

DEPARTMENT OF TRANSPORTATION

Right-of-Way Relocation Assistance Program



Sherrill F. Norman, CPA
Auditor General

Secretary of the Department of Transportation

The Department of Transportation is established by Section 20.23, Florida Statutes. The head of the Department is the Secretary who is appointed by the Governor and subject to confirmation by the Senate. During the period of our audit, the following individuals served as Department Secretary:

| | |
|----------------------|---|
| Mike Dew | From June 5, 2017 |
| Rachel Cone, Interim | From February 4, 2017, through June 4, 2017 |
| Jim Boxold | Through February 3, 2017 |

The team leader was Jon M. Bardin, CPA, and the audit was supervised by Barry Bell, CPA.

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DEPARTMENT OF TRANSPORTATION

Right-of-Way Relocation Assistance Program

SUMMARY

This operational audit of the Department of Transportation (Department) focused on the administration of the Right-of-Way Relocation Assistance Program. Our audit disclosed the following:

Finding 1: Contrary to Department policies and procedures, Department records did not always evidence the reason at least three comparable replacement dwellings were not identified during the replacement housing assistance process. Additionally, Department records did not adequately demonstrate the population from which comparable replacement dwellings were selected.

Finding 2: The Department did not always adequately document the basis for providing replacement housing of last resort assistance payments to displaced persons.

Finding 3: Department records for some fixed payments in lieu of actual moving and related expenses did not clearly evidence that the displaced entities would incur a substantial loss of existing patronage and such loss was not apparent given the nature of the entity and move.

Finding 4: The Department did not always correctly calculate mortgage interest differential payments and, as a result, underpaid some displaced homeowners.

Finding 5: The Department did not always provide displaced persons the correct purpose for collecting their social security number (SSN) or the specific Federal or State law governing the collection, use, or release of the SSNs.

BACKGROUND

State law¹ provides that the Department of Transportation (Department) is responsible for coordinating the planning and development of a safe, viable, and balanced State transportation system. The Department operates with a decentralized organizational structure consisting of seven districts, a Turnpike Enterprise, a Rail Enterprise, and a Central Office.² The Department also provides assistance to the Florida Transportation Commission and administrative support to the Commission for the Transportation Disadvantaged. For the 2017-18 fiscal year, the Legislature appropriated approximately \$14.5 billion to the Department and authorized 14,970.25 positions.³

Pursuant to State law,⁴ the Department may acquire real and personal property from public or private entities to secure or use transportation rights-of-way for existing, proposed, or anticipated transportation facilities on the State Highway System, on the State Park Road System, in a rail corridor, or in a transportation corridor designated by the Department. To ensure that persons displaced by Department

¹ Section 334.044(1), Florida Statutes.

² Section 20.23, Florida Statutes.

³ Chapter 2017-70, Laws of Florida.

⁴ Section 337.25(1)(a), Florida Statutes.

acquisitions receive just compensation, State law⁵ authorizes the Department to compensate displaced persons⁶ for replacement housing and relocation moving (relocation assistance) expenses, as applicable. Replacement housing assistance payments are designed to allow displaced persons to transition to similar housing arrangements at no additional cost. Relocation assistance payments are designed to cover the reasonable costs for displaced persons to move and displaced businesses to reestablish their business or offset expected losses due to loss of clientele or net earnings. The Department elected to follow Federal regulations⁷ for relocation assistance even though a project may not be Federally funded. During the period July 2016 through January 2018, the Department acquired 2,110 parcels of property, with acquisition costs totaling \$410.9 million, and expended \$4.9 million for replacement housing assistance and \$5.9 million for relocation assistance.

FINDINGS AND RECOMMENDATIONS

In responding to the findings and recommendations, Department management provided a general statement in addition to specific responses regarding each finding. In the Department's general statement and responses to Findings 1 through 3, Department management indicated that our report erroneously equated the terms "document" and "documentation" to mean a narrative or explanation and stated that our recommendations to those findings were counterproductive, likely to increase litigation, would increase the Department's administrative workload, and likely not be approved by the Federal Highway Administration (FHWA) since they were diametrically opposed to Federal regulations. Additionally, in the Department's general statement, management indicated that to ascertain whether sufficient documentation exists to support a relocation decision or finding requires a complete review of the entire project and parcel files which was, admittedly, not done for this audit.

Notwithstanding Department management's general statement, nowhere in our report do we define either "document" or "documentation" or even suggest that such terms mean a narrative or explanation. Further, the point of our findings and recommendations were not to increase the Department's workload or increase the possibility of litigation, but rather, to ensure that the basis for the expenditure of public funds is adequately documented in Department records. With respect to the Department's assertion that a complete review of the entire project and parcel files had not been conducted for this audit, we reviewed all supporting documentation provided by the Department for each selected payment included in our audit testing. At no time during the audit, nor in management's response, did the Department cite specific instances where the Department had not provided all records necessary for audit. Additional comments regarding management's responses to Findings 1 through 3 are included after each finding.

⁵ Section 421.55, Florida Statutes.

⁶ A displaced person is any individual, partnership, corporation, or association that is required to move from any real property as a result of the acquisition of such real property for public purposes.

