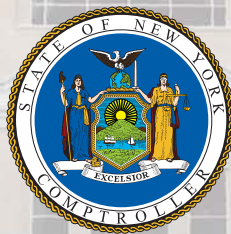




# Office of Parks, Recreation and Historic Preservation

## Environmental Protection Fund

Report 2008-S-148



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

December 31, 2009

Carol Ash  
Commissioner  
Office of Parks, Recreation and Historic Preservation  
Empire State Plaza, Agency Building 1  
Albany, NY 12238

Dear Commissioner Ash:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office of Parks, Recreation and Historic Preservation's controls over the awarding of Environmental Protection Fund grants. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### **Audit Objectives**

The objectives of our performance audit were to determine if the Office of Parks, Recreation and Historic Preservation (Office) awards Environmental Protection Fund (EPF) grants timely and based on valid, objective criteria.

#### **Audit Results - Summary**

EPF appropriations funded seven specific programs at the Office: Open Space; Municipal Grants; Stewardship; Zoos, Botanical Gardens and Aquariums (ZBGA); Barns Restoration and Preservation (Barns); Oceans and Great Lakes; and Biodiversity. Total EPF funding for these seven programs during the three State fiscal years ended March 31, 2008 was over \$280 million. We found that for six of these programs, the Office awarded the funds to grantees in a timely fashion and ensured that the funds were spent within a reasonable time span. However, appropriations for the Barns program were not spent timely and over \$1.1 million in EPF funding for this program should be returned to the State Treasury as a refund of EPF appropriations. In addition, we determined that the award process for the Municipal Grants program has weaknesses that could allow the process to be manipulated unfairly. For the other programs, we found the Office has adequate controls in place to award EPF funding based on valid, objective criteria.

The Office administered the Barns program through a contract with the Natural Heritage Trust (NHT), a public benefit corporation established by the State to assist in the preservation of natural and historic resources. The contract, which was initiated in 2000, totals \$12.3 million and expires at the end of January 2010. As of June 1, 2009, the Office had distributed all but about \$58,000 of this funding to NHT. At the same time, NHT had not committed slightly more than \$170,000 of the funds it received to grantees and had determined it would not need to pay out about \$878,000 in funds it had previously awarded, because projects had either been completed or cancelled. Since funding for this program has ended, we conclude that the Office should recover these funds, which total about \$1,048,000, from NHT and remit them together with the undistributed \$58,000 to the State Treasury as a refund of EPF appropriations.

We also found that the original contract with NHT had authorized it to charge certain administrative expenses against the EPF money, but this provision was not included in the most recent contract extension negotiated at the end of 2007. As a result, NHT charged over \$286,000 of ineligible administrative expenses against the EPF funding between April 1, 2007 and March 6, 2009.

Subsequent to the completion of our audit, the Office extended its contract with NHT through the end of 2011 and amended the terms to increase allowable administrative charges. Even though the Office has not awarded any new grants under the Barns program since 2005, officials now indicate they do not plan to recover the unused funding from NHT, but will instead make it available to fund new grants, as well as almost \$600,000 in additional administrative cost charges by NHT over the next two years. In view of the State's current fiscal difficulties and the fact that the EPF and similar funds are being swept of available balances to fund day-to-day activities, we believe the Office's decision is fiscally imprudent. We continue to recommend that these excess funds be immediately recovered to provide the State policy makers with the opportunity to determine their most effective use.

For the Municipal Grants program, applications are independently scored by Office staff in regional and central offices, who then come together to arrive at a consensus score. The Commissioner awards most of the funding (95 percent) by proceeding down the ranked list of the consensus scores. The entire process is managed through a computerized Grant Award System (System). Although the individual regional, central, and consensus scores should be recorded in the System, we found between 29 and 42 percent of the scores were missing for each of the three years we reviewed and no documentation is retained detailing how or when the final consensus score was arrived at for each application. Further, we found the System is not secure and anyone with access to it could simply change any of the individual scores, including the final score, without either authorization or a record of their action. Our analysis of 616 scores in the System identified 35 cases where the final consensus score was outside the parameters we would have expected based on the individual scoring (i.e., the consensus score was either greater or less than both of the individual scores). The lack of an audit trail prevented us from determining whether these scores were accurate and the awards valid.

Our audit contains five recommendations directed toward improving the Office's controls over the awarding of EPF grants. Although Officials generally agreed with our recommendations, they disagreed that excess funding should be recovered from NHT.

