



# Office of Parks, Recreation and Historic Preservation Natural Heritage Trust

Sources of Trust Revenues

2009-S-11



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

January 21, 2011

Andy Beers  
Acting Commissioner  
Office of Parks, Recreation & Historic Preservation  
Empire State Plaza  
Agency Building 1  
Albany, NY 12238

Alexander J. Roth  
Executive Director  
Natural Heritage Trust  
Empire State Plaza  
Agency Building 1  
Albany, NY 12238

Dear Commissioner Beers and Mr. Roth:

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 Natural Heritage Trust's sources of revenues. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Section 55.13 of Arts and Cultural Affairs 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*

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## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### **Audit Objective**

Our objective was to determine whether New York State Office of Parks, Recreation and Historic Preservation (Office) revenues have been incorrectly deposited into the custodial accounts of the Natural Heritage Trust (Trust).

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

The Trust is a charitable public benefit corporation which is governed by a Board of Directors comprising the Commissioner of the Office, who is the current Chairperson, the Commissioner of the Department of Environmental Conservation, the Secretary of State, and the Chairperson of the State Council of Parks. The Trust is charged with collecting revenues from donations, gifts, and bequests and for administering certain grants. Also, it may collect funds through activities the Trust administers. As a public benefit corporation, monies deposited into the Trust's accounts are not subject to State budgetary controls. For the period April 1, 2006 through February 26, 2009, the Trust received \$35.7 million in revenues from various sources. We reviewed a sample of these revenues to determine if they were legitimate revenues of the Trust or if they were State revenues of the Office incorrectly deposited into the Trust accounts.

The Trust maintains over 200 custodial accounts for account holders, including the Office. We reviewed \$6.1 million of revenue transactions for the Trust's custodial accounts at 6 of the Office's 13 park regions (Long Island, Central, Taconic, Niagara, Thousand Islands, and Finger Lakes) and two individual park facilities (Empire Fulton Ferry and Peebles Island) for the period from April 1, 2006 through February 26, 2009. We found over \$3.5 million in revenues that were deposited into Trust accounts, but should have been deposited into Office (State) accounts.

Of the \$3.5 million, we found that \$829,000 in revenues generated from general park use, such as issuing permits and renting park facilities, should have been deposited into Office accounts. We also identified \$850,000 received from corporate golf outings held at the Bethpage State Park Black Course which should have been deposited into Office accounts. Additionally, \$1.8 million was incorrectly received by the Trust for Office-sponsored programs and events. Trust and Office officials stated these events were co-sponsored by the Trust. However, we found this classification was incorrect and determined the funds should have been deposited into Office accounts, rather than Trust accounts.

While the Office and the Trust may have similar missions, and the Trust can be used to contribute to and support the Office's mission, they are separate entities whose funds are not interchangeable, nor should they be commingled. When this occurs it results in circumventing the budgetary and control processes established by the State to ensure the funds will be used for their intended purpose.

Our report contains seven recommendations to recover State funds and improve controls over Office and Trust revenue. In responding to our draft report, Office and Trust officials generally agreed with our recommendations but continued to express their belief that it is completely appropriate to deposit much of this revenue in custodial accounts maintained by the Trust, but controlled by Office staff.

**Auditor's Comment:**

We have not recommended that the entire \$3.5 million in revenue identified in this report be returned to the State; only amounts related to activities like permit fees and recycling revenues that are already deposited as State revenues by other parks, and remaining balances left over from discontinued activities. Under current arrangements, revenues referred to as sponsorships and donations are treated as custodial funds held for the convenience, and used at the discretion, of an outside party; the Office. If these revenues belong to the Office, as a State agency it must deposit them into State accounts subject to legislative appropriation. If the revenues belong to the Trust, as a charitable organization it cannot continue to abrogate its fiduciary responsibility to manage and control their use through proper budgeting, accounting and fiscal oversight. We believe the law is clear on these points.

