Table of Contents

A Review of the Right-of-Way Acquisition Process at the Texas Department of Transportation

July 1997

Table of Contents, concluded

Key Points of Report

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Overall Conclusion

While management controls over the right-of-way acquisition process at the Texas Department of Transportation (Department) provide basic assurance that assets are safeguarded, our review revealed unaddressed weaknesses involving management of the complete process. In addition, we found opportunities to improve the Department's application of the retooling effort to the right-of-way acquisition process and in other areas as well. We commend the Department for recognizing right-of-way control weaknesses and inefficiencies through the Retooling TxDOT Project, which began reviewing the right-of-way acquisition process in 1994. The Department has developed and begun implementing plans to improve management of the right-of-way acquisition process, including a new information system.

Key Facts and Findings

- Department management holds the districts accountable for right-of-way management at the end of the acquisition process, rather than using information to monitor the process from beginning to end. There is a risk that overall project schedules will continue to experience unnecessary, costly disruptions.
- While Retooling TxDOT has identified and begun implementing improvements to the right-of-way process, opportunities exist for additional improvements. Examples of improvements needed, which could be applied to all retooling efforts, are:
  - The use of data to identify change needs improvement. For instance, the baseline data on cycle times used for retooling was developed ad hoc and based upon a single sample project. This approach may not provide a true baseline either for drawing conclusions about the process or measuring improvements.
  - Performance measures need to focus less on whether the districts have implemented the changes and more on whether the changes actually result in improvements to outcomes. For example, are more right-of-way projects 100 percent complete by the projected letting date?
  - Retooling TxDOT should include district-level processes when it initially frames the process to be retooled. For example, district-level processes for scheduling, monitoring, and managing right-of-way projects were not included in the right-of-way retooling project. These district processes can have a major impact on the timeliness of the overall process.

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Executive Summary

Management controls over the right-of-way acquisition process at the Texas Department of Transportation (Department) provide basic assurance that assets are safeguarded. This means that purchases are made from the Right-of-Way Plans, clear title to the parcels is acquired, and amounts paid for the negotiated parcels are based upon appraised values. The majority of the responsibility and decision making for right-of-way acquisition is delegated to the districts.

However, our review revealed unaddressed weaknesses involving management of the complete process. In addition, we found opportunities to improve the Department's application of the retooling effort to the right-of-way acquisition process and in other areas as well.

We commend the Department for recognizing many right-of-way control weaknesses and inefficiencies through the Retooling TxDOT project, which began reviewing the right-of-way acquisition process in 1994. The Department has developed and begun implementing plans to improve management of the right-of-way acquisition process, including a new information system. Over the last five years, expenditures for right-of-way acquisitions have totaled approximately $1 billion.

Expand Monitoring and Evaluation of the Right-of-Way Acquisition Process

Management holds districts accountable for the timing of their right-of-way purchases at the end of the acquisition process. Executive management requires that district engineers give an explanation if right-of-way acquisition has a negative impact on construction letting and project completion dates and costs. Although this is helpful, some interim milestones would provide an opportunity to correct problems before they affect letting.

The Department should improve monitoring and evaluation of district activities to improve the quality of the right-of-way acquisition process statewide. Current controls provide basic assurance that assets are safeguarded. However, these controls do not ensure that the purchases occur when planned and make the most efficient use of the State's financial resources. Consistent, comprehensive information on the timeliness of the right-of-way process is not currently available.

Lack of reliable information makes identification and resolution of problems with timing of right-of-way acquisition very difficult. If the districts cannot determine the amount of time that specific phases of the acquisition process normally take or the status of a particular project, it is difficult to determine if the project is on schedule or needs adjustment. Improving the timeliness of the right-of-way process requires better information and active use of that information to identify problems and resolve them quickly.

Information about the right-of-way process resides in several different information systems. Data collection is not coordinated among these systems, and data is neither validated nor regularly reconciled between them. This fragmentation causes many problems in the quality of data available to manage the right-of-way process.

Improvements Are Needed in the Way the Department Implements and Monitors Change Initiatives

The Department has repeatedly focused its attention on improving the right-of-way process. Many of its efforts have failed to yield the desired results. External and internal reviews identified that some current weaknesses existed as far back as 1985.

The Department made good-faith efforts to resolve the weaknesses identified, only to have them remain substantially the same. The Department needs carefully to consider the causes of the unsuccessful, past corrective actions to ensure that Retooling TxDOT and other change initiatives do not have the same problems.

Areas identified as problematic in past reviews include project management, management information systems, and communication between the right-of-way function and the planning and design staff at district and division level.

Management's responses to these internal and external reviews were generally positive and promised corrective action. Although improvements have been made, these actions have been less than successful in completely resolving the identified concerns. This pattern suggests that real change has been difficult to accomplish within the context of the Department's policy of decentralized management and control, combined with a lack of reliable statewide data on right-of-way acquisition performance.

The Department's Retooling TxDOT Project Has Identified the Need for Improvements in the Right-of-Way Process

The Department has identified the need for additional improvements and initiated a project called Retooling TxDOT. Retooling TxDOT reviewed various business functions, process, and activities.