⁷ Title 49, Part 24, Code of Federal Regulations.

Finding 1: Comparable Replacement Dwelling Determinations

Federal regulations⁸ and Department policies and procedures⁹ specify that no person to be displaced by a Department property acquisition is required to move from their dwelling unless at least one comparable replacement dwelling is made available to the person. When possible, three or more comparable replacement dwellings were to be made available and, if three were not available, Department policies and procedures required that Department records evidence this determination. Federal regulations¹⁰ also prescribe that, to the extent feasible, comparable replacement dwellings are to be selected from the neighborhood in which the displaced dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. Department Right-of-Way relocation agents¹¹ (agents) were to select three comparable replacement dwellings that were: substantially similar to the Department-acquired dwelling; available; and in a decent, safe, and sanitary condition.

To determine whether the Department appropriately documented the identification and selection of comparable replacement dwellings, we examined Department records for 17 replacement housing assistance payments, totaling \$623,853, made during the period July 2016 through January 2018. Our examination disclosed that, for 3 of the 5 replacement housing assistance payments for which the Department identified fewer than three comparable replacement dwellings, Department records did not evidence the reason more comparable replacement dwellings were not identified. Our examination also found that, for all 17 payments, Department records did not adequately demonstrate the population from which comparable dwellings were selected. For example:

- For a \$72,844 rental assistance payment,¹² while the Department identified three comparable replacement dwellings, one of the comparable replacement dwellings was 38 miles away from the Department-acquired property. Although this replacement dwelling was not selected, it was not clear from Department records why this dwelling was considered from the population of possible replacement dwellings.
- For a \$44,000 purchase additive payment,¹³ the Department appraised the displaced dwelling for \$301,000 and ultimately acquired the displaced dwelling for \$475,000 after negotiations. Department records indicated that, between March 2016 and July 2016, the Department selected three comparable replacement dwellings with listing prices of \$398,800, \$449,888, and \$519,000, from most comparable to least comparable. According to Department records, by July 20, 2016, the two most comparable dwellings were no longer available for sale and the Department used the third most comparable replacement dwelling to calculate the purchase additive. However, Department records did not evidence why additional comparable replacement dwellings were not identified or the basis for selecting the comparable dwellings considered. As shown in Table 1,

⁸ Title 49, Section 24.204(a), Code of Federal Regulations.

⁹ Section 9.2.6, Department Right-of-Way Manual, *General Relocation Requirements*.

¹⁰ Title 49, Section 24.403(a)(4), Code of Federal Regulations.

¹¹ Department Right-of-Way relocation agents represent the Department to work with and advise displaced persons throughout the relocation process to ensure that displaced persons receive all relocation entitlements.

¹² Rental assistance payments represent the difference between the displaced person's previous monthly rent and utility costs and the costs to rent and pay utilities on a comparable replacement dwelling, multiplied by 42 months.

¹³ A purchase additive payment is the amount which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of: (1) the reasonable cost of a comparable replacement dwelling, or (2) the purchase price of the replacement dwelling actually purchased and occupied by the displaced person.

based on the first two comparable replacement dwellings, the displaced person would not have been eligible for a purchase additive payment because the replacement dwellings' listing prices were less than the amount paid by the Department for the acquired property. Additionally, compared to the displaced dwelling, Department records noted that the selected comparable replacement dwelling was 17 miles away, 20 years newer, had a living area twice the size, including two additional bedrooms, was in better condition, and had lighter street traffic.

**Table 1
Comparable Replacement Dwellings Example**

| Dwelling Information | Displaced Dwelling | Comparable Dwelling 1 | Comparable Dwelling 2 | Comparable Dwelling 3 |
|----------------------------------|---------------------------|------------------------------|------------------------------|------------------------------|
| Year Built | 1951 | 1951 | 1951 | 1971 |
| Bedrooms/Bathrooms | 3/3 | 5/3 | 4/4 | 5/3 |
| Living Area (in square feet) | 1,844 | 2,484 | 3,182 | 3,766 |
| Lot Size (in square feet) | 10,125 | 11,645 | 27,750 | 11,752 |
| Listing Price | N/A | \$398,800 | \$449,888 | \$519,000 |
| Sale Date | N/A | 9/30/16 | 9/30/16 | 9/14/16 |
| Entitled Purchase Additive | N/A | \$ - | \$ - | \$ 44,000 |
| Distance from Displaced Property | N/A | 0.3 miles | 0.5 miles | 17.0 miles |

Source: Department and applicable county records.

Our review of Department policies and procedures also disclosed that Department staff were not required to document the population of dwellings from which comparable dwellings were selected, which may have contributed to the issues noted. In response to our audit inquiry, Department management indicated that personal factors (e.g., school zone, proximity to the displaced person's employment) could have been taken into consideration when searching for a replacement dwelling.

Documentation evidencing the reason at least three comparable replacement dwellings are not identified during the replacement housing assistance process and the population of available dwellings from which comparable replacement dwellings are selected would better demonstrate that replacement dwelling determinations are appropriately made in accordance with Federal regulations. In addition, absent corresponding documentation requirements, the risk of inconsistencies between Department agents regarding the selection of comparable replacement dwellings and the determination of resulting compensation is increased.

