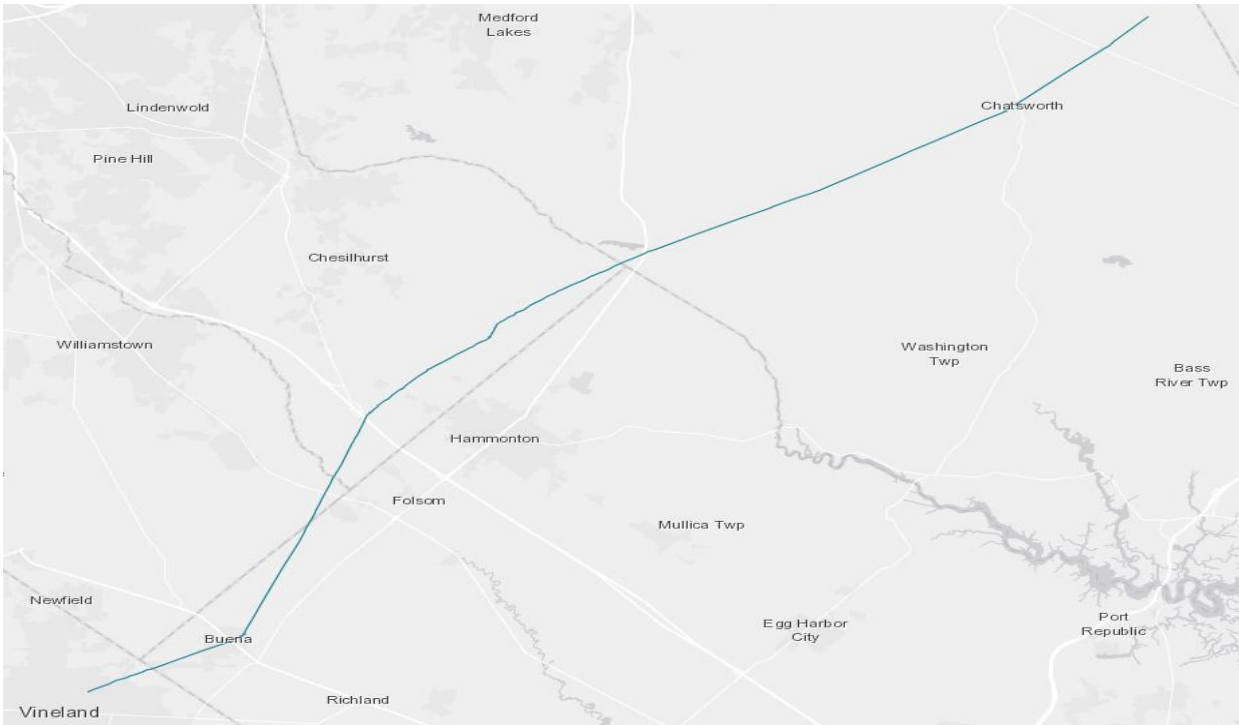
The SIRR was acquired by the DOT in 1994 and is located in Union County (approximately five miles).



(Source: DOT)



The SSRR was acquired by the DOT in 1986, 1987, and 1995 and is located in Atlantic, Burlington, Camden, Cumberland, and Gloucester Counties (approximately 40 miles; of which 24 miles were purchased with funds from the Bond Act).





## State-Owned Freight Rail Lines

The department can repurpose inactive railroad lines for other transportation or recreational use by entering into agreements with other government agencies or private companies.

The LCRR, RVRR, SIRR, and one segment of the SSRR were acquired in accordance with the Bond Act and are not being used for their intended transportation purpose. We determined that 70 of the 82 total miles of rail on the four lines are not currently operational.

Railroad Line		Track Miles	Current Non-Operational Miles
LCRR	Lackawanna Cutoff Railroad	28	20
RVRR	Rahway Valley Railroad	9	9
SIRR	Staten Island Railroad	5	4
SSRR	Southern Secondary Railroad	40	37
<b>Total</b>		<b>82</b>	<b>70</b>

The department has been advised by the New Jersey Office of the Attorney General (OAG) that the Bond Act precludes the sale of these properties. Based on our interviews and our review of documentation, we have concluded that a ballot measure would be necessary to authorize the sale of these properties. However, the 1994 letter by the OAG states the department may, within the guidelines set forth in N.J.S.A. 27:7-21.4; 21.6 and 21.7, enter into a temporary lease with the highest responsible bidder for property acquired under the Act. The department could enter into an agreement with local jurisdictions or private companies to use these properties for transportation purposes or to provide tourist destinations by converting the properties into rail parks, rail trails, or rail museums. Additionally, an agreement could be entered into with New Jersey Transit (NJT) for properties that have future passenger transportation potential.

