
Secretary of State

State of Oregon

PARKS AND RECREATION DEPARTMENT

**Review of the Department's Relationship with the
Oregon State Parks Trust**



Audits Division

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Audits Division

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*Auditing for a Better
Oregon*

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This report contains the results of our audit of the Oregon Parks and Recreation Department's relationship to the Oregon State Parks Trust (trust), a non-profit corporation. We concluded that the department and the trust were not properly operating as independent entities, and the department did not always comply with state requirements in its dealings with the trust. In one instance the department paid the trust \$12,200 for lobbying work performed by a contractor. The department did not disclose this payment for lobbying as required by state law. In other instances the department entered into agreements with the trust that were fiscally disadvantageous to the state, were not competitively awarded as the state requires, and did not adequately protect state funds from improper use. The report provides recommendations to guide the department in addressing the audit findings.

The department's response to our report can be found at the end of this report.

OREGON AUDITS DIVISION

John N. Lattimer
Director

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EXECUTIVE SUMMARY

Purpose

In 1995, the Chair and Vice Chair of the Oregon Parks and Recreation Commission (commission) and the director of the Oregon Parks and Recreation Department (department) helped establish the Oregon State Parks Trust (trust), a non-profit corporation. The principal purpose of the trust is to obtain resources to benefit public parks. We conducted this audit to determine if the department and the trust were operating as independent entities, and if the department had complied with state requirements in its dealings with the trust.

Background

When the trust was established in 1995, the department already operated its own trust fund, as allowed by statute, for receiving gifts and donations for state parks. According to the department director, the trust was formed with the belief that persons and organizations who would not donate to a state-run program may be more likely to donate to an independent organization. The department considers the trust a "fast-action tool" that can accomplish some things (has freedoms) that the department, as a state agency, cannot.

The department sought advice from the Department of Justice in setting up the trust. The department was advised that if it appeared that the department or the commission controlled the trust, it would be more likely that a court (or the legislature or the State Auditor) would conclude that the foundation [trust] is an arm of the state, not an independent corporation. Based upon this advice, the trust was set up in its bylaws to be independent of the department.

Results in Brief

The department and the trust did not operate independently.

We found that the department and the trust did not operate as independent entities, and that the department did not always comply with state requirements in its dealings with the trust.

We determined that the department:

- Donated one-half of a state-paid full-time position to the establishment and administration of the trust since September 1994. This arrangement provides the trust with a half-time business manager. The trust never had any employees on its payroll. Having a department employee serve as the trust's business manager provides no independence and exposes the state to increased fiscal risks. Through December 1998, the value of the donated staff time and benefits was approximately \$109,204.
- Did not disclose its lobbying activity to the state's Government Standards and Practices Commission, as required by state law. The department paid the trust approximately \$12,200 for lobbying work performed by a contractor working for the trust. The department also participated in the trust's lobbying work.
- Paid the trust approximately \$1,500 for temporary services that were never performed for the department. Of this, approximately \$656 was for lobbying-related work on behalf of the trust.
- Entered into agreements with the trust that were fiscally disadvantageous to the state, were not competitively awarded as the state requires, and did not adequately protect state funds from improper use. Goods and services provided under the agreements could have been obtained by the department at a lower cost. In one of the agreements, the trust bought 50 yurts and leased them to the department. The lease guarantees the trust a profit of between \$227,500 and \$325,500 over ten years. According to the director, the department agreed to make high-lease payments as a means of providing the trust with operating funds.
- Allowed the trust, from its formation until July 1998, to be operated rent free from a state employee's desk located in the department's Salem headquarters. Since July 1998, the department has rented office space to the trust in its Salem headquarters. The department currently pays \$350 per

month to lease the space, but charges the trust \$120. This arrangement was not presented to the Department of Administrative Services for approval, as required. Through this arrangement, and it not requiring the trust to pay its first four months' rent, the department provided the trust with a subsidy of at least \$1,952 through January 1999.

- Provided the trust with three short-term loans at no interest. One was for \$132,400, another was for \$69,900, and a third was for \$10,000. These loans were made without valid state contracts. By not charging interest, the department provided the trust with a subsidy of at least \$5,040.

Summary of Recommendations

To be independent of the trust, exercise appropriate control over state funds, and maintain acceptable ethical and business standards, the department should:

- Stop paying a state employee to work as business manager for the trust.
- Report all lobbying activities and expenses to the state's Government Standards and Practices Commission.
- Withdraw from all commercial agreements that provide the trust with state funds but do not provide the state with goods or services of comparable worth.
- Recover from the trust temporary labor overpayments worth approximately \$1,500.
- Establish procedures to ensure that all invoices and internal requests for payments are properly supported before payment is approved.
- Train department managers and staff in procedures required to approve invoices for payment.
- Make contracts, rather than formal or informal agreements, the instrument for providing subsidies to and for obtaining goods and services from vendors.
- Develop policy and provide training detailing the need for all business arrangements to be reviewed to ensure that all

comply with applicable rules and regulations.

- Monitor contractors' performance in complying with the subsidy portion of contract requirements and restrictions.

Agency Response

The department's written response to this audit can be found starting on page 25 of this report.

Introduction

Formation of the Oregon State Parks Trust

The Oregon Parks and Recreation Department (department) was established as a separate state agency in 1989 to assure that Oregonians have adequate outdoor recreation resources. The department is led by an appointed director and the Oregon Parks and Recreation Commission (commission) whose seven members are appointed by the governor and confirmed by the senate.