Recommendation: We recommend that Department management revise policies and procedures to require that Department records evidence the population from which comparable replacement dwellings are selected and ensure that, when three replacement dwellings are not identified during the replacement housing assistance process, Department records evidence the reason.

Follow-Up to Management's Response

Department management indicated in their written response that our report failed to identify the specific parcel files and projects referenced in the finding, making it difficult to address the finding and recommendation. Department management also indicated that "the finding that the 17 files do not contain sufficient justifications is simply untrue" and that "all files included sufficient justifications if less than three comparables were used." Notwithstanding this response, during our audit Department management requested, and we provided, a listing identifying the parcel and project information for the 17 payments

included in our audit testing. Our finding does not suggest that Department records for the 17 payments did not evidence the reason more comparable replacement dwellings were not identified, rather, the finding indicates that Department records for the 17 payments did not adequately demonstrate the population from which comparable dwellings were selected. Department records for 3 of the payments, however, did not evidence the reason more comparable replacement dwellings were not identified. Consequently, the finding and related recommendation stand as presented.

Finding 2: Replacement Housing of Last Resort Assistance Payments

Federal regulations¹⁴ and Department policies and procedures¹⁵ provide for, and restrict the amount of, replacement housing assistance payments to eligible tenants or owner-occupants who have been displaced from a dwelling. Specifically, down payment assistance and rental assistance payments cannot exceed \$7,200 per displaced person and the sum of the price differential (purchase additive), the mortgage interest differential, and relocation incidental expenses paid to displaced persons cannot exceed \$31,000. Table 2 shows, by payment type, information regarding Department replacement housing assistance payments made during the period July 2016 through January 2018.

**Table 2
Department Replacement Housing Assistance Payments
During the Period July 2016 Through January 2018**

| Payment Type | Number of Displaced Persons (Households) Receiving a Payment ^a | Number of Payments | Total Amount of Payments |
|--------------------------------|---|--------------------|---------------------------|
| Purchase Additive | 35 | 50 | \$1,887,944 |
| Mortgage Interest Differential | 9 | 9 | 190,469 |
| Relocation Incidental Expenses | 86 | 135 | 316,336 |
| Down Payment Assistance | 29 | 30 | 824,109 |
| Rental Assistance | 58 | 79 | 1,573,885 |
| Mobile Home Purchase | 8 | 10 | 91,448 |
| Totals | | <u>313</u> | <u>\$4,884,191</u> |

^a Some displaced persons received more than one payment type.

Source: Department records.

If a down payment assistance, rental assistance, or price differential payment is insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a displaced person, or the market does not include comparable replacement housing that can be made available to the displaced person in a timely manner, the Department is authorized to provide replacement housing of last resort assistance payments. Pursuant to Federal regulations,¹⁶ any decision to provide replacement housing of last resort assistance payments must be adequately justified either:

- On a case-by-case basis, for good cause, where appropriate consideration is given to: the availability of comparable replacement housing in the program or project area; the resources

¹⁴ Title 49, Sections 24.401, 24.402, and 24.404, Code of Federal Regulations.

¹⁵ Section 9.4, Department Right-of-Way Manual, *Replacement Housing Payments*.

¹⁶ Title 49, Section 24.404, Code of Federal Regulations.

available to provide comparable replacement housing; the individual circumstances of the displaced person, or

- By a determination that there is little, if any, comparable replacement housing available to displaced persons within an entire program or project area and, therefore, last resort housing assistance is necessary for the area as a whole; a program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and the method selected for providing last resort housing assistance is cost-effective, considering all elements, which contribute to total program or project costs.

As part of our audit, we examined Department records related to 16 displaced persons who received replacement housing of last resort assistance payments, totaling \$705,847, during the period July 2016 through January 2018, to determine whether the payments were appropriately supported and paid in accordance with Federal regulations and Department policies and procedures. Our examination disclosed that Department records for 10 of these payments did not adequately evidence the basis for the replacement housing of last resort assistance payments, including 6 payments totaling \$288,835 where the stated reason for the payments was “because the calculation exceeds the threshold” and 4 payments totaling \$266,753 for which Department records denoted that the payments were “due to the limited market.”

In response to our audit inquiry, Department management indicated that the Department was not required to document the basis for providing replacement housing of last resort assistance payments. Notwithstanding Department management’s response, absent adequate documentation evidencing the reasons why replacement housing of last resort assistance payments were required, the Department cannot demonstrate that the displaced persons were eligible to receive such assistance in accordance with Federal regulations.

Recommendation: We recommend that Department management ensure that the basis for providing replacement housing of last resort assistance payments is sufficiently documented in Department records in accordance with Federal regulations.