The first area reviewed was the right-of-way acquisition process. Process steps were deleted that did not add value, such as multiple reviews. Controls were adjusted to be more risk-based. An administrative settlement process was created to decrease the number of properties acquired by eminent domain. Recommended changes to the process were implemented October 15, 1996. The Department is developing an automated right-of-way information system that will support the process statewide. The target date for full implementation of the changes and the new automated system is December 1997.

While the Department has identified and begun implementing significant improvements, opportunities exist for additional improvements in the way the Department identifies the changes and the way it implements them:

- The lack of comprehensive data and the exclusion of some district-level management processes from the improvement efforts increases the likelihood that the Department may not be making the most important changes.
- Collection and use of data needs improvement, both to identify and monitor changes.
- Performance measures need to focus less on whether the districts have implemented the changes and more on whether the changes actually result in improvements to outcomes.
- Retooling TxDOT may need to include district-level processes when it initially frames the process to be retooled.
- The reporting and accountability relationships between the districts, divisions, and executive management are not always clear.
- The Department needs more detailed implementation and monitoring plans at the district level to ensure the districts

actually implement the changes as intended.

Objectives and Scope

The objectives of this review were to assess whether adequate management controls exist for right-of-way purchases and to assess whether the Department's retooling process for the Right-of-Way Division has affected the effectiveness of current acquisition controls. We were able to assess the controls for safeguarding state assets at the Right-of-Way Division level, which has the final responsibility for the assets, but we did not review specific controls at the district level. The Department is implementing changes to the right-of-way process and controls.

The original scope of the review consisted of all right-of-way acquisition processes, including district right-of-way operations. Since the retooling changes were not fully implemented at the time of the audit, we postponed the district-level review. However, we are reporting the issues identified during the initial review of the right-of-way acquisition process because we believe they will affect the chances for a successful agencywide implementation of this re-engineering effort.

Summary of Management Responses

This SAO audit report provided no substantive information to help TxDOT management improve our ROW functions. Before this audit started, TxDOT had identified, developed and was implementing significant changes to our ROW business process and information system. The majority of the report repeats information already available to TxDOT Management. (See Appendix 2.)

Auditor Follow-Up Comment to TxDOT Responses

We respect the Department's right to express its position regarding our audit report, and we have thoughtfully considered this response and the specific points with which the Department exception.

There is a basic disagreement between the Department and the State Auditor's Office on the significance of the problems identified. These are in Section 1-B: "Monitor and Evaluate Right-of-Way Project Management;" Section 1-C: "Monitor and Evaluate Right-of-Way Inventory;" Section 2: "Improvements Are Needed in the Way the Department Implements and Monitors Change Initiatives;" and Section 3-B: "The Current Right-of-Way Retooling Process Has Some Weaknesses."

The Department expresses concerns about communications during this project. We followed what we understood to be the agreed-upon procedures. We regret this misunderstanding. The delays in reporting the issues were caused by decisions in our Office concerning the format in which this audit information would be presented.

However, it is our job to make state and agency leadership aware of weaknesses in accountability systems which could lead to ineffective and inefficient use of the State's resources. After reviewing the information provided in the Department's response, the procedures we followed when conducting this review, and the results derived from those procedures, we remain confident about the manner in which the results of our work are presented in this report and the conclusions we drew from those results.

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Section 1:

Expand Monitoring and Evaluation of the Right-of-Way Acquisition Process, and Use Them to Improve the Process

The Texas Department of Transportation (Department) needs improved monitoring and evaluation of district activities to improve the quality of the right-of-way acquisition process statewide. Current controls provide basic assurance that assets are safeguarded. The Right-of-Way Division reviews and approves all right-of-way acquisitions. It reviews these acquisitions for compliance with both Department policy and federal requirements, and it ensures that:

- Purchases are on the Right-of-Way Plan.
- Clear, recorded title to the parcels is acquired.
- Amounts paid for the negotiated parcels are based upon appraised values.

However, these controls do not ensure that the purchases occur when planned and make the most efficient use of the State's financial resources. Consistent, comprehensive information on the timeliness of the right-of-way process is not currently available. Individual districts collect whatever information they feel is needed. This lack of information makes identification and resolution of problems with right-of-way timing very difficult. If the districts cannot determine how much time a specific phase of the acquisition process normally takes, or what the status of a particular project is, it is difficult to determine if the project is on track or needs adjustment.

Improving the timeliness of the right-of-way process requires better information and active use of that information to identify problems and resolve them quickly. The Department needs to:

- Collect better information about the right-of-way process.
- Monitor and evaluate project status.
- Monitor and manage the right-of-way inventory.

Section 1-A:

Collect Better Information on the Right-of-Way Acquisition Process

Information about the right-of-way process resides in several different statewide databases, one Right-of-Way Division database, multiple agencywide databases, and two partially implemented databases developed to unify division-level information. Data collection is not coordinated among these systems, and data is neither validated nor reconciled between them. This fragmentation causes many problems in the quality of data available to manage the right-of-way process.

The rights kinds of data are not available. Information needed to assess how well each district is managing right-of-way projects is not available. A basic monitoring system requires historical information about how long a particular task takes, creation of a standard based upon that information, measurement of actual performance, and

comparison between the standard and actual. None of this information is currently available on right-of-way acquisitions.

