

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**H. Carl McCall
STATE COMPTROLLER**



**DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND OFFICE OF PARKS,
RECREATION AND HISTORIC
PRESERVATION**

**SELECTED ACQUISITION PRACTICES UNDER
THE OPEN SPACE CONSERVATION PLAN**

2000-S-58

**DIVISION OF MANAGEMENT AUDIT AND
STATE FINANCIAL SERVICES**

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Report 2000-S-58

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Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-4246

Ms. Bernadette Castro
Commissioner
Office of Parks, Recreation and Historic Preservation
Empire State Plaza, Building #1
Albany, NY 12238

Dear Ms. Crotty and Ms. Castro:

The following is our report on selected acquisition practices under New York State's Open Space Conservation Plan, as jointly administered by the Department of Environmental Conservation and the Office of Parks, Recreation and Historic Preservation.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services

October 24, 2002

Division of Management Audit and State Financial Services

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EXECUTIVE SUMMARY

DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

SELECTED ACQUISITION PRACTICES UNDER THE OPEN SPACE CONSERVATION PLAN

SCOPE OF AUDIT

The Department of Environmental Conservation (Department) and the Office of Parks, Recreation and Historic Preservation (OPRHP) are both responsible for implementing New York State's Open Space Conservation Plan (Plan). The Plan, first authorized by the Legislature in 1990, identifies priority open space statewide and describes how to preserve such areas to achieve conservation goals, such as protecting water quality and providing space for outdoor recreation. The initial Plan, approved in 1992, was revised and updated in 1995 and 1998, and the 2001 Plan was awaiting Executive Branch approval as of May 1, 2002. Department and OPRHP professionals work with nine Regional Advisory Committees to identify Plan open space projects, and cooperate with other government entities and conservation interest groups in implementing the Plan. The Department and OPRHP acquire priority open space through direct purchase, easement, gift, exchange or transfer transactions, some of which involve the use of third-party intermediaries. The State can also achieve conservation objectives through tax incentives and local planning. From April 1, 1998 through March 31, 2001, the Department acquired 358 parcels at a cost of \$144.7 million, and OPRHP acquired 72 parcels at a cost of \$69.3 million. Acquisitions are funded by the 1996 Clean Water/Clean Air Bond Act, the Environmental Protection Fund and other State monies.

Our audit addressed the following questions about Department and OPRHP open space acquisitions from April 1, 1998 through March 31, 2001:

- Do the Department and OPRHP comply with statutory and regulatory requirements for selecting, appraising and purchasing projects on the 1998 Plan?
- Are the funds used for land purchases and alternative acquisition options appropriately spent?

Audit Observations and Conclusions

We found that the Department and OPRHP generally comply with statutory and regulatory requirements for acquiring Plan projects. However, the agencies use different approaches in arriving at a price offered to sellers, do not document the reasons why they use specific third-party intermediaries in certain acquisitions, and have not reported externally on Plan accomplishments. Further, OPRHP does not have an efficient system for tracking and monitoring Plan acquisitions or for valuing its open space at full cost.

Our review of Department and OPRHP processes for acquiring open space revealed that both agencies have similar procedures for identifying, surveying and appraising parcels, but use different approaches for setting the price offered to sellers. The Department discloses and offers the highest approved appraised value (fair market value) in accordance with the State's Eminent Domain Procedures Law and the State Comptroller's opinions. OPRHP does not disclose this value; instead, it asks for the seller's price, a practice it states is authorized by the OPRHP Law. Since the State should be consistent in dealings with sellers, we recommend the agencies work to establish uniform price-offer practices for the acquisition of Plan open space. (See pp. 7-9)

We examined a randomly selected sample of 20 acquisitions (10 Department and 10 OPRHP) from the 1998 Plan and found both agencies generally complied with statutory and regulatory requirements. However, when they use the services of third-party intermediaries for acquisitions, they do not document why they use one intermediary rather than another. One frequently used intermediary charges interest and overhead, while other intermediaries do not assess these costs. We also found that both agencies have not filed the required annual report on Plan activities since the Plan's inception, in part because the Environmental Conservation Law does not state to whom the report should go. We recommend that the agencies document the reasons why a particular third-party intermediary was involved in the acquisition, and that they report on Plan accomplishments to the State Land Acquisition Advisory Council until directed otherwise by law. (See pp. 9-14)

The Department and OPRHP should have management reporting systems to track acquisitions and related expenditures. Agencies are also required by State accounting policies to record the value of assets on the Statewide Fixed Asset Accounting System at full cost. We found that OPRHP did not have a system to provide comprehensive and up-to-date information for effectively managing acquisitions and tracking all the costs associated with their value. We recommend that OPRHP expedite the implementation of an automated acquisition tracking system. (See pp. 17-20)

COMMENTS OF DEPARTMENT AND OPRHP OFFICIALS

A draft copy of this report was provided to Department and OPRHP officials for their review and comment. Their comments have been considered in preparing this final report. Department officials agreed with the three recommendations addressed to them and indicated actions taken or planned to implement them. They also provided information that has been used to clarify or revise certain parts of this report.

OPRHP officials agreed with the 9 recommendations in this report, and indicated actions taken or planned to implement them. However, they objected to the conclusion that their manual system for tracking acquisitions was not an efficient process that produced accurate results. While we recognize that the information from the manual system was accurate; OPRHP was not able to easily obtain summarized fiscal and individual project status without reviewing each file and manually complying information, a time-consuming process.

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Major Contributors to This Report

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Office of Parks, Recreation and Historic Preservation Officials

INTRODUCTION

Background

First authorized by the State Legislature in 1990, New York State's Open Space Conservation Plan (Plan) identifies open space and historic sites that are viewed as priority open space and describes how such areas can be conserved and managed in a sensible and affordable way. The goals of the Plan are to:

- protect water quality, including surface and underground drinking water;
- provide high quality outdoor recreation to all New Yorkers;
- protect and enhance scenic, historic and cultural resources;
- protect habitat needed to support plant and wildlife diversity;
- maintain critical resource-based industries, like farming and tourism;
- provide places for education about ecological resources; and
- preserve open space for the protection and enhancement of air quality.