Follow-Up to Management’s Response

Department management indicated in their written response that, if the file is documented with “Last Resort Housing” only, by pure definition, no other justification is needed for the payment. Department management further indicated that the Federal Highway Administration (FHWA) in an e-mail dated September 30, 2019, confirmed that the Department’s documentation was consistent with Federal regulations and Department procedures. Notwithstanding the Department’s response, as indicated in the finding, Federal regulations (Title 49, Section 24.404, Code of Federal Regulations) state that any decision to provide replacement housing of last resort assistance payments must be adequately justified on either a case-by-case basis or a determination that little, if any, comparable replacement housing is available. Thus, the basis for the Department’s assertion that last resort housing payments are self-justifying is not readily apparent. Further, in confirming with the FHWA that the Department’s documentation was consistent with Federal regulations and Department procedures, the Department provided the FHWA documentation for three example replacement housing of last resort assistance payments, two of which were not subject to our audit procedures and a third that was not an audit exception. Consequently, the finding and related recommendation stand as presented.

Finding 3: Fixed Payments in Lieu of Payment for Actual Moving Expenses

Federal regulations¹⁷ and Department policies and procedures¹⁸ provide that, for nonresidential moves, displaced businesses, farms, and nonprofit organizations (displaced entities) may be eligible to receive a fixed payment¹⁹ in lieu of payment for actual moving and related expenses, and actual reasonable re-establishment and search expenses. To determine whether a displaced entity was eligible to receive a fixed payment, the Department was, among other things, to determine whether the displaced entity could not be relocated without a substantial loss of existing patronage (i.e., clientele or net earnings). Department policies and procedures specified that an entity was assumed to not be able to relocate without a substantial loss of existing patronage unless the Department determined that the displaced entity would not suffer a substantial loss of its existing patronage. The Department's determination was to be made in consideration of the nature of the entity, nature of clientele (e.g., walk-ins, referrals, telephone contacts), whether the transaction of business occurs on the displacement site or elsewhere, and any other point considered relevant by the Department.

The Department provided fixed payments in lieu of actual moving expenses, totaling \$1,145,096, to 35 displaced entities during the period July 2016 through January 2018. As part of our audit, we examined Department records for fixed payments, totaling \$480,687, made to 13 displaced entities to determine whether the displaced entity was eligible to receive the payment. Our examination disclosed that, in assuming that displaced entities would incur a substantial loss of patronage, the Department did not actively assess the reasonableness of this conclusion for each payment and Department records for 4 of the 13 fixed payments did not clearly evidence that the displaced entity would incur a substantial loss of existing patronage and such loss was not apparent given the nature of the displaced entity and move. Specifically:

- A church received \$40,000 to move approximately 213 feet away on the same street.
- A yoga studio received \$39,755 to move approximately 1,056 feet away on an adjoining street.
- A mobile roof cleaning business administratively operated from the displaced business owner's residence received \$20,310 to move 9 miles away.
- A screen repair and installation company administratively operated from the displaced business owner's residence received \$40,000 to move 5.5 miles away.

According to Department management, the Department only questions whether a displaced entity would incur a substantial loss of existing patronage in the most extreme circumstances. Department management also indicated that the option to receive a fixed payment in lieu of payment for actual moving expenses is provided to all displaced entities without regard to loss of patronage and that the Department cannot deny any entity the right to make this claim type.

¹⁷ Title 49, Section 24.305, Code of Federal Regulations.

¹⁸ Section 9.3.20, Department Right-of-Way Manual, *Fixed Payments, Non-Residential Moves for Businesses, Farms, and Nonprofit Organizations*.

¹⁹ The fixed payment is to equal the average annual net earnings of the business during the 2 most-recent taxable years prior to the taxable year in which displacement occurred, but not less than \$1,000, nor more than \$40,000. If the average annual net earnings of a displaced business are less than \$1,000, the business is to receive the \$1,000 minimum payment.

Documentation clearly evidencing the reasons that a displaced entity will incur a substantial loss of existing patronage as a result of a Department acquisition would better allow the Department to demonstrate that the displaced entities were eligible to receive a fixed payment for moving and related expenses.

Recommendation: We recommend that Department management ensure that Department records clearly evidence for all fixed payments in lieu of payment for actual moving expenses that a displaced entity will incur a substantial loss of existing patronage in accordance with Federal regulations.

Follow-Up to Management's Response

Department management indicated in their written response that documentation of a legal presumption that a business will incur a substantial loss of its existing patronage is neither logical nor required. Additionally, Department management stated that it is only when the Department attempts to overcome the legal presumption where it is logical and required to document the reasons the assumption does not apply. However, as cited by Department management in their response, the Secretary of the United States Department of Transportation has stated that a business move under a Federal or Federally assisted program almost always results in the disruption of business activity and a consequent loss of patronage. In those cases in which this is not so, the Secretary stated that the burden of proof was on the displacing agency. Thus, the presumption of a loss of patronage does not appear to relieve the Department from assessing the validity of the assumption in all instances and ensuring that the public record clearly evidences the assessment. Consequently, the finding and related recommendation stand as presented.

Finding 4: Mortgage Interest Differential Payments

Federal regulations²⁰ and Department policies and procedures²¹ provide for payments to be made to displaced homeowners for the increased interest costs and other debt service costs incurred in connection with the mortgage placed on the displaced homeowner's replacement dwelling. To assist states with calculating mortgage interest differential payments, the United States Department of Transportation, Federal Highway Administration (FHWA), makes a Mortgage Interest Differential Payment (MIDP) calculator available on its Web site. The MIDP calculator requires states to input various information regarding the displaced homeowner's prior and new mortgage, such as the existing principal balance of the displaced homeowner's prior mortgage and associated interest rate, the new mortgage amount and terms (in months), and the lesser of the prevailing interest rate or the interest rate for the new mortgage.