The only information the Department routinely tracks is funds expended on right-of-way purchases. No one system tracks the status of the acquisition of right-of-way parcels through the various tasks in the process. Consequently, the Department cannot tell how long it should reasonably take to complete tasks such as acquiring a parcel through negotiation or eminent domain. No standards or benchmarks exist for the districts to find out whether their process is effective. No system determines whether the districts are meeting schedules and goals to acquire right-of-way until the very end of the process.

Data is not standardized or reconciled between systems, and access is limited. Significant quantities of data exist in separate automated systems supporting the right-of-way acquisition process. While the individual district, Right-of-Way Division, and statewide systems may meet certain needs, they do not record and report consistent and comparable information. The *TxDOT Retooling Change Imperative Report* identified that some information collected on these various databases may be redundant or contradictory with other databases. Access to the data is limited. Some examples include:

- Department-level databases
  - "Priorities for system enhancements may conflict"
  - Right-of-way information in Financial Information Management System (FIMS) is not routinely reconciled to construction project information in the Right-of-Way Division database.
- Right-of-Way Division database
  - The Right-of-Way Division must enter data for its mainframe database, districts have only inquiry capability.
  - District right-of-way personnel lack a strong understanding of the Right-of-Way Division database's capabilities and functions.
- District-level databases
  - Districts create and maintain individual right-of-way databases; the districts gather data on a variety of database and spreadsheet applications.
  - Integration of databases created by the district right-of-way sections is limited; the databases have specific, narrow uses.
  - The processes for computer application controls and preservation of data integrity for the district right-of-way information systems are unclear and/or not consistently applied.

The lack of standardized, reliable information makes comparisons between the districts difficult, if not impossible.

The Department has no standardized reporting system. The Department does not have any standard reports on the timeliness of right-of-way acquisitions. We looked at several information systems for reports on right-of-way acquisitions. While it was not expected that all these systems would have right-of-way reports, complete information was not on any of these systems:

- Current measures of district office performance in acquiring right-of-way are limited. The Department reports to the Legislative Budget Board the number of right-of-way parcels purchased and the total dollars spent.

- The Department's executive information system, the Texas Executive Information System (TExIS), has no information on right-of-way status or purchases.

- The right-of-way information used for planning is based upon data provided by individual districts, which in turn comes from various district information systems.

- Data on acquisition milestones, such as the date district right-of-way agents make the offer, is not uniformly collected, documented, or analyzed.

Without adequate data the Department cannot know that goals are being met, reliable information is reported, and laws and regulations are complied with. All the participants in the project need to share information to coordinate operations. This includes sharing information between each district's planning, design, construction, and right-of-way sections. The risk is that the lack of reliable information and coordination between the districts and the divisions could also affect the acquisition process.

Recommendation:

The Department needs to improve the information available about the right-of-way process. Some of this may have already been accomplished as part of the Right-of-Way Management Information System (ROWIS) project. The steps to be considered include:

- Conduct a needs assessment, including consideration of district, division, and statewide management needs.

- Determine the cost/benefit of the needs identified so that the Department can implement systems to collect the most important information first.

- Design a system for collecting the data, making sure that it is standardized, reliable, and interfaces accurately with existing systems.

- Create reports that meet users' needs and provide information needed for decision-makers.

Management Response:

Our ROW retooling and ROWIS project included these items. (See management's full response on page 19.)

Auditor's Follow-Up Comment:

While most the steps were included in the planning for the ROWIS project, implementation was not complete at the time of the review. The target date for full implementation of the retooling changes and the new automated system is December 1997.

Section 1-B:

Monitor and Evaluate Right-of-Way Project Management

The Department needs a better system for monitoring the management of right-of-way projects and their relationship with overall construction management. As part of the Retooling TxDOT Project, a new information system, ROWIS, is being developed to accomplish this. The *TxDOT Retooling Change Imperative Report* stated that existing communication and project management depend largely on informal networks, causing priority setting and communications among all parties to be less than desirable. As a result, parcel acquisitions have been delayed or their actual timing has not occurred as planned, causing problems with contract letting. Delays in the acquisition of right-of-way and utility adjustments have caused more than $11 million in settlements for related claims for construction contracts over the past seven years.

There is no early warning system in the right-of-way process to tell the Department how well it is doing. Right-of-way acquisitions are under the jurisdiction of the district engineers. The Department does not require the district engineers to provide any kind of standard data or report on the status of right-of-way acquisitions on an ongoing basis. Although management requests information from time to time, the districts generate it from ad-hoc systems whose reliability is uncertain. This lack of automated tracking and scheduling tools has contributed to delays in letting due to critical activities not being done or scheduled properly.