According to the Plan, open space can be publicly or privately owned. Open space is defined as land that is not intensively developed for residential, commercial, industrial or institutional use. It includes agricultural and forest land, undeveloped shorelines, undeveloped scenic lands, public parks, preserves and bodies of water, such as lakes and bays. A priority open space resource identified on the Plan may range in size from a few acres to several thousand acres, and may include parcels belonging to several owners.

Implementation of the Plan is primarily the joint responsibility of the Department of Environmental Conservation (Department) and the Office of Parks, Recreation and Historic Preservation (OPRHP). Both agencies work in conjunction with nine Regional Advisory Committees (RACs), which are appointed by State and local governments to provide local input on the Plan, to develop the Plan. The Department and OPRHP also work in coordination with other government entities, universities, conservation interest groups and other private sector organizations to achieve Plan objectives. The Department of Agriculture and Markets, through its farmland protection program, and the Department of State, through the Coastal Zone Management and Waterfront Revitalization Programs, also help achieve Plan objectives.

The initial Plan received final executive approval on November 18, 1992 and is required to be updated every three years. The Plan was revised in 1995 and 1998, and 2001 Plan was awaiting Executive branch approval as of May 1, 2002.

State agency professionals and the RACs follow an established process to identify the priority open space resources (projects) included in the Plan. For example, the 1998 Plan lists 131 projects identified as a result of:

- An analysis by agency staff of New York State's resources including hydrology, distribution of rare and endangered species, population distribution and density, location of water supplies, existing State land ownership patterns, recreational and cultural resource preservation needs;
- The recommendations of the RACs;
- Recommendations of those testifying at public hearings or providing written comments on the 1992 and 1995 Plans and the 1997 draft Plan; and
- Geographic distribution across the State.

Before the Department or OPRHP can acquire open space, the State Land Acquisition Advisory Council (SLAAC) will “have an opportunity to review and make recommendations regarding specific parcels proposed...for acquisition...” SLAAC members include the Governor, Department and OPRHP Commissioners,

and the majority and minority leaders of the Senate and the Assembly or their designees.

Actions that conserve or preserve identified Plan projects can take up to several years to accomplish, depending on a variety of factors (e.g., the nature of the parcels, the specific conservation objectives, or a modification, such as a change in geographic definition). Further, the acquisition process itself can be lengthy. The 1998 Plan's 131 projects comprise thousands of parcels (tracts of land). For funding or availability reasons, the Department and OPRHP usually acquire a project's parcels piecemeal, which tends to delay the project's completion. Thus, as shown in the following summary of Plans since 1992, updated Plans contain new projects, "rolled over" and modified projects, and a relatively few completed projects.

The Department of Environmental Conservation The Office of Parks, Recreation, and Historic Preservation Summary of Open Space Plans						
		Roll Over of Plan			Plan Progress	
Plan Year	Total Projects	New Projects	Rolled Over Projects	Modified Projects	Projects with Progress	Projects Completed
1992	75	75			27	3
1995	90	24	54	12	38	4
1998	131	53	58	20	57	12
2001	132	46	43	43		

The Department and OPRHP can preserve or conserve priority open space by purchasing the parcels, by acquiring a conservation easement, or by obtaining the parcels as a result of a gift, transfer or exchange. Other means of meeting conservation objectives include tax incentive programs, local planning and land use regulations on a local, State and Federal level. The outright purchase of parcels involves specific steps, including appraisals, reviews and approvals, and results in title to the parcels passing to the State. The Department and OPRHP sometimes use third-party intermediaries to acquire parcels when the State does not temporarily have funds available to make the purchase or the seller prefers to negotiate

with an intermediary. When the State acquires a conservation easement to priority open space, it acquires certain property rights, which enable it to stop development of the land. Although property residents, such as forest land owners, continue to own the land, their development rights are limited or completely gone. A gift results in a transfer of property title to the State at little or no cost to the State. The Department and OPRHP survey and inspect the gifted land prior to its acquisition. A transfer is a property swap between two State agencies; an exchange involves a property swap between the State and a private party, as authorized by the Legislature.

For the period April 1, 1998 through March 31, 2001, the Department acquired 358 parcels (84,029 acres) for 46 projects at a cost of \$144.7 million. For the same period, OPRHP acquired 72 parcels (12,814 acres) for 32 projects at a cost of \$69.3 million. The Department and OPRHP are required to file an annual report on the results of their open space acquisitions.

Funding for the Plan comes from a variety of sources, including the 1996 Clean Water/Clean Air Bond Act (Bond Act), the Environmental Protection Fund (EPF), Federal Funds, enforcement fines and State appropriations. Projects funded by the Bond Act are intended to develop, expand or enhance water quality protection or public access to a wide variety of water bodies. The EPF provides a permanent funding source for a variety of open space, recreational and natural resource protection purposes.

At the Department, the Division of Lands and Forests is primarily responsible for overseeing the Plan. The Bureau of Real Property acquires properties or obtains alternative protection for Plan projects, and tracks the Department's land acquisition tracking system, an automated database system. A total of about 61 Department staff help carry out the Plan. At OPRHP, the Bureau of Natural Resource Management is primarily responsible for overseeing the Plan. The Real Property Bureau acquires the properties with some assistance from the Regional Offices. OPRHP has a total of 6 staff who have some responsibility for the Plan, but one to three staff handle most of the acquisition process. At the time of our audit, OPRHP tracked land acquisitions manually.

Audit Scope, Objectives and Methodology

We audited selected activities of the Department and OPRHP related to the acquisition of open space for conservation and preservation purposes for the period April 1, 1998 through March 31, 2001. The objectives of our performance audit were to determine: (1) whether the Department and OPRHP are in compliance with statutory and regulatory requirements and procedures for selection, appraisal and purchase of identified parcels under the 1998 Plan; and (2) whether the funds used for parcel purchases and alternative acquisition options were appropriately spent. To accomplish our objectives, we interviewed officials and reviewed statutory authority, regulations, policy, procedures and records at the Department's central office and OPRHP's central office. In addition, we analyzed the Department's land acquisition tracking system and reviewed the records management systems at both the Department and OPRHP. We excluded transfers from our audit scope, since transfers record a change of jurisdiction from one agency to another, and do not involve a determination of the parcel's fair market value. In addition, we did not examine the participation of the Department of Agriculture and Markets and the Department of State because these agencies do not acquire land instead they have easements that give them certain rights.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Department and OPRHP that are included within the audit scope. Further, these standards require that we understand the Department's and OPRHP's internal control structures and compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence-supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We used a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have

identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort to reviewing operations that may be relatively efficient or effective. As a result, we prepare our audit reports on an “exception basis.” This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Comments of Department and OPRHP Officials to Audit

A draft copy of this report was provided to Department and OPRHP officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix B. Where appropriate, we have made changes to our report because of additional information.

