

**Tennessee Department of Transportation
Right-of-Way Division**

February 2001

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John G. Morgan
Comptroller

February 20, 2001

The Honorable John S. Wilder
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The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Tommy G. Haun, Chair
Senate Committee on Transportation
The Honorable L. Don Ridgeway, Chair
House Committee on Transportation
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Department of Transportation's Right-of-Way Division. This audit was conducted pursuant to Chapter 735, Public Acts of 2000.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
00-097

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Department of Transportation
Right-of-Way Division
February 2001

AUDIT OBJECTIVES

The objectives of the audit were to determine the authority and responsibility mandated to the division by the General Assembly; to determine the extent to which the division has fulfilled its legislative mandate and complied with applicable laws and regulations; and to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the division.

FINDINGS

The Division Failed to Take Timely Action to Remove a Right-of-Way Acquisition Consultant Firm With Problems From the Qualified List

Based on our review of division documentation, it appears that the division had written evidence as early as 1997 that a right-of-way acquisition consultant firm had problems. However, despite continuing problems, the division contracted with the firm for yet another project in June 1999 and did not remove the firm from the qualified bid list until October 1999. In the interim, the firm hired a consultant (who had previously contracted individually with the division) whose work on their joint project resulted in complaints to state legislators and a May 2000 internal audit. By not taking timely action, the division risked potential negative consequences for the construction projects and TDOT's reputation with the public (page 21).

The Division Needs to Formalize and Improve Its Process for Monitoring the Performance of Right-of-Way Acquisition Consultants

Because right-of-way acquisition consultants represent the Tennessee Department of Transportation (TDOT) in negotiations with property owners, it is important that the Right-of-Way Division has a formal, effective process in place to monitor those consultants and to identify and address problems before they negatively impact a highway construction project. Currently, according to division manage-

ment, there are no written procedures and no standard set of policies and procedures that the central office and regions are supposed to follow when monitoring consultants. The monitoring that does take place during a project appears to focus on ensuring that tracts are acquired timely (page 26).

The Division Needs a Uniform System for Processing Complaints

The division does not have a uniform system to process complaints filed at the regional field offices or the central office. The division does not routinely log complaints and does not have a main repository documenting complaint information and status. The division does not have specified time frames to respond to and resolve complaints, methods for publicizing complaint procedures, or a process for regional field offices to report complaints to the central office. Thus, the division's ability to track complaints, ensure appropriate and timely resolution, and identify complaint trends is limited (page 28).

Personnel Files of Division Staff Did Not Always Contain Information Needed to Ascertain Qualifications and Performance

In a review of staff personnel files, not all files contained documentation of staff qualifications, such as the appraiser certification required for some positions. In addition, not all division staff receive annual performance evaluations (page 35).

Division Management Should Continue to Improve Their Process for Determining Whether to Use Consultants or In-House Staff

The *Right-of-Way Procedures Manual* does not provide specific criteria (e.g., number of tracts, project complexity, regional staff productivity) for division management to use when deciding whether to use a consultant or in-house staff for a particular project. Recently, as a result of a department-wide assessment called Business Process Reengineering, division management decided to emphasize the use of internal staff rather than consultants and to review more closely each region's current and future workload prior to authorizing the use of consultants. Although the decision to review more closely the use of consultants appears very appropriate, it seems that the process could be further improved if, in addition to reacting to specific region requests, division management periodically assessed each region's staffing, current and anticipated project workload, and productivity. Management would then have the information needed to more completely assess the need for consultants on a given project. In addition, management might also then be able to compare productivity among regions and better evaluate not only region staff's, but also consultants', productivity (page 31).

The Division Has Not Reviewed and Updated Its Policies and Procedures as Required

The division does not perform annual evaluations of its policies and procedures manual to determine whether amendments or revisions are needed. In addition, the division does not always formally update its policies and procedures manual as changes are made, and its appraiser guidelines have not been revised since 1983. Without those formal evaluations and updates, division management cannot ensure that all needed revisions to policies and procedures are made in a timely manner or that all changes are communicated fully and accurately to regional staff and division contractors (page 33).

Most Landowners Surveyed Were Satisfied With the Right-of-Way Process; Some, However, Raised Serious Concerns

Based on survey responses, individuals appeared, generally, to be satisfied with the treatment received from the department staff and with the right-of-way process. The majority of landowners indicated they were properly notified of the right-of-way public meeting and that the highway construction projects and right-of-way process were clearly described. Also, most of the respondents indicated they believe the department treated them fairly. Despite the generally positive responses, however, several respondents made comments indicating that they believed they were not treated fairly, or that the right-of-way agent was not courteous and/or knowledgeable (page 36).

OBSERVATIONS AND COMMENTS

The audit also discusses the following items: the results of our review of files for a representative sample of tracts acquired by the division during fiscal years 1999 and 2000; the division's use of administrative settlements; problems with the division's TRIS computer system; the incomplete information available on tracts donated by landowners; the need for the division to improve its process for seeking out minority contractors; the results of our review of bid files; and interviews with division contractors (page 12).

"Audit Highlights" is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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**Performance Audit
Tennessee Department of Transportation
Right-of-Way Division**

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**Performance Audit
Tennessee Department of Transportation
Right-of-Way Division**

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Department of Transportation's Right-of-Way Division was conducted pursuant to Chapter 735, Public Acts of 2000. The legislation requires the Office of the Comptroller of the Treasury to conduct a performance audit of the policies, procedures, and directives related to the acquisition of right-of-way for state highways.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the division by the General Assembly;
2. to determine the extent to which the division has fulfilled its legislative mandate and complied with applicable laws and regulations; and
3. to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the division.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities and procedures of the Tennessee Department of Transportation's Right-of-Way Division were reviewed with a focus on procedures in effect during field work (August 2000 to November 2000). The audit was conducted in accordance with generally accepted government auditing standards and included

1. review of applicable statutes and rules and regulations;
2. examination of the division's documents, policies, and procedures;
3. review of prior performance audits, financial and compliance audit reports, and audit reports from other states;

4. interviews with division staff, division contractors, staff of right-of-way divisions in other states, and Federal Highway Administration (FHWA) staff; and
5. a file review of a sample of acquisitions made during the fiscal years ending June 30, 1999, and June 30, 2000, and a survey of landowners of those tracts.

To identify acquisitions made during fiscal years 1999 and 2000, we obtained a listing of tracts which had checks issued (i.e., as payment for the tract) during that period. Because of the length of time required for the acquisition process, in some cases the files reviewed encompassed several years of activities and, therefore, included a review of actions taken prior to the tenure of current division management.

DEPARTMENT OF TRANSPORTATION'S ORGANIZATION AND RESPONSIBILITIES

The Tennessee Department of Transportation (TDOT) was established in 1972 under the provisions of *Tennessee Code Annotated*, Title 4, Chapter 3, Part 23. The department was created to plan, design, construct, and maintain the state's highway network. The department is also responsible for other modes of transportation such as aeronautics, public transit, railroads, and waterways.

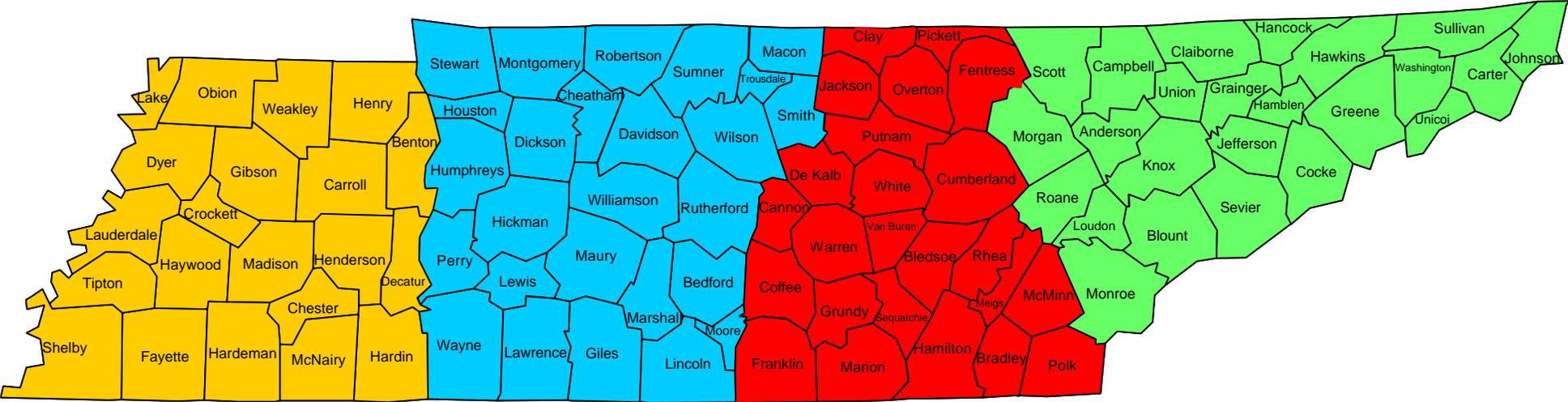
The Department of Transportation is headed by a Commissioner, a Deputy Commissioner, a Chief of Administration who oversees department offices such as Finance, Human Resources, and Information Technology, and a Chief Engineer who oversees the department's highway planning, design, and operations functions. The Right-of-Way Division reports to the Chief Engineer. Under Section 302 of Title 23, U.S. Code, state transportation departments are responsible for establishing right-of-way programs including appraisal, acquisition, and relocation for federal-aid highway projects.

RIGHT-OF-WAY (ROW) DIVISION

The Right-of-Way Division is responsible for all activities related to acquiring the property rights necessary for the construction of public roads and highways of Tennessee. The division has a central office (headquarters) in Nashville and four regional field offices that report to the central office. The four regional Right-of-Way field offices are located in the Tennessee Department of Transportation's regional field offices. The Region 1 field office is located in Knoxville, the Region 2 field office is in Chattanooga, the Region 3 field office is in Nashville, and the Region 4 field office is in Jackson.

In addition, there are two satellite Right-of-Way offices—one in Johnson City that operates as part of the Knoxville regional field office and another in Memphis that operates as part of the Jackson regional field office. See Exhibit 1 for a map indicating the portions of the state for which each region is responsible.

Tennessee Department of Transportation Regions



- Region I
- Region II
- Region III
- Region IV

The field offices of the Right-of-Way Division perform the following functions:

- review/approve property appraisals,
- coordinate utility relocation,
- negotiate and acquire rights-of-way, and
- provide relocation assistance for persons and businesses.

The central office coordinates the activities of the regional field offices, establishes policies and procedures for the entire division, and contracts for appraisals and other right-of-way acquisition services. The central office Relocation Property Management Section supervises the regional field offices' relocation sections to ensure that regions are adhering to federal and division policies and procedures. The Acquisition Section assists regional field offices in resolving any problems with the acquisition of individual tracts and also coordinates with the state's Attorney General's Office when tracts are condemned. The Appraisal Section has authority over all appraisal activity, including contracting for appraisals and reviewing appraisal work. Appraisal Section staff review appraisals for Region 3 (which currently lacks sufficient review staff) and assist other regions with appraisal reviews as needed. The Administration Section coordinates budget, payroll, and invoice payment issues with TDOT's Finance Division and manages the central office file room. The Utilities Section supervises utility relocation functions of the regional field offices and coordinates with railroads regarding right-of-way issues.

Exhibit 2 is an organizational chart of the Right-of-Way Division.