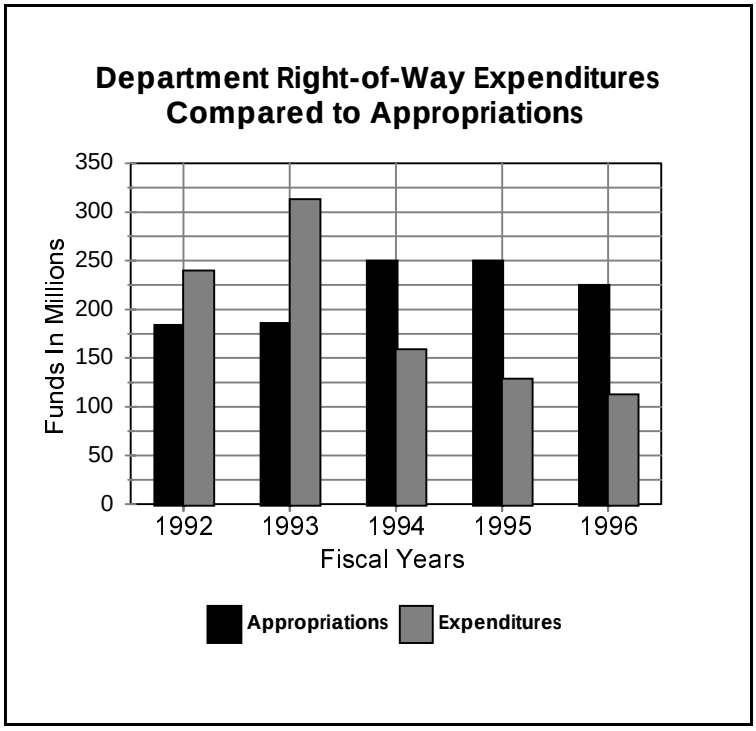
Management holds districts accountable for the timing of their right-of-way acquisitions at the end of the process. Executive management requires that district engineers give an explanation if right-of-way acquisition has a negative impact on construction letting and project completion dates and costs. Although this is helpful, some interim milestones would provide an opportunity to correct problems before they affect letting.

A recent federal process review found that 46 percent of the construction contracts reviewed were let without full acquisition of right-of-way, violating federal guidelines. The sample was from the five urban districts: Houston, Dallas, San Antonio, Fort Worth, and Austin. A sample of 25 percent for each district of federally funded new location, reconstruction, and widening projects with unclear right-of-way and/or utilities were selected. Furthermore, the federal audit team found the districts visited did not uniformly document the right-of-way acquisition process. In response to the findings the Executive Director stated,

> Recently, the department has taken steps to ensure more accurate letting dates by requiring that only projects with approximately 75 percent right-of-way/utility needs complete qualify for inclusion in our project development plan updates which include moving those projects into the 3-year STIP.

Retooling TxDOT reported in *Phase 2, Business Cases and Recommendations*, that the Department does not integrate right-of-way acquisition activities into the overall project development process. This contributes to inadequate lead time to acquire needed right-of-way for projects. For example, if the district does not include the right-of-way staff in initial planning, inaccurate or unknown dates for parcel acquisition may cause delays in letting, higher costs, and project disruption. The higher costs and project disruption are in the form of claims and project extensions or suspensions. This was identified in the federal process review. Department staff also identified this situation during the Retooling TxDOT review, and management implemented new procedures on October 15, 1996, to require right-of-way personnel to be included in key planning meetings.

Figure 1



Another example is how the right-of-way estimates used in the Legislative Appropriation Requests are determined. The Design Section prepares a schedule including projects expected to be let in the biennium. The district right-of-way staff determines the number of parcels and estimates the amount of funds necessary to purchase the right-of-way needed for the projects on the letting schedule. District right-of-way staff do not consider whether acquiring the number of parcels within the stated period is possible.

The *TxDOT Retooling Change Imperative Report* also noted that forecasting for right-of-way acquisition expenditures fluctuates excessively. As shown in Figure 1, the actual

expenditures differ noticeably from year to year. The actual expenditures usually do not match appropriated amounts.

Recommendation:

The Department needs improved performance measures and data collection to enhance its management of right-of-way projects. Given the variable nature of right-of-way projects, one option might be to require district engineers to develop a project plan that takes into consideration the specific nature of the parcels to be acquired. That plan would then be used as a standard against which actual performance would be measured. Such a plan could also be used to determine if the resources assigned to complete a particular project are sufficient. Comparing the specific project plan with the district's resources could accomplish this.

In addition, the Department could establish statewide standards for the controllable tasks within the right-of-way acquisition process. For example, standards could be set for the time allowed between receipt of the appraisal and the delivery of an offer. For districts or projects whose performance is significantly different from the standard, management would require that district engineers explain the difference and the steps to reduce future variances. This would allow problems to be identified and solved before they affect letting.

The Department should include data and performance measures in regular management reports. Management should determine the information and format for the reports as part of the development process of ROWIS. Management should make the performance measures available to all district engineers to encourage the prompt resolution of any identified problems.

Management Response:

Our ROW retooling and ROWIS project included these items. Additionally, the Right of Way Division does currently generate monthly reports on district acquisition activity and status for the Deputy Executive Director of Transportation Planning and Development. (See full response on page 19.)

Auditor Follow-Up Comment:

The Deputy Executive Director of Transportation Planning and Development does receive monthly reports on the amount of right-of-way funds expended compared to the budgeted amounts. These reports show only the cumulative district information. The reports do not contain information on the individual right-of-way projects or the status of the number of parcels remaining.

Section 1-C:

Monitor and Evaluate Right-of-Way Inventory

Highway right-of-way purchases tie up state dollars that could otherwise earn interest. The districts should therefore time these purchases to ensure that the land purchased will be promptly used. It may, however, be a good idea to purchase and hold land in some cases. One example would be when property costs are rising and the Department will need the additional right-of-way soon for future expansion. Another would be acquiring right-of-way to preserve corridors in metropolitan or areas of projected growth.