State laws provide the department broad authority to fulfill its mandate. *Oregon Revised Statute* (ORS) 390.010(5) makes it a state policy to encourage all government agencies, voluntary and commercial organizations, citizen recreation groups, and others, to work cooperatively and in a coordinated manner to meet the public's recreation needs.

According to the Department of Justice (DOJ), the department has the implied authority, through the general powers given to it by statute, to work with a non-profit corporation to fulfill its mandate. That implied authority includes the authority to take steps during the formation of a non-profit corporation to ensure that the new entity's purpose and mission does not conflict with the department's statutory mandate.

The department director and the commission's chair and vice-chair assisted in the May 1995 formation of the Oregon State Parks Trust (trust). The trust's role is to acquire funds and property for public park or public recreation uses. It is a legally independent non-profit corporation with tax-exempt status under Title 26, Section 501(c)(3) of the federal Internal Revenue Code.

A 26-member voluntary board of trustees leads the trust. The department director is a non-voting member of the board. The chair and vice chair of the commission are ex-officio members of the trust board. The trust is located in the department's headquarters building in Salem.

In forming the trust, the department obtained legal guidance from DOJ. The department was advised to maintain the trust's independence. DOJ offered the following cautions:

- If it appeared that the department or commission controlled the trust, it was more likely that external parties would conclude that

the trust was an arm of the state, not an independent corporation.

- If the commission chair was made an ex-officio trustee, the bylaws would then effectively allow the state, through the commission, to control the trust, thereby undermining the trust's independence.
- Giving the trust authority to enter into a contract for the department would imply a principal-agent relationship that could make the department liable for trust activities.
- If the department wrote and designed trust publications, coordinated its fund-raising events and publicity, provided office space and contributed cash, little would remain for the trust to do, except set general policy through its board.
- The trust's dependence on extensive support from the department would tend to undermine the trust's status as an independent entity. Cash payments to the trust should call for some specific return from the trust.

The department has entered into agreements with the trust that have resulted in the trust's use of state funds and assets. DOJ has determined that, based on the department's broad authority, the department may enter into contracts or other arrangements with the trust that result in the use of public funds and other assets by the trust, but only if the department possesses and exercises the authority to control the use of funds to ensure that the trust uses them for a valid state purpose.

Scope and Methodology

This audit evaluates certain agreements and transactions between the department and the trust. The objectives of this audit were to determine if the department and the trust were operating as independent entities, and whether the department had complied with state requirements in its dealings with the trust. We did not attempt to perform a financial or compliance audit of the trust's records.

We evaluated financial transactions between the department and the trust using data from the information system used by the department. We also reviewed documents and forms provided by the department and the trust. We verified the reliability and completeness of computer processed data by comparing data amounts with financial records, matching downloaded record totals with reported amounts, and comparing data to documented record layouts.

To understand and evaluate the origins of the trust and its relationship

to the department, we:

- reviewed the trust's articles of incorporation, by-laws, and annual reports;
- interviewed personnel at the department and the trust;
- reviewed commission and trust meeting minutes and correspondence;
- reviewed significant contracts and agreements between the department and the trust;
- compared department activities against applicable federal and state laws and regulations; and
- obtained legal guidance from the Oregon Department of Justice.

We conducted this audit in accordance with generally accepted governmental auditing standards. We limited our review to those areas specified in this section of the report.

Chapter 1: Trust Operations Not Independent of the Department

A Department Employee Acts as the Trust's Business Manager

The department donated to the trust one-half of a state-paid full-time position.

In forming the trust, the department received advice from the Department of Justice that it could supply accounting and management services until the trust was able to hire its own staff. Since September 1994, the department has donated to the trust one-half of a state-paid full-time position. The trust has no employees. The donated position provides the trust with a half-time business manager. The state pays all costs for the position. From September 1994 through December 1998, the value of the donated half-time position amounted to \$109,204.

Having a department employee serve as the trust's business manager provides for no independence between department and trust operations. This lack of independence increases the state's fiscal risks. It also violates a key provision in the original cooperative agreement between the department and the trust.

A department employee, acting as the trust's business manager, exercised significant authority.

The original cooperative agreement provides that any staff donated by the department be given responsibilities not impairing the trust's independence. Our review showed that the donated employee, acting as the trust's business manager, exercised significant authority. The arrangement provided no separation of trust operations from the department. For example, the donated employee signed contracts and agreements on behalf of the trust, including:

- Two interest-free loans from the department; one for \$132,412, another for \$69,906.
- A \$300,000 promissory note with a private foundation.
- A \$15,000 agreement to provide consulting services to the department.

According to the Department of Justice, the donated employee's authority to execute contracts and agreements for the trust implies that the department either exercised through the employee a level of control over the trust's transactions

inconsistent with restrictions in the original cooperative agreement, or ceded control over the employee's work activities to the trust, calling into question the propriety of the department continuing to pay this employee's salary.

Chapter 2: Lobbying Activities Not Reported

Background

The department provided the trust with funds to form and coordinate a grassroots lobbying effort without complying with state law.

Department management assisted in forming the trust to provide an independent means for obtaining funds and properties to preserve and improve state parks. In 1997, the department provided the trust with funds to form and coordinate a grassroots lobbying effort. The department did not report its participation in the trust's lobbying activities, as required by state law. In addition, the department's agreement with the trust to pay for the services did not comply with state contracting and procurement rules.

The trust was formed in 1995 at a time when the state's ability to continue providing a statewide system of state parks was in jeopardy. In June 1996, the department proposed closing 64 parks because of a funding shortfall. The Oregon Legislative Emergency Board subsequently authorized \$1.8 million to keep all state parks open through June 1997.