RIGHT-OF-WAY PROCEDURES MANUAL

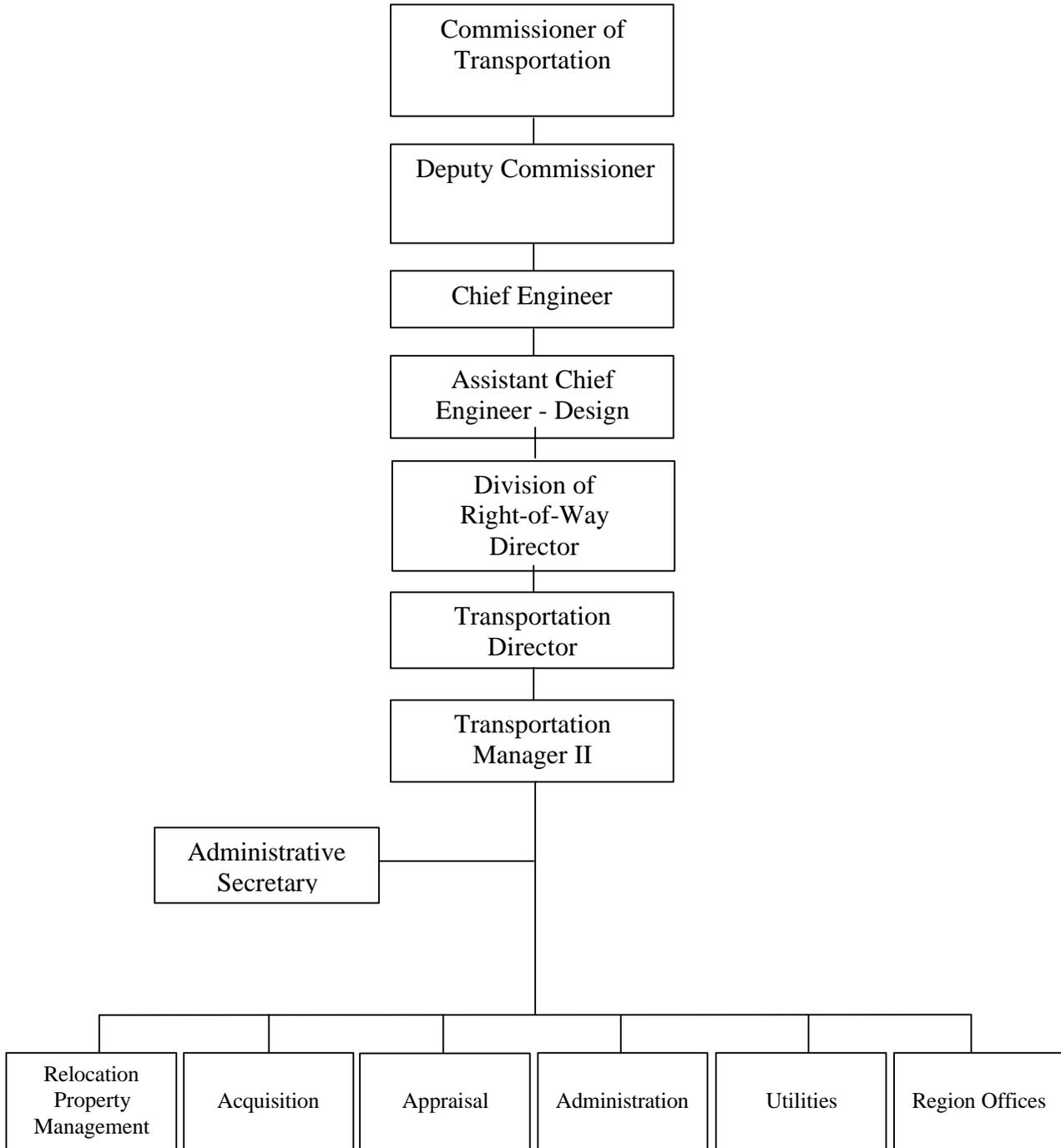
The current *Right-of-Way (ROW) Procedures Manual* was published in 1997. According to the manual, it was prepared to assist division employees, TDOT and state government personnel, and clientele who work with the department on right-of-way matters. The manual contains the policies, procedures, and practices to be followed by ROW employees. Departures from manual requirements must be approved by the Director of the Right-of-Way Division. The state manual incorporates federal requirements.

Specific topics covered in the manual include

- organization of the office,
- administrative and financial responsibilities of the division,
- general contract requirements for all contracts administered by the division,
- an overview of the project development process, and
- detailed operating procedures and work processes of ROW functions.

Changes to the manual are accomplished through Central Office Procedures (COPs). A COP may include amendments to the manual but also can supersede the provisions of the manual. The entire manual is to be reviewed annually to determine if amendments or revisions are necessary. (See page 33 concerning the division's failure to meet this requirement.)

**Tennessee Department of Transportation
Division of Right-of-Way
Organization Chart
As of January 2001**



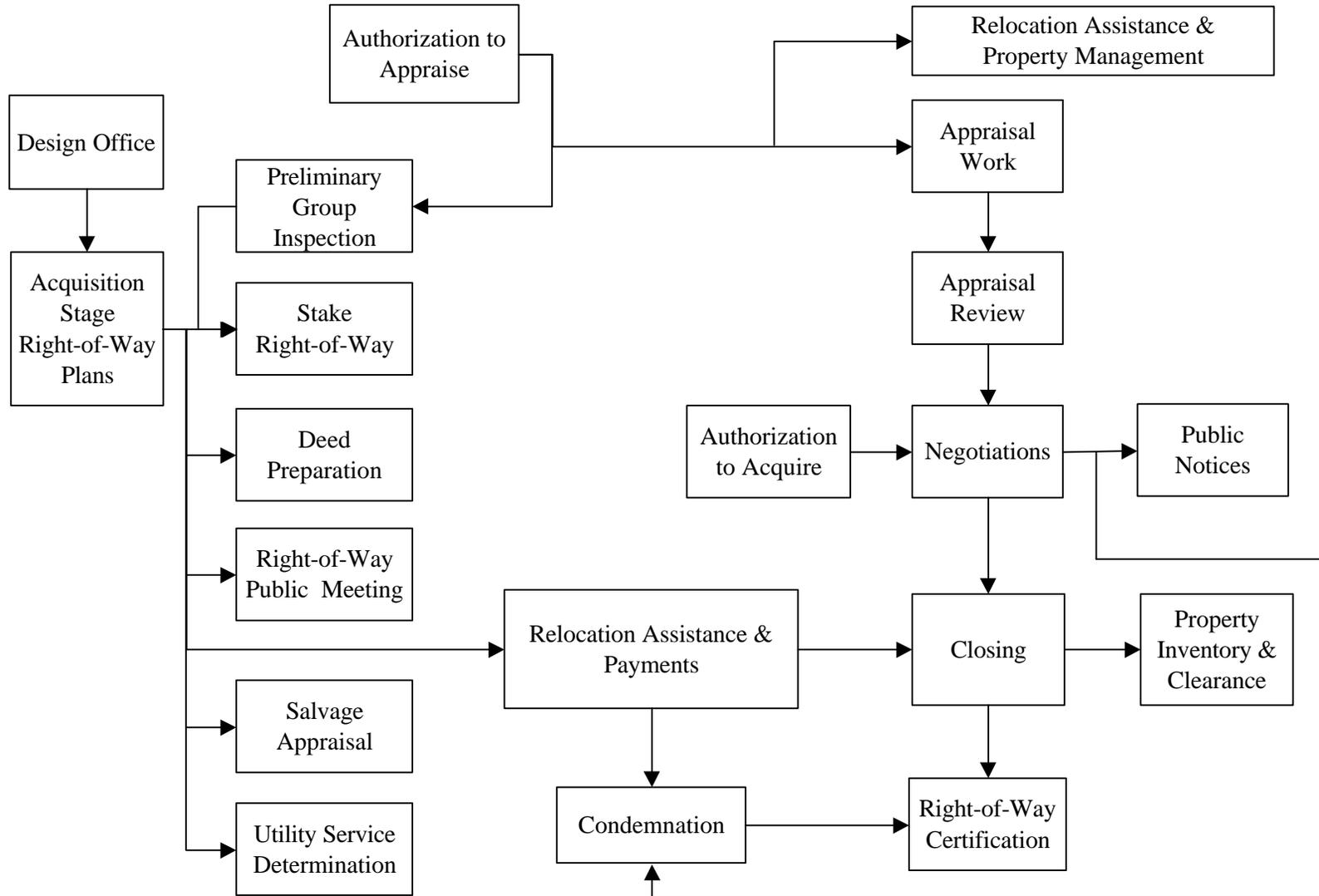
RIGHT-OF-WAY PROCESS

The right-of-way process includes all activities related to acquiring a right-of-way for the construction and maintenance of public roads and highways. According to the *ROW Procedures Manual*, the development of a ROW project is divided into two phases—pre-acquisition and acquisition. See Exhibit 3 for a flow chart of the acquisition stage.

Pre-acquisition includes the following:

- **Conceptual Stage Relocation Plan** - A survey of proposed highway alternates determines businesses and households to be relocated and includes a survey of the local housing market and interviews with local officials. The regional field office's relocation section is responsible for the plan.
- **Preliminary Cost Estimate** - The regional field office's appraisal section surveys project alternates to determine land usage and the number and type of improvements in order to estimate project cost.
- **Corridor Public Hearing** - The regional field office has a representative at the hearing, scheduled by TDOT's legal office. The public attends and can comment on the project proposals.
- **Preliminary Value Engineering Field Review** - The design division conducts this review, which consists of an office and field inspection of the preliminary plans.
- **Design Public Hearing** - The regional field office has a representative present at this hearing, scheduled by TDOT's legal office. This hearing can be scheduled in conjunction with the corridor public hearing.
- **Right-of-Way Field Review** - This is the responsibility of the regional field office and involves an office and on-site inspection of the right-of-way plans as developed to that date.
- **Right-of-Way Cost Estimates** - The regional field office appraisal section analyzes the project, and determines land usage, improvements to be acquired, and the possibility of damage to any property as a result of the acquisition.
- **Authorization for Incidentals** - The department's office of program operations authorizes preliminary activities including title reports, but not appraisals.
- **Title Work** - After plans are received and incidentals authorized, regional field office staff can initiate and perform title work in-house or can contract with an authorized title company.

Tennessee Department of Transportation
Right-of-Way Division
Acquisition Stage



- Right-of-Way Proposal to Local Government - The regional field office is responsible for sending the proposal to appropriate local government officials for adoption.

Acquisition includes the following:

- Acquisition Stage ROW Plan Issued - TDOT's design division distributes copies of the ROW plan to the central office and regional field office.
- Authorization to Appraise - The office of program operations authorizes appraisal work to begin.
- Preliminary Group Inspection - The regional field office appraisal section is responsible for an on-site analysis of the project to determine 1) the complexity of the appraisals, 2) any unusual problems, and 3) an estimate of appraisal costs. Other regional field office sections also participate in the analysis.
- Stake Right-of-Way - Upon receipt of the final right-of-way plan, regional field office management requests that the appropriate TDOT section begin staking the ROW.
- Deed Preparation - Actual preparation of deeds is typically assigned to engineering technicians in the regional field offices.
- ROW Public Meeting - The regional field office schedules this meeting. Staff answer the public's questions concerning the acquisition process.
- Utility Service Connection Determination - The regional field office property management section determines the need to adjust or relocate private utilities in order to maintain services and obtains cost estimates as needed.
- Appraisal Work - The regional field office appraisal section is responsible for monitoring this activity. In some instances, staff may complete appraisals, but the majority of appraisals are performed by contract appraisers. (ROW policies detail the criteria and requirements for the use of in-house versus contract appraisers.)
- Salvage Appraisal - The regional field office property management section determines the retention value of improvements that may be acquired.
- Authorization to Acquire - TDOT's office of program operations submits authorization to the ROW Division. Staff then notify the appropriate regional field office.

- Appraisal Review - This review of all appraisals and appraisal documentation is a joint responsibility of the regional field office appraisal section and the central office appraisal review section.
- Negotiations - Started after the appraisal review, the process requires that certain forms be completed, written offers be tendered, and follow-up contacts be made when necessary. According to the manual, all reasonable steps are to be taken to obtain amicable settlements.
- Relocation Assistance Payments - The regional field office relocation sections help persons and businesses to relocate. This part of the process can include payments for relocation assistance.
- Closing - The regional field office staff or consultants hired for the project schedule the closing and submit TDOT's payment to the property owner for deed transfer.
- Condemnation - The field agent notifies the Regional Transportation Manager I that negotiations were unsuccessful. A deposit for the appraised amount is made to the court, and the property owner is notified.
- Property Inventory and Clearance - The regional field office relocation section inventories and inspects the vacated property and arranges for clearance of improvements.
- Right-of-Way Certification - A designee of the ROW Director certifies as to the status of the availability of the right-of-way, before construction contract bids are opened.