Department officials agreed with the three recommendations in this report, and indicated actions taken or planned to implement them.

OPRHP officials agreed with the 9 recommendations in this report, and indicated actions taken or planned to implement them. However, they disagreed with the conclusion that their acquisition tracking system did not provide complete and accurate land acquisition information because it is a manual system. Our conclusions also include the fact that summarized fiscal information and individual project status was not easily obtained. In addition, an automated tracking system would allow OPRHP to monitor the progress of the projects and provide management and other interested parties with timely, summarized information in an expeditious manner.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation and the Commissioner of the Office of Parks, Recreation and Historic Preservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

ACQUISITION OF OPEN SPACE

Our examination of a sample of Department and OPRHP acquisitions revealed that the agencies use the same procedures for identifying, surveying and appraising parcels, but use different approaches for setting the price offered to landowners. We also found that both agencies generally conform to statutory requirements, but that neither agency documents the reasons for using specific third-party intermediaries in acquiring open space. We also found that, in the almost ten years that have elapsed since the first Plan was approved, neither the Department nor OPRHP has reported externally on its accomplishment of Plan objectives.

Price Offers

The Department and OPRHP can acquire parcels identified on the Plan as priority open space by purchasing the parcels from the owner. For both the Department and OPRHP, the purchase process involves obtaining necessary surveys, mapping, evaluations and appraisals of the parcel(s). Either one or two appraisals are performed (two are needed if the parcel's fair market value is expected to be more than \$300,000) and are reviewed by agency officials. Both agencies set the highest approved appraised value, as established through an agency appraisal review process, as the fair market value for the parcel(s).

However, while the agencies have the same procedures for determining the value of the parcel(s), they have different approaches for arriving at the price offered to the seller. The Department discloses and offers to the seller the highest approved appraised value determined in the appraisal review. This is the price the Department pays unless the seller wishes to accept less for personal reasons (e.g., tax impact). However, OPRHP officials indicated they do not disclose the fair market value of the parcel(s) based on the appraisal review; instead, they start their negotiations by asking for the seller's price. OPRHP officials further said they regard the fair market value established in the appraisal review as the maximum value to be paid for the parcel(s).

Department officials stated that they follow the process for setting the price in accordance with the Eminent Domain Procedures Law and the State Comptroller's regulations and opinions. Department officials also stated that the Federal government requires that agencies comply with just compensation requirements, which are similar to the State's eminent domain procedures, when Federal funds are used. Since the Department's open space acquisitions sometimes involve Federal funds, the Department adopted the Federal requirement.

By contrast, OPRHP does not disclose or offer the highest approved appraised value, and further stated that this value is the maximum price to be paid for the parcels. OPRHP's position is that Section 3.17 of the Parks, Recreation and Historic Preservation Law is the operative statute for its land acquisitions. That statute, which provides the authority for OPRHP to acquire parcels as may be necessary for the purpose and functions of OPRHP, provides that such parcels may be acquired pursuant to the procedures of eminent domain or by purchase, lease, exchange, grant, condemnation, gift, devise, bequest, or by any other lawful means. In addition, OPRHP states that Section 49-0203 of the Environmental Conservation Law (ECL), which is the statute relied upon by the Department for its Plan acquisitions, expressly announces that it is the policy of the State to pursue acquisitions through voluntary agreement to the maximum extent practicable. In responding to our audit, OPRHP officials further explained that, when it seeks to acquire open space through such voluntary agreements, it contacts the owners to determine their willingness to sell to OPRHP, and suggests that owners obtain their own appraisal to determine their asking price. Officials stated that the seller's asking price, if known by OPRHP, is never provided to the OPRHP appraiser(s). OPRHP states it has the right to seek a negotiated voluntary agreement before resorting to eminent domain, and that the procedures of eminent domain apply only in those instances in which OPRHP is acquiring by eminent domain.

To determine the extent of any fiscal impact associated with a difference in the price offered to sellers, we randomly selected 20 acquisitions (10 Department and 10 OPRHP) on the 1998 Plan for which the Department and OPRHP paid \$1.3 million and \$11.9 million, respectively. Of the 20 parcels reviewed, we found that 8 parcels (3 Department and 5 OPRHP) were

acquired for a total of \$1,218,148 less than the appraisal review amount. The 3 Department parcels, obtained for \$39,413 less than the appraisal review amount, were acquired from third-party intermediaries who paid less than the appraised value and passed those savings along to the Department. The remaining 5 parcels were acquired by OPRHP for \$1,178,735 less than the appraisal review amount. This amount could be viewed as a savings for OPRHP, or alternately, as an underpayment to the sellers. Records for these five acquisitions showed no indication that OPRHP had disclosed to sellers the fair market value established through its appraisal review process.

We obtained a legal opinion from the Office of the State Comptroller Counsel's Office on the appropriate value to be paid in acquiring parcels under the Plan. The opinion, which interpreted the requirements of Section 49-0203 of the ECL, states that when acquiring parcels in conjunction with the Plan, the appropriate value to be paid must be no less than the highest approved appraisal as established pursuant to Section 303 of the Eminent Domain Procedure Law. However, the Counsel's Office also found that OPRHP's legal interpretation is not unreasonable. While the positions of both the Department and OPRHP may seem reasonable, the practical effect is that one agency discloses the highest approved appraised value up front, and the other agency does not. To ensure the State appears consistent in its dealings with property owners, both agencies should use the same approach in negotiating the price offers. Department and OPRHP officials stated they will meet and discuss this issue, and have agreed to give due consideration to the development of a consistent approach.