This report, dated December 31, 2009, is available on our web site at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236



## Introduction

### Background

The Environmental Protection Fund (EPF) was created by Chapters 610 and 611 of the Laws of 1993 to provide funding for: State land acquisition; development and maintenance of State parks; local parks programs; local recycling programs; and other environmentally-related programs and initiatives. Major funding for the EPF comes from a dedicated portion of real estate transfer tax revenues. A portion of the EPF funding is appropriated to the Office of Parks, Recreation and Historic Preservation (Office) where it funds seven specific programs: Open Space; Municipal Grants; Stewardship; Zoos, Botanical Gardens and Aquariums (ZBGA); Barns Restoration and Preservation (Barns); Oceans and Great Lakes; and Biodiversity. In each case, EPF funds are intended to be used to achieve specific program objectives. For the three fiscal years ended March 31, 2008, over \$280 million was appropriated from the EPF to fund these programs, as follows:

- The Open Space program's purpose is to expand existing park areas or build new ones. During the three fiscal years ended March 31, 2008, the Office received over \$147.5 million in EPF appropriations for this program.
- The Municipal Grants program provides funding to local governments and not-for-profit entities to accomplish goals related to parks, historic preservation, and heritage area programs and land acquisitions. The Office received \$56 million of EPF appropriations during the three fiscal years ended March 31, 2008 to support this program.
- The Stewardship program provides funding for State parks and land infrastructure to accomplish a variety of goals, such as creating access opportunities for people with disabilities, recreational trail construction and maintenance, and cabin area and camping facility development. The Office received \$43.75 million in EPF funding for this program during the three fiscal years ended March 31, 2008.
- The ZBGA program provides a means to develop educational, cultural and recreational programs. The Office received \$21.5 million in EPF funding during the three fiscal years ended March 31, 2008 for this program.
- The Barns program provides grants to owners of historical barns to repair and restore the structures. This program last received EPF appro-

priations, totaling \$5.75 million, during the fiscal year ended March 31, 2006.

- The Oceans and Great Lakes program incorporates the relatively new concept of ecosystem-based management into agency operations and was appropriated \$4 million of EPF funding during fiscal year ended March 31, 2008.
- The Office also received \$1.5 million of EPF funding during the fiscal year ended March 31, 2008 for its Biodiversity program, which identifies biodiversity protection opportunities affecting the Office and local governments.

**Audit  
Scope and  
Methodology**

We audited to determine if the Office awards EPF grants timely and based on valid, objective criteria. Our scope period was from April 1, 2005 to June 1, 2009. To accomplish our objectives, we reviewed relevant State and local laws, and analyzed grant proposals, award scoring methodologies, and related financial data. We also met with Office officials to confirm and enhance our understanding of the EPF program.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting  
Requirements**

A draft copy of this report was provided to Office officials for their review and comment. Their comments were considered in preparing this report

and are included in their entirety at the end of this report. Our rejoinder to the Office's comments are included thereafter in our State Comptroller's comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Parks, Recreation and Historical 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.

**Contributors  
to the Report**

Major contributors to this report were Frank Houston, John Buyce, Greg Petschke, Lynn Freeman, Andre Spar and Michele Krill.



## Audit Findings and Recommendations

### Timeliness of Awards and Payments

We found that, for six of the seven EPF grant award programs that were in effect during our audit period, the Office awarded the funds to grantees in a timely fashion and ensured that the funds were spent within a reasonable time span. However, our examination identified problems with the administration of the Barns program. Although Office records indicated that all but \$58,000 in appropriated Barns funds had been disbursed to NHT, we found that over \$3.6 million of the \$12.3 million appropriated for this program since its inception in 2001 remains unexpended by NHT. In addition, at least \$1.1 million, and as much as \$1.5 million of that amount, should be returned to the State as a refund of EPF funds due primarily to cancelled projects.

#### *Barns Program Awards and Payments*

In fiscal year 2000-2001, the Office entered into a contract with the Natural Heritage Trust (NHT) to administer the Barns program. NHT is a public benefit corporation organized by the State to assist in the preservation of the State's natural and historic resources and is controlled primarily by the heads of the Office and the Departments of State and Environmental Conservation. The contract between the Office and NHT was initially developed to manage \$2 million of State monies appropriated for the newly established Barns program. The contract was subsequently amended several times to include an additional general fund appropriation of \$1 million and annual EPF appropriations totaling \$9,280,000, the last of which was appropriated for the 2005-06 fiscal year. Of the \$12.3 million in funding provided under the contract, about \$11 million was reserved for direct grants to barn owners, with the balance (about \$1.3 million) to be used for NHT's administrative expenses.