PROPERTY APPRAISAL

Under the U.S. Constitution and as cited in Article I, Section 21, of the Tennessee Constitution, a person's property cannot be taken or applied to public use without the consent of his or her representative, or without just compensation being made. Section 29-17-801(a)(1), *Tennessee Code Annotated*, authorizes the state, its counties, and municipalities to acquire by eminent domain right-of-way for the construction and maintenance of highways.

Federal regulations (49 CFR, Section 24.201[d]) require that the amount established as just compensation not be less than the approved appraisal of the fair market value of the property. The federal *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, Section 101(13), defines an appraisal as a "written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information." The Tennessee Real Estate Appraiser Commission sets

qualifications for licensing appraisers, including education and experience requirements. Prior to contracting with appraisers, the department verifies their credentials with the commission.

ROW Division's "Guidelines for Appraisers"

The Tennessee Department of Transportation's Right-of-Way Division has developed "Guidelines for Appraisers" for use by in-house staff and contract appraisers. These guidelines incorporate the FHWA regulations. The manual defines a formal appraisal as a complete before-and after-value estimate of the entire tract, including all land and improvements, giving consideration to incidental damages and/or special benefits to the property.

Appraisals (or other value-determining methods approved by the FHWA) are used to assist the department in determining the amount of just compensation to which the property owner is entitled. The appraisal serves as a starting point for negotiations between TDOT negotiators and property owners with the ultimate goal of acquiring the property for proposed highway construction. The degree of detail needed in the appraisal report may vary depending on the complexity of the acquisition; however, all appraisals must meet the minimum requirements under the Uniform Standards of Professional Appraisal Practice promulgated by The Appraisal Foundation's Appraisal Standards Board.

Appraisal Review

Federal regulations (49 CFR, Section 24.104) require a qualified reviewing appraiser to examine all appraisals and to assure that they meet applicable appraisal requirements and, prior to acceptance, seek necessary corrections or revision. The division's "Guidelines for Appraisers" state that the appraisal must be reviewed both for mathematical accuracy and soundness of reason and logic as related to fair market value. A review appraiser must be a qualified appraiser who is completely familiar with the type of appraisal problem being reviewed.

FEDERAL HIGHWAY ADMINISTRATION (FHWA) REVIEWS

In recent years, the Federal Highway Administration (FHWA) has conducted the following reviews of the Right-of-Way Division jointly with TDOT:

- *Process Review of Appraisal Reports and Appraisal Review Documentation*, August 1996. This review focused on required appraisal support and documentation, reasonableness of estimated values, and acceptable appraisal review and compensation determination practices. The review found 1) serious weaknesses and/or violations of instructions in the Guidelines for Appraisers Manual; 2) appraisal reviews that ranged from well-thought-out analytical reviews to oversimplified summaries of background material; and 3) a shortage of central office review appraisers and the need for appraisal review guidelines and training sessions.

- *Process Review of Property Management Program*, July 1997. This review found inconsistencies in the use and disposal of acquired improvements.
- *Inspection of the Relocation Assistance Functions*, September 1998. This review found some conflicts with established policies and procedures contained in the *Right-of-Way Procedures Manual*.

According to current staff at the FHWA, the Right-of-Way Division has adequately addressed all FHWA recommendations to correct the problems cited in the reviews. The FHWA has not conducted any subsequent reviews of the Division of Right-of-Way, and a schedule for future reviews has not been established.

The FHWA also participated in the development of the Right-of-Way Division's policies and procedures manual and must approve substantive changes to it.

BUSINESS PROCESS REENGINEERING

According to division management, in July 1997, the Tennessee Department of Transportation (TDOT) contracted with PricewaterhouseCoopers to conduct an assessment, titled Business Process Reengineering (BPR), of the department's operations. The Commissioner of TDOT believed processes needed revising. One reason cited was that TDOT projects were taking up to 12 years from conceptual stage to construction completion. One of the BPR's goals was to reengineer the department's process to decrease that time to five or six years.

Seven of the BPR's recommendations concerned the Right-of-Way Division. Those recommendations and their status as of December 2000 are detailed below:

- Assess consultant procurement - In response to this recommendation, ROW division management began investigating contracting processes such as the Request for Proposal process and negotiated contracts, as alternatives to the current process of awarding contracts to the low bidder. As a result of this review, the department has proposed new legislation that would allow the Right-of-Way Division to use negotiated contracts in procuring consultants.

Division management also began to look more closely at each region's current and future workload prior to authorizing the use of consultants. Thus far, however, there has been no analysis of staff or consultant productivity. See finding 4.

- Assess check processing procedures - As a result of this recommendation, management reviewed and streamlined check processing. They are planning to meet with region staff to determine whether the streamlining has had the desired effect, whether additional changes need to be made, or whether other departments, such as Finance and Administration, need to be consulted.

- Assess federal regulations concerning early acquisition - The division is just beginning to discuss this recommendation.
- Assess appraisal requirements - The division is in the process of updating its guidelines for appraisers. See finding 5.
- Assess engineering and appraisal staff needs - The assessment has been completed. The division identified the need for one utility staff position in each region, and these positions have subsequently been filled. The division also identified a need to hire survey crews in two of its regions. The positions have not yet been filled, however, because the division was waiting to obtain items such as trucks and survey equipment that the survey crews need in order to begin work.
- Assess policies and procedures - The division has not assessed its policies and procedures as frequently as required. See finding 5.
- Assess training needs - The division is just beginning to discuss this recommendation. One possibility being considered is for the division to begin providing training to companies contracted to provide right-of-way services.

OBSERVATIONS AND COMMENTS

The items discussed below did not warrant a finding but are included in this report because they describe audit work performed or because they may have an impact on the Right-of-Way Division's operations.

REVIEW OF TRACT AND PROJECT FILES

Pursuant to Chapter 735, Public Acts of 2000, we reviewed a representative sample of tract acquisition files from fiscal years ending June 30, 1999, and June 30, 2000. The sample consisted of 364 acquired tracts from 122 highway projects and included tracts acquired by 1) ROW division staff negotiating with landowners; 2) ROW consultant contractors; and 3) condemnation proceedings. We also reviewed tracts that were acquired through donation (see page 17). All four regional field offices were visited to complete the file reviews; overall, we found that the files were reasonably complete and contained the information required by the division's manual.

Each regional field office maintains a records system by project. The files consist of project records such as correspondence, contracts, proposals to local governments, vouchers paid, plans, and plan revisions. In addition, the office maintains a separate file for each tract acquired. We reviewed both the project files and tract files.

Project Files

Table 1 indicates the number of projects reviewed by region, the number and percentage of projects reviewed by region that used right-of-way acquisition consultant firms, and the number and percentage of tracts acquired by region. For 30 of the 122 projects, the division had contracted with a right-of-way acquisition consultant to perform acquisitions/relocations. When comparing the four regional field offices, Region 3 had the largest percentage of projects in the sample that used consultants (46%) and the lowest percentage of total tracts acquired (23%).

Table 1
Project Files Reviewed by Region
Fiscal Years Ending June 30, 1999, and June 30, 2000

	Total Number of Tracts Acquired	% of Total Tracts Acquired by Region	Total Projects Reviewed	Consultant Projects Reviewed	% of Projects Reviewed That Used Consultants
Region 1*	1003	24.4%	29	0	0%
Region 2	982	23.9%	25	2	8%
Region 3	960	23.3%	37	17	46%
Region 4	1166	28.4%	31	11	35%
Total	4111	100.0%	122	30	25%

* Region 1 does not currently use right-of-way acquisition consulting firms.

ROW Division management stated that there has never been a comparison of productivity between consultants and internal staff. However, as a result of the BPR recommendations (and as part of a statewide effort to help the division become more efficient), management now reviews each region's workload prior to authorizing the use of a right-of-way acquisition consultant (see page 31). Since the inception of these reviews, various regions have, on a few occasions, had their requests to use consultants denied or limited (i.e., the region was approved to use consultants for some functions but was required to use in-house staff for others).

Tract Files

Table 2 indicates the number of tracts reviewed by region, the number and percentage of tracts condemned, and the number and percentage of tracts acquired by right-of-way acquisition consultants. In the tract files reviewed, Region 3 had the largest percentage of tracts acquired by consultants (63%) and the lowest percentage of condemned tracts (13%).

A condemnation can result when a settlement cannot be reached. In such cases, the property can be condemned and the money for the estimated value deposited with the court, pending final adjudication. According to Section 29-17-802, *Tennessee Code Annotated*, when a governmental entity finds it necessary to condemn property, the entity shall deposit the assessed amount of damages with the clerk of the court of jurisdiction and file a petition asking for condemnation of the property. Section 29-17-805, *Tennessee Code Annotated*, states that if the

owner does not accept the amount assessed by the condemner, the owner shall serve notice to the court and a jury trial will be convened. The owner can have the deposit paid to him while the trial is in process, provided the owner agrees to refund any difference if the award is less than what was paid by the condemner.

Table 2
Tract Files Reviewed by Region
Condemnations and Acquisitions by Consultants
Fiscal Years Ending June 30, 1999, and June 30, 2000

	Total Number of Tracts Acquired	Total Tracts Reviewed	% of Tracts Reviewed	Total Condemned	% Condemned	Tracts Acquired by Consultant	% Acquired by Consultant
Region 1*	1003	93	9.3%	16	17%	0	0%
Region 2	982	84	8.6%	20	24%	7	8%
Region 3	960	83	8.6%	11	13%	52	63%
Region 4	1166	104	8.9%	15	14%	47	45%
Total	4111	364	8.9%	62	17%	106	29%

* Region 1 does not currently use right-of-way acquisition consulting firms.

USE OF ADMINISTRATIVE SETTLEMENTS

The division makes frequent use of administrative settlements, in which the property owner is offered compensation for the property that exceeds the appraised value of that property. In some cases we reviewed, the increase in the offer was quite large; however, the division did appear to follow the stated approval and justification procedures. In addition, although there were variations, the division's administrative settlement procedures appeared to address similar issues as those in the other states whose right-of-way staff we interviewed.

Process

Once an appraisal of a property has been completed, a negotiator contacts the property owner and uses the appraisal to negotiate in good faith with the property owner. The negotiators are expected to arrive at a settlement with the property owners, based on the approved appraised value of the property. The negotiator explains the proposed construction and its effects on the property to the owner. The negotiator prepares a log that includes a record of all contacts with the owners. If the owner accepts the offer, a closing date is set, and upon accepting the agreed-upon amount, the owner transfers title to TDOT.

Sometimes, when settlements cannot be reached through the negotiation process, the negotiator may suggest making an administrative settlement. FHWA guidelines state that when public interest necessitates expeditious property acquisition in order to ensure timely project completion, an administrative settlement can be offered. According to the ROW Division

manual, an administrative settlement can be made when such action is determined to be “reasonable, prudent, and in the public interest.” The amount of the administrative settlement made to the property owner is authorized by an appropriate individual within the ROW Division and is for a value in excess of the appraised value of the property. ROW regional field office managers are authorized to approve administrative settlements for all tracts on which the increase does not exceed \$10,000 or 10%, whichever is greater. According to division management, an administrative settlement of up to \$2,500 more than the offer based on the appraisal can be automatically justified by the ROW Division because of the administrative costs in preparing for and conducting a trial. Additional increases above the appraisal amount may be approved based on a new, higher appraisal or special considerations (see below).