As part of our audit, we examined Department records for the nine mortgage interest differential payments, totaling \$190,469, made by the Department during the period July 2016 through January 2018. Our examination disclosed that the Department incorrectly calculated and paid the mortgage interest differential in three instances, resulting in underpayments totaling \$48,533 to the displaced homeowners. According to Department management, the underpayments occurred due to agents inputting incorrect

²⁰ Title 49, Section 24.401(d), and Appendix A for Section 24.401(d), Code of Federal Regulations.

²¹ Right of Way Manual, Section 9.4.22, *Increased Mortgage Interest Differential Payment*.

amounts into the MIDP calculator. Subsequent to our audit inquiry, the Department paid the displaced homeowners for the amounts owed.

By not ensuring that mortgage interest differential payments are correctly calculated, the Department has reduced assurance that all displaced homeowners are appropriately compensated in accordance with Federal regulations and Department policies and procedures.

Recommendation: We recommend that Department management ensure that mortgage interest differential payments are correctly calculated and paid to displaced homeowners in accordance with Federal regulations and Department policies and procedures.

Finding 5: Collection of Social Security Numbers

The Legislature has acknowledged in State law²² that a person's social security number (SSN) was never intended to be used for business purposes. However, over time the SSN has been used extensively for identity verification and other legitimate consensual purposes.

Recognizing that an SSN can be used to perpetrate fraud against an individual and acquire sensitive personal, financial, medical, and familial information, the Legislature specified²³ that State agencies may not collect an individual's SSN unless the agency is authorized by law to do so or it is imperative for the performance of that agency's duties and responsibilities as prescribed by law. Additionally, State agencies are required to provide each individual whose SSN is collected written notification regarding the purpose for collecting the number, including the specific Federal or State law governing the collection, use, or release of the SSN. The SSNs collected may not be used by the agency for any other purpose other than the purposes provided in the written notification. State law further provides that SSNs held by an agency are confidential and exempt from public inspection and requires each agency to review its SSN collection activities to ensure the agency's compliance with the requirements of State law and to immediately discontinue SSN collection upon discovery of noncompliance.

We examined Department records related to 80 payments (60 relocation moving payments and 20 replacement housing payments) made to 78 displaced persons during the period July 2016 through January 2018 and noted that, while the Department collected SSNs from 36 of the displaced persons, the Department did not always provide the displaced persons the correct purpose for collecting their SSNs or the specific Federal or State law governing the collection, use, or release of the SSNs. Specifically, the form used by the Department to collect 21 of the displaced persons' SSNs indicated that the SSNs were collected because Federal regulations required the Department to report relocation moving and replacement housing payment transactions to the Internal Revenue Service (IRS). However, the form did not provide the specific Federal or State law governing the collection, use, or release of the displaced persons' SSNs and, in response to our audit inquiry, Department management acknowledged that these payment transactions were not taxable and indicated that the Department collected the SSNs to process the payments in the State's accounting system.

²² Section 119.071(5)(a)1.a., Florida Statutes.

²³ Section 119.071(5)(a)2.a., Florida Statutes.

Effective controls for the collection and use of individuals' SSNs would better ensure and demonstrate Department compliance with statutory requirements and reduce the risk that SSNs may be unnecessarily collected or utilized for unauthorized purposes.

Recommendation: We recommend that Department management take appropriate steps to demonstrate compliance with applicable statutory requirements for the collection and use of SSNs.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from February 2018 through July 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Department of Transportation (Department) focused on the administration of the Right-of-Way Relocation Assistance Program and excess land management. The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in

considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Department policies and procedures, and other guidelines, and interviewed Department personnel to obtain an understanding of relocation assistance and excess land management processes.
- Obtained an understanding of selected Department information technology (IT) controls, assessed the risks related to those controls, evaluated whether selected general and application IT controls for the Right-of-Way Management System and Receipt Processing System were in place, and tested the effectiveness of the controls.
- From the population of 313 replacement housing payments, totaling \$4,884,191, made to 174 displaced persons during the period July 2016 through January 2018, examined Department records for 20 selected payments, totaling \$753,760, to determine whether the payments were properly authorized, supported, reviewed, and paid in accordance with Title 49, Section 24, Code of Federal Regulations; Section 337.25, Florida Statutes; Department Rule 14-66.007, Florida Administrative Code; and Department policies and procedures. In addition to the 2 mortgage interest differential payments, totaling \$105,406, included in the 20 replacement housing payments tested, we selected and examined Department records for the 7 other mortgage interest differential payments, totaling \$85,063, paid during the period July 2016 through January 2018, to determine whether the payments were mathematically accurate.
- From the population of 828 relocation moving expense payments, totaling \$5,934,554, made to 462 displaced persons during the period July 2016 through January 2018, examined Department records for 60 selected payments, totaling \$1,541,469, made to 60 displaced persons to determine whether the payments were properly authorized, supported, reviewed, and paid in accordance with Title 49, Section 24, Code of Federal Regulations; Section 337.25, Florida Statutes; Department Rule 14-66.007, Florida Administrative Code; Department policies and procedures; and other guidelines.
- From the population of 118 land parcel sales, totaling \$13,368,921, made by the Department during the period July 2016 through January 2018, examined Department records for 15 selected land parcel sales, totaling \$3,065,661, to determine whether the sales were advertised, and the parcels properly disposed of, in accordance with Section 337.25(4), Florida Statutes, and Department policies and procedures.
- From the population of 124 land parcels, totaling 483 acres, acquired by the Department in 1997, and 42 land parcels, totaling 22 acres, acquired by the Department in 2007, held by the Department in 2018 as excess land, examined Department records for 10 selected 1997 parcels