In a December 1996 letter to users of state parks, the trust announced that it was forming a "...grassroots organization to secure legislative approval of adequate funding for the state parks system." Through a program named "Save our State Parks" (SOS Parks!), the trust asked for at least 1,000 persons to contact legislators, attend legislative hearings, call park supporters, and talk to others about state parks. The next session of the Legislative Assembly would begin in January 1997.

Among its activities, the trust organized a March 17, 1997 SOS Parks! rally on the steps of the state capitol that, according to newspaper accounts, drew 500 persons. A May 1997 SOS Parks! letter to 6,000 supporters urged all to write to local newspapers and contact legislators in support of a \$30 million per biennium increase in the department's budget. An August 1997 letter thanked SOS Parks! supporters for their help with the Legislative Assembly's approval of a department budget that would keep all state parks open through the 1997-99 biennium.

We found that the department took part in the trust's SOS Parks! lobbying effort by:

1. Entering into an agreement with the trust that provided an estimated \$12,200 to form and coordinate the SOS Parks!

grassroots lobbying effort;

2. Meeting with a trust sub-contractor to plan SOS Parks! activities;
3. Having department employees prepare a SOS Parks! newsletter to legislators; and
4. Paying the trust \$656 for temporary labor on the SOS Parks! project.

Under state law, the activities of SOS Parks!, and the department's activities to support SOS Parks!, are considered lobbying. ORS 171.725(7) defines lobbying as follows:

Influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action, or attempting to obtain the good will of legislative officials.

Under state law, such lobbying activities need to be disclosed for the integrity of the Legislative process. ORS 171.730 states:

The Legislative Assembly finds that to preserve and maintain the integrity of the Legislative process, it is necessary that the identity, expenditures and activities of certain persons who engage in efforts to persuade members of the Legislative Assembly or the executive branch to take specific actions, either by direct communication to such officials or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

The department did not report its lobbying.

The department is required by state law to report its participation in lobbying activities. According to the director of the state's Government Standards and Practices Commission, the department has not reported any direct or indirect participation in lobbying for this period. The examples described above indicate that the department contributed approximately \$12,200 toward lobbying in 1997.

We referred this matter to the state's Government Standards and Practices Commission.

Lobbying Funded Through an Agreement

State funds assist in forming the SOS Parks! Grassroots lobbying effort.

Department management provided the trust with state funds to assist in forming and coordinating the SOS Parks! grassroots lobbying effort. It did so through a written agreement with the trust.

In February 1997, the department entered into a cooperative agreement with the trust whereby it agreed to pay \$15,000 "...to review existing OPRD user databases and database formats for assimilation into new formats for the management of an effective customer communications program." The department employee serving as the trust's business manager signed the agreement with the department on behalf of the trust.

In keeping the agreement, the department paid the trust to identify ways to update and maintain existing information and suggest applications for internal and external use of its automated mailing lists of park users. In addition to the stated purpose of the agreement, the department apparently paid the trust to use the department's mailing lists to contact potential supporters of a grassroots lobbying effort. It also paid the trust to organize the identified supporters into a grassroots organization that lobbied the Legislative Assembly for an increase in the department's budget.

Because the trust has no employees, the department employee who serves as the trust's business manager hired a sub-contractor to perform work under the agreement. The trust's agreement with the sub-contractor included work on the department's databases, plus additional work to organize and coordinate a grassroots lobbying effort.

The department paid the trust \$15,000 in four installments between January 1997 and May 1997. The trust's sub-contractor delivered a report on the database review in November 1997. Our review of invoices and other records showed that most of what the department paid for pertained to lobbying, not a database review. Table 1 lists the amounts the department paid, according to the billing titles shown on invoices from the trust. We ascertained that billing titles including the word "staff" refer to the sub-contractor's labor expenses.

Table 1
Department Payments for the Trust's "Database Review"
Invoice Billing Titles and Amounts Billed and Paid

10,000 Envelopes	\$ 460.66
Postage	3,461.08
Staff-lobby/grassroots	9,090.29
Staff-database	954.23
Lobby expenses	159.77
Expenses	873.97
Total	\$15,000.00

The billing titles shown on the invoices were consistent with the lobbying work described in the trust's agreement with the sub-contractor. To confirm that little of the sub-contractor's work involved a review of the department's databases, we obtained the sub-contractor's time and billing records. Of the 706 hours recorded as worked under the agreement, 146 hours (21percent) were for a database review.

The sub-contractor's records did not show what portion of the other expenses went for lobbying or the database review. We noted, however, that expenses for 10,000 envelopes and postage are consistent with the grassroots lobbying activities of SOS Parks!.

Using the sub-contractor's time record, we determined that \$12,216 went for lobbying.

Because of the expense data limitation, we used the sub-contractor's time record as a basis for estimating what portion of the \$15,000 was spent on the database review. We multiplied the sub-contractor's recorded time on the database project (146 hours) by the billing rate, \$19.10 per hour. The resulting value, \$2,784, indicates that the remaining \$12,216 went for lobbying.

Department managers said that they did not contract for lobbying services. They said that their agreement was for a specific deliverable, a review of department databases and, because of that, the billing titles on the invoice should be considered irrelevant.

In addition to the invoices and billing records described above, we found other evidence that the department used the database agreement as a means to supply the trust with funds for lobbying.

The following extracts from meeting minutes of the trust's board show that the department requested the trust's involvement in lobbying, and that the department provided the trust with funds for lobbying.

The department committed \$15,000 to support lobbying.