Acquisition Process

The Department and OPRHP must comply with various procedural, approval and funding requirements when they acquire open space for preservation and conservation purposes. While the agencies generally acquire parcels identified on the Plan, they are permitted to acquire parcels outside the Plan if acquisition opportunities arise. To determine whether the agencies complied with established acquisition processes, we examined samples of acquisitions selected from among the 430 parcels the agencies acquired during the period April 1, 1998 through March 31, 2001. Of that number, 37 parcels were not on the 1998 Plan and 393 parcels were on the Plan. With the exception of several instances of OPRHP

noncompliance, we found that the agencies generally complied with acquisition requirements.

Plan Acquisitions

Of the 430 acquisitions made by the Department and OPRHP during our audit period, 393 were included on the 1998 Plan. As noted earlier, we randomly selected 20 of these acquisitions (10 Department and 10 OPRHP) for review. Although we found the Department followed proper procedures in acquiring the ten Department acquisitions we reviewed, we identified instances of noncompliance with requirements in four of the 10 OPRHP acquisitions we sampled. The four exceptions involved three instances in which OPRHP did not obtain prior SLAAC review, and one instance in which OPRHP did not comply with EPF funding requirements. We discuss these exceptions below.

As noted earlier, SLAAC will have an opportunity to review and make recommendations regarding the Plan project in which a parcel is located before the Department or OPRHP can acquire the parcel. According to Section 49-0211 of the ECL, SLAAC is required to provide this review to ensure a balance of statewide and regional interest in acquisitions and to review annual reporting of the RACs, the agencies, and the Plan. SLAAC has 30 days to give comments or recommendations. If SLAAC gives approval or if the 30-day time limit expires, the project application is forwarded to the Executive Deputy Commissioner for final approval. We found that three of the ten OPRHP acquisitions reviewed did not have SLAAC review before OPRHP acquired the parcels. OPRHP did not submit these acquisitions to SLAAC to provide SLAAC the opportunity to perform its oversight responsibility. OPRHP officials state they will comply with this requirement in the future.

Most of the funding for acquiring parcels on Plan projects is from the Bond Act and the EPF. Under the ECL, the Department and OPRHP are required to notify local governments in the event Bond Act money is used and the project is not on the Plan. Local governments have 90 days to file an objection. In the event the local government objects, the State may not purchase the parcels. The EPF requires similar notification of local government if EPF funds are used and the project involved was not one of the original projects contained in the 1992 Plan. The project must also be listed in the EPF appropriations each year.

We reviewed the type of funding and the funding requirements for the 20 parcels in our random sample of acquisitions that were on the 1998 Plan. All the parcels we reviewed met the requirements for Bond Act funding, which totaled approximately \$9.6 million; all but one parcel met the requirements for EPF funds, which totaled about \$3.6 million. There was no evidence that OPRHP had obtained local government approval for this acquisition, which received \$30,000 in EPF funds, even though the project in question was not included on the 1992 Plan. Since local government was not advised of this acquisition, it did not have the opportunity to comment on or disapprove of the acquisition, as required by statute.

OPRHP officials stated that they did not obtain local government approval for this acquisition because they believed the relevant project (a Statewide Small Project) was included on the 1992 Plan. However, our review found that Statewide Small Projects were on the 1995 and 1998 Plans, but not on the 1992 Plan. Therefore, OPRHP should have sought local government approval before acquiring this parcel.

Acquisitions Outside the Plan

Of the 430 parcels acquired during our audit period, we found that 37 parcels, valued at \$821,859, were not on the 1998 Plan. These 37 parcels comprised 31 gifts to the Department (30) or OPRHP (1); 2 Department purchases at a cost of \$812,971; 2 exchanges; and 2 transfers. To determine whether the agencies followed established acquisition procedures in obtaining these properties, we reviewed a total of 10 of the 37 acquisitions: the two purchases, the two exchanges, the 1 gift made to OPRHP and 5 randomly selected gifts from among the 30 gifts to the Department. Since the two purchases involved Bond Act funds, we also ascertained whether the Department had notified local government of the acquisitions, as required. We did not review the transfers, since, as noted earlier, we did not include transfers in the scope of our audit. We found that the agencies followed their procedures in acquiring the ten sampled parcels that were not included in the 1998 Plan.

Third-Party Intermediaries

The Department and OPRHP may sometimes use third-party intermediaries (intermediaries) to acquire parcels when the State does not temporarily have funds available to make the

purchase or when the seller prefers to negotiate with an intermediary. In addition to paying the intermediary the agreed-upon purchase price for the parcels, the State may reimburse the intermediary for the actual, reasonable and necessary expenses incurred by the intermediary in acquiring the parcels (as long as the State derives some benefit from those expenditures) when a purchase and sale agreement between the State and an intermediary provides for such reimbursement. All expenses must be fully disclosed through detailed itemization and be sufficiently explained and documented.

The following expenses may be reimbursed to an intermediary: appraisals; legal fees; title insurance; direct costs (staff, travel); overhead; loan interest; taxes; and survey costs. All these costs must be established by receipt or other documentation and be explained, if not self explanatory from the documentation provided. In reviewing our random sample of 20 acquisitions selected from the 1998 Plan, we found that 11 acquisitions used intermediaries; 7 of these acquisitions listed a total of \$132,714 in acquisition-related expenses that were reimbursed to intermediaries.

When we examined these acquisition-related expenses, we found they were all receipted costs incurred by the intermediaries. However, we question whether all these costs were reasonable and necessary expenses. Specifically, only one intermediary in our sample charged interest and overhead. According to Department records, this party, which also has a seat on four of the nine RACs in the State, was involved in 81 acquisitions during our audit period. Our review of acquisition files showed that, for 57 acquisitions, this intermediary signed an option and the title transfer was between the Department and the seller. For the remaining 24 acquisitions, the intermediary purchased the parcels and sold them to the Department at a later time. This intermediary was reimbursed approximately \$540,000 in overhead costs for all 81 parcels, and about \$553,000 in interest on the 24 parcels acquisitions.