(totaling 147 acres) and 5 selected 2007 parcels (totaling 12 acres) to determine whether the Department evaluated the need for retaining the excess parcels in accordance with Section 337.25(3), Florida Statutes, and Department policies and procedures.

- Analyzed Department Right-of-Way Management System data related to the 313 replacement housing payments, totaling \$4,884,191, and the 828 relocation moving expense payments, totaling \$5,934,554, made during the period July 2016 through January 2018, to determine whether the payments were reasonable.
- Analyzed Department Right-of-Way System data related to the 118 land parcel sales, totaling \$13,368,921, made during the period July 2016 through January 2018, to determine whether the sales prices were reasonable.
- Reviewed applicable laws, rules, and other State guidelines to obtain an understanding of the legal framework governing Department operations.
- Observed, documented, and evaluated the effectiveness of selected Department processes and procedures for:
 - Cash management, purchasing and budgetary activities, and fixed capital outlay.
 - The assignment and use of motor vehicles. As of January 31, 2018, the Department was responsible for 2,445 motor vehicles with related acquisition costs totaling \$44,238,773.
 - The administration of Department contracts. As of January 31, 2018, the Department was responsible for 8,411 active contracts totaling \$35,905,958,320.
 - The assignment and use of mobile devices with related costs totaling \$1,206,176 during the period July 2016 through January 2018.
 - The administration of the requirements of the Florida Single Audit Act. During the period July 2016 through January 2018, the Department expended \$1,222,643,307 for 25 State Financial Assistance programs.
 - The acquisition and management of real property leases in accordance with State law, Department of Management Services rules, and other applicable guidelines. As of January 31, 2018, the Department was responsible for eight real property leases.
 - The administration of hurricane-related contracting and purchasing activities. During the period July 2016 through January 2018, the Department expended \$173,935,616 related to hurricane activity impacting the Department for four Governor-declared emergencies.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large initial 'S'.

Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE²⁴



Florida Department of Transportation

RON DESANTIS
GOVERNOR

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KEVIN J. THIBAUT, P.E.
SECRETARY

October 21, 2019

Sherrill F. Norman
Auditor General
Claude Denson Pepper Building
Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

I am pleased to respond to the preliminary and tentative audit findings and recommendations concerning your audit of:

Department of Transportation – 2018 Operational Audit
Right-of-Way Relocation Assistance Process

As required by Section 11.45(4) (d), Florida Statutes, the department's responses and corrective actions for this operational audit are enclosed.

I appreciate the efforts of you and your staff in assisting to improve our operations. If you have any questions, please contact our Inspector General, Kris Sullivan, at 850-410-5800.

Sincerely,

A handwritten signature in blue ink, appearing to read "for Kevin J. Thibault", is written over the typed name and title. The signature is fluid and cursive.

Kevin J. Thibault, P.E.
Secretary

KJT: cm

Enclosures (1)

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²⁴ Management's response refers to attachments that are not included in this report but are public records that may be obtained from the Department.

Summary of Findings and Department Responses Auditor General 2018 Operational Audit-Right of Way

Finding 1- Comparable Replacement Dwelling Determinations: Contrary to Department policies and procedures, Department records did not always evidence the reason at least three comparable replacement dwellings were not identified during the replacement housing assistance process. Additionally, Department records did not adequately demonstrate the population from which comparable replacement dwellings were selected.

Recommendation: We recommend that Department management revise policies and procedures to require that Department records evidence the population from which comparable replacement dwellings are selected and ensure that, when three replacement dwellings are not identified during the replacement housing assistance process, Department records evidence the reason.

Agency Response and Corrective Action Plan: The Department disagrees with Finding 1. The AG's report fails to identify the parcel file and project file being referenced in the findings, making it difficult to directly address the findings and recommendations. That said, Title 49 CFR s. 24.204(a) requires a minimum of one comparable replacement dwelling. Chapter 9.2.6.1 of the Right of Way Manual also states that at least one comparable replacement dwelling is made available. The procedure (9.4.28.1) prefers three but requires that there must be at least one. If three are not available, the file will be so documented; "limited market" or "fast-moving market" is a sufficient reason pursuant to the procedures and FHWA. The finding that the 17 files do not contain sufficient justifications is simply untrue. All files included sufficient justifications if less than three comparables were used. The relocation agents computing Replacement Housing Payments are subject matter experts. It is not a Department procedural requirement or Federal requirement to list available dwellings on the market or document the reason that a comparable was chosen over a different available comparable in the market. The procedure requires (with reason) that the file is documented to show the selected comparables' similarities to the subject property. The number one comparable must be equal to or better than the displacement dwelling. Per procedure 9.4.28.1(C), comparable replacement dwellings will be selected from the neighborhood of the displacement dwelling, or in a nearby or similar neighborhood where housing costs are the same or higher than the displacement dwelling.