1. The minutes of an August 29, 1996 meeting of the trust board show that the department director asked the trust to contribute funds for two projects to help obtain stable funding for the department:
 - Contribute \$10,000 for "...an independent public relations and lobby group to retain during the next legislative session."
 - Contribute \$5,000 "...to obtain temporary staff help to organize a grassroots effort to get citizens involved and to identify a group of 1000 individuals willing to write, telephone or call legislators when appropriate." The individual doing this work "...could also review OPRD multiple databases and suggest changes to improve efficiencies."
2. The minutes of a November 12, 1996, trust executive committee conference call show that the department director had previously indicated that the department would provide \$15,000 to support "...lobbying and grassroots organizing efforts...."
3. The minutes of a March 12, 1997, trust executive committee conference call concerning the "Grass Roots/Lobby effort" reported, "A contract was executed in which OPRD committed \$15,000 towards this effort."
4. An April 3, 1997, memorandum to the trust board from the department employee who serves as the trust's business manager reported, "Financial Recap: Trust committed \$5K, OPRD committed \$15K, and \$600 in miscellaneous receipts create a total program budget of \$20,600 for lobby and grass roots effort."

Department Management's Meetings With the Sub-contractor/ Lobbyist

The sub-contractor was a registered lobbyist from 1996 through the period of the contract. The sub-contractor's work record lists many meetings with the department director and managers concerning legislation or the preparation and editing of SOS Parks! newsletters. For example:

- December 3, 1996: A "strategy meeting" with the department director and four department employees regarding a "letter to 4,000."
- December 30, 1996: A discussion with the department director regarding "strategy for grassroots effort."
- March 20, 1997: A "strategy meeting" with the department director and a manager regarding House Bill 3586.¹
- March 27, 1997: Reviewed legislative testimony with a department employee.
- March 31, 1997: A meeting with the department director and managers regarding legislation, and a meeting with the director and department staff regarding "strategy" for the next SOS Parks! newsletter to supporters.

Agreement is in violation of state contracting rules.

We reviewed the department's \$15,000 agreement for reasonableness and compliance with state rules. We questioned the stated purpose of the agreement because the trust is not a vendor of consulting services, nor does it have any employees. In addition, we identified the following instances where the agreement was not in compliance with the state's contracting and procurement rules:

- The form of the contract, written as a cooperative agreement, was not in compliance with Oregon Administrative Rule (OAR) 125-020-0210. It should have been written, according to

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¹ House Bill 3586 was a proposal to issue lottery-backed revenue bonds for the purpose of funding new acquisitions and capital improvements for state parks. This measure was not approved. House Bill 3041, which was adopted, included provisions from House Bill 3586 for lottery-backed revenue bonds for state parks.

state requirements, as a contract for personal services.

- The contract was not competitively awarded. OAR 125-020-0330 required the department to solicit bids from at least three qualified vendors. The trust was the only organization contacted.
- Work began prior to the execution date of the contract. The contract was for work performed between November 20, 1996, and September 1, 1997. It was not signed (fully executed) until February 27, 1997. The contractor's work records show that work began in November 1996. OAR 125-020-0500 provides that contracted work may begin only after the contract is fully executed.

Furthermore, the department did not make payments to the trust as specified in the contract. One half of the contract amount was to be paid at execution of the contract. The final payment was not to be made until after final acceptance of the work. The department paid the full amount of the contract between February 1997 and June 1997. The deliverable was not provided until November 10, 1997, five months after the final payment and 70 days after the contract had expired.

Department Assisted in Lobbying Legislators

Other evidence shows that the department participated directly in the trust's lobbying activities. A June 4, 1997, trust memorandum indicates that employees in the department's public service section worked with the trust's contractor to produce and deliver a newsletter to legislators. The newsletter reportedly included excerpts from newspaper editorials supporting parks.

Chapter 3: Inadequate Control of State Resources

Trust agreements do not provide adequate control over state funds.

The department entered into agreements with the trust that provide the trust with state funds. The agreements do not provide adequate control over the trust's use of state funds. The agreements are fiscally disadvantageous to the state and allow the trust to receive state funds without providing services. In addition, the agreements were made in violation of state contracting and procurement requirements.

According to the Department of Justice, the department may enter into contracts with the trust resulting in the trust's use of public funds and other assets. The department is permitted to enter into such contracts inasmuch as it receives services for its payments. The department must also possess and exercise the authority to control the trust's use of the public funds and assets to ensure that they are used for valid state purposes.

Yurt Agreement

The department agreed to pay between \$527,500 and \$625,000 for yurts valued at \$300,000.

The department agreed to a 10-year lease/purchase agreement for 50 year-round universal recreational tents (yurts) purchased by the trust. The department agreed to pay between \$527,500 and \$625,500 for these yurts, valued at \$300,000. The department could have procured the yurts itself at a lower cost. The department did not structure the lease/purchase agreement to control the trust's use of the state funds being provided.

In 1996, the trust paid \$300,000 for 50 yurts using a \$300,000 interest-free loan from a private foundation. The yurts were to be installed in 17 state parks. Under an agreement with the trust, the department leases the yurts for 10 years and then takes ownership.

The agreement was structured so that the department's lease payments enable the trust to repay its loan from the foundation. The payments agreed upon guarantee the trust, over a period of 10 years, a profit of between \$227,500 and \$325,500. According to the department director, the terms of the agreement were structured to provide the trust with operating funds.