Entering into agreements with other government agencies or private companies could also relieve the department of potential liabilities and maintenance costs related to overgrowth, encroachment issues, trespassing violations, illegal dumping, defacement of structures, and the removal of safety barriers (see exhibits). The department does not maintain a separate accounting of maintenance costs for these properties.

### Recommendation

We recommend the department reach out and document its efforts to enter into agreements with local jurisdictions for converting the railroad lines to recreational or transportation use or with NJT for future passenger service. Additionally, if the department finds it necessary, it should seek updated guidance from the OAG regarding potentially leasing these properties in the future. Furthermore, the department should ensure that necessary measures are taken to properly

maintain these properties to reduce the state's risk of liability.



## **Lease Revenue**

**The department should enter into lease agreements for railroad lines as permitted by statute.**

The department entered into a licensing agreement with an independent contractor in 2017 allowing for the current use of a segment of the Staten Island Railroad Line. However, the department has not entered into a formal lease agreement with the independent contractor, as permitted under N.J.S.A. 27:7-21.4, which has resulted in an undetermined amount of unrealized revenue to the state. According to the licensing agreement, the independent contractor agreed to, within 30 days of entering into a lease agreement, pay a lump sum equal to the product of the number of months between execution of the license agreement and the execution of the lease agreement multiplied by the monthly payment due to the state under the lease agreement. The department needs to have the property appraised to determine the fair market value prior to entering into a lease agreement. According to the department's Right of Way Acquisition Manual, it is the responsibility of the Division of Right of Way and Access Management to negotiate lease agreements and present them to the State House Commission. Revenues cannot be collected until the lease agreement is approved by the State House Commission.

### **Recommendation**

We recommend the department have the property appraised to determine its fair market value and submit a lease agreement to the State House Commission in order for lease payments to be defined. Once defined, any lease payments owed should be pursued for collection.



## **Capital Assets**

**Strong internal controls ensure department-owned capital assets are properly accounted for in the state's asset management system (LBAM).**

The entire RVRR and various parcels from the SIRR, LCRR, and SSRR are not included in the LBAM system. Additionally, acquisition costs are understated in the LBAM system by \$25.3 million, as summarized in the following chart.

Railroad		Purchase Price		
		Per Deed	Per LBAM	Difference
LCRR	Lackawanna Cutoff Railroad *	\$ 17,000,000	\$ 716,839	\$ 16,283,161
RVRR	Rahway Valley Railroad	6,400,000	-	6,400,000
SIRR	Staten Island Railroad	4,000,000	1,693,657	2,306,343
SSRR	Southern Secondary Railroad	276,146	12,027	264,119
<b>Total</b>		<b>\$ 27,676,146</b>	<b>\$ 2,422,523</b>	<b>\$ 25,253,623</b>

*\*Auditors relied on the June 2008 New Jersey – Pennsylvania Lackawanna Cut-Off Passenger Rail Service Restoration Project Environmental Assessment to determine the cost of this railroad line because all the purchase deeds could not be located.*

The Department of the Treasury Circular No. 21-13-OMB requires state agencies to report in the LBAM system all real estate properties or other assets acquired, leased, licensed, constructed, owned, retired, or sold for which the agency maintains stewardship, responsibility, or is the main occupant of a building. The department did not perform a reconciliation of all of its capital assets to ensure that these properties were properly accounted for in the LBAM system.

### Recommendation

We recommend the department reconcile its capital assets to the LBAM system for accuracy and establish procedures for inclusion of future asset purchases and removal of asset disposals to comply with state regulations.



## Exhibits

### Photographic Examples of Railroad Abandonment Issues

During our audit, we reviewed documentation supplied by the DOT and performed online research, which confirmed the existence of several abandonment issues for the four railroads, such as overgrowth, dumping, and defacement of structures.

