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**Department of Transportation
Division of Right of Way and Access Management**

July 1, 2012 to September 30, 2015

**Stephen M. Eells
State Auditor**



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Enclosed is our report on the audit of the Department of Transportation, Division of Right of Way and Access Management for the period of July 1, 2012 to September 30, 2015. If you would like a personal briefing, please call me at (609) 847-3470.

Gregory Pica
Assistant State Auditor
December 23, 2015

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Scope

We have completed an audit of the Department of Transportation, Division of Right of Way and Access Management for the period July 1, 2012, through September 30, 2015. Our audit included a review of the division's right-of-way acquisition, outdoor advertising, and highway access management programs.

The division is primarily responsible for acquiring land necessary for the construction and maintenance of New Jersey's highways and state roads. Core activities include obtaining property appraisals, conducting bona fide negotiations, acquiring property by agreement or through condemnation, and relocating displaced families and businesses. The size of transportation projects can vary greatly, but there was payment activity on nearly 400 parcels in each fiscal year during our audit period. On average, 105 properties, which also vary greatly in size, are acquired per year, with about one-third acquired by condemnation. During our audit period, the division spent an average of \$4.9 million per fiscal year on right-of-way activities in state transportation funds, and another \$10.3 million per fiscal year in federal transportation funds.

The division's Outdoor Advertising Services unit manages the outdoor advertising program. Activities include issuing permits for the placement of outdoor advertising signs along all roads and highways in New Jersey, inspecting proposed sign locations and erected signage, conducting route surveillance for enforcement, and imposing and collecting penalties for violations. Permits are valid for one year and over 1000 permit applications were processed each year during our audit period, 85 percent of which were renewal applications. About \$1.7 million in application, permit, renewal, and other fees were collected each year.

The division's Major Access Permits unit is responsible for controlling access to highways, major arterials, and other roadways in an effort to improve traffic conditions and reduce crashes. Property owners seeking traffic access to state roadways and transportation infrastructures must submit an application for an access permit to the Major Access Permits unit. Permits are valid for two years and approximately 240 permit applications were processed per year during our audit period. About \$700,000 in application, permit, and renewal fees were collected annually.

Objectives

The objectives of our audit were to determine the adequacy of controls over the right-of-way acquisition, outdoor advertising, and highway access management programs and whether their activities were conducted in compliance with state and federal laws, regulations, and policies.

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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied state and federal legislation, the administrative code, and policies and manuals of the division. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our testing. We also read the budget messages, reviewed financial and program activity trends, and interviewed division personnel to obtain an understanding of the programs and their internal controls.

Our testing was conducted using nonstatistical sampling approaches. Our samples were designed to provide conclusions on our audit objectives. Sample populations were both judgmentally and randomly selected for testing.

Conclusions

We found controls over the right-of-way acquisition, outdoor advertising, and highway access management programs to be adequate and their activities to have been conducted in compliance with state and federal laws, regulations, and policies. In making these determinations, we noted certain weaknesses that merit management's attention. In addition, we found a potential opportunity for increasing state-share cost reimbursements related to access management activities.

Outdoor Advertising Program - Route Surveillance

The division should improve its controls over the outdoor advertising program by increasing the frequency of route surveillance.

The division's limited surveillance of federally-determined controlled routes diminishes its ability to effectively control the outdoor advertising program. Federal law requires states to provide continuing "effective control" of outdoor advertising or be subject to a loss of 10 percent of their federal-aid highway funds, which would have been \$96 million in fiscal year 2015. Effective control is to include periodic surveillance of the controlled routes in order to discover illegal signs and monitor pre-existing signs. The periodic surveillance, or route surveys, are to be routine and are considered "critical" for effective control. The route surveys help discover new illegal signs, detect unlawful expansion of existing signs, and provide assurance that permits are current and that new signs are erected in the proper location.

The division is not adequately documenting those surveys which have been completed. The division uses two logs to monitor controlled routes that need to be surveilled: one for the 206 National Highway System (NHS) routes totaling 2,811 miles and another for the 288 non-NHS routes totaling 791 miles. The log used to monitor the NHS routes is incomplete and unreliable. Of the 206 routes listed, 67 had no entry for the last date of surveillance and 51 had dates prior to 2010. We were told by the lead inspector that, although the log is unreliable, all NHS route surveys had been completed by the end of 2012. However, we cannot confirm this or determine, even if true, how long it took to complete those routes. Since 2012, route surveillance has focused on the non-NHS routes. However, only 24 percent of the non-NHS route miles have been completed. At that rate, it will take almost nine years to complete the 791 non-NHS route miles, while none of the 2,811 NHS route miles are surveilled.