According to the Department of Justice, the department is permitted to enter into contracts inasmuch as it receives service for its payments. The evidence shows that the department agreed to high-lease payments that exceed the value of services received from the trust. Other than the department's signing of the original

loan agreement with the foundation, we identified no services that the trust provides to the department in this arrangement. For example:

- The interest-free loan with the foundation was arranged and negotiated by the department and commission members.
- The department pays all labor costs to administer the project. The trust's business manager is a department employee.
- The department coordinated the work to install the yurts and performed the work to furnish them.
- The department pays all costs to maintain the yurts.

Because the trust does not provide the department with any meaningful services under the agreement, we question the department's payment of any amount greater than \$300,000. Any additional amount being paid represents a subsidy or gift of state funds.

As part of the yurt project, the department gave the trust two no-interest, short-term loans. One was for \$132,412 to supply a down payment on the purchase. Another was for \$69,906 for the balance due on the first 25 yurts at delivery. By not charging interest, the department provided the trust with a subsidy of approximately \$4,966. To estimate this value, we multiplied the amount loaned (\$132,412 for 120 days and \$69,906 for 60 days) by 9 percent annual interest.²

Because the yurt lease/purchase agreement and the two loan agreements did not specify how the trust might use the subsidy portion of the state's payments, the department did not provide for adequate control of state funds. The department's general powers are not a sufficient control to assure that public funds will be used for legitimate state purposes. The agreements should have been structured as valid state contracts to provide the state with enforcement power over the trust's use of the money.

Further, according to the Department of Justice, the form of the \$132,412 loan agreement did not provide adequate control of the state funds. The department and the trust used a memorandum of understanding to document the advance. DOJ states, "...the

² ORS 82.010 determines the legal rate of interest to be nine percent per annum if the parties have not specified a rate of interest.

***The yurt agreement
is not in compliance
with state rules.***

memorandum, by its terms, does not require the trust to return the advance if [Meyer Trust] failed to approve the grant. Nor does it include a mechanism for ensuring the trust's repayment of the advance in the event the grant was approved." Even though the agreement did not provide adequate control, the department did receive repayment of the principle amount of both loans.

In reviewing the yurt agreement, we noted the following exceptions to state contracting and procurement rules:

- The yurt lease/purchase agreement was awarded to the trust without competitive bidding. Oregon Revised Statute 279.015 requires competitive bidding for all contracts exceeding \$5,000.
- The yurt lease/purchase agreement was awarded to the trust without a legal evaluation by the Attorney General. ORS 291.047 requires prior approval by the Attorney General for state contracts over \$100,000.
- The yurt lease/purchase agreement was awarded without review by the Department of Administrative Services (DAS). OAR 125-300-0100 (5)(c) provides that if a purchase exceeds \$75,000, the product or service shall be obtained through competitive bidding by DAS.

Payment for Temporary Services Benefiting the Trust

The trust billed the department in May 1997 for \$2,000 for 240 hours of service provided by a temporary employee who worked for the trust from January 1997 through April 1997. The department paid the bill. The department did not have a contract with the trust for these services. Part of the amount paid included time the employee worked on the SOS Parks! grassroots lobbying effort.

The temporary employee performed some services that were department-related. We estimated that the department-related work was worth \$498. The remainder of the amount paid, \$1,502, was overbilled.

The trust billed the department \$1,502 for work not performed for the department.

The department employee who serves as the trust's business manager said that the temporary employee worked primarily for the trust. The trust's time and billing records showed that the employee worked approximately 58 hours on department-related tasks. At the billing rate of \$8.58 per hour, the value of the 58 hours is approximately \$498. Consequently, the records indicate that the trust billed the department \$1,502 (\$2000 – \$498) for work not performed for the department.

The \$2,000 invoice included approximately 75 hours' labor performed by the employee on the SOS Parks! lobbying effort. This involved work on a "Data Base for SOS (mailing list)." It also involved preparing for the March 17, 1997 SOS Parks! rally on the steps of the capitol. At the billing rate of \$8.58 per hour, the value of 75 hours of labor is approximately \$643 for lobbying that was not reported by the trust to the Standards and Practices Commission. In this case, the department violated state procurement rules by hiring temporary labor from other than a qualified vendor. The trust is not a state-qualified vendor of temporary employment services.

Office Space Rent Subsidy

The department subleases space to the trust without having obtained approval.

The trust office is located in the department's Salem headquarters building. Since July 1998, the department rented part of its leased office space to the trust at a discount. Under an agreement with the department, the trust pays the department \$120 per month for 327 square feet of space. The department pays \$350 per month for the same space. The department did not require the trust to pay its first four months' rent. As of January 1999, the cumulative value of this monthly rent subsidy (now \$230 per month) and amounts of unpaid rent was \$1,952.

The department began renting space to the trust without obtaining approval from the Department of Administrative Services (DAS). The lease for the department's headquarters building was negotiated and executed by DAS's facilities division. Under state rules, only DAS has the authority to rent unused or excess space to non-state agencies.

Because the sublease agreement between the department and the trust does not specify how the trust may use the rent subsidy, the department provided for no control to assure that the public funds are used for legitimate state purposes.

\$10,000 Payment to the Trust

The department provided the trust with \$10,000 in state funds for 27 days at no interest. It did so without a contract. According to the department, a department manager provided the money so that the trust could pay a bill owed by the department in the following biennium.

The department runs advertisements and promotions in the Oregon Outside Magazine. The department entered into an annual contract with the magazine for these services. The magazine bills the department once for services to be provided in the following year.