We found that, as of June 1, 2009, the Office had transferred all but \$58,032 of the appropriated Barns funds to NHT. NHT awarded \$10,769,096 of the \$10,939,468 provided in direct grant monies to 473 barn projects. The remaining \$170,373 has not been awarded and the last grants were made in 2006. These remaining funds, together with the \$58,032 (a total of \$228,405), should be returned to the EPF.

We also identified awards that will not be expended and should be returned to the State by NHT. NHT's records indicate it has paid out a total of \$7,363,441 to barn owners from the \$10,769,096 in grants it awarded, leaving a balance of \$3,405,655 to be expended. When we inquired about the status of the grant projects, we learned that 280 of the original 473

projects had been completed or cancelled. During our audit, NHT sent inquiries to 83 of the remaining 193 “active” grantees and identified 23 projects that should be closed out without further expenditures. This left a net total of 170 active projects remaining with unexpended grant balances totaling \$2,527,572. The \$878,083 in excess unexpended EPF funds being held by NHT should be returned to the State.

The Office needs to follow up on the remaining 170 projects to identify any additional award amounts that will not be spent and that should be recovered from NHT. We analyzed the payments made for these 170 grants and identified an additional \$383,000 that could likely be recovered. For example, we identified eight grants, totaling about \$160,000, which had been awarded in 2001 and 2003, yet still had no payment activity 6 to 8 years later. These projects are probably no longer valid and should be closed out and the funds returned. Further, we identified another 48 grants awarded between 2000 and 2003 that had received payments of as much as 90 percent of the grant amount, but still had unexpended balances totaling over \$223,000. It is likely much of this funding may also never be needed.

#### *NHT Administrative Cost Charges*

The terms of the contract between the Office and NHT provide for \$1,282,500 to be used for NHT’s administrative expenses; primarily salaries, fringe benefits and travel associated with staff hired to manage the program. We found that, as of March 6, 2009, NHT had charged administrative costs totaling \$1,353,957 against the Barns program, \$71,457 more than the maximum allowed by the contract. Further, our review of the original contract and its subsequent amendments disclosed that administrative expenses were only authorized to be paid out of the EPF money through March 31, 2007. At that time, the Office extended the contract through January 2010, but did not include any provision for NHT to make administrative expense charges. However, we found NHT still charged the program \$286,352 for administrative expenses between April 1, 2007 and March 6, 2009.

#### *NHT Contract Amendment*

(In response to our draft report, officials indicated that, subsequent to our audit, the Office amended its contract with NHT to retroactively authorize the excess administrative costs charged after April 1, 2007 and to extend the agreement through December 31, 2011. The new agreement also allows NHT to charge almost \$600,000 in additional administrative costs over the next two years, bringing the total to almost \$2 million, or more than 15 percent of the amount appropriated from the EPF. Officials also indicated that, in light of the extended term of the contract, they plan to allow NHT to retain all unspent funds and make them available to fund new Barn grants.)

### *Auditor's Comments*

While we recognize that the remaining funds continue to represent valid re-appropriations for the Barns program, we do not believe the Office's decision is appropriate in light of the State's current fiscal difficulties.

As previously discussed, the Office's own records showed over \$1.1 million appropriated for the Barns program is no longer needed to fulfill existing commitments to grantees. Furthermore, even though re-appropriated funding has been available, the Office has not seen a need to award any new grants under this program since 2005. At a time when available balances are being swept from the EFP and other similar funds to help meet the State's day-to-day operating needs, the Office's decision not to recover these funds is, at best, imprudent. Most importantly though, it is fiscally irresponsible for the Office to allow NHT to charge off more than half of these available funds as administrative cost for what is essentially a dormant program. As such, we continue to believe the Office should immediately recover any funds not needed to complete current grants and provide State policy makers with the opportunity to determine the most effective use for these funds at the present time.