These purchases, and the resulting inventory, should therefore be monitored and evaluated to make sure the Department is doing a good job of correctly timing its purchases. The Department spent approximately $1 billion on right-of-way over the last five years alone. For example, if just one percent of these purchases were one year early, the State would lose interest of $500,000 (assuming a 5 percent rate of interest), or $1,370 per day.

An evaluation of the quality of the current right-of-way inventory is not possible with the data readily available. Although limited information is available on what right-of-way has been purchased, it is not easily accessible. The data is maintained in the district offices on various manual and electronic systems. The resulting right-of-way inventory cannot be broken down by:

- What has been used
- What is being held for future expansion
- What is being held for current projects
- What was purchased for projects that the Department subsequently delayed or placed on hold

This information could be used to analyze and evaluate the quality and timeliness of right-of-way acquisitions. The same information could also be used in the planning and prioritization processes. This would not replace the current prioritization process, but include an additional factor for consideration. For example, an analysis could be done of the property held more than ten years but not in the current project plan. This would help the Department identify potential sites of surplus property and/or identify districts that may be buying too far ahead of time. While not all the properties in this category would necessarily be problems, the analysis would at least allow identification of such situations for review.

Current Government Accounting Standards do not require the reporting of infrastructure assets, such as right-of-way, on the balance sheet. However, Government Accounting Standards Board (GASB) recently announced that it would soon be considering requiring the recording of current year infrastructure acquisitions and a phased-in recording of previous acquisitions. Infrastructure assets include roads, bridges, and tunnels. Although these reporting requirements are much less extensive than the information we are recommending be collected for management purposes, they are a good first step.

Recommendation:

The Department should develop a process for monitoring and evaluating its right-of-way inventory to identify opportunities for improvement. While we recognize that identifying all the right-of-way the Department has acquired may not be cost effective, the process could initially include the parcels acquired in the last two fiscal years. This would provide a start and new parcels could be added at acquisition. Parcels from prior periods could be added when the Department researches to determine the infrastructure assets for the compliance with the new GASB requirements. Such a process might include:

- Developing a list of right-of-way acquired
- Determining which of these properties:
  - Are being used on current projects
  - Are being held for future expansion (i.e., corridors in metropolitan areas)
  - Were purchased for projects that were subsequently delayed or put on hold
  - Have been used
- Analyzing the above information to identify surplus property or adjust future purchases

Management Response:

The recommended inventory functions have not been recognized as a need in our ongoing ROW improvements. We have no current plans to evaluate the benefits and costs of developing an extensive automated information system to perform these functions. (See management's full response on page 19.)

Auditor Follow-Up Comment:

The Department may have the basic data needed to compile this information on existing systems. We will continue to work with the Department on the importance of this issue.

Section 2:

Improvements Are Needed in the Way the Department Implements and Monitors Change Initiatives

Figure 2

PEMS: A Case Study in Reasonable Change That Did Not Resolve a Problem

Three separate reviews have identified project management from the planning through the construction phase as a concern. A 1985 review by Price Waterhouse concluded that management did not effectively integrate right-of-way activities into the overall project development process. Part of management's plan to improve this situation included development of the Preliminary Engineering Management System (PEMS).

An Audit Report on Management Controls at the Texas Department of Transportation (SAO Report No. 95-021), released by the State Auditor's Office in November 1994, again found problems with the Department's management of preconstruction activities. The Department agreed that management and control of preconstruction activities had been a problem since the mid-1980s. Management's response committed to fully implementing PEMS by providing district engineering offices with PEMS training and software by February 1995.

However, the development of PEMS has not resolved the problems associated with the management and control of preconstruction activities within the Department. In addition, PEMS is not actively used at the district level. One district engineer told our auditors that he did not know anyone who would use PEMS. Another official explained that the system seemed good, but was not user-friendly.

If PEMS had been fully implemented, it might have resulted in huge productivity gains and greatly improved the timeliness of right-of-way projects. Since it was not, the Department did not receive the intended benefits.

PEMS is an example of how a proposed solution to a known problem can fail to resolve the issue. It has not leveraged procedural changes within the Department and apparently does not have buy-in at the district level.

Now, the Department is developing a new system (the Right-of-Way Management Information System, or ROWIS) to help address findings from the first report of the Department's Retooling TxDOT Project (December 1994). This report also found that the Department did not effectively integrate right-of-way activities into the overall project development process.

ROWIS looks reasonable and should provide part of the information needed to better manage the right-of-way process. However, the Department's experience with PEMS raises concerns about whether this new system will help address the real issue of integrating right-of-way activities into the overall construction development process unless it is accompanied by broader changes in procedures and monitoring activities.

Although the Department has repeatedly focused its attention on improving the right-of-way process, many of its efforts have failed to yield the desired results. External and internal reviews identified that some current weaknesses existed as far back as 1985. The Department made good faith to resolving them, only to have the weaknesses remain substantially the same.

A review of problems identified over the past 12 years shows a pattern of similar concerns. These concerns include project management, management information systems, and communication between the right-of-way function and the planning and design staff at district and division level. Management's responses to these were generally positive and promised corrective action. However, these actions have been less than successful in resolving the identified concerns.