We sought to identify the reasons why the Department used intermediaries, and why the acquisition of a particular parcel involved one intermediary rather than any other available or interested party. Our review of Department documentation did not reveal the reason why particular intermediaries were involved in acquisitions. In explaining intermediary involvement, Department officials told us that, in many instances,

intermediaries contact the property owners and initiate the acquisitions without any request from the Department. According to Department officials, these intermediaries are strong advocates for open space, are aware of the properties listed on the Plan, and are proactive in acquiring such properties. Officials also stated that most intermediaries operate primarily in certain areas of the State, or specialize in certain types of acquisitions. Therefore, if a parcel of land is acquired in a particular area of the State or through a specific kind of transaction, the acquisition is more likely to involve certain intermediaries as opposed to others. Officials noted that other factors may also influence the intermediary used (e.g., seller preference, intermediary's ability to meet time frames, or access to funds).

We agree that the reasons given by Department officials could be valid. However, when the reasons for using a particular intermediary for an acquisition are not documented – especially when that intermediary charges for acquisition-related expenses – there is less assurance that the involvement of that intermediary was, in fact, appropriate. To provide better assurance of propriety in such transactions, the Department needs to document the reasons why particular intermediaries are involved in acquisitions.

Annual Reporting Requirements

The Commissioners of the Department and OPRHP are required by the ECL to file a report annually on their parcel acquisition activities. These activities include lands acquired (whether in fee title or by easement), funds obligated and disbursed, and acreage obtained over the past year and cumulatively since the inception of the Plan. The report must also include a description of the State's land acquisition plans, its priorities for the coming year and the recommendations of the RACs. However, the statute does not state to whom the report should be addressed.

We found that the Department has been preparing annual reports that include the required items and has sent them to the Department's executive management as part of the annual budget process. However, Department officials told us that the report has not been filed outside the agency since the controlling legislation is vague about where these reports should be filed. OPRHP prepares an internal report for submission to

OPRHP executive staff. However, this report does not meet statutory requirements because it does not include the funds obligated and disbursed on an annual or cumulative basis.

As a result, in almost ten years that have elapsed since the first Plan was approved, neither agency has reported to the public or to policymakers on the progress in meeting the open space conservancy goals the Plan was established to achieve. In the absence of further direction, the Department and OPRHP should provide their annual reports to SLAAC to identify Plan accomplishments and account for the use of Bond Act, EPF and other State funds.

(The Department responded that while the audit report points out that the statute “does not state to whom the annual report should be addressed,” the Department regularly reports to the public and the Legislature through a variety of means such as the EPF reports, annual Clean Water/Clean Air Bond Act report and press releases.

Auditors’ Comment: While we recognize that the Department has issued reports that include information of their Plan-related activities, this is not a substitute for a cohesive annual report on parcel-acquisition activities.)

OPRHP agrees with the recommendation that annual reports should be submitted to SLAAC. They have redesigned the annual reporting format and stated they will submit this report annually to SLAAC in the absence of a clear statutory direction as to the distribution thereof.

Recommendations

To the Department and OPRHP:

1. Establish a joint interpretation of the legal requirements governing the acquisition of parcels under the Plan and consistently apply that interpretation in all future acquisitions.

Recommendations (Cont'd)

2. For each open space land acquisition involving a third-party intermediary, document the reasons why that particular third-party intermediary was involved in the acquisition.
3. In the absence of further legislative clarification, provide annual reports of open space acquisition and the results of acquisition activities to SLAAC.

To OPRHP:

4. In future acquisitions, comply with EPF funding requirements related to obtaining local government approval and submit acquisitions to SLAAC for approval prior to purchase.
5. Modify the OPRHP annual report to include all data required by statute.

(OPRHP agrees with the recommendation to modify its report, and stated it would provide its report to the Department and to SLAAC since there has been no further legislative clarification.)

ASSET MANAGEMENT

The Department and OPRHP are responsible for acquiring and maintaining priority open space to meet conservation and preservation objectives, and, as such, they should have management reporting systems in place to track acquisitions and to reconcile acquisition-related expenditures. Further, agencies are required to record the value of their land or other assets on the Statewide Fixed Asset Accounting System (SFAAS) at full cost, as defined by the Office of the State Comptroller's (OSC) accounting policies.

During our audit, we determined that the Department's automated acquisition tracking system provided reliable and complete acquisition data necessary to manage acquisition assets. We also verified the results of the Department's reconciliation of acquisition records on its tracking system to OSC records on the State Accounting System. Therefore, we did not audit the Department's acquisition-related expenditures or its compliance with SFAAS reporting requirements. However, we found that OPRHP managers did not have comprehensive and up-to-date information they need to effectively manage acquisitions or to track all the costs associated with an asset's value.

Acquisition Tracking at OPRHP

OPRHP needs a management reporting system in place that tracks parcel acquisitions and measures the extent to which OPRHP is attaining the Plan's stated objectives of acquiring, protecting and preserving forest and environmentally sensitive lands. However, at the time of our audit, OPRHP recorded and monitored land acquisition project information using manual processes and reviews that did not allow for efficient tracking of acquisition data. OPRHP officials told us an automated tracking system is in development.

OPRHP's manual filing system is based on budget certificates, which are filed by year and then by funding source. OPRHP's Planning Unit, which is responsible for implementing the Plan, also maintains a summary of acquisitions (i.e., pending

acquisitions and acquired over the past five years) in a binder, which is used to monitor acquisitions. According to OPRHP, the Unit updates the binder each time a project is started or completed, and once a year, at a minimum. Because of this system's limitations, OPRHP was unable to easily obtain summarized fiscal and individual project status information for land acquisitions projects without reviewing each file and manually compiling information.

An OPRHP official told us that the new system, which he confirmed was not in place at the time of our audit, was taking time to develop and implement because of a lack of staff. According to OPRHP, the proposed new system will be designed to monitor and document the progress of land acquisition projects, and to generate reports such as project status, acreage, cost, profile, funding source, and project list reports. When developing the system, OPRHP was aware of the information contained on the Department's land acquisition system. However, OPRHP officials informed us that they did not copy the Department's tracking system because OPRHP has different software applications. Given that the Department already has a reliable database system for tracking the same kinds of data for open space acquisitions, we encourage OPRHP to work with the Department to develop a system with similar capabilities.