#### **Recommendations**

1. Release the \$58,032 that was never remitted to NHT for the Barns program and return it to the State as a refund of EPF appropriations.
2. Recover the \$1,048,456 in Barns grant funds that NHT will not need to fund payments to grantees and return it to the State as a refund of EPF appropriations.
3. Monitor Barn grant activity at NHT to ensure the remaining funds are spent timely. Follow up on the remaining active grants and recover any additional funds that NHT does not require to pay existing grantees and return these monies to the State as refunds of EPF appropriations.
4. (Recommendation deleted based on agency response. See State Comptroller comments.)

#### **Award Criteria**

We determined that six of the seven EPF-funded programs had clear criteria for awards, which the Office applied in a consistent manner. However, we identified weaknesses in the award procedures for the Municipal Grant program, which funded grants totaling almost \$54 million during the three fiscal years ended March 31, 2008.

All Municipal Grant program applications receive two ratings, one from one of the Office's regional park offices and one from the central office in Albany. These ratings are entered onto the Office's computerized

Grant Award System (System) and then shared between the two raters. These raters then confer and develop a consensus numerical score for the application, which is entered into the System. Although the Commissioner of the Office has the discretion to award Municipal Grant program funds to any applicant, 95 percent of the awards made during our three-year audit scope were directed to the applicants with the highest consensus scores. Therefore, since the consensus scores are vital to the selection process, they should be determined in a consistent manner that is fair to all applicants.

We reviewed internal controls over the System and found it allows rating fields to remain blank. As a result, not all of the 961 applications received during the three years ended March 31, 2008 have ratings as required, including 29 percent of the applications from 2005, 42 percent from 2006, and 37 percent from 2007. In addition, we found that anyone with access to the System can enter new scores or alter existing scores. The System does not track these changes, so Office management cannot monitor these transactions. In addition, Office staff do not document and retain the reasons for any scoring changes made on the System. As a result of these weaknesses, there is a risk that anyone with access to the System could input incorrect scores or change scores at any time prior to the awarding of the grants; potentially casting doubt on the fairness and integrity of the award process.

We analyzed the 616 of 961 applications that had consensus scores for 2005, 2006 and 2007. While we did not expect the consensus scores to be a simple average of the two individual scores, we did expect them to be no higher than the highest individual score or lower than the lowest individual score. Instead, we found the consensus scores for 30 awarded projects were higher than the highest individual rating. The Office could not provide documentation to explain why these scores were higher. We also found that there were five projects that had consensus scores lower than the lowest individual score and, as a result, may not have had the opportunity to be awarded funding. Since the reasons for these scores were not documented, neither the Office nor we can determine why these changes occurred, which may have prevented other applicants from obtaining awards.

## **Recommendations**

5. Improve Grant Award System security to enable management to monitor the completeness of the information and the accountability for any score changes.
6. Communicate the importance of retaining documentation to support score changes to all staff involved in the rating process.



## Agency Comments



### New York State Office of Parks, Recreation and Historic Preservation

The Governor Nelson A. Rockefeller Empire State Plaza • Agency Building 1, Albany, New York 12238  
www.nysparks.com

David A. Paterson  
Governor  
Carol Ash  
Commissioner

November 30, 2009

Mr. Frank Houston  
Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
123 William Street – 21<sup>st</sup> Floor  
New York, NY 10038

Dear Ms. Frieder:

The New York State Office of Parks, Recreation & Historic Preservation has reviewed the Office of the State Comptroller's draft audit report 2008-S-148 entitled "*Environmental Protection Fund*". Enclosed please find the Agency's response to the draft report.

As summarized by the attached, we generally concur with the recommendations made in the draft audit and have already implemented many changes and improvements in procedures. Specifically, an amendment to contract C002832 was requested and approved which revises the budget and extends the terms of the contract from January 30, 2010 to December 31, 2011; resolving four of the six recommendations made in the report.

The audit is generally a positive one and OPRHP understands there is always room for improvement. We thank the OSC team for their professionalism and their efforts on our behalf in conducting this review.

Thank you for the opportunity to respond to the report. If you have any questions regarding the Agency's response, please contact Brian D. Jackson of OPRHP's Office of Internal Audit at (518) 473-3390.

Sincerely,

Peter C. Finn  
Deputy Commissioner for Finance and Administration

Enclosure

cc: Commissioner Ash  
Tom Lukacs, Division of the Budget  
Andy Beers  
Erik Kulleseid  
Mindy Scott  
Brian Jackson

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**New York State Office of Parks, Recreation & Historic Preservation  
Response to the Office of the State Comptroller's Audit Report  
Environmental Protection Fund  
2008-S-148**

The Office of Parks, Recreation & Historic Preservation's (OPRHP) response to the Office of the State Comptroller's (OSC) draft audit report number 2008-S-148, entitled "Environmental Protection Fund" is presented below. OPRHP has reviewed the findings and recommendations presented in the draft audit report and our responses to the recommendations are noted in the following section.