Administrative Settlements in the Files Reviewed

Table 3 shows the number of tracts reviewed that had a settlement in excess of the appraised value and the largest increase over the original appraised value for each region. The percentage of tracts reviewed that had offers in excess of the appraisal ranged from 43% in Region 2 to 66% in Region 3. The largest single increase in a region varied dramatically—from less than \$9,000 in Region 1 to over \$200,000 in Region 3. According to FHWA guidelines, acquiring land for right-of-way purposes involves dealing with the public, and raises very personal and sensitive issues. Therefore, the amount owners believe their property is worth and the appraisal amount may vary significantly. Regional staff cited the administrative cost issue (see above) as well as other considerations such as the length of time the family has owned or lived on the property, family businesses located on the property for several generations, and the age of the displaced property owner, as justifications for the amounts offered above the appraisal amounts.

Table 3
Tract Files Reviewed by Region
Offers Above the Appraisal Amount
Fiscal Years Ending June 30, 1999, and June 30, 2000

	Total Tracts Reviewed	Tracts with Offer in Excess of Appraisal	% of Tracts with Offer in Excess of Appraisal	Largest Single Amount of Increase
Region 1	93	49	53%	\$8,950
Region 2	84	36	43%	\$36,850
Region 3	83	55	66%	\$205,875
Region 4	104	54	52%	\$13,170

Procedures in Other States

We interviewed staff of the right-of-way divisions in five states—Florida, Kansas, Kentucky, Mississippi, and South Carolina. Although the specifics of their policies concerning administrative settlements varied among the states, there were certain common elements. Four of the states required written justification of the settlement and had set varying levels of approval

depending on the dollar amount of the settlement or increase. (The other state had very strict limitations on settlements so that these safeguards were not necessary.)

Mississippi, which has a policy limiting the maximum amount that can be negotiated to the appraisal value plus estimated court costs, appears to take the most conservative approach to administrative settlements. It was the only state we reviewed that limited the amount that could be negotiated. Kentucky allows district offices the opportunity to recommend a settlement that exceeds the approved appraisal amount if it is prudent and in the best interest of the public to settle. Districts have the authority to settle up to \$2,500 above the approved appraisal without approval from the central office; all other settlements must be approved by the central office.

Kansas' right-of-way division has set the following guidelines concerning the level of staff who may approve administrative settlements at varying amounts above the appraised value:

Responsible Party	Authorized Amount
Acquisition Consultant	\$500 or less
Acquisition Consultant/Project Manager	\$5,000 or less*
Right-of-Way Agent	\$5,000 or less
Chief Acquisition Officer, Operations Assistant, or Chief of Right-of-Way	Over \$5,000

* The Chief Acquisition Officer, Operations Assistant, or Chief of Right-of-Way may consider the experience and qualifications of the consulting firm and may choose to limit the authorized amount given to the Acquisition Consultant/Project Manager.

To help accelerate the process, South Carolina has delegated authority to approve administrative settlements/adjustments to the lowest staff levels possible; but the adjustments must be justified in writing. A Right-of-Way Agent 1 can make an administrative adjustment of \$2,500 above the offer of just compensation; a Right-of-Way Agent 2 can make a \$5,000 adjustment. A Right-of-Way Agent 3 can make adjustments of up to \$10,000 or 10% of the original offer, whichever is greater. District Managers can make adjustments of up to \$25,000 or 25% of the original offer, whichever is greater.

In Florida, an administrative settlement of up to \$5,000 (exclusive of fees and costs such as attorney fees and appraisal and business damage estimate costs) may be made for tracts estimated at \$2,500 or less. Tracts estimated between \$2,500 and \$10,000 cannot have an administrative settlement that exceeds 100% of the estimate without an appraisal. However, when the Department's Right-of-Way Agent/Specialist both values and negotiates the parcel, the increase cannot be based on valuation changes unless market data in support of the increase becomes available subsequent to the initial estimate. A District Manager and one other district office staff must approve any settlements under \$500,000. The Director of Production at the district office approves settlements between \$500,000 and \$1,000,000, and the District Secretary at the central office approves anything greater than \$1,000,000.

PROBLEMS WITH THE RIGHT-OF-WAY DIVISION'S TRIS COMPUTER SYSTEM

In August 1998, the Department of Transportation hired a consultant to make the then existing Right-of-Way Division computer system Year 2000 (Y2K) compliant. (The total cost for the consultant was \$160,000.) The converted system, known as the Tennessee Right-of-Way Information System (TRIS), was only intended to be used temporarily until the department could develop a computer system better able to address the division's overall needs. As part of this effort, the department is planning to perform a scope study beginning in July 2001 to ascertain the division's information needs.

Although Right-of-Way Division staff are supposed to be able to rely upon TRIS to perform their jobs until the department can develop a new computer system, two of the division's four regional offices state that they have experienced significant problems with TRIS. Specifically, they indicated that the system is slow and not very user friendly. Division staff also reported that needed information cannot be obtained from the system. According to staff in one regional office, they have such little trust in TRIS that they maintain manual records of information, as well as entering the data into TRIS.

According to department management, some of the difficulties with TRIS occurred because the Y2K consultant left before system problems were detected and resolved. Another factor is that the TRIS system was created using Microsoft Access, which is designed to be used by 20 or fewer individuals. As a result, the TRIS system, which may be used by as many as 200 ROW staff, frequently becomes overloaded and shuts down.

DONATED TRACT INFORMATION INCOMPLETE

Our review of a sample of files on tracts donated by landowners revealed that the division keeps very little information on such tracts. In addition, it was unclear whether the central office or the regional offices were responsible for keeping information on donated tracts.

According to management and staff of the division, the state does not acquire a significant number of tracts by donation. Occasionally a property owner will donate land to the state with the hope of receiving some form of benefit (e.g., a bridge or access road). However, the project for which the tract or tracts were donated would have to benefit more individuals than just the property owner. Chapter VIII of the *Right-of-Way Procedures Manual* states that prior to accepting donations, the state must inform the property owner of his or her right to receive just compensation. A signed statement must be obtained from the property owner to the effect that the property owner has been informed of his or her right to receive just compensation and is waiving such right. Because of the Internal Revenue Service rules, when a donation is obtained for property valued at \$5,000 or more, the owner must be informed that a contracted appraisal is needed in order to claim the donation. The owner may refuse this service, and if so, the file will be appropriately documented and no appraisal will be made.

To obtain an understanding of the type of information that the division maintains, we reviewed 20 Region 3 tract files for 1999 donations. (According to division staff, Region 3 was

the only region with a sizable number of recent donations.) We found that the files contained only a title search. Region 3 staff said that documentation for donated land was kept at the central office; however, our review of the central office files for the same 20 tracts found no additional information. Central office management stated that they had little information on property donations and that any information on the matter would be located at the field offices.

We contacted TDOT's General Counsel, who stated that they also had limited information on donated tracts. That office provided us with the only file they had on donated tracts. The file, for two Region 4 tracts donated in 1996, contained correspondence between the property owner and the state and a legal description of the donated land. According to General Counsel, information on donated property should be located in either the central office or the regional field offices.

Based on our review and discussions with division management, it appears that responsibilities for tracking and maintaining information on donated property need to be clarified with regional office staff to ensure that pertinent information is obtained and maintained and is readily available if needed.

NEED TO IMPROVE PROCESS FOR SEEKING OUT MINORITY CONTRACTORS

The Right-of-Way Division needs to make additional efforts to ensure that minority and female businesses are aware of the opportunity to submit bids for work on right-of-way projects and that they are contracted with when possible.

The *Right-of-Way Procedures Manual*, Chapter III, *Contracts*, Part 1, Item II, "Contracting with Minority Firms," states,

It is the policy of the department to award a fair share of contracts to minority and female businesses. . . . Our procedures have been written to ensure that minority and female businesses are utilized when possible as sources of services.

To accomplish this, the manual lists the following affirmative steps to be taken:

1. Include minority and female businesses on solicitation lists.
2. Ensure that minority and female businesses are solicited whenever they are potential sources.
3. When economically feasible, divide total project requirements into smaller tasks or quantities so as to permit minority and female participation.
4. Where requirements permit, establish delivery schedules which will encourage participation by minority and female businesses.

The manual's contract procedures for small purchases (services estimated to cost less than \$25,000) state that "if there are qualified minority and/or female firms not currently under contract at least one must be selected to be submitted a bid proposal." In addition, the procedures manual states that each year, for one day in January, the Right-of-Way Division will publish in all daily newspapers across the state a notice soliciting inquiries from individuals or businesses interested in performing services.

During the course of our audit, we found no evidence that the division was not following the policies and procedures. However, it appears that there are additional steps the division might take to increase the number of minorities, particularly ethnic minorities, contracting with the division. First, the division could expand its annual solicitation to include all services for which the division contracts. Currently, the annual solicitation lists demolition services, grass mowing, pest control, title work, and appraisals but does not include acquisition consulting. (Division management could not provide an explanation for this omission.) Second, the division could expand its advertising efforts. Although all four regional field offices indicated that they place advertisements in newspapers when requesting bids, only Region 3 also places those advertisements in newspapers that specifically target ethnic minorities.

Third, the division could be more active in its recruitment of minority firms. Currently, when soliciting bids for right-of-way acquisition consultants, the central office sends solicitations to all prequalified firms (this list includes three female-owned businesses and one business owned by an ethnic minority). In addition, when the regions are soliciting bids for services costing less than \$25,000, they follow the requirement that they submit a bid proposal to at least one minority- and/or female-owned firm, if there are qualified minority- and/or female-owned firms not currently under contract. Beyond these steps, however, the division does not actively look for minority- or female-owned firms to solicit for bids. According to staff in TDOT's Small Business Development Program (which certifies firms as Disadvantaged Business Enterprises [DBEs] and tries to assist those firms in obtaining state contracts), the division has never contacted the program about DBEs that may be qualified to perform right-of-way related work and has not contracted with any DBEs. In addition, female- or minority-owned firms that are currently on the division's prequalified list might benefit from certification as DBEs. According to program staff, the certification does not cost the firms, requires only verification that the firms meet the DBE requirements, and entitles the firms to assistance including training and technical assistance. Such assistance could possibly help those firms compete more successfully for division contracts. The division should work with the Small Business Development Program to identify current DBEs that may be qualified for division contracts and should encourage prequalified female- and minority-owned businesses to take advantage of the Small Business Development Program's services.

REVIEW OF BID FILES

To determine whether the division followed the Right-of-Way manual's requirements for accepting and awarding bids to right-of-way acquisition consulting firms, we reviewed the files for 32 projects that had bids awarded for acquisition consulting services. Although some documentation was not available for bids awarded prior to the implementation of the Consultant

Review Panel (see below), the review indicated that, overall, the requirements were met and appropriate documentation was included. We do believe, however, that the panel should better document its review of bids for required criteria. Such additional documentation could improve the division's ability to justify/support its decisions in the event of a challenge by an unsuccessful bidder.

The Right-of-Way Division has a Consultant Review Panel, composed of central office management, that must prequalify right-of-way acquisition consultant firms, based on criteria in the procedures manual, before they are eligible to submit bids to the division. The panel, which meets as needed and does not keep minutes of its meetings, is responsible for approving firms' personnel and verifying personnel's qualifications (e.g., ensuring that they have all the necessary licenses and certifications). Once a firm is prequalified, it remains on the bid list unless removed (e.g., because of poor performance) by the panel. The panel also determines which projects will be offered to newly qualified firms for bidding (such firms cannot bid on large or difficult projects until they have established themselves on smaller projects). Factors in determining the difficulty of a project include the number of tracts to be acquired, the number of relocations, and the extent to which utility adjustments and sign relocations are needed.

A bid can be rejected if it is unbalanced (unusually high or low by line item or in total), any information is omitted, or there are other irregularities. To evaluate these criteria, panel members must review each bid. The bid sheets contained a listing of the bids received, dollar amounts of the bids, and the signatures of panel members present when the bids were opened; however, 29 of 32 project files examined (91%) included no other documentation that bids had been reviewed for the criteria indicated. The only evidence that the three bids that were rejected had been reviewed was a note indicating the rejection of the bid, but no reason for the rejection was given.

Division employees should review each bid for all relevant information and document their review and the reasons for their decision regarding the bid.