On June 16, 1997, the department received a \$10,000 bill from Oregon Outside Magazine for advertising services to be provided in the fiscal year ending June 30, 1998. On June 17, 1997, the trust billed the department \$10,000 so that it could pay the bill. On June 19, 1997, the department provided the trust with a check for \$10,000. On July 16, 1997, the trust apparently paid the magazine \$10,000 on behalf of the department. Because we did not audit the trust's financial records, we have no information on what the trust did with the \$10,000 that it held for 27 days.

Prepayment was seen by department management as a way to avoid returning unspent funds to the General Fund.

Department management said that the department employee who arranged the transactions wanted to pay the advertising bill from the current biennium's budget. The employee was not sure, however, if current funds could be used to prepay services to be delivered in the next biennium. The arrangement, which was not reviewed by the department's fiscal staff, was apparently seen as a way to avoid the appearance of a prepayment and to avoid returning unspent funds to the state's General Fund at the end of the biennium.

Our review of the \$10,000 payment showed that:

- The arrangement was unnecessary. The department should have paid the bill itself. The state's rules do not prohibit prepayment for services contracted for in the current biennium.
- The department violated state rules by furnishing state funds to an independent entity without competitive procedures or a valid contract.
- Without a contract, the department provided for no control to

assure that the public funds would be used for legitimate state purposes. Neither did it have the trust's written promise that the money would be used for the intended purpose.

Merchandising Agreement

In another commercial arrangement, the department agreed to pay the trust 50 cents each for shirts that the department sells to the public as souvenirs or uniforms for park employees.

The trust does nothing to earn 50 cents per item sold by the department. The amount represents a subsidy or gift to the trust. We estimate that the department has given the trust \$775 under this arrangement.

Because the department has no written agreement with the trust regarding this arrangement, the department has provided for no control to assure that the trust will use the public funds for legitimate state purposes.

RECOMMENDATIONS

1. For the department and trust to operate more independently, **we recommend** that the commission and department stop paying state employees to perform business management services for the trust.
2. To comply with state lobbying regulations, **we recommend** that the department report all of its lobbying activities and expenses to the state's Government Standards and Practices Commission.
3. To ensure that the state receives value in exchange for the funds provided to the trust, **we recommend** that the department withdraw from all commercial agreements that provide the trust with state funds but that do not provide the state with goods or services of comparable worth. These include:
 - (a.) The subsidy portion of the yurt lease/purchase agreement, valued between \$227,500 and \$325,500 over ten years.
 - (b.) The office space rent subsidy valued at \$230 per month.
 - (c.) Interest free loans.
 - (d.) Merchandising arrangements, such as the one where the trust receives 50 cents for every shirt sold by the department.
4. **We recommend** that the department recover from the trust temporary labor over-payments worth approximately \$1,500.
5. To ensure that it makes payments only for approved services, **we recommend** that the department:
 - (a.) Establish procedures to ensure that all invoices, and internal requests for payments, are properly supported before payment is approved. This should include:
 - independent internal review for proper authorization, agreement with contracted terms and conditions, reasonableness, sufficiency and competence of supporting data, and compliance with department and state requirements; and
 - independent verification that services agreed upon were provided.

- (b.) Train department managers and staff in procedures required to approve invoices for payment.
6. To ensure that state funds are provided properly to external entities and used only for legitimate state purposes, **we recommend** that the department:
- (a.) Make contracts, rather than formal or informal agreements, the instrument for providing subsidies to and for obtaining goods and services from vendors;
 - (b.) Develop contract expertise and review all proposed contracts. The review should be complete enough to recommend approval only when contract proposals:
 - Have been processed in compliance with applicable state requirements, such as those requiring competitive procurement, involvement by DAS, or legal review by the Attorney General;
 - Include sufficient and convincing support showing the need for obtaining the goods and services by contract rather than through the department itself.
 - Include sufficient and convincing support showing that amounts paid will reflect the market value of the goods or services provided; and
 - Include language that specifies how any subsidy portion of a contract may be used. The language must limit the use of public funds to specified legitimate state purposes.
 - (c.) Monitor contractors' performance in complying with contract requirements and restrictions.

Commendation

The courtesies and cooperation extended by the officials and staff of the Oregon Parks and Recreation Department were commendable and much appreciated.

Audit Team

James D. Pitts, Audit Administrator

Charles Hibner, CPA

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AGENCY'S RESPONSE TO THE AUDIT REPORT

July 22, 1999

Cathy Pollino, Deputy Director
Secretary of State, Audits Division
255 Capitol Street NE, Suite 500
Salem, Oregon 97310

Dear Ms. Pollino:

This letter is in response to the Oregon Audits Division letter and draft audit report number 5 for Oregon Parks and Recreation Department's (OPRD's): *Review of the Department's Relationship with the Oregon State Parks Trust*. OPRD's responses, including comments, action taken, and/or planned improvements are listed after each recommendation made in the draft report.

Sincerely,

Robert L. Meinen,
Director



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CHAPTER 1: TRUST OPERATIONS NOT INDEPENDENT OF THE DEPARTMENT

Audit Recommendation:

For the department and Trust to operate more independently, we recommend that the commission and department stop paying state employees to perform business management services for the Trust.

Response:

- The department requested, and the 1995 legislature approved, establishing a public affairs program which included a position that would solicit donations of lands, cash, trusts, bequests, and memorials to the department. Based on Department of Justice (DOJ) approval of our cooperative agreement with the Trust, one-half of this position's time was devoted to assist and participate in activities of the non-profit Oregon State Parks Trust, established in 1995.
- The department agrees that this staffing relationship has caused confusion about roles and that errors were made regarding the segregation of the department's employee's duties between department and trust business management activities. These were judgement errors and not made for personal gain. With that in mind, the department will restructure the relationship and amend the department/Trust agreement to clarify this issue.
- Based on the audit recommendation, the department agrees that all future financial contracts and/or obligations of the Trust be approved and signed by the Trust chair, and that they will not financially obligate the department.