#### Lackawanna Cut-off Railroad:

The Paulinskill Viaduct is located on the LCRR. The viaduct is 1,100 feet long, and its 115 foot-tall seven arch span provided rail service across the Paulinskill River between 1910 and 1978. Despite being officially closed to the public, the viaduct still receives pedestrian traffic, including hikers, ATV riders, and graffiti artists. The continued use of the property by trespassers along with missing guardrails, missing manhole covers, and rusted ladders presents an increased liability to the state.



Paulinskill Viaduct (Source: Lehigh Valley Live)

Rahway Valley Railroad:

The following two pictures are of the rusted Rahway River bridge, constructed in 1905. The first photo shows graffiti, missing railroad ties, and downed trees covering the tracks in the background. The second photo demonstrates how these abandoned sites can become a dumping ground for vehicles, trash, and other vegetative debris.



Rahway River bridge (Source: DOT)





(Source: DOT)



Staten Island Railroad:

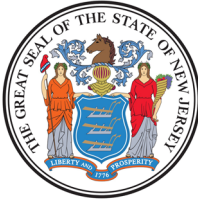
This photo of the Staten Island Railroad near Liberty Avenue provides another example of these properties being used as a dumping ground for a variety of household trash on the right of way.



(Source: DOT)







# State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

PHILIP D. MURPHY  
*Governor*

DIANE GUTIERREZ-SCACCETTI  
*Commissioner*

SHEILA Y. OLIVER  
*Lt. Governor*

April 10, 2023

Mr. Brian M. Klingele  
Assistant State Auditor  
Office of the State Auditor  
125 South Warren Street  
P.O. Box 067  
Trenton, New Jersey 08625-0067

Re: Response to Draft Audit Report of the Department of Transportation,  
Office of Freight Planning

Dear Mr. Klingele:

The New Jersey Department of Transportation (the Department) is in receipt of the above-mentioned Office of the State Auditor's (OSA's) draft audit report titled "Department of Transportation, Office of Freight Planning." We appreciate OSA's review and thank you for the opportunity to comment on the draft audit report.

Please find below the following responses to the draft audit report:

## **OSA Recommendation**

We recommend the department reach out and document its efforts to lease the railroad lines to local jurisdictions for conversion to recreational or transportation use or lease to NJT for future passenger service. Furthermore, the department should ensure that necessary measures are taken to properly maintain these properties to reduce the state's risk of liability.

## **Response**

The Office of Freight Planning (OFP) will develop a plan to assess use opportunities along the varying rail segments, communicate with stakeholders and document such efforts. Further, a

plan for current and future maintenance will be discussed and implemented. The Department has provided NJ Transit with a licensing option for future passenger service on the Lackawanna Cut-off.

### **OSA Recommendation**

We recommend the department have the property appraised to determine its fair market value and submit a lease agreement to the State House Commission in order for lease payments to be defined. Once defined, any lease payments owed should be pursued for collection.

### **Response**

The Department will ensure an appraisal and a formal license agreement is initiated for the segment of the Staten Island Railroad discussed. The Office of Freight Planning will establish an accounts receivable for the capture and use of Lease/License Revenue payments going forward to be used for maintenance of the railroad lines or other freight use.

### **OSA Recommendation**

We recommend the department reconcile its capital assets to the LBAM system for accuracy and establish procedures for inclusion of future asset purchases and removal of asset disposals to comply with state regulations.

### **Response**

The Department concurs with the Audit and will undertake to incorporate these corridors as assets in the Land and Building Asset Management System. The Department is in the process of upgrading its database system to provide data more effectively to the LBAM system regarding acquisitions and disposals.

Thank you again for the opportunity to review and comment on the draft audit report.

Sincerely,



Diane Gutierrez-Scaccetti  
Commissioner

c: Joseph Bertoni, Deputy Commissioner  
Michael Russo, Assistant Commissioner, PMGA  
Inspector General's Office  
Nicole Minutoli, Director, Division of Multimodal Services  
Victor Akpu, Director, Division of Right of Way and Access Management  
Jonathan Trauger, Program Supervisor, Office of Internal Audit