This pattern suggests that real change has been difficult to accomplish within the context of the Department's policy of decentralized management and control, combined with a lack of reliable

statewide data on right-of-way performance. Changes are essentially left up to the discretion of the district engineers. The districts are not given compelling evidence that the changes will be of benefit, and they are not told of any penalties that might be assessed if changes are not made. Little or no monitoring is done. Consequently, the districts have little incentive to put forth the effort needed to make the changes.

One example of how this can occur is the development and implementation of the Preliminary Engineering Management System (PEMS). (See Figure 2.) This system is still available, but management has given the districts the option of whether or not to use it.

The Department needs carefully to consider the possible causes of why the PEMS and other changes to identified problems were unsuccessful. This will help to ensure that Retooling TxDOT, ROWIS, and other change initiatives do not have the same problems.

Recommendation:

Management should develop more comprehensive plans for the implementation of promised corrective action and resolution of findings. These implementation plans should include:

- Consideration of the Department's decentralized organization structure and how that might affect implementation
- Identification and monitoring of interim milestones
- Monitoring to determine whether the districts and divisions have completed corrective action to resolve the findings
- Monitoring to determine whether the outcomes improved as expected as a result of the action taken

Management Response:

No comment to the section. (See management's full response on page 19.)

The Department's Retooling TxDOT Project Has Identified the Need for Improvements in the Right-of-Way Process

The Department recently identified the need for additional improvements and initiated a project called Retooling TxDOT. Retooling TxDOT reviewed various business functions, process, and activities. The initial review of the right-of-way acquisition process began in 1994. Recommended changes to the process were implemented October 15, 1996. While the Department has identified and begun implementing significant improvements, opportunities exist for additional improvements. These opportunities exist both in the way the Department identifies the changes and the way it implements them.

Section 3-A:

The Retooling Process Has Identified and Begun Implementing Improvements

The Department's recent retooling of the right-of-way process identified and began the process of implementing several improvements to the right-of-way acquisition process, such as:

- Deleting process steps that did not add value, such as multiple reviews
- Adjusting controls to be more risk based; for example, they now only require long form appraisals for higher value properties
- Establishing statewide fee schedules for appraisals
- Using industry standard forms and formats to shorten and improve data requested and collected; for example, on appraisal reports
- Creating an administrative settlement process to decrease the number of properties acquired by eminent domain
- Improving the information available to users through technology improvements
- Adding processes (irrevocable possession and use agreements) to decrease the time until the State has possession of the property
- Developing an automated right-of-way system that will support the process statewide

Implementation of these changes to the right-of-way process began on October 15, 1996. The target date for full implementation of the changes and the new automated system is December 1997.

Recommendation:

The Department should continue with the implementation of the retooling recommendations. Executive management should provide strong support to ensure the Right-of-Way Division and districts fully implement the initiatives. Management should allocate adequate resources to ensure that development of the new automated system, ROWIS, is completed on schedule.

Management Response:

Concur. (See management's full response on page 19.)

Section 3-B:

The Current Right-of-Way Retooling Process Has Some Weaknesses

While Retooling TxDOT has identified and begun implementing significant improvements to the right-of-way process, opportunities exist for additional improvements, both in the way the Department identifies the changes and the way staff implements the improvements:

- The collection and use of data needs improvement, both to identify changes and to monitor them.
- Performance measures need to focus less on whether the districts have implemented the changes and more on whether the changes actually result in improvements to outcomes. (For example, are more right-of-way projects 100 percent complete by the projected letting date?)
- Retooling TxDOT may need to include district-level processes when it initially frames the process to be retooled. For example, district-level processes for scheduling, monitoring, and managing right-of-way projects were not included in the right-of-way retooling project. These district processes can have a major impact on the timeliness of the overall process.
- The reporting and accountability relationships between the districts, divisions, and executive management should be clarified.
- The Department needs more detailed implementation and monitoring plans at the district level to ensure the districts actually implement the changes as intended.

The lack of comprehensive data and the exclusion of some district-level management processes increase the likelihood that the Department may not be making the most important changes. For example, deleting some division-level review processes may save time, but without data the Department does not really know by how much. It also does not know if changing other processes, which Retooling TxDOT did not review, might provide even greater savings. For example, decreasing the time between the date the district received the appraisal and the date the district makes the offer might result

in greater time savings than those gained from deleting some division-level review processes.

The lack of sufficient data, comprehensive performance measures, unclear reporting and accountability relationships, and district-level implementation plans reduce the likelihood that changes will be fully and consistently implemented at the district level. As a result, the statewide process may not improve. If PEMS had been fully implemented, it might have resulted in huge productivity gains and greatly improved timeliness of right-of-way projects. Since it was not, the Department did not receive the intended benefits.

Improve data. Data should be collected and analyzed both to determine the changes needed and to monitor the impact of their implementation. The baseline data on cycle times used for Retooling TxDOT was developed ad hoc, and was based upon a single sample project. It does not appear that the baseline data can function as a true baseline either for drawing conclusions about the process or measuring improvements. It does not appear that the Department has established any mechanism to collect this data after staff makes the changes.