With an automated tracking system, OPRHP can monitor projects' progress, summarize program accomplishments, detect acquisition delays and initiate corrective action. Such a system should also provide for efficient access to all the information OPRHP has about a specific project or parcel. For example, OPRHP maintains a Geographic Information System (GIS), a computerized database that creates maps of all of the land owned by the agency, when a parcel is acquired, it is added to the GIS so it can be mapped. OPRHP should provide for a computer link to GIS to enable efficient access to comprehensive information about acquisitions.

OPRHP should also build in fiscal controls to verify the accuracy and completeness of acquisition-related cost data. OPRHP officials informed us that they do not currently reconcile their records with OSC's fiscal records related to acquisitions because their existing methods of tracking assets do not allow for reconciliation. The reconciliation function acts as a check to determine that funds from all sources are accounted for in a

transaction, and that funds were expended for the approved acquisition. OPRHP should regularly reconcile their records with OSC records once the new system is in place.

Fixed Asset Information

In a major effort to improve financial reporting, accountability, and operational efficiencies in managing these assets, the Office of General Services (OGS) has established SFAAS. The primary purpose of the SFAAS system is to maintain auditable information on the State's fixed assets in accordance with Generally Accepted Accounting Principles (GAAP). In general, fixed assets are defined as tangible property to be used over a long period of time, and having a significant value. The five major types of assets included in SFAAS are: all land, land improvements costing over \$100,000, all buildings, all building renovations costing over \$100,000, and equipment costing over \$25,000. If an asset meets the test of significant value (a cost of over \$25,000) and has a useful life of two years or more, it should be included in SFAAS. SFAAS is intended to provide centralized information that enables the State and agencies to effectively budget, account for, and control the acquisition and disposition of fixed assets. Thus, all State agencies are responsible for entering accurate fixed asset data on SFAAS. However, we found that OPRHP asset data is not complete and does not include all relevant costs in asset values.

OGS requires State agencies to update the SFAAS every two years, at the minimum, with the next update occurring in March 31, 2002. As of April 2000, OPRHP's Real Property Bureau was given responsibility for entering acquisitions into SFAAS as the final step in a project's acquisition. Out of a total of 72 parcels acquired by OPRHP during the period April 1, 1998 through March 31, 2001, 47 were required to be entered on the SFAAS as of the last update on March 31, 2000. However, we found that 22 out of the 47 parcels were not recorded on the SFAAS, as required.

Furthermore, we discovered the cost information being entered into the SFAAS by OPRHP is inaccurate, since OPRHP does not include all an asset's relevant costs in its valuation. The OSC Accounting Policy Manual (Manual) states that the cost of land, as recorded, should include costs in addition to the "consideration given or received." According to Volume IX, Section III-1 of the Manual, the cost of land should also include

other related expenses (e.g., costs of appraisals, surveys, acquisition costs and environmental audits). At the time of the audit, OPRHP was posting only the actual purchase price on the SFAAS. OPRHP did not include other related costs because they are funded through a Special Revenue Other Account. However, these costs should be included in the asset's value, regardless of the source of funding. We were informed that OPRHP's new tracking system will track all costs related to a project.

(OPRHP officials responded to the draft report that the automated tracking system was in place during our audit.

Auditors' Comment: During the course of our audit, information provided to us was manually compiled. Had we been aware that the automated tracking system was operational, we would have audited that system as well.)

Recommendations

To OPRHP:

6. Expedite the development of an automated tracking system for land acquisitions to help manage these assets effectively and efficiently. Work with the Department to develop this system which will be capable of:
 - a. Monitoring individual project status;
 - b. Linking to other OPRHP systems, like the GIS; and
 - c. Providing timely, reliable summary information regarding program accomplishments.
7. When the new tracking system is in place, periodically reconcile expenditure amounts with OSC records to ensure the accuracy of OPRHP system records.
8. Post all fixed asset acquisitions on the Statewide Fixed Asset Accounting System when due.
9. Include all costs associated with the acquisition of land in the cost of land in accordance with OSC Manual policies.

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ERIN M. CROTTY
COMMISSIONER

JUL 09 2002

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 William Street, 21st floor
New York, NY 10038

Dear Ms. Maldonado:

Enclosed is the Department of Environmental Conservation's response to the Office of the State Comptroller's draft audit report 2000-S-58 entitled Selected Acquisition Practices Under the Open Space Conservation Plan.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erin M. Crotty', written over a horizontal line.

Erin M. Crotty

Enclosure

**Department of Environmental Conservation
Response to Comptroller's Draft Audit Report 2000-S-58
Selected Acquisition Practices Under the
Open Space Conservation Plan**

We have reviewed the Draft Audit Report (the Report) in the above matter and here comment on its findings and recommendations. The Department of Environmental Conservation (the Department) is always seeking to identify areas where we can improve our processes. In the case of the Open Space Program, the Department is justly proud of what has been accomplished over the past seven years. Other states have come to use New York's program as a model for developing their own efforts in this area.

Under the current administration, the State of New York has invested more than \$350 million to conserve more than 325,000 acres of land identified in the State's Open Space Conservation Plan. In his 2002 State of the State address, Governor Pataki outlined a vision of preserving an additional million acres of land across New York over the next decade in partnership with local governments, conservation groups and the public, using the Open Space Plan as the template. Under State law, the Open Space Plan is updated every three years by the Department and the Office of Parks, Recreation and Historic Preservation (OPRHP), with the assistance of nine regional advisory committees appointed jointly by the State and county governments. A draft Plan was developed last year and widely distributed, followed by a series of public hearings throughout the State. Nearly 900 public comments were received, which were overwhelmingly supportive of a continued strong Open Space Conservation Program.

New York's efforts in conserving open space resources range from preserving wilderness areas of the Adirondacks and Catskills to establishing urban parks along the State's restored waterways, to saving valuable farm and forest land. In addition, the Governor's initiation of the New York State Quality Communities Program and the creation of the Quality Communities Interagency Task Force were specifically designed to assist the State's communities in bringing about effective land preservation and rehabilitation strategies.