Background Information:

The department thought that the support provided to the Trust was an acceptable practice. This conclusion is based the Department of Justice legal opinion. **1**

Additional Notes:

1. For clarification purposes, only one department employee has ever been used by the Trust as the business manager. Therefore, the plural "employees" of the audit text is inaccurate.

CHAPTER 2: LOBBYING ACTIVITIES NOT REPORTED

Audit Recommendation:

To comply with state lobbying regulations, the audit recommends that the department report all of its lobbying activities and expenses to the state's Government Standards and Practices Commission.

Response:

- The department believes that it has reported all lobby activities and expenses required by law. The department is currently waiting for the state's Government Standards and Practices Commission ruling on this issue.
- The department did not contract with the Trust or the Trust's lobbyist for lobbying services. The department provided information in response to the lobbyist's requests as allowed by law.
- The basic issue relates more to legal relationships and record-keeping between the two entities than it relates to government ethics and reporting of lobbying activities. 2

The review of the time sheets submitted by the Trust showed billing errors to the department for temporary labor. The department has submitted a letter to the Trust requesting a \$1,500 reimbursement for the temporary labor billing error.

The department contracted with the Trust for the purpose of a database review and evaluation of existing name lists that were duplicated and not coordinated. During the billing cycle errors were made by the Trust and not identified by the department. However, the department received and was satisfied with the completed product and paid the Trust \$15,000 as provided in the contract.

- The department also disagrees with the audit that department employees who were not registered as lobbyists performed lobbying activities. To the best of our knowledge, no department employee, other than those who registered as lobbyists, exceeded the statutory limits established in ORS 171.735(4) that set the thresholds in time and expenditures that requires registration.

CHAPTER 3: INADEQUATE CONTROL OF STATE RESOURCES

Audit Recommendations:

To ensure that the state receives value in exchange for the funds provided to the Trust, we recommend that the department withdraw from all commercial agreements that provide the Trust with state funds but do not provide the state with goods or services of comparable value. These include (*text italicized*):

"The subsidy portion of the yurt lease/purchase agreement, valued at between \$227,500 and \$325,500 over ten years"

Response:

- The department believed the original cooperative agreement between the department and the Trust ensured that the subsidy portion of the yurt loan would be directed to the department for goods and services of comparable value.
- The Chairman of the Oregon State Parks Trust has made a written request to the private foundation that seeks forgiveness of the balance of the loan used to purchase the yurts. If approved, the Trust and department loan agreement will be amended, payments to the Trust stopped and ownership of the yurts transferred to the department. Also, it will stipulate that any funds generated by the yurt agreement and not already obligated for department projects "will be obligated for department projects only."
- The Trust loan arrangement to the department allowed 50 additional yurts to be placed in parks, but committed the Trust to the risk of funding a seven year loan. Both the trust membership and department staff believed the loan payment revenue was possible, but not guaranteed, based on an earlier trial yurt program. The overall plan of the loan arrangement was to increase park use and revenues resulting from the higher rates and occupancies experienced with yurts sales. The popularity of the yurt camping program has proven this plan to be true.

Background Information:

The department was first in the nation's leader to implement yurt style alternative camping in public campgrounds. The first yurts were placed in Oregon state parks during the winter of 1994/95 as a trial program. Because of the yurt amenities, they proved to be an immediate favorite with campers year round. Yurts are extremely popular with families and groups who do not own recreational vehicles and do not want to tent camp. The department recognized the revenue potential of more yurts and worked with the Trust which applied for a loan from a private foundation for the purchase of 50 additional yurts. The private foundation loaned the Trust \$300,000 and the 50 yurts were purchased under a DAS price agreement during the winter of 1996. The yurts were placed in the parks and available to the public for the 1996 spring and summer seasons. **3**

Yurts rent for almost twice the rate of the average tent site and because of higher year round occupancies, have become an important revenue source to the department. During the 1999-01 biennium, total rental revenues for the department's 153 yurts are projected to be \$2.0 million.

Following Oregon's lead, more than 10 other state park systems have implemented yurt camping, making yurt camping available to the public on a large scale. This new way to camp has opened up more opportunities for year round use and provided an alternate to tent camping and recreational vehicles .

"The office space rent subsidy valued at \$230 per month"

Response:

- The department has requested and received approval from DAS to rent office space to the Trust under terms of the current agreement.
- All future sub-letting of the department's Salem office and other facilities under the Department of Administrative Services (DAS) jurisdiction will be coordinated with DAS.

The department is currently reviewing the contract with the Trust and office space considerations and rents will be covered in the next contract. It is believed locating the Trust in close proximity to the department has merit and should continue.

"Interest free loans"

Response:

- As recommended by the audit, the department will work with DAS and the Department of Justice to ensure future contracts address the need to include interest payments on loans made by the department to any entity.

Background Information:

At the time of the Trust's yurt loan request, the department understood that the private foundation did not grant loans to government agencies. This position was later clarified by the private foundation to a historically preference not to support government operations, with awards made only in very special circumstances.

To expedite the purchase and placement of the yurts prior to the loan approval, the department provided a short-term loan arrangement with the Trust. This allowed the department to make and confirm yurt reservations prior to placement in the parks and made them available for the upcoming spring and summer seasons. Additional park use and revenues were the end result of this one-time loan arrangement.