CONTRACTING FOR RIGHT-OF-WAY ACQUISITION-RELATED ACTIVITIES/ INTERVIEWS WITH CONTRACTORS

The ROW Division awards contracts to qualified firms for real estate appraisals, real estate title reports, closing real estate transactions, and negotiating acquisition of right-of-way with landowners. Attorneys bidding for title work and closing contracts are required to be members in good standing with the Tennessee Bar. Appraisers bidding for appraisal contracts must be licensed by the Tennessee Real Estate Appraisers Commission. Consultants who bid for contracts to negotiate the acquisition of right-of-way and/or for closing real estate transactions must be prequalified prior to bidding on a contract. A Consultant Review Panel, consisting of ROW Division staff, sets the criteria for right-of-way consultants to meet. (See page 20 for additional information on the prequalification process.) We interviewed 11 contractors who are on the division's bid lists—three appraisers, three real estate title preparers, and five right-of-way acquisition consultants. Overall, those contractors were generally positive about their working relationship with the division.

Six of the contractors interviewed indicated that it would be beneficial to them if the division provided training related specifically to right-of-way issues. One suggestion was a class in reading right-of-way plans. All 11 contractors indicated that the guidance provided by the division was appropriate and that they received written guidelines or policies and procedures to follow. Most of the contractors also stated that the division monitors their performance and that the type and amount of monitoring is appropriate. The meeting of project deadlines was mentioned most often as the focus of department monitoring; work quality and submission of appropriate paperwork were also mentioned. One contractor did complain that individuals who consistently perform poorly are allowed to remain on the list of contractors who are qualified to submit bids.

Most of the contractors interviewed indicated that the division was helpful in dealing with problems with landowners. Two contractors, however, raised issues regarding the division's initial contact with landowners. One contractor indicated that the division could eliminate some of the animosity of landowners by communicating with them individually prior to having an appraiser contact them. Another contractor noted that North Carolina and Alabama have a division representative contact the property owner prior to sending an appraiser.

FINDINGS AND RECOMMENDATIONS

1. The division failed to take timely action to remove a right-of-way acquisition consultant firm with problems from the qualified list

Finding

The Right-of-Way Division did not take action in a timely manner to prevent a right-of-way acquisition firm with problems performing the contracted work from continuing to contract with the division. After several years of problems (see Table 4), the firm hired a consultant (who had previously contracted individually with the division) whose work on their joint project resulted in complaints to state legislators and a May 2000 internal audit. By not taking timely action, the division risked potential negative consequences for the construction projects and the Tennessee Department of Transportation's (TDOT's) reputation with the public.

Based on our review of division documentation, it appears that the division had written evidence as early as 1997 that a right-of-way acquisition consultant firm had problems. (See Table 4.) However, despite continuing problems, the division contracted with the firm for yet another project in June 1999 and did not remove the firm from the qualified bid list until October 1999.

Although there was no documentation in the firm's file prior to 1997, division management indicated that this right-of-way acquisition firm began to have problems approximately six years ago, when it was contracting for a Region 4 project. The regional field office reported problems to the central office and subsequently decided to not continue to use the

firm. (According to division management, when these initial problems occurred, decisions regarding consultants were made by one staff member, with little documentation; a Consultant Review Panel was established in 1995 to formalize the process.)

An April 1997 internal audit of the firm conducted by TDOT cited a variety of problems—failure to follow negotiation and relocation assistance procedures, failure to perform closings timely, and including in the list of project personnel individuals who did not actually participate in that project. (See Table 4.)

Table 4
Documentation of Problems With Consultant Firm

Date	Where	What	Sent To	Sent By	Contents
4/11/97	Central Office Files	Copy of April 1997 TDOT Internal Audit	Central Office	Internal Audit	Findings - Personnel identified by the firm were not actually used on the project in question; closings were not performed timely (no explanation given); and negotiation and relocation assistance procedures were not followed.
12/1/97	Central Office Files	Memo	Central Office	Region 3 Staff	Requests that firm be removed from qualified list
12/10/97	Central Office Files	Letter	Consultant Firm	Central Office	Informs firm of complaint by Region 3 staff
12/10/97	Central Office Files and Region 3 Files	Letter	Consultant Firm	Region 3 Staff	Informs firm of award of a new contract for a Region 3 project and cites problems encountered with closeout of a previous project the firm had worked on
1/6/98	Central Office Files and Region 3 Files	Memo	Central Office	Region 3 Staff	Requests cancellation of the contract between TDOT and firm because firm listed individual as project manager but had not contacted him prior to doing so
1/14/98	Central Office Files and Region 3 Files	Memo	Consultant Firm	Region 3 Staff	Disappointed that firm has not contacted region staff about 12/10/97 letter
6/8/98	Central Office Files	Memo	Central Office	Region 3 Staff	Recommends firm be removed from the qualified list*
6/10/98	Central Office Files	Letter	Consultant	Central Office	Informs firm it has been suspended for an additional six months**

12/4/98	Central Office Files	Letter	Consultant Firm	Central Office	Suspension continued
10/11/99	Central Office Files	Memo	Central Office	Region 3	Reluctant to pay consultant firm because of poor performance
10/25/99	Central Office Files	Memo	TDOT General Counsel	Central Office	Consultant Review Panel removed firm from qualified list.
10/25/99	Central Office Files	Letter	Consultant	Central Office	Consultant Review Panel removed firm from qualified list.

* Removal from the qualified list would effectively prohibit the firm from bidding on and receiving division contracts. Unlike a suspension, which is temporary (for a specified period of time), removal is permanent unless the Consultant Review Panel takes formal action to reinstate the contractor.

** The file contained no documentation of an initial suspension. However, this letter appears to indicate that the firm was already on suspension prior to June 1998.

Furthermore, during 1997, Region 3 also asked not to work with the firm. Region staff had problems with the firm getting its work completed in a timely manner on a project, and staff notified the central office (by telephone and memo) of the problems. According to division management, after discussions with the department's General Counsel, it was decided that they could not deny the firm the ability to bid on a project since it was still qualified and problems at the region had not been adequately documented. Subsequently, the firm was hired to work on a project in Region 3 that began in December 1997.

In addition to problems with this firm, the division also experienced serious problems, resulting in a May 2000 TDOT internal audit (see Table 5 and page 26), with an individual consultant hired by the same firm. This individual also had his own consulting firm, in apparent violation of the prequalification rules of the Consultant Review Panel. (This issue was not addressed by the division.) According to Right-of-Way Division management, while working for the firm discussed above and in Table 4, the individual consultant performed unsatisfactory work on a Region 2 project during December 1999, resulting in a number of complaints from local citizens about problems concerning relocation calculations and forms.

**Table 5
Documentation of Problems With Individual Consultant**

Date	Where	What	Sent To	Sent By	Contents
1/31/00	Attachment to May 2000 TDOT Internal Audit	Letter	State Representative	Constituent	Complaints about the individual consultant and relocation calculations from contact with the individual consultant in December 1999
3/1/00	Attachment to May 2000 TDOT Internal Audit	Survey of Land-owners	Central Office	Landowners of Completed ROW Projects	Good comments about the individual consultant's work on an earlier project
6/13/00	Central Office Files	May 2000 TDOT Internal Audit	TDOT Management	TDOT Internal Audit Office	Findings – Consultant didn't always offer relocatee correct amount, and records contained inconsistencies; relocation records were not always complete or up-to-date; consultant altered division forms.
8/2/00	Central Office Files	Letter	Consultant	Central Office Management	Individual consultant's own firm (not the one he is working for) is temporarily suspended from bidding because of concern regarding individual consultant's performance.*
8/7/00	Central Office Files	Memo	Central Office	Region 2 Relocation Staff	Indicates problems with individual consultant
8/8/00	Central Office Files	Memo	Central Office	Region 2 Staff	Recommends that contract with individual consultant be terminated
8/14/00	Central Office Files	Letter	Consultant	Central Office	Your contract has been terminated.
9/21/00	Central Office Files	Letter	Consultant	Central Office	You have been temporarily suspended from the qualified list.

* This is the individual's firm and not the firm he was working for when the complaints started in Region 2 in 1999.

In its response to the May 2000 internal audit findings regarding this consultant, the ROW division said the consultant had been advised in fall 1999 to correct relocation forms. Management also said that the consultant would appear before the Consultant Review Panel. Documentation summarized in Tables 4 and 5 indicates that the consultant was temporarily suspended in August 2000; however, he is still on the qualified list and may submit bids after his suspension is lifted. The consultant firm appeared before the panel in October 1999 and was removed from the qualified list.

Recommendation

As part of its system for monitoring the performance of right-of-way acquisition consultants (see page 26), division management should follow up promptly on allegations/evidence of inappropriate behavior or noncompliance with state and federal procedures or contract requirements. The division should then take timely action to address problem behavior, to ensure that problems with consultants do not negatively impact construction projects or TDOT's reputation with the public.

Management's Comment

We concur. Current division staff are unaware of how decisions were reached concerning right-of-way acquisition consultants and cannot comment on the part of the findings prior to the formation of the Consultant Review Panel. We agree that prior to the panel no system was in place to address and resolve consultant problems. The formation and implementation of the panel has been in existence since 1995. The panel consists of five members (all located in the Central Right-of-Way Office) and meets on an as needed basis. When a problem arises the panel will meet quickly to discuss the issues, taking into consideration the pertinent facts, opinions from the regional manager, and the desired outcomes. The Dekalb County project was managed in a way to meet our contract-letting schedule with minimal disturbance. To terminate a consultant contract during a project can be very disruptive to the property owners and the acquisition/relocation process, resulting in potential delays. The Region and Central Right-of-Way Offices were aware of the problems on the Dekalb County project and attempted to assist the consultant and work through the issues. This consultant performed a project prior to the Dekalb County project for another region, to the satisfaction of the Regional Manager. The individual contracting for the Dekalb County project did work for a different consulting firm previously which was removed from the bid list. According to the regional manager, he received no complaints with regard to this specific individual. It is our opinion the panel responds promptly and tries to work with the consultant, allowing them due process.

2. The division needs to formalize and improve its process for monitoring the performance of right-of-way acquisition consultants

Finding

Because right-of-way acquisition consultants represent the Tennessee Department of Transportation (TDOT) in negotiations with property owners, it is important that the Right-of-Way Division has a formal, effective process in place to monitor those consultants and to identify and address problems before they negatively impact a highway construction project.

Currently, according to division management, there are no written procedures and no standard set of policies and procedures that the central office and regions are supposed to follow when monitoring consultants. The monitoring that does take place during a project appears to focus on ensuring that tracts are acquired timely. The consultants' contracts with the division require that the consultant submit (to the central office and the relevant region) project status reports which include the number of tracts acquired and closed, the number of tracts condemned, and relocation progress and status. When asked about their monitoring of consultants, regional office staff (who typically would maintain more contact with the consultant during the project than the central office) cited review of this same type of information—tracking compliance with deadlines to ensure that the tracts are acquired timely. In addition, the vast majority of the documentation of monitoring we found during our file reviews also focused on the meeting of project deadlines.

Although meeting deadlines is an important aspect of consultant performance, monitoring should also focus on other aspects of performance such as compliance with procedures. Federal Highway Administration guidelines include several recommendations on monitoring methods, including establishing checkpoints for work to be done under the contract, reviewing very carefully the initial batch of work products in various functional areas that are completed, and performing a quality assurance check of the records to identify general contract compliance and resolution of issues.

A May 2000 audit by TDOT's Office of Internal Audit also made several recommendations concerning consultant monitoring. The audit, which resulted from complaints about a right-of-way acquisition consultant, found that the consultant's relocation records contained inconsistencies and were not always complete, up-to-date, or present in the tract files; that the consultant did not always offer the relocatee the correct amount and did not always make the replacement housing payment offer or the moving cost offer simultaneously with the fair market value offer; and that the consultant altered division forms so that certain required information was omitted. In addition, the audit found that the division had a monitoring problem. Division policy permitted relocation documents to be reviewed and approved by any consultant on the division's list of approved consultants; the relocation documents for this project had been reviewed by a consultant in Virginia. The audit recommended that the division reevaluate this policy and consider requiring that "the consultant who reviews and approves the work of the acquisition consultant be someone more knowledgeable of the project being reviewed." Right-of-Way Division management responded that they were exploring the possibility of having relocation computations approved by the central office or regional office.