The Report states that the audit was designed to address whether or not the Department complies with statutory and regulatory requirements for selecting, appraising and purchasing projects under the Open Space Conservation Plan and whether or not the funds used for land purchases and alternative acquisition options is appropriately spent. We are not surprised to find that the Report indicates that the Department is appropriately administering the program on all of these counts.

The Report discusses the role played by third-party intermediaries in the acquisition of some properties. The Report explains why the involvement of these intermediaries is useful and necessary in many instances. The Report recommends that the reasons for the involvement of a third-party intermediary in a particular transaction be documented in the Department's files. The Department accepts this recommendation and plans to implement it in connection with future acquisitions.

The description of the intermediaries' participation in the process, as contained in the body of the Report, is generally accurate. However, the Report's Executive Summary uses terminology not contained in the body of the Report and this terminology is misleading. The Executive Summary states: **"We recommend that the agencies document their *choices* of third-party intermediaries ..."** (emphasis added). The use of the word *choices* implies that the Department initiates the participation of the third-party intermediaries and is able to choose which ones are to participate in any given transaction. This implication is incorrect.

*
Note

The Department does not have the ability to choose between or among several third-party intermediaries in connection with any particular acquisition nor is the Department in a position to direct that a third-party intermediary be involved in an acquisition transaction at all. In many instances, these intermediaries initiate the transactions with property owners without any request from the Department. The intermediaries that become involved in these purchases are strong advocates for open space and are pro-active in making these acquisitions whenever possible. This is the primary reason for their existence and why they continue to receive the support of their patrons. At the same time, the intermediaries are aware of the Open Space Plan and they know what properties are listed therein. In addition, most intermediaries primarily operate in certain areas of the State or specialize in certain types of land transactions. Some have more resources than others or vary in the level of resources available to them.

* See State Comptroller's Note, B-6

The wording of the Executive Summary should be changed to remove this inaccuracy and to ensure that it is consistent with the main body of the Report.

The Report also makes reference to the State Land Acquisition Advisory Council (SLAAC). The Report states that “SLAAC members include the Governor, ... and the majority and minority leaders of the Senate and Assembly.” What the law actually says is that the SLAAC membership shall include these “officials or their designees.” In practice, it is the designees who make up the membership of this council. Similarly, the Report states that “before the Department or OPRHP can acquire open space, the project on which the parcel is located must also be reviewed and approved by the State Land Acquisition Advisory Council (SLAAC).” This is not correct. What the law actually says is that the council will “have an opportunity to review and make recommendations regarding specific parcels proposed ... for acquisition” The actual approval rests with the Department or OPRHP.

*
Note

*
Note

More importantly, the Report states that “in the almost ten years that have elapsed since the first Plan was approved,” the Department has not “reported externally on its accomplishment of Plan objectives.” This, too, is incorrect. While the Report points out that the statute “does not state to whom the report should be addressed,” the Department regularly reports to the public and to the Legislature on its open space acquisitions and its “accomplishment of Plan objectives.” This is done through a variety of means. The reports of activity of the Environmental Protection Fund and the annual reports of the 1996 Clean Water/Clean Air Bond Act report on the State’s efforts, acquisitions and accomplishments in this area. The Open Space Plan itself also documents accomplishments made under the Plan and the status of parcels under the Plan. In addition, the State regularly issues press releases regarding open space acquisitions which provide the public with the very information listed in the statutory requirements.

*
Note

The Report also discusses the difference between the Department’s and OPRHP’s method of arriving at the price to be offered in connection with any given acquisition. The Report finds that both the Department and OPRHP use the same method for determining the fair market value of property to be acquired, but that the Department and OPRHP differ in their legal interpretations of the pertinent statutes regarding the price that must be offered to property owners. Further, the State Comptroller’s Counsel’s Office states that both the Department’s and OPRHP’s legal interpretations are valid. In this regard, the Report repeatedly states that the Department utilizes the “highest approved appraised value” as its

* See State Comptroller's Note, B-6

offering price. Such statements are incorrect. What the Department offers, in accordance with statute, is the fair market value of the property.

With regard to the specific recommendations contained in the Report, we offer the following:

Recommendation 1:

Establish a joint interpretation (with OPRHP) of the legal requirements governing the acquisition of parcels under the Plan and consistently apply that interpretation in all future acquisitions.

Department Response:

OPRHP participates, along with the Department, in the State's Open Space Conservation Program. The Report finds that both the Department and OPRHP use the same method for determining the value of property to be acquired, but that the Department and OPRHP differ in their legal interpretations of the pertinent statutes regarding the price that must be offered to property owners. Further, the State Comptroller's Counsel's Office states that both the Department's and OPRHP's legal interpretations are valid. The Department is exploring the feasibility of establishing a joint interpretation of the statutory requirements.

Recommendation 2:

For each open space land acquisition involving a third-party intermediary, document the reasons why that particular third-party intermediary was involved in the acquisition.

Department Response:

We agree with this recommendation. While it is not necessary, we believe that there is merit in documenting the reasons why particular third-party intermediaries are involved in particular acquisitions and will begin instituting this practice.

Recommendation 3: In the absence of further legislative clarification, provide annual reports of open space acquisition and the results of acquisition activities to the SLAAC.

Department Response:

The Report points out that the Department has complied with its annual reporting requirement under the law, but that the controlling legislation does not specify to whom the report should be submitted. The Department has already determined to provide its annual report information to the State Land Acquisition Advisory Council (SLAAC). In the meantime, the Department regularly reports to the public and to the Legislature on its open space acquisitions and accomplishments through a variety of means such as the Environmental Protection Fund reports, the annual Clean Water/Clean Air Bond Act reports, the Open Space Plan itself, and press releases which provide the public with the very information listed in the statutory requirements.

State Comptroller's Note:

This report has been revised to reflect additional information provided in the agency's response.