The outdoor advertising operations manual, in place since 2009, established a route surveillance cycle of six years, which can be modified as resources permit. Where resources are limited, priority is to be given to interstate highways and major state highways. Since then, two inspectors have retired and have only recently been replaced. The priority of the remaining inspectors has been to perform the site inspections required in the permit applications and renewal process. According to the lead inspector, this takes up most of the inspectors' time, leaving little time for route surveillance. Without performing routine route surveillance, though, illegal signs could go undetected on both NHS and non-NHS routes. Additionally, noncompliance with the federal law can put significant federal funding at risk.

Federal statutes and regulations do not specify how frequently routes should be surveilled. We contacted the federal Office of Planning, Environment, and Realty, which has jurisdiction over outdoor advertising, and were told that while there is no set standard defining how often routes must be surveilled, most states complete surveillance of all controlled routes on an annual basis.

Recommendation

We recommend the division improve controls over the outdoor advertising program by increasing the frequency of route surveillance. In addition, the division should maintain an accurate and complete route survey log, thus providing the support needed to show that route surveillance is being completed.



Outdoor Advertising Program - Penalties and Abatements

The division should improve its monitoring of penalties and documenting of abatements.

The manner in which the Outdoor Advertising Services (OAS) unit monitors penalties prevents reconciliation with the program's database. When a sign is in violation of the administrative code, a penalty of up to \$500 but not less than \$50 per day shall be assessed to the permit holder for each day the sign remains in violation. In determining the penalty amount, the gross income of the sign, the egregiousness of the violation, whether the violation was intentional or accidental, and whether the violator has a history of repeated violations are to be considered. To track outstanding violations, the enforcement supervisor prepares a monthly violations summary report. Once a violation is corrected, the record of that violation is removed from subsequent monthly reports. According to the database, from March 18, 2013 through March 18, 2014, there were 192 violations with penalties totaling \$152,885. From March 19, 2014, through March 18, 2015, there were 241 violations totaling \$48,733.

When a payment for a violation is received, only the dealer (permit holder) number, deposit slip number, and transaction amount is entered into the database. Detailed violation information, such as violation number, violation date, or original penalty amount, is not entered into the database. The violations summary report includes the violation number, dealer name, date of the violation, action required, status, and date resolved, but no deposit information, such as the check date, the deposit slip number, or the date deposited. Therefore, we were unable to reconcile the deposits in the database with the information kept by the program's enforcement supervisor.

In addition, the OAS unit does not always adequately document its decisions to abate penalties. The code allows all or any portion of a penalty to be abated in the interest of equity. Adequate documentation of any penalty abatement helps to provide assurances of a fair and impartial decision-making process. However, often the only supporting documentation is the notification to the violator that the penalty was abated. The monthly summary report does not document the original amount of the penalty, the amount paid, whether any portions were abated, the reason for any abatement, or whether a violator is a repeat offender. Furthermore, the division does not keep track of the number and amount of penalty abatements, or notify the Commissioner of any penalty abatements.

We reviewed the violation files listed on the April 2015 violation summary report. Of the 52 violations listed on the report, 47 violations, totaling \$4,450, were paid on time and in full. One violation is still outstanding and one was abated with adequate documentation. Three violations originally totaling \$25,905 were settled for \$3,100, or 12 percent of their original assessed amounts, without any documentation explaining the decision to abate.

Recommendation

We recommend the division develop a more detailed way to monitor penalty payments for violations that would allow reconciliation with the outdoor advertising database, and thoroughly document the decisions to abate penalties. In addition, the Commissioner should periodically be notified of the number and amount of penalty abatements.

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Access Management - Developer Agreements

The division could increase reimbursements by millions of dollars by increasing the usage of developer agreements.

A developer agreement is an agreement between the department and a developer whereby the developer agrees to reimburse the department for state-service costs. These costs include those associated with the review of plans, construction engineering, inspection services, legal costs associated with the agreement, and any costs incurred prior to the execution of the agreement for concept, access application, and preliminary plan review, and issuance of access permits. The costs consist of actual wages, plus a percentage for fringe benefits and administrative costs, for state employees' time spent working on the application, as well as any related direct expenses, including costs associated with the execution of the agreement. Any fees paid by the developer as part of the access application and concept review processes are credited against the developer agreement reimbursable amount. There were 51 access permit applications with associated state-service costs during our audit period that had a developer agreement. The division will collect \$7.5 million in reimbursable state-service costs for these applications.