Expand performance measures. The performance measures that have been identified so far tend to focus on determining whether the districts have implemented the recommended changes (how many short forms used) and not whether the process has improved (how long does it take to get an appraisal completed). There are no measures for error rates in the process, although the Retooling TxDOT team told us that some information is being collected informally. This would help determine if the changes made have unintended consequences. This is particularly important where controls, such as the division-level review of some appraisals, have been eliminated.

Include district-level processes. Retooling TxDOT did not fully examine the role of district operations on right-of-way acquisition performance. The flow chart of the right-of-way acquisition process used for retooling did not include the district processes for scheduling, monitoring, or managing right-of-way acquisition. These processes can have a major impact on the timeliness of the process. For example, if the district does not have standards for, or monitor how long offers have remained outstanding, the eminent domain process could be greatly delayed. If a district does not have a process for setting priorities for acquisitions, agents could be buying the easy-to-acquire parcels first rather than the key or difficult pieces. This may be backwards from what should be done.

Clarify accountability and reporting relationships. Accountability and reporting relationships for the right-of-way process are not clear. The Retooling TxDOT manual indicates that the Right-of-Way Division is responsible for monitoring the districts. However, the Right-of-Way Division does not have the authority to hold the district engineers accountable, only the Executive Director has this authority. Retooling TxDOT is responsible for the performance measures related to measuring the effects of the retooling changes. The responsibility for monitoring whether the right-of-way performance actually improved belongs to the Deputy Executive Director of Transportation Plan Development. Management has not determined the reports

ROWIS will generate. The responsibility for creating an interim monitoring process, so that accountability can occur, is also unclear.

Create and monitor district-level implementation plans. Although Retooling TxDOT issued a manual that provides clear instructions about what changes are to be made and which positions have what roles, it is not an implementation plan. District engineers and right-of-way personnel will still have to figure out how to make those changes in their own organizations. The districts may need additional support and monitoring to make sure the changes actually get implemented as intended.

Recommendation:

Future Retooling TxDOT and other change initiatives should consider the following steps:

- Determine a baseline for current right-of-way acquisition so the Department can better understand the effect of the changes on the process.
- Collect more detailed information about the process before making changes, especially those whose benefit is derived based upon limited data.
- Include district-level management processes in the review.
- Identify performance measurements and collect data to monitor the effectiveness of the changes adopted.
- Expand performance measures to focus more on outcomes.
- Clarify reporting relationships to ensure accountability.
- Require district-level implementation plans and monitor them.
- Assign the responsibilities for monitoring both the changes to the process and the effect of the changes.

Management Response:

ROW retooling is TxDOT's pilot project in reengineering our business processes. As one of the few state agencies engaged in a major retooling effort, we will continue to improve its method of evaluation and implementation. We concur that improvements should, and are, being made to ROW retooling and other retooling initiatives at TxDOT. (See management's full response on page 19.)

Management Responses

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG•125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

April 7, 1997

Mr. Scotty Killingsworth
Office of the State Auditor
Two Commodore Plaza
206 East Ninth St., Suite 1900
Austin, TX 78701

RE: Management Response to SAO Draft Report, Review of Controls for the TxDOT Right of Way Acquisition Process

Dear Mr. Killingsworth:

General Response

This SAO audit report provided no substantive information to help TxDOT management improve our ROW functions. Before this audit started, TxDOT had identified, developed and was implementing significant changes to our ROW business process and information system. The majority of the report repeats information already available to TxDOT management. This absence of substantive information, we believe, is related to the lack of interaction with TxDOT management during the audit.

At the start of and during the audit, the in-charge auditor was requested by the TxDOT audit director to provide periodic updates to TxDOT management. This audit began in August 1996 and field work was completed in November 1996. There was no engagement letter, no entrance conference, no interim briefing and no exit conference with TxDOT management. On November 26, 1996, Mr. Robert Cuellar, Deputy Executive Director for Transportation Planning and Development was interviewed (not briefed) and on December 11, 1996, TxDOT internal audit staff met with State Auditors to discuss preliminary ROW audit findings related to retooling (an internal audit of retooling was in process). On February 10, 1997, the SAO staff faxed Discussion Points 1-6 to TxDOT. State Auditor staff and TxDOT management met on February 20 for about two hours "to review the potential issues identified during the project and receive initial responses from TxDOT management" as stated on the SAO Meeting Agenda/Announcement. On March 11, 1997, TxDOT received the SAO's draft ROW Audit Report which had substantially the same content as the Discussion Points 1-6. Issues raised by TxDOT management during the February 20 meeting were not addressed.

Responses to Recommendations

Section 1-A (Collect Better Information on the Right of Way Acquisition Process): Our ROW retooling and ROWIS project included these items.

Section 1-B (Monitor and Evaluate Right of Way Project Management): Our ROW retooling and ROWIS project included these items. Additionally, the Right of Way Division does currently generate monthly reports on district acquisition activity and status for the Deputy Executive Director of Transportation Planning and Development.

Section 1-C (Monitor and Evaluate Right of Way Inventory): The recommended inventory functions have not been recognized as a need in our ongoing ROW improvements. We have no current plans to evaluate the benefits and costs of developing an extensive automated information system to perform these functions.

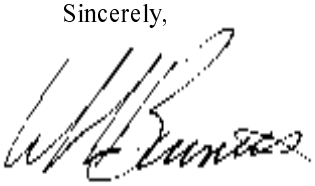
Section 2 (Improvements Are Needed in the Way the Department Implements and Monitors Change Initiatives): No comment.