- In reference to bullet one of Finding 1, the file (assuming we have identified the correct file) is documented to show that there was difficulty finding comparable properties in the nearby area. The displacement dwelling had a large amount of square footage, which was difficult to find in the search for a replacement property. The AG's conclusions are accordingly rejected.
- In reference to bullet two of Finding one, the particular file has not been identified. That said, it is not a Department procedural requirement or Federal requirement to find additional comparable properties if any of the selected comparables become unavailable. The AG's report fails to recognize the time frames in which listings must be found and presented to relocatees. 49 CFR s. 24.204(a) requires a minimum of 1 comparable replacement dwelling. Therefore, additional comparable properties did not need to be identified. Per procedure 9.4.28.1, the selected comparable must be equal to **or better than** the displacement dwelling. The remaining comparable met this requirement, and the file documented the comparable's similarities to the displacement dwelling.

The procedure the Department must follow when looking for comparable dwellings is found in 49 C.F.R. § 24.403(1) & (4) which provide:

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If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. . . .

To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

In other words, the Department, in a very limited time, will attempt to find three dwellings for sale in 1) the same neighborhood and if that is not feasible, the Department will look in 2) nearby neighborhoods or in 3) similar neighborhoods. Note that the first two criteria are geographically-tied while the third criteria is not, which helps explain why there are comparable replacement dwellings 17 or even 38 miles from the displacement dwelling. By using terms such as “if available” and “to the extent feasible,” the procedure is obviously designed to provide the Department great flexibility and is not designed to burden the Department with onerous paperwork.

The recommendation increases the Department's administrative burden that is not required by law, rule or procedure. By comparison, in standard real estate appraisals, the appraiser lists the comparable sales that are used, but does not list sales that were looked at and then rejected on the basis they are not comparable or not as comparable as the sales that are used. Listing sales that are reviewed, but not used, should be avoided, where their existence could be taken out of context and used in an adversarial proceeding against the Department.

Estimated Corrective Action Date: N/A

Agency Contact and Telephone Number: Scott Foltz, Director – 850-414-4556

Finding 2- Replacement Housing of Last Resort Assistance Payments: The Department did not always adequately document the basis for providing replacement housing of last resort assistance payments to displaced persons.

Recommendation: We recommend that Department management ensure that the basis for providing replacement housing of last resort assistance payments is sufficiently documented in Department records in accordance with Federal regulations.

Agency Response and Corrective Action Plan: The Department disagrees with Finding 2. The Definition that Florida uses for Last Resort Housing in the Right of Way Manual, Chapter 9.1, specifically states that *Last Resort Housing is a provision of replacement housing by techniques developed for such purpose, when a highway project cannot proceed to construction because suitable, comparable and/or adequate replacement sale or rental housing is not available and cannot otherwise be made available to displacees within the payment limits established by law.* Essentially, if the file is documented with “Last Resort Housing” only, that is the justification by the pure definition in the procedure, nothing else is needed. This definition is an acceptable justification, as outlined in Title 49 CFR s. 24.404(1). Other types of justification are also acceptable for FHWA, such as “exceeds RHP threshold,” as the Department cannot prohibit payment in situations where the RHP threshold is exceeded. The RHP and possibility of HLR are tied to the entire parcel file, as value for the subject property and the need for superior comps based on DS&S conditions, or the unavailability of comparables generally lead to HLR. It is the FHWA's and Department's mission to ensure that the displacees are not worse off than they were in the subject

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property, as that would not be compliant with Federal Regulations. Exceeding the payment threshold is commonplace, and the Department is required to pay HLR to ensure the displaced is not unduly burdened.

The FHWA in an email dated September 30, 2019, confirmed the Department's documentation, as described above, is consistent with federal regulations and Department procedures. Any further documentation is inconsistent with FHWA requirements and increases the potential for litigation.

Estimated Corrective Action Date: N/A

Agency Contact and Telephone Number: Scott Foltz, Director – 850-414-4556

Finding 3- Fixed Payments In Lieu of Payment for Actual Moving Expenses: Department records for some fixed payments in lieu of actual moving and related expenses did not clearly evidence that the displaced entities would incur a substantial loss of existing patronage and such loss was not apparent given the nature of the entity and move.

Recommendation: We recommend that Department management ensure that Department records clearly evidence for all fixed payments in lieu of payment for actual moving expenses that a displaced entity will incur a substantial loss of existing patronage in accordance with Federal regulations.

Agency Response and Corrective Action Plan: The Department disagrees with Finding 3. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and other related expenses and actual, reasonable reestablishment expenses. This fixed payment to a business is based on the business's average annual net earnings over a two-year period and shall not be less than \$1,000 or more than \$40,000 (amount updated through MAP-21).