There were 577 applications with total costs of more than \$16 million that did not have a developer agreement. While many of these applications had state-service costs less than their combined application and permit fees, 222 had state-service costs of more than \$25,000 each. The total cost for these 222 applications exceeded the maximum application and permit fees by at least \$10 million. Moreover, 79 of these applications had costs exceeding \$50,000 each. The total cost for these 79 applications exceeded the maximum application and permit fees by at least \$6.7 million.

The administrative code requires a developer agreement as a condition of an access permit under five specific conditions. The 222 applications without a developer agreement did not meet those conditions. However, the department may also require a developer agreement as a

condition of an access permit when the department, in its sole discretion, determines that this condition is in the public interest. All that is required is notification to the applicant such a determination has been made. When the permit is issued, execution of the developer agreement shall be one of the conditions. In fact, to its credit, the department has recently required an agreement for any application involving a traffic signal even though this is not one of the conditions listed in the code.

Recommendation

We recommend the department utilize developer agreements when costs are expected to be significantly more than expected fees, regardless of whether the application meets one of the five conditions listed in the administrative code. If the department determines it needs to revise the administrative code to clarify that cost is a potential condition of a permit, it should attempt to do so.

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Right of Way - PAECETrak Database

The division needs to enforce the directive that parcel records be entered into the PAECETrak database.

Adequate supporting documentation of the acquisition of property provides assurance the acquisition process was fair and equitable. The use of the division's database, PAECETrak, is varied and inconsistent, hindering the division's ability to provide this assurance. Additionally, any monitoring or performance measuring is limited by an incomplete database. Furthermore, the division spends approximately \$100,000 per year for the routine maintenance, support, and hosting of the database.

According to the division's acquisition manual, the PAECETrak database is the "main and most reliable storage for parcel records. Any other file is secondary and should not be used as the prime storage process." The division is not strictly enforcing this directive. In addition, there is no single, clear standard for data-file content requirements. Based on the manual and different internal checklists, we developed a list of about 30 attributes that should be found in each data file, varying depending on the type of acquisition. We randomly selected 16 parcels and none of the files had all the information tested entered into PAECETrak. The information for each parcel varied greatly, with error rates ranging from 21 percent to 92 percent, with an average error rate of 39 percent for each parcel.

Recommendation

We recommend the division enforce its own manual and improve its monitoring of data entry into the division's PAECETrak database in an effort to ensure all relevant data is entered. Clear

standards should be established identifying which information should be in the database given different situations.

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Right of Way - Leases

The division is not adequately monitoring leases.

The division is potentially foregoing additional revenues by not updating lease agreements. State law allows property acquired for transportation purposes to be leased out if it is determined the property is no longer needed or to be used for a future project. As of June 2015, the division had 72 active leases with annual rent amounts totaling just under \$395,000. Thirty-one of these leases were with government entities and were generally long-term leases with nominal rents, as permitted by law. We focused on the remaining 41 leases, which had annual rent amounts totaling \$388,000.

Most leases reviewed were five-year leases, with the rental amount increasing each year of the lease. When a lease expires, it converts to a month-to-month lease and the lessee pays the latest rent amount under the terms of the lease until it is renewed. Twenty-nine of the 41 leases reviewed were expired and, on average, had not had the lease amount changed in more than eight years.

The acquisition manual requires all lease agreements to have a Department Action form approving the lease and an explanation for how the rental amount was derived. In addition, the rental amount is to be determined by an appraiser. We randomly sampled 11 leases and reviewed their paper files and most did not have the required documentation: 27 percent did not have a Department Action form and 64 percent did not have an explanation for how the rent was derived.

We were told by the staff responsible for maintaining these records that there is not enough staff to do this work and that other tasks are higher priority. But the division is liable for the property it leases and responsible for maintaining each property. In addition to potentially foregoing additional revenues, failure to update the lease agreements and the database limits the division's ability to adequately manage the properties it owns and leases.

Recommendation

We recommend the division increase its monitoring efforts regarding leased property. Additionally, it should review and update each lease file, entering into new leases where applicable.

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Right of Way - Excess Land Inventory

The division's inventory of land is incomplete.

Effective controls over property management require a complete inventory of land. However, the division's inventory of excess and surplus property acquired for transportation purposes is not complete. In addition, state law requires the department to annually prepare, and submit to the Governor and the Legislature, an inventory of the properties owned by the State of New Jersey and held for transportation projects that are not under construction. The inventory shall include: the location and size of the property; the date and cost of acquisition; and the purpose for which the land was acquired and the reasons why the property has not been used for that purpose. Furthermore, the division's acquisition manual requires its Technical Support Unit to "establish and maintain an inventory of parcels" for both excess land and surplus property.