In addition to that specific recommendation, the internal audit also made several general recommendations:

1. The division should monitor consultants more closely in order to recognize and correct any deviations from the procedure manual during the early stages of the project.
2. The division should monitor consultants' work and review their records more closely to recognize and correct any discrepancies.
3. The division should perform these reviews prior to paying the consultant.

The division has implemented one of the recommendations from the May 2000 internal audit and now requires in-house approval of all relocation payment packages before payment can be concluded. Division management stated that although desk reviews of consultants' required paperwork have been conducted in the past, the division has not performed any within the last year because of time constraints. Management would like to develop a plan for routine review of such paperwork. After larger projects are completed, the Central Office also conducts surveys of property owners from whom land was purchased for right-of-way. The surveys are conducted to assess performance by in-house staff as well as consultants.

Recommendation

The division should implement a system for monitoring the ongoing performance of right-of-way acquisition consultants during a project and after completion. The division should develop written methods for monitoring a consultant's performance that focus on compliance issues and review of records, as well as time deadlines. The division should insist on the inclusion of more complete reporting requirements for consultants. To ensure that consultants are able to fulfill their responsibilities, the division needs to improve controls and should implement the recommendations regarding consultant monitoring in the May 2000 internal audit.

In addition, the division should develop and analyze monitoring reports and complaint logs (see page 28) to identify problems before they become significant.

Management's Comment

We concur. The division has a system in place, which monitors consultants, focusing on aspects other than time. Currently, consultant projects are reviewed at certain milestones for proper documentation, accuracy, and procedural compliance. When a consultant sends a payment package into the regional office for processing, the regional staff review these payments for proper documentation. A new process is in place which requires all relocation computations on consultant projects to be approved by either the Central or Regional Right-of-Way Offices prior to any relocation offers being made. This procedure was implemented by memorandum dated June 16, 2000, to regional managers. In addition, the consultant is required, by contract, to

submit status reports which are reviewed to identify any deficiencies. These measures assist the division in monitoring the consultant and identifying any potential problem areas. The Central Office has previously conducted audits on consultant projects; however, due to a substantial workload and limited staff, it is impractical to expect this on every project. The division will periodically review this process for improvements as the need arises.

3. The division needs a uniform system for processing complaints

Finding

The Right-of-Way Division does not have a uniform system to process complaints filed at the regional field offices or the central office. The division does not routinely log complaints and does not have a main repository documenting complaint information and status. The division does not have specified time frames to respond to and resolve complaints, methods for publicizing complaint procedures, or a process for regional field offices to report complaints to the central office. Thus, the division's ability to track complaints, ensure appropriate and timely resolution, and identify complaint trends is limited.

For the complaint process to be effective, the division needs to inform landowners and the public about how and where to file a complaint. Time frames for response and resolution are needed as benchmarks to check the progress of complaint resolution and to evaluate the process. Complaint status reports from regional field offices can keep central office management informed and help management identify potential problems where special attention is needed. Without adequate complaint procedures, the division cannot assure that a good-faith effort has been made to afford due process to all citizens making complaints.

Lack of Complaint Instructions to the Public

The division has Acquisition and Relocation Assistance Brochures which contain information needed by persons affected by the right-of-way acquisition and relocation processes. The Acquisition Brochure provides a brief summary of the acquisition process and discusses the rights of the owner. The Relocation Assistance Brochure describes the relocation assistance and payments available to displaced persons and outlines the replacement housing policy. These brochures are available at public Right-of-Way meetings and are given to property owners when initially contacted by a negotiator. However, neither brochure provides the reader (public and landowners) with instructions on how to file complaints.

Regional Field Offices Do Not Maintain Complaint Logs, and They Handle Complaints Differently

None of the four regional field offices have a complaint log that documents the type of complaint, date of the complaint, name of the person filing the complaint, and how the complaint was resolved. Management and staff at the regional field offices indicated that they receive both

phone and letter complaints. In addition, the central office may call the regions to ask staff to handle and resolve complaints received about projects in a particular region. All four regions differ somewhat in the method used to take care of complaints.

Regions 1 and 2 indicated they receive most of their complaints as phone calls, which are taken by the director and, at his discretion, are passed along to staff to resolve. Any complaint that concerns a specific tract is noted in the tract file.

Region 3 said complaints are seldom received about the performance of consultants or appraisers; the majority of complaints are about the amount offered for a particular piece of property or about the idea of the state acquiring an owner's property. If Region 3 receives a written complaint about the performance of an appraiser or consultant, the complaint is placed into the individual appraiser's or consultant's file and the central office is notified. Telephone complaints are not documented but are communicated to the central office via phone calls.

As Region 4 receives phone call complaints, the information is noted and passed along to staff to resolve. A log is not kept. Management will inform central office about complaints received first at the region. According to region management, few complaints are received about appraisers or consultants; the majority of complaints are from persons distressed with the amount offered or with the idea of the state acquiring their property.

Central Office Does Not Maintain a Complaint Log

According to Right-of-Way central office management and staff, the central office does not keep a complaint log. However, the central office does have a correspondence file and log that includes any correspondence between the division and the Commissioner of the Tennessee Department of Transportation (TDOT), including complaint letters from property owners. Our review of this file found letters to the Commissioner from property owners with concerns regarding TDOT's pending acquisition of their property. In response to the letter from the property owner, the Commissioner indicated in his letter of response that TDOT staff would research the matter; however, the file did not have evidence of any further research. In the case of property owners who had questions about appraisals, the letters from the Commissioner indicated that, based on the Commissioner's inquiry to ROW staff, the appraisal was accurate. The file also contained letters from state legislators asking the Commissioner to investigate complaints from their constituents.

In addition to this file, one central office staff person maintains a correspondence file that includes letters of complaint on projects involving him. When a written complaint is received about a consultant, he places a copy of the written complaint in the consultant's file. However, neither of the files is as comprehensive as a complaint log would be.

Recommendation

Right-of-Way Division management should implement a centralized, standardized system for monitoring and tracking complaints at the regional field office level and at the central

office level. In developing such a system, management needs to consider issues such as the following:

- What type of contact will be considered a complaint? Will only written complaints be logged or will all contacts, including phone calls, be logged, but only signed written complaints be formally followed up? (If division management decides to require a signed complaint prior to initiating action, they should consider developing a standard complaint form that could be sent to telephone complainants for completion and return.)
- Will all complaints (e.g., complaints about division staff/contractors versus those concerning the amount offered for a tract of land) be handled in the same way?
- What are the costs and benefits of different levels of complaint monitoring/tracking?

Management should set time guidelines for responding to and resolving formal complaints to help ensure that resolution is pursued promptly.

The Right-of-Way Division should analyze complaint data to identify trends and types of complaints. Identifying complaint trends regarding a particular project, ROW staff person, or contractor would help management take corrective actions prior to a problem becoming significant. (See page 21.)

Management needs to instruct its agents and subcontractors to include public notification of complaint procedures when negotiating with landowners. Central office management should develop guidelines for regional field offices with instructions on handling complaints and when to refer complaints to the central office.

Management's Comment

We concur. Very few landowners look forward to selling their property, residence, or business to the state for the construction of a highway. The nature of our business is such that, when acquiring property from the public, complaints are going to occur. Our negotiation process requires each agent when dealing with a landowner to maintain a log of each contact, including all pertinent items discussed, documents presented, complaints/problems the property owners may have, and resolution of these issues. Any written complaints sent from property owners or state legislators to the Commissioner's Office concerning right-of-way issues are logged and responded to in a timely manner (a two-week time frame is our goal) and copies sent to regional offices for their information and follow up, if required. Correspondence sent to the Region or Central Right-of-Way Office is followed up in writing as well. Due to this finding, however, the Central Office will distribute a memorandum to the regions requiring them to maintain a separate file for all written complaints and responses; this will apply to the Central Office as well. No change is anticipated to the way verbal complaints will be addressed. The memorandum will stress the importance of explaining to individuals who express verbal complaints the need to put the issues into writing. This memorandum will be distributed to both Central and Regional Offices by March 2001.

4. Division management should continue to improve their process for determining whether to use consultants or in-house staff

Finding

When the division uses a right-of-way acquisition consultant, that consultant performs the negotiating, acquisition, relocation, and, sometimes, the closing functions. The division's use of consultants versus in-house staff for right-of-way acquisitions varies by region and appears to be the result of differences in region staffing levels, project numbers and complexity, and region management's perceptions about the usefulness of consultants. (See Table 6.) The *Right-of-Way Procedures Manual* does not provide specific criteria (e.g., number of tracts, project complexity, regional staff productivity) for division management to use when deciding whether to use a consultant or in-house staff for a particular project. In the past, when regional offices submitted a memo requesting permission to contract with a consultant for a specific project, division management apparently authorized most requests with minimal analysis. Recently, as a result of a department-wide assessment called Business Process Reengineering, division management decided to emphasize the use of internal staff rather than consultants and to review more closely each region's current and future workload prior to authorizing the use of consultants.

The decision to review more closely the use of consultants appears very appropriate. However, it seems that the process could be further improved if, in addition to reacting to specific region requests, division management periodically assessed each region's staffing, current and anticipated project workload, and productivity. Management would then have the information needed to assess more completely the need for consultants on a given project. In addition, management might also then be able to compare productivity among regions and better evaluate not only region staff's, but also consultants', productivity.

Table 6 compares staffing levels and total tracts acquired by region. The division does not track the number of acquisitions made by Right-of-Way (ROW) staff and by consultants in each region. Therefore, we were unable to perform any reliable analysis of staff productivity, and the table only includes such a breakdown for the tracts we reviewed as part of our file review. The available information indicates that Region 1 had more acquisition and relocation staff (19) than any of the other three regions, and used no consultants. Region 3 acquired the fewest tracts during fiscal years 1999 and 2000, had the smallest staff (9), and, based on our file review, relied on consultants more heavily than the other regions.

Table 6
Regional Field Office Staff and Tracts Acquired
Fiscal Years Ending June 30, 1999, and June 30, 2000

	Region 1*	Region 2	Region 3	Region 4
Acquisition Staff	8	7	5	8 (1 vacancy)
Relocation Staff	11	6	4	3 (1 vacancy)
Total Staff	19	13	9	11
Total Tracts Acquired	1003	982	960	1166
Acquired Tracts in File Review	93	84	83	104
Tracts in File Review Acquired by ROW Consultants	0	7	52	47
Tracts in File Review Acquired by Staff	93	77	31	57

* Region 1 does not currently use consultants.

Source: ROW Organizational Charts obtained in October 2000 (for numbers of staff); TDOT STARS information for fiscal years ending June 30, 1999, and June 30, 2000 (for number of tracts acquired); and Division of State Audit file review.

Recommendation

Division management should implement a formal method to assess regional field office productivity, staffing, and project workload in order to better evaluate staff performance and the need to use ROW consultants. The division should maintain documentation of its analyses.

Management's Comment

We concur. One of our charges under BPR (Business Process Reengineering) is consultant procurement. Not only are we reviewing how we contract with consultants, but the utilization of consultants vs. in-house staff. We plan on requiring the regions to submit a more detailed request when asking for a consultant. The type of information needed has not been determined at this time. Several factors can be considered as mentioned in the audit; however, it is our belief that each request should be handled on a case by case basis. Central office last year requested each region to submit information concerning the number of tracts acquired, closed, and relocated. We will continue this process. Once all issues are corrected with the TRIS program, this information should be more readily available. We anticipate a more detailed request from the regions for consultant contracting to be implemented by June 2001.