Section 3-A (The Retooling Process Has Identified and Began Implementing Improvements): Concur.

Section 3-B (The Current Retooling Process Has Some Weaknesses): ROW retooling is TxDOT's pilot project in reengineering our business processes. As one of the few state agencies engaged in a major retooling effort, we will continue to improve its methods of evaluation and implementation. We concur that improvements should, and are, being made to ROW retooling and other retooling initiatives at TxDOT.

If you have any questions, please contact Owen Whitworth, Director, Audit Office at 512/463-8637.

Sincerely,



Wm. G. Burnett, P.E.
Executive Director

cc: Larry Alwin, State Auditor
Anne Wynne, Commission Member

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG•125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

June 17, 1997

Mr. Scotty Killingsworth
Office of the State Auditor
Two Commodore Plaza
206 East Ninth St., Suite 1900
Austin, TX 78701

RE: Management Response to SAO Final Draft Report for the Review of Right of Way Acquisition Process

Dear Mr. Killingsworth:

We have reviewed the Final Draft Briefing Report you sent on May 29, 1997. There have been no changes to the content/substance of the document since our written response dated April 7 and our last meeting on April 30, 1997, so, therefore, we ask that you use the response we provided on April 7. We would like to have a final closeout conference based on the Final Draft Briefing Report that includes our responses.

Even as we now agree to disagree on much of this report, we recognize the responsibilities and the value of the audit function. Thank you, Mr. Barnie Gilmore and Mr. Frank Vito, for your efforts to address our concerns with this audit.

Please contact Owen Whitworth, Director, Audit Office, to schedule the final closeout conference with me and Mr. Robert Cuellar or for other matters on this report.

Sincerely,

Wm. G. Burnett, P.E.
Executive Director

Appendix:

Objectives, Scope, and Methodology

Objectives

- Assess whether adequate management controls exist for right-of-way purchases.

- Assess whether the Department's retooling process for the Right-of-Way Division has affected the effectiveness of current acquisition controls.

- Assess whether proposed changes to controls over the right-of-way acquisition process will adequately protect title for property acquired by the State and safeguard state assets in an effective and efficient manner.

We were able to assess the controls for safeguarding state assets at the Right-of-Way Division level, which has the final responsibility for the assets, but we did not review specific controls at the district level. The Department is in the process of implementing changes to the right-of-way process and controls. The implementation date of this reengineering effort, Retooling TxDOT, was October 1996. However, full implementation of the information system which supports the retooling is not scheduled for completion until December 1997.

Scope

The scope of the project included the consideration of administrative functions, management of information resources, and policies and processes used to monitor and evaluate the right-of-way acquisition process. The original scope of the project included reviewing all right-of-way acquisition processes, including selected district right-of-way operations. Since the Retooling TxDOT changes were not fully implemented at the time of the review, we postponed the district-level review to a later date. However, we are reporting the issues identified during the initial review of the right-of-way acquisition process because we believe they will affect the chances for a successful agencywide implementation of this retooling effort.

Information to support the conclusions came from the Department's internal reviews including Retooling TxDOT reports, task force reviews, and internal audit reports. Additional external reports reviewed included prior State Auditor's Office reports, federal process reviews, and the Price Waterhouse Management Control audit.

Methodology

The methodology used on this audit consisted of collecting information, performing audit tests and procedures, analyzing the information, and evaluating the information against established criteria.

Information collected to accomplish our objectives included the following:

- Interviews with the management and staff at the Texas Department of Transportation headquarters and district offices

- Interviews with individuals from the Federal Highway Administration

- Documentary evidence such as:
  - State and federal statutes and regulations
  - Department of Transportation publications, policy manuals, documents, memoranda, contracts, and audit reports
  - Various management reports

- Enabling legislation

- Agency-generated data from the financial Information Management System, Design and Construction information System, and the Right-of-Way Division "D-15" database

Procedures and tests conducted:

- Reviewed right-of-way current acquisition controls

- Tested selected parcels to determine if the acquisition price was correctly based upon appraisal or eminent domain proceedings and if each parcel was part of an approved right-of-way plan

- Reviewed the effect of the changes of the retooling recommendations on the controls

- Reviewed the retooling implementation plan and actual steps taken through the end of fieldwork

- Assessed the right-of-way acquisition process from the districts through the Right-of-Way Division

Analytical techniques:

- Process review of the current right-of-way processes
- Process review of the right-of-way process after the retooling recommendations were implemented

Criteria used:

- State Auditor's Office Accountability Project Methodology general and specific criteria

- State Auditor's Office Management Control Methodology

Other Information

Fieldwork was conducted from August 1996 to December 1996. This audit was performed in accordance with applicable professional standards, including:

- Generally Accepted Government Auditing Standards
- Generally Accepted Auditing Standards

The following members of the State Auditor's Staff performed the audit work:

- J. Scott Killingsworth, CIA (Project Manager)
- Arthur Arispe
- Linda Lansdowne, CPA
- Marios Parpounas
- Norman Pipione, CGFM
- Robert Rodney, CPA
- Barnie Gilmore, CPA (Audit Manager)
- Deborah L. Kerr, Ph.D. (Director)