The manual also requires that, upon completion of a project, all potentially excess parcels are to be communicated to the Technical Support Unit. However, we were told that this is not done. The current inventory is updated only when an inquiry from the public or another government entity is made of a property. The property's ownership is then researched to determine if the property is indeed owned by the state. If it is, there is a lengthy process to determine if the property is excess property to be held for a future use, or surplus property available for sale or lease. Without being informed of potentially excess parcels upon the completion of a project, a current, accurate, and complete inventory cannot be maintained. This prevents the division from being aware of additional potential surplus sales or leasing opportunities. Furthermore, the state is responsible for the property it owns, even property it is unaware it owns.

The Technical Support Unit concedes the inventory is incomplete. We were told a complete inventory could be done with additional resources. However, the division believes most of the potentially excess property would consist of small tracts of land that are often only of value to the adjoining property owner and that most large parcels are landlocked, encumbered with restricted use, or are viewed as parcels that may be needed for future transportation needs. Therefore, developing a complete inventory is not a priority.

Recommendation

We recommend the division enforce its manual's directive that the Technical Support Unit be informed of all potentially excess parcels upon completion of a project. In addition, it should make proactive efforts to update its land inventory of state-owned property acquired for transportation purposes when resources permit.

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Lt. Governor

December 21, 2015

Stephen M. Eells, State Auditor
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Dear Mr. Eells:

Staff in the Capital Program Management area completed a review of the “findings and recommendations” for Right of Way and Access Management, identified in the OLS Audit report conducted from July 1, 2012 to September 30, 2015. Analyses have been conducted and the New Jersey Department of Transportation offers the following response to these specific recommendations:

Developer Agreements: The Department agrees with the recommendation to increase the use of Developer Agreements and has in fact already done so as indicated in the report by using developer agreements whenever physical changes to a traffic signal are involved. The Department is currently in the process of repealing the existing regulations and adopting a new Access Code. As recommended in the report, the Department will incorporate language into this new rule that states it will be in the public interest to utilize a developer agreement when review and inspection costs are anticipated to significantly exceed the fees collected for the application and permit. If the rule repeal and new rule adoption does not proceed, the Department will propose to amend the current rule to contain similar language.

PaecceTrak: The Division agrees with the audit recommendation. As part of our operations manual update that is currently on going and will be in effect in January 2016, we are incorporating a checklist to certify that all relevant documents are incorporated into the PAECETrak database system before a case is submitted for processing. The Division is also undertaking an analysis to streamline the database to make it easier to comply with the manual requirements.

Leases: The Division recognizes the need to update those leases which are not nominal (approximately 60% of leases are for \$1.00). Our leases with County and local municipalities are based on \$1.00 month to month lease comprising of about 60% of our total leases. With current staffing level, NJDOT will utilize administrative determination of value to survey market rents and update expired leases. The market survey will be reviewed by manager as well as supervisor to ensure reasonability of conclusion. This methodology would still need to be accepted by the State House Commission, in lieu of a full blown appraisal.

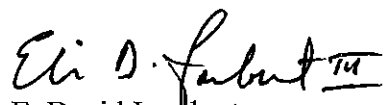
Excess Land: The Division concurs with the audit recommendation for a better method of tracking potential excess parcels. Given that the process of determining what has actual market potential is complicated, as most pieces of excess land are small remnants, landlocked or otherwise not developable.

The Division will work with project manager to assist in identifying potential excess land when project is complete. The Division has also been going through older maps to try to determine if any part of that land is outside of the current roadway configuration.

Route Survey/Surveillance: Although the current staffing levels limit the ability to dramatically streamline and perfect the route surveillance program, the Office of Outdoor Advertising (OOA) agrees that the surveillance must be conducted with more certainty and regularity. The OOA will implement the controls necessary to increase the frequency of the route surveillance. Additionally, the OOA agrees with the recommendation to maintain an accurate and complete route survey log, and has already implemented this recommendation.

Outdoor Advertising Violation Records: The OOA is developing an Excel database to maintain a detailed program to document and monitor the payments and/or abatements of violations to ensure they are well justified in the public interest. The OOA agrees to notify the Commissioner on a periodic basis of any abatements and the rationale with respect to such abatements.

Respectively submitted,



E. David Lambert
Assistant Commissioner
Capital Program Management