5. The division has not reviewed and updated its policies and procedures as required

Finding

The Right-of-Way Division does not perform annual evaluations of its policies and procedures manual to determine whether amendments or revisions are needed. In addition, the division does not always formally update its policies and procedures manual as changes are made, and its appraiser guidelines have not been revised since 1983. Without those formal evaluations and updates, division management cannot ensure that all needed revisions to policies and procedures are made in a timely manner or that all changes are communicated fully and accurately to regional staff and division contractors.

Evaluation of the Right-of-Way Manual

The division's policies and procedures manual requires a review of the entire manual each year; however, division management stated that no such evaluation had been performed since 1997. Federal Highway Administration guidelines require a review of states' manuals every three years. (The last review prior to 1997 was done in 1989.) According to management, sections of the manual are periodically reviewed as part of Business Process Reengineering (BPR), an assessment the Tennessee Department of Transportation began in 1997 in an effort to decrease the time required to complete transportation projects. Our review of BPR meeting minutes from January 1999 to November 2000 found that management did occasionally discuss the need to update some sections of the division's policies and procedures manual.

In order to meet the three-year federal requirement, the division has requested and received an extension until the end of 2001. During 2001, staff will conduct limited revisions (i.e., incorporating changes that have already been made but have not yet been included in the manual). Management stated that the division plans to fully update the manual once the BPR process has concluded. They indicated, however, that it could be "years" before the process is completed.

Updates to the Policies and Procedures Manual

The division's policies and procedures manual states that, for interim changes in significant operating procedures, the division is to issue a Central Office Procedure (COP), a formal policy statement indicating the date the change becomes effective, an explanation as to why the change is being made, and details of the revised procedure. Division management report, however, that COPs are not always issued for policy changes. Between January 1997 and November 2000, the division issued only nine COPs for such changes. One example of a policy change for which a COP had not been generated is a state law, effective June 2000, that requires the Department of Transportation or its agent to allow a landowner to examine the appraisal or any other documents used to determine the proposed purchase price. The central office's failure to generate COPs for all policy changes as they occur could limit the availability of information on current policies and procedures, thereby increasing the potential that changes will not be adhered to.

Division management stated that staff are notified of such policy changes by memorandum or word of mouth. A review of division files for 1997 through 2000 found evidence that the central office had contacted the four regions regarding some changes in policies and procedures. However, because of the informal nature of the communications, central office management has limited assurance that changes are accurately communicated to all the division's staff and agents. This problem appears to be enhanced by the decentralized nature of the division's operations with its four regional offices as well as its regular use of consultants to perform Right-of-Way functions. Moreover, the division's daily interaction with the public necessitates the consistent application of division policies and procedures. A lack of consistency could result in public distrust of division operations.

During our interviews with Right-of-Way staff in five other states (Florida, Kansas, Kentucky, Mississippi, and South Carolina), staff in three of those states indicated that they maintain and update their policies and procedures manual on the Intranet and update the manual each time a policy change is made. Such a process increases the probability that policy changes are communicated timely and consistently to all interested parties.

Guidelines for Appraisers

The division has also developed "Guidelines for Appraisers" for use by in-house staff and contract appraisers. There is no requirement for an update or review of these guidelines, which were last revised in 1983. However, it seems likely that federal and state laws or requirements, as well as various aspects of the division's appraisal process, have changed since the last revision. Division management stated that they are currently in the process of revising the guidelines and estimated that the revision should be complete by summer 2001.

Recommendation

Management should (1) perform annual evaluations of its policies and procedures manual to ensure that needed changes are made on a timely basis; (2) generate COPs for significant policy changes to ensure that all staff and contract personnel are aware of changes as they occur; and (3) complete revisions to the "Guidelines for Appraisers" and ensure that the new guidelines are distributed to all prequalified appraisers.

Management's Comment

We concur. Updating our procedures manual is one of our seven charges under the department's BPR process. Because changes to the other six areas will result in revisions to all parts of the manual, it was determined to review this area last. However, as a result of this audit, emphasis will be placed on this topic. We anticipate completing the update by September 2001.

6. Personnel files of division staff did not always contain information needed to ascertain qualifications and performance

Finding

In a review of staff personnel files (maintained by the department's Human Resources Office), not all files contained documentation of staff qualifications. In addition, not all division staff receive annual performance evaluations.

Job Qualifications

We reviewed the Department of Personnel's job specifications for division staff positions and compared the requirements to staff's personnel records. The files for 10 of 92 staff did not contain any documentation of the appraiser certification required for their positions. By contacting the Tennessee Real Estate Appraisers Commission, we were able to confirm that the 10 staff had the needed certification. Division management stated that it is not critical to have such information in the individual's personnel file because such necessary employment information is maintained by the Department of Personnel. However, the June 1999 performance audit of the Department of Personnel found that the department's "Applicant Services Division does not verify the information job applicants submit, assigning that responsibility to the hiring agencies." Therefore, it is important that the Department of Transportation obtains documentation that staff are qualified for their position and maintain that documentation in the personnel files.

Evaluations

A review of personnel files found that 57 of 87 division employees hired before July 1999 did not receive a performance evaluation in 1999. In addition, as of November 3, 2000, 79 of 91 employees hired before July 2000 had not received a performance evaluation for calendar year 2000. The division's failure to routinely evaluate all staff limits management's ability to adequately assess employee performance and thereby identify areas for needed improvement as well as document employee readiness for possible promotion.

The division's evaluations are performed using standard Department of Personnel forms. According to Department of Personnel staff, employees should have a probationary evaluation during their first six months of employment and annual evaluations thereafter; however, the department's policy allows individual departments discretion on the timing of evaluations. The Department of Personnel provides individual departments with a listing of all employees whose evaluations are overdue. Individual departments can also access a Department of Personnel database that identifies all staff who have an evaluation due within the next 45 days.

Central office division staff stated that all Right-of-Way Division employees are to receive annual performance evaluations. However, regional field office management believe it is time-consuming and unnecessary to annually evaluate long-term employees without work problems.

Recommendation

Department of Transportation Human Resources staff should obtain and maintain in the personnel files documentation to show that employees have appropriate certifications as required for their positions. Division management should ensure that employees receive required performance evaluations.

Management's Comment

We concur. The Right-of-Way Division will assist the Human Resource Division in any way possible when information is requested for personnel files. The importance of the annual performance evaluations was emphasized at a recent meeting held with the regional transportation managers on February 1-2, 2001.

7. Most landowners surveyed were satisfied with the right-of-way process; some, however, raised serious concerns

Finding

We surveyed individuals who have recently sold land to the state to determine whether the Right-of-Way Division's staff, or other persons representing the Department of Transportation, complied with regulations when acquiring land for highway construction projects. More specifically, we conducted the survey to determine the landowners' level of satisfaction with the department staff and right-of-way process. Surveys were sent to 325 individuals. As of January 17, 2001, we had received responses from 149 (46%) of these landowners.

Based on survey responses, individuals appeared, generally, to be satisfied with the treatment received from the department staff and with the right-of-way process (see Table 7). The majority of landowners indicated they were properly notified of the right-of-way public meeting and that the highway construction projects and right-of-way process were clearly described. Also, most of the respondents indicated they believe the department treated them fairly.

Several respondents, however, made comments indicating that they believed they were not treated fairly, or that the right-of-way agent was not courteous and/or knowledgeable. (See Table 7.) Many of these same respondents also indicated that they were not provided with (1) a copy of the appraisal of their property, (2) a clear explanation of how the value of their property was determined, and/or (3) an explanation of the expected effect on the value of the remainder of their property after right-of-way was acquired. In addition, some landowners responded that they were not given the names and phone numbers of persons to contact if they had complaints

or needed additional information. Given the sensitive, contentious nature of right-of-way acquisition, it is unreasonable to expect that the division could satisfy all landowners; however, it is important that the division be able to quickly identify and correct any problems in the process resulting from inappropriate or uneducated behavior by right-of-way agents.

Recommendation

The Right-of-Way Division should routinely survey landowners who have sold property to the state, follow up on allegations of unfair or inappropriate treatment, identify any trends (e.g., problems linked to a particular right-of-way agent), and take prompt action to ensure that future problems are minimized.

Management's Comment

We concur. The division is currently following this process on a limited basis. We will attempt to increase the number of projects surveyed as time and staff permit.

Table 7
Department of Transportation - Right-of-Way Division
Results of Landowner Survey

1. Were you notified of the initial Right-of-Way public meeting?

Yes	No
81%	19%

1a. If yes, how were you notified?

Notice from TDOT	Meeting notice in newspaper, on radio/television	Word of mouth (neighbors, etc.)
50%	29%	21%

2. Did you attend the Right-of-Way meeting?

Yes	No
51%	49%

2a. If yes, did Right-of-Way staff clearly describe the highway project and the right-of-way process?

Yes	No
91%	9%

2b. If you answered no, please explain:

There were three households being misplaced. The staff seemed mostly involved with others.

I was not notified; therefore, I did not attend meeting.

Was told of land state was to buy, did not tell of what damages it was going to effect in land that was left.

I was not notified of such meeting.

It wasn't clear.

Not able to attend, but representative came by property and explained everything to me personally.

The man came out to my house and explained.

The agent described it sufficiently when he came to my home.

Staff, although making an effort, were from Nashville office and unfamiliar with terrain and locations.

They did not go into much detail about the actual process of what we will go through with our land during construction.

3. How did the Right-of-Way agent first contact you regarding the acquisition of your property?

Visit to home	By telephone	By mail
37%	42%	21%

4. Did the Right-of-Way agent provide you with a copy of the appraisal of your property?

Yes	No
76%	24%

4a. Did the Right-of-Way agent give you a clear explanation of how your property's value was determined?

Yes	No
75%	25%

4b. Did the Right-of-Way agent discuss with you the expected effect on the value of the remainder of your property after right-of-way was acquired?

Yes	No
52%	48%

4c. Did the Right-of-Way agent provide you with the options available to you if you rejected the state's offer for your property?

Yes	No
80%	20%

4d. Did the Right-of-Way agent provide you with the names and phone numbers of persons to contact if you had complaints or needed additional information?

Yes	No
74%	26%

4e. If there was other information you believe you should have received but did not, please explain:

I believe I should have been given more than 3 weeks notice before I had to vacate. The agent laughed and said he "thought he had."

We had some different circumstances, but could not get questions answered or names of others at TDOT that would talk to us.

I did not know what the property was valued at.

After I requested more, they gave me a contact person.

On what facts they made the appraisal.

Information about the process, our rights, help on interpreting maps. Would not let us meet with appraisal agent. We scheduled a trip to the property but no one would meet with us.

Would like to have had appraisal of the property.

Information about filing federal income tax.

We should have been given information on what recourse we would have if the construction went beyond the property that was purchased. They went beyond their line by approximately 30 feet.

ROW agent told me that his supervisor or higher would be contacting me, which no one ever did. This was after the state made their offer.

Should provide more information on conservation of land; handling of drainage; fencing, noise and pollution barriers.

5. Was the Right-of-Way agent courteous and professional in his/her meetings with you?

Yes	No
94%	6%

5a. If you answered no, please explain:

From the outset I got the sense that he felt he could do whatever he wished. From showing up at my door with no phone call prior to his arrival, the questioning of my housekeeper (not once, but twice) even though he was told that any questions he had should be directed to me only. He was courteous, but lacked professionalism.

Most of time yes - she did get up in the air once and I told her I was here to talk and get this settled.

He was courteous, but treated us in a condescending manner. It was not a pleasant experience.

First agent that came was confusing and didn't have all her facts correct. Lied about a couple of things.

Agent didn't know the value of the property. The value was based on a piece of property on another highway.

Our first agent was nice and agreeable in the first meeting. The second time was different. He talked to us like kindergartners and was a smart mouth. He turned it in for condemnation. My wife was on the phone with his boss before he was out of sight. The other guy was a pleasure to deal with.

Not very personable/was in big hurry.

We never met with the right-of-way agent. He was courteous on the phone.

6. Was the Right-of-Way agent knowledgeable about the project and other properties affected?

Yes	No	No opinion
73%	9%	18%

6a. If you answered no, please explain:

He explained the property next door would be cleaned up.