Per 49 CFR 24.305(a)(2), a business is eligible for the payment if it meets the following criteria:

The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). **A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of existing patronage.**

When the "assumption provision" was first adopted, there were some objections to the inclusion of the legal presumption. However, the Secretary of the United States Department of Transportation commented:

Several comments were received objecting to the last sentence of (a)(1) beginning "A business is assumed to meet this test * * * " The Department believes that a business move under a Federal or federally-assisted program **almost always results in the disruption of business activity and a consequent loss of patronage.** In those cases in which this is not so, the Department believes **the burden of proof should be on the displacing agency.** Therefore, no change has been made in this standard [of the adopted rule].

See Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act); Acquisition for Federal and Federally-Assisted Programs, 50 FR 8955-01 (March 05, 1985) (emphasis supplied). Therefore, per 49 CFR 305(a)(2), the Department must assume that the displaced business

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will have a loss of existing patronage due to the move. Documentation of a legal presumption is neither logical nor required.

The Department is authorized to challenge this assumption only if it is factually clear that a substantial loss of patronage will **NOT** occur. If the Department denies a displaced business eligibility due to lack of evidence of loss of patronage, it is the Department's burden to document and prove otherwise. It is only when the Department attempts to overcome the legal presumption where it is then logical and required to document the reasons the assumption does not apply.

Trying to document the reasons that a loss of patronage will actually occur, when loss of patronage is assumed to occur, is contrary to federal regulation, increases the administrative burden on the Department and increases the likelihood of litigation.

Estimated Corrective Action Date: N/A

Agency Contact and Telephone Number: Scott Foltz, Director – 850-414-4556

Finding 4- Mortgage Interest Differential Payments: The Department did not always correctly calculate mortgage interest differential payments and, as a result, underpaid some displaced homeowners.

Recommendation: We recommend that Department management ensure that mortgage interest differential payments are correctly calculated and paid to displaced homeowners in accordance with Federal regulations and Department policies and procedures.

Agency Response and Corrective Action Plan: The Department concurs with Finding 4. The issues that were discovered were corrected, and additional payments were made to those displacees. Also, to ensure this is not a widespread issue, future Quality Assurance Reviews are reviewing 100% of MIDP to ensure they were calculated correctly, and pen and ink changes have been made to the procedure to ensure that there is clarity with the fact that escrow amounts (insurance and taxes) included in mortgage payments are not included in the calculation for MIDP.

Estimated Corrective Action Date: Corrected

Agency Contact and Telephone Number: Scott Foltz, Director – 850-414-4556

Finding 5- Collection of Social Security Numbers: The Department did not always provide displaced persons the correct purpose for collecting their social security number (SSN) or the specific Federal or State law governing the collection, use, or release of the SSNs.

Recommendation: We recommend that Department management take appropriate steps to demonstrate compliance with applicable statutory requirements for the collection and use of SSNs.

Agency Response and Corrective Action Plan: The collection of SSN is a Department of Financial Services' (DFS) requirement for processing payments to individuals. The Department will clarify with DFS the statutory authority to collect the SSNs.

Estimated Corrective Action Date: In Process

Agency Contact and Telephone Number: Scott Foltz, Director – 850-414-4556

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General Statement from Department of Transportation:

Payment of relocation assistance and moving costs to persons displaced by transportation facilities or related projects, is provided for in Florida Administrative Code Rule 14-66, which incorporates by reference 49 Code of Federal Regulation Part 24. Per 23 CFR 710.201(c), FHWA must review and approve of the Department's Right of Way manual to ensure consistency with applicable federal laws and regulations. The attached email includes FHWA's memo dated December 12, 2018, approving the Department's Right of Way Manual and email approval of procedural update of Section 1.1 on August 7, 2017.

The AG report erroneously equates the terms "document" and "documentation" to mean a narrative or explanation. The single provision within with the relevant Federal regulations makes clear that documentation typically means providing supporting documents and not a narrative or explanation. 49 C.F.R. § 24.207(a) states: "Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses." Section 9.2.14 of the FDOT Right of Way Procedures Manual contains a similar explanation the of the term "documentation." Throughout the ROW Procedures Manual, the term "explain" rather than the term "document" is routinely used where a narrative is required to be created rather than relying upon existing documentation. For example, Section 9.4.21.3(B), makes the distinction between "fully explain" and "documented" clear when it states, "Any variation in size between the acquired and replacement dwellings must be **fully explained and documented.**" Without doubt, these terms have different meanings.

To ascertain whether sufficient documentation exists to support a relocation decision or finding requires a complete review of the entire project and parcel files which was, admittedly, not done for this audit. A selective review of requested documents is insufficient to determine whether a particular issue is sufficiently documented, or when required, explained.

A narrative explanation summing up the totality of why a certain determination was made is not required by Federal rule or FDOT procedure. The recommendations, one through three, are counterproductive, are likely to increase litigation, would increase the administrative workload on the Department and likely will not be approved by the FHWA since these recommendations are diametrically opposed to federal regulation.