"Merchandising arrangements, such as the one where the

Trust receives 50 cents for every shirt sold by the department"

Response:

- As recommended in the audit, the Trust is no longer involved in purchasing merchandise for the department to sell.

Background Information:

Several of the department's statutorily authorized cooperative associations have had considerable success in selling park theme related merchandise to park users. The department decided to expand this merchandising program to other areas where cooperative associations did not already exist. The department's intent was to increase department visibility and to generate additional revenues. The Trust was the initial risk taker in establishing the merchandising program in 1996.

Currently, the department is developing it's own merchandising program and the Trust is no longer involved. The department is working with DAS to develop a price agreement for a theme product line such as clothing and books that may be sold in small park stores staffed by volunteers and hosts. This program will further promote state parks and generate additional revenues.

Audit Recommendations:

The audit recommends that the department recover from the Trust temporary labor over-payments worth approximately \$1,500.

Response:

- The department agrees with the audit that an overpayment was made and will request reimbursement of the \$1,500 from the Trust.

Audit Recommendations:

To ensure that it makes payments for only approved services, we recommend that the department:

- (a.) Establish procedures to ensure that all invoices, and internal requests for payments, are properly supported before payment is approved.
- (b.) Train department managers and staff in procedures required to approve invoices for payment.

Response:

- The Financial Services Section of the department is now responsible for all contract payments, independent from the project manager, to ensure compliance with the terms of the contract and Oregon Law and that the product or service has been received before payment is made.
- The department hired additional contract administration staff and implemented new procedures for contract approvals and provides an ongoing employee contract training program.

Background Information:

There was only one department financial services employee when separation from the Department of Transportation (ODOT) occurred in 1989. The department continued to contract with ODOT for accounting functions. The 1995 legislative session approved four accounting positions to reorganize the accounting program and begin transfer of accounting functions from ODOT to the department . Funding included a dedicated contracts position that was filled in late 1994 as a limited duration position.

When the 1997 legislative session approved a \$15 million lottery bond program, it further intensified the department's commitment to enhance contract administration capability. Because of the need to manage bond and other program contracts, an additional contract position was filled in early 1999. These positions receive specialized purchasing training from DAS, Bureau of Labor and Industries (BOLI), Department of Justice (DOJ) and additional community college course work. The contract staff provide support to other department employees through manuals, workshops and one-on-one discussions.

Today, the department's contracts program is a specialized and centralized department function. Competitive bidding processes that follow DAS policies and procedures are mandatory. Clearance forms requiring authorized employee approvals are required before work can begin on projects and services to the department. Payments are closely monitored to ensure contract terms have been executed.

Audit Recommendations:

To ensure that state funds are provided properly to external entities and used only for legitimate state purposes, we recommend that the department:

- (a.) Make contracts, rather than formal or informal agreements, the instrument for providing subsidies to and for obtaining goods and services from vendors;

- (b.) Develop contract expertise and review all proposed contracts (additional clarification text not included);
- (c.) Monitor contractor's performance in complying with contract requirements and restrictions.

Response:

- The department agrees with the audit that contracts are the proper instrument to ensure that the level of goods and services provided by vendors meet department expectations. The department will continue to consult with DAS and DOJ to establish contract standards that comply with the audit recommendations.
- As noted in an earlier response, the Financial Services Section of the department is now responsible for all contract payments independent from the project manager. This reorganization allows another level of contract compliance review to ensure that the product has been received before payment is made.
- The department will continue to work closely with DAS, BOLI and DOJ to ensure that bidding and contract procedures and forms are the most current and staff are knowledgeable in their use:
 - As previously noted, processing of contracts has been centralized and assigned to staff who are knowledgeable and continually trained in purchasing rules and regulations;
 - The determination if a project is to be let out to bid or completed by the department follow the rules established by BOLI for construction, repair and rehabilitation contracts and DAS for personal services contracts;
 - All contracts are competitively bid to reflect that the amounts paid represent the market value of the goods or services provided;
 - As recommended in the audit, contracts specify that any subsidy achieved through the use of state funds will be redirected back to legitimate state purposes.

OREGON AUDIT DIVISION'S FOOTNOTES TO THE AGENCY'S RESPONSE

1. As stated on page 5 paragraph 1 of this report, "...the department received advice from the Department of Justice that it could supply accounting and management services **until the trust was able to hire its own staff.**" [Emphasis added.] This was clearly not to be a permanent arrangement. We disagree with the department's conclusion that Department of Justice's legal advice provides a basis for the state's continuous funding of the position for more than four years after the trust was established.
2. The evidence that we obtained and reported on pages 7 – 13 shows that the department paid the trust for lobbying activities performed by the trust's contractor. According to the contractor's records, only a small portion of the \$15,000 paid to the trust went for a database review. The department should either (1) report that it paid for lobbying activities or (2) seek to recover from the trust the portion of the \$15,000 that were for activities outside the scope of the contracted work. Further, as shown on page 12 of the report, we question why the department would contract with the trust for database consulting services. The trust is not a vendor of consulting services, nor does it have employees. It is unclear why the department did not follow the state's competitive procurement requirements and contract directly with a vendor.
3. Nowhere in the report do we question a decision to install yurts in state parks. We do question the department's entering into an agreement that obligated the state to pay the trust between \$527,500 and \$625,500 for 50 yurts valued at \$300,000. We also question why the department did not attempt to purchase some or all of the yurts at the lowest cost by following the state's competitive procurement requirements.

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