Agent had to get answers from someone else.

Was not able to give much information about where we were in the process or how much time before things happened.

The second man that came was.

Agent didn't know anything about property.

He was new.

Did not explain.

The agent had no knowledge of the project.

Told me not to discuss our particular situation with any of the other neighbors involved.

I thought this was very strange.

He was confused about the reason for the project and did not seem convinced the project was even necessary.

If he was knowledgeable he kept it to himself.

He didn't know about engineering questions - why certain pieces of land were required.

Did not know or would not tell about properties around us. I knew more from reading the papers than from the right-of-way meeting. I do not think the way this was done was right because of neighbors I've talked to who told me the amount of money they received. They received 5 times more than I did when I'm losing more land - all because they held out and wouldn't agree to a price. I'm not one to stand in the way of progress and look what happened! It doesn't always pay to be a "nice guy" does it!

7. Did the Right-of-Way agent answer your questions fully and honestly, as far as you know?

Yes	No
93%	7%

7a. If you answered no, please explain:

I think he gave answers he thought I wanted to hear. As it turned out, his answers were not completely accurate.

He checked on a question we had and notified us of the answer to the question.

He could answer very few questions. Everything appeared "very secret."

Second agent - yes. First one - no.

Agent valued my property by comparing it to property on another highway.

The second agent did. First agent said he could not answer our questions concerning the flow of water and if we didn't sign he would just condemn it.

Did not take time to explain.

Couldn't answer a lot of questions.

The questions asked at the time were answered honestly as far as we know but questions have come up since then that we did not know would occur.

8. Did the Right-of-Way agent schedule the closing (and other meetings) at a time and place convenient to you?

Yes
94%

No
6%

8a. If you answered no, please explain:

He came to my house since I am a disabled person and do not drive.

Papers were sent and we were told to sign.

We were not pleased with the initial offer – it was much less than the county tax appraisal. The agent referred us to a person in TDOT. The TDOT person's immediate reaction was: "this is a case for condemnation." "Closing", if there was such an event, occurred uneventfully many months, or even years, later.

We were never given an option; we were just told when to be at home for a meeting.

9. Do you believe the Tennessee Department of Transportation fulfilled the commitments made to you informally by the Right-of-Way agent?

Yes
90%

No
10%

10. How long after you signed the agreement to sell your property did you actually receive payment?

Less than one month
22%

One to two months
56%

Over two months
22%

11. Overall, do you believe you were treated fairly by the Tennessee Department of Transportation, its staff, and other persons representing the department?

Yes
80%

No
12%

No opinion
8%

11a. If you answered no, please explain:

I am not sure because construction was started through property before an easement was ever obtained.

We didn't get the settlement we had asked for. We also had to pay an attorney \$2,500 for an unsuccessful settlement. We realized at the last that we were going to have a very serious noise problem. We asked for enough damages to set the house back on our property. We were told that noise was not a factor in determining damages.

12. Please use the space below to add any additional comments regarding the acquisition of your property for right-of-way or to make suggestions on how to improve the acquisition process.

Agent and the others that helped him were very knowledgeable and helpful.

I was very impressed with the whole process. It was very good. I had heard horror stories before, but that did not happen with me.

I paid to survey my property and mark the corners with stakes. When the road went in recently, my stakes were destroyed and I no longer know where my property lines are. I would appreciate having my property lines at the interstate reestablished at the corners.

Need to have better access to and from property while under construction. At present time, access - driveways and exits - are very poor

A little compassion would have made losing our home a little easier to take. One month would not have made any difference in your plans.

Very disappointed at the way TDOT acquired my property.

We were very pleased with the acquisition. The agent and his staff were very pleasant and helpful at all times. However, we still have one concern about the drainage across our property and the problems or damages it may cause.

Most people do not know if the price is good or fair for their property.

I'm not sure I got paid the right price for my land.

The State of Tennessee handled the transaction much more expediently than the State of Kentucky.

We had a hard time getting the money from the agent.

All managers and working people on this road crew have been very helpful in any way they could.

I think if everyone is treated fairly there will be no problem. It's when you try to take advantage of the little man that things get messed up. Everyone that we dealt with was fair and nice in their duties. As far as the first agent, if he thinks he can manipulate people into signing he has another think coming. Please, next time keep hot headed jerks like the first agent at the office.

On-site decisions should be made instead of from reports by an architect in Nashville. Original plans called for me to lose 2 large pecan trees which are extremely valuable to me as source of great shade. This was being done simply to open access to a side road. Across the side road from my yard is nothing but open field. A no-brainer if the decision was made on site.

I believe I should have gotten more money for damages. My farm was divided into 2 parts with a small amount on one side. This makes it more difficult to farm. It also would make it more difficult to sell as a whole.

Agent was very knowledgeable and pleasant to work with.

So many folks do not understand what all this means to them and need more help, individually, as they try and fully understand the impact on them.

Trees still remain standing after the bank was sloped. I fear a high wind would blow the trees over on my house since they are leaning in that direction. I am requesting TDOT remove them at their earliest convenience.

I find it strange that the state bought property and did not use any of it for improvements to highway and construction is completed.

Provide a procedure description so the landowner knows what to expect. Explain the impact on the remaining acres. Need to work with landowners who live out of state to help meet their more difficult schedule and expenses.

The dust this road has created has covered my pool all year and my house and cars. I firmly believe that when this road is finished the state should send someone to clean the house up (wash it down). I also thought the hill at our street was going to be cut down so you could see to get out. Now it is worse.

We believe the land acquisition process in our case bordered on “legalized stealing.” It was anything but a fair-market transaction. In this situation, we had an overly demanding buyer and an unwilling seller. It is one thing to give your land for a public project, but it is another thing to not be paid adequately for the taken property. As mentioned earlier, the initial offering by the state was less than the county tax appraisal.

This forced us to seek the services of a lawyer, and a private land appraiser. It is true that the final settlement was more than the initial offering, but after legal fees and appraiser fees the net effect was very disappointing and will always be a sore spot with our family. We believe the compensation for our land was grossly inadequate.

I had to turn a claim over to my insurance company to try to resolve a severe problem with the chimney. It started leaning away from the house after heavy equipment started all the back filling and packing directly in front of the house.

Everything was done in an orderly manner and within a sufficient length of time.

Didn't know of ROW public meeting, other than that everything went great.

Process works fine.

Agent was very knowledgeable, courteous and professional.

Agent is a very nice gentleman. I could not have been treated any better.

I was pleased with the entire process and personnel involved.

I have not been contacted in any way concerning a private water line that crosses highway to my house. Although I have utility water this is my line that will be damaged by the road workers. This had nothing to do with my settlement from the state. I have received nothing from this. I would like to know where I stand on this water line.

Provide tax information. Provide a local representative for contact in problems.

I believe DOT should replace our walk and driveway, and level out and sod all places that were disturbed during construction.

If they pay you for a certain amount of property and then tear up more property, they should pay for the additional property they've messed up. They are cheating people big time if everyone is being treated the way we are.

The agent was very nice to the road department.

Overall the construction went well. However, due to the construction in front of the driveway a rise in the driveway was created that was not there before. We would like for the driveway to be the same as before construction began.

They should have told me they were going to close my 40' right-of-way road that has existed since 1930. This 16' curb cut has to service three homes. I hope they will leave a curb cut for our entrance that has been there since the thirties.

Everything went ok.

Our deal was very small and simple.

As I stated in the previous questions, I do not feel I was treated fairly by the state because of one offer being made. I was told by the agent that the state would not go higher than what he offered. I asked If I could meet with his supervisor or higher. This meeting was never made possible. Next thing I received was a letter of condemnation of my property. I felt I had no other choice than to turn to a lawyer. I really wish that we could have come to a fair agreement on the price, or replacement of my property with the same potentials as my property had as I discussed with the agent.

The gentleman was very polite, professional and easy to work with.

All workmen I encountered were extremely courteous and helpful.

While we did not accept the original offer, we were able to settle the case out of court.

The state's attorney was very kind, efficient and articulate. I was able to deal with him without an attorney of my own.

TDOT allowed the local fire department to burn the house they bought. There was a tree next to the house which was burned. The tree was not taken down. This tree fell in a storm and severely damaged a mobile home on the property next to it. I would like something done to reimburse me for the damage.

The agent was very polite. He went out of the way to get everything done. I wish every state worker was as nice as he was.

I was told by the townspeople it would take a while to receive payment. I admit I did take his word that it would be here in 6 to 8 weeks. I had to get a loan to pay my creditors until the money came (6 months) But I made it through OK. I hope this road looks good when it's done—everyone is looking forward to seeing it.

As of today we have big trucks vibrating the whole house. We also told the state the check should be made to us, not the lien holder. We were the ones being damaged. We wanted to use the money from the damages to move the house back and for replacement windows. It's all over now, but we will do our homework before the next project comes through. We also feel we didn't get any interest on our money, according to other landowners we talked to. Our only suggestion is that anytime the state obtains property from an individual, you need to consider the after effects created.

RECOMMENDATIONS

ADMINISTRATIVE

The following areas should be addressed to improve the efficiency and effectiveness of the operations of the Tennessee Department of Transportation's (TDOT's) Right-of-Way Division.

1. As part of its system for monitoring the performance of right-of-way acquisition consultants, division management should follow up promptly on allegations/evidence of inappropriate behavior or noncompliance with state and federal procedures or contract requirements. The division should then take timely action to address problem behavior, to ensure that problems with consultants do not negatively impact construction projects or TDOT's reputation with the public.
2. The division should implement a system for monitoring the ongoing performance of right-of-way acquisition consultants during a project and after completion. The division should develop written methods for monitoring a consultant's performance that focus on compliance issues and review of records, as well as time deadlines. The division should insist on the inclusion of more complete reporting requirements for consultants. To ensure that consultants are able to fulfill their responsibilities, the division needs to improve controls and should implement the recommendations regarding consultant monitoring in the May 2000 internal audit.
3. The division should develop and analyze monitoring reports and complaint logs to identify problems before they become significant.
4. Division management should implement a centralized, standardized system for monitoring and tracking complaints at the regional field office level and at the central office level. In developing such a system, management needs to consider issues such as the following:
 - What type of contact will be considered a complaint? Will only written complaints be logged or will all contacts, including phone calls, be logged, but only signed written complaints be formally followed up? (If division management decides to require a signed complaint prior to initiating action, it should consider developing a standard complaint form that could be sent to telephone complainants for completion and return.)
 - Will all complaints (e.g., complaints about division staff/contractors versus those concerning the amount offered for a tract of land) be handled in the same way?
 - What are the costs and benefits of different levels of complaint monitoring/tracking?

5. Management should set time guidelines for responding to and resolving complaints to help ensure that resolution is pursued promptly.
6. The division should analyze complaint data to identify trends and types of complaints. Identifying complaint trends regarding a particular project, ROW staff person, or contractor would help management take corrective actions prior to a problem becoming significant.
7. Management needs to instruct its agents and subcontractors to include public notification of complaint procedures when negotiating with landowners. Central office management should develop guidelines for regional field offices with instructions on handling complaints and when to refer complaints to the central office.
8. Division management should implement a formal method to assess regional field office productivity, staffing, and project workload in order to better evaluate staff performance and the need to use ROW consultants. The division should maintain documentation of its analyses.
9. Management should (1) perform annual evaluations of its policies and procedures manual to ensure that needed changes are made on a timely basis; (2) generate COPs for significant policy changes to ensure that all staff and contract personnel are aware of changes as they occur; and (3) complete revisions to the “Guidelines for Appraisers” and ensure that the new guidelines are distributed to all prequalified appraisers.
10. Department of Transportation Human Resources staff should obtain and maintain in the personnel files documentation to show that employees have appropriate certifications as required for their positions. Division management should ensure that employees receive required performance evaluations.
11. The division should routinely survey landowners who have sold property to the state, follow up on allegations of unfair or inappropriate treatment, identify any trends (e.g., problems linked to a particular right-of-way agent), and take prompt action to ensure that future problems are minimized.