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July 19, 2002

Ms. Carmen Maldonado
Audit Director
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Division of Management and State Financial Services
123 William Street, 21st Floor
New York, NY 10038-3804

Dear Ms. Maldonado:

In response to the State Comptroller's Draft Audit Report (2000-S-58) (hereinafter referred to as "the Report") on the Department of Environmental Conservation and the Office of Parks, Recreation and Historic Preservation (OPRHP) Selected Acquisition Practices Under the Open Space Conservation Plan, we have reviewed the findings and recommendations and offer the following response:

It is most unfortunate and regrettable that the scope of the State Comptroller's Audit of the New York State Open Space Conservation Plan did not choose to address whether or not the goals and objectives of the Open Space Plan were being achieved. The quality and character of the lives of the people of New York depend upon the quality and character of the land on which we live. The Open Space Conservation Plan legislation of 1990 recognized the critical need to provide direction to the State's effort in protecting our open space resources and charged the Office of Parks, Recreation and Historic Preservation and the Department of Environmental Conservation with this mandate.

Under Governor Pataki's leadership, remarkable progress has been made in open space conservation including the protection of over 394,000 acres of land identified in the Plan through the investment of more than \$378 million primarily from the State's dedicated Environmental Protection Fund and the Clean Water/Clean Air Bond Act. The continued availability of these resources, combined with the State Farmland Protection program administered by the Department of Agriculture and Markets, the Municipal Park and Historic Preservation Grant Program administered by this office and the Waterfront Redevelopment program administered by the Department of State represent historic benchmarks in this State's commitment to fulfilling the mandate of the Open Space Plan. With unprecedented public involvement and support obtained through the efforts of the nine Regional Advisory Committees and the State Land Acquisition Advisory Council, previously at-risk Open Space has been protected throughout the State. While the value of lands now protected can be calculated by acquisition and easement cost, the long term economic, social, environmental and ecological benefits are incalculable.

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The following is in response to the specific recommendations in the report.

Recommendation #1

Establish a joint interpretation of the legal requirements governing the acquisition of parcels under the Plan and consistently apply that interpretation in all future acquisitions.

Response:

OPRHP officials will meet and discuss this issue with DEC officials and give due consideration to the development of a consistent approach. We do believe, however, that the OPRHP system, as prescribed by existing statute, is the most cost effective and, as the report noted, has resulted in substantial savings for the State of New York.

Recommendation #2:

For each open space land acquisition involving a third-party intermediary, document the reasons why that particular third-party intermediary was involved in the acquisition.

Response:

OPRHP has consistently limited the use of third parties to accomplish acquisitions. However, there are times that a third party has been used effectively to protect many recreational, scenic and environmentally sensitive parcels of land. OPRHP has a policy regarding the use of third parties and follows this policy in determining when it is in the best interest of the State. When this method is utilized in the future to assist OPRHP in meeting the Open Space Plan goals a justification memorandum will be placed in the permanent project file.

Recommendation #3

In the absence of further legislative clarification, provide annual reports of open space acquisition and the results of acquisition activities to SLAAC.

Response:

OPRHP does provide updated reports through the Open Space Plan update as well as providing annual acquisition data to the Department of Environmental Conservation. In addition, OPRHP reports out to the State Council of Parks four times a year. Based upon the Comptroller's recommendation, OPRHP has re-designed the annual reporting format which includes all data required by statute and will submit this report annually to SLAAC in absence of clear statutory direction as to the distribution thereof.

Recommendation #4

In future acquisitions comply with EPF funding requirements related to obtaining local government approval and submit acquisitions to SLAAC for approval prior to purchase.

Response:

OPRHP shall comply with EPF funding requirements by obtaining local government approvals and shall submit all potential EPF funding projects to SLAAC for approval prior to commencing the acquisition process. All documentation will be noted within the projects data record.

Recommendation #5

Modify the OPRHP Annual Report to include all data required by statute.

Response:

The OPRHP Annual Report has been modified to include all data required by statute and will be provided to SLAAC on an annual basis.

Recommendation #6

Expedite the development of an automated tracking system for land acquisitions to help manage these assets effectively and efficiently. Work with the Department to develop this system which will be capable of: a) monitoring individual project status; b) linking to other OPRHP systems, like the GIS; and c) providing timely, reliable summary information regarding program accomplishments.

Response:

It must be noted that the Comptroller's report on Page 4 states that, "OPRHP tracked land acquisitions manually" and that at the time of the audit, OPRHP was not only able to provide all the necessary information needed to complete the audit but the information was found to be accurate as well. As noted in the Report, "OPRHP officials told us an automated tracking system is in development." In fact, the automated tracking system was in place and was utilized as a dual system during implementation by OPRHP to provide information to the auditors. This tracking system is being upgraded to better enter, retrieve and disseminate all data concerning a project. Additional programming is underway to more fully integrate the system with GIS.

Recommendation #7

When the new tracking system is in place, periodically reconcile expenditure amounts with OSC records to ensure the accuracy of OPRHP system records.

Response:

OPRHP will insure that the automated tracking system accurately reconciles the expenditures with available OSC records.

Recommendation #8

Post all fixed asset acquisitions on the Statewide Fixed Asset Accounting System when due.

Response:

All fixed asset data will be posted on the Statewide Fixed Asset Accounting System in a more timely manner.

Recommendation #9

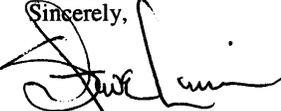
Include all costs associated with the acquisition of land in the cost of land in accordance with OSC Manual policies.

Response:

The new Land Acquisition Tracking System (LATS) is in place and will now include all soft cost such as survey, appraisal, environmental audit and pro-ration of taxes in addition to the land cost. This data will be reconciled and entered into SFAAS in accordance with the SFAAS manual.

We believe that most of the deficiencies noted in the audit were clerical in nature and positive steps have already been implemented to cover these gaps. We do, however, take strong exception to the conclusion that OPRHP did not have a system in place to provide comprehensive and up-to-date information for effectively managing acquisitions. We feel that the effectiveness of the manual system that was in place prior to this report was

substantiated by its ability to provide all the information required for the audit. While the computerized system now in place will certainly be more efficient, the reports generated are only as good as the data entered. We firmly believe the manual system that previously existed was a dependable management tool that was utilized effectively.

Sincerely,

Steve Lewis
Director, Real Property