**Comments on Major Findings of the Audit**

We generally concur with the recommendations made in the draft audit and have already implemented many changes and improvements in procedures. In addition, an amendment to contract C002832 between OPRHP and the Natural Heritage Trust (NHT) was amended on September 18, 2009. Specifically, the amendment revises the budget and extends the terms of the contract from January 30, 2010 to December 31, 2011.

The audit is generally a positive one and OPRHP understands there is always room for improvement. We thank the OSC team for their professionalism and their efforts on our behalf in conducting this review.

**Response to Recommendations 1-6 (Pages 14 - 16)**

The following section presents OPRHP's response to each recommendation contained in the draft audit report.

- o **Recommendation 1:** Release the \$58,032 that was never remitted to NHT for the Barns program and return it to the State as a refund of EPF appropriations.

*Agency Response: Contract C002832 between OPRHP and the NHT was amended on September 18, 2009. The amendment extends the terms of the contract from January 30, 2010 to December 31, 2011. The \$58,032 in question will be combined with any additional funds that are identified and made available to be awarded for new grants.*

\*  
Comment  
1

- o **Recommendation 2:** Recover the \$1,048,456 in Barns grant finds that NHT will not to fund payments to grantees and return it to the State as a refund of EPF appropriations.

\* See State Comptroller's comments on page 21

Agency Response: Partially Agree. Contract C002832 between OPRHP and the NHT was amended on September 18, 2009. The amendment extends the terms of the contract from January 30, 2010 to December 31, 2011. We will look to identify any funds that are not required to be paid and make the funds available to be awarded for new grants.

\*  
Comment  
1

- o **Recommendation 3:** Monitor Barn Grant activity at NHT to ensure the remaining funds are spent timely. Follow up on the remaining active grants and recover any additional funds that NHT does not require to pay existing grantees and return these monies to the State as refunds of EPF appropriations.

Agency Response: Partially Agree. Contract C002832 between OPRHP and the NHT was amended on September 18, 2009. The amendment extends the terms of the contract from January 30, 2010 to December 31, 2011. We will follow up on active grants and look to identify any funds that are not required to be paid and make the funds available to be awarded for new grants.

\*  
Comment  
1

- o **Recommendation 4:** Absent approval of a retroactive amendment to the contract covering administration of the Barns program, recover the \$286,352 paid to NHT for administrative expenses incurred after March 31, 2007 and return the funds to the State Treasury as refunds of EPF appropriations.

Agency Response: Contract C002832 between OPRHP and NHT was amended on September 18, 2009. The amendment extends the terms of the contract from January 30, 2010 to December 31, 2011 and increases the total allowable administrative expenses to \$1,948,637.

\*  
Comment  
2

The amended budget for administrative expenses is as follow:

FY 2000 - 2001	FY 2001 - 2002	FY 2002 - 9/1/2004	FY 9/1/2004 - 12/31/2011	Total FY 2000 - 2011
\$85,000	\$85,000	\$500,000	\$1,278,637	\$1,948,637

\*  
Comment  
1

- o **Recommendation 5:** Improve Grant Award System security to enable management to monitor the completeness of the information and the accountability for any score changes.

Agency Response: Agree. The Grant Award System database has been secured and all scores will be locked.

- o **Recommendation 6:** Communicate the importance of retaining documentation to support score changes to all staff in the process.

Agency Response: Agree. We will increase our efforts to document in writing the rationale used in assessing grant scores.

\* See State Comptroller's comments on page 21



## **State Comptroller's Comments**

1. As discussed more fully in the body of the report, we believe it is fiscally imprudent for the Office to allow over \$1.1 million of unobligated EPF funds to remain in NHT accounts, and to provide for more than half of these funds to be absorbed as administrative costs, especially in light of the State's current fiscal situation. These funds should be immediately recovered and redeposited into State accounts so that State policymakers have the opportunity to determine how they can be used most effectively.
2. Our recommendation to recover \$286,352 from NHT for ineligible administrative cost charges was deleted based on the Office's September 18, 2009 contract amendment.