This report, dated January 21, 2011, is available on our website 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, 11th Floor  
Albany, NY 12236



## Introduction

### Background

The Office of Parks, Recreation and Historic Preservation (Office) operates and maintains a Statewide system of parks and historic sites. The Office also hosts a variety of cultural, recreational, and educational programs. The Office divides the State into 13 regions, each with a number of parks and its own regional office. Pursuant to State law, revenues generated by the Office through user fees, lease and rental agreements, concessions, special events fees, and other activities related to programs, operations, or facilities under the jurisdiction of the Office are to be deposited into the Office's Patron Services Account (PSA) or the State Park Infrastructure Fund (SPIF.)

These funds are appropriated in the State Budget and can be spent for purposes identified in the appropriation acts approved by the State Legislature. Since there is no "earmarking" of funds in the PSA or SPIF based on where revenue is generated, fees collected in a particular park or park region do not have to be spent where the revenues are generated. Funds deposited in the PSA or SPIF beyond those necessary to meet appropriations cannot be spent by the Office without additional appropriation authority enacted by the Legislature.

The Natural Heritage Trust (Trust) is a charitable public benefit corporation created in 1968 for the primary purpose of receiving and administering private gifts, devises, and bequests of real and personal property donated to further conservation, outdoor recreation, and historic preservation. The Trust's Board of Directors comprises the Commissioner of the Office, who is the current Chairperson, the Commissioner of the Department of Environmental Conservation, the Secretary of State, and the Chairperson of the State Council of Parks.

The Trust is charged with collecting revenues from donations, gifts, and bequests and for administering certain grants. Also, it may collect funds through activities the Trust administers. As a public benefit corporation, monies deposited into the Trust's accounts are not subject to State budgetary controls. The money is not appropriated or accounted for as it would be if the funds were deposited into the Office's or any other State agency account. Under the Public Authorities Law, the Trust is required to report budgetary and other financial information to the Governor's Authorities Budget Office and certain other State Legislature committees. The Trust's accounts are independently audited each year by a private accounting firm. A prior audit of the Trust (2007-S-28) showed

expenditures were related to the purpose of the Trust and the intent of the established accounts.

A prior audit of the Office's Long Island Regional Office (Report 2007-S-80), issued in November 2008, found that some of that Region's fee revenue, which was generated by use of Office facilities, was being deposited inappropriately into Trust accounts. The Trust deposited these revenues in custodial accounts from which Office employees could spend State funds for purposes and in amounts not authorized by the State Legislature. We estimated that, in 2007, such deposits totaled \$210,300.

In response to that audit, Office officials indicated they issued new procedures directing that, "all special permit fees paid to the [Office] for public facility use, including filming, photography, and permitted use of areas and facilities (e.g., use of shelters, ball fields, and so on), shall be deposited into regular agency accounts (Patron Services) and shall not be deposited into accounts of the [Trust]. [Trust] accounts should continue to be used for income received from donations, sponsorships, special events, and similar activities sponsored (or co-sponsored) by the [Trust]." Also, Trust officials have since reviewed their custodial accounts to assess whether funds in those accounts should have been deposited into Office accounts. They determined that about \$750,000 from film permit revenues, as well as some special events were deposited into Trust accounts in error and have since closed these accounts.

The objective of this audit was to determine whether other Office revenues have been incorrectly deposited into the custodial accounts of the Trust.

#### **Audit Scope and Methodology**

We audited the Trust's sources of revenues for the period April 1, 2006 through September 9, 2009 to determine whether State (i.e., Office) revenues have been incorrectly deposited into the custodial accounts of the Trust. To accomplish our objective, we met with Trust and Office officials to confirm and enhance our understanding of their practices for receiving and collecting revenues. We judgmentally selected a sample of \$6.1 million in Trust revenue transactions for the period April 1, 2006 through February 26, 2009 from a total population of \$35.7 million in revenue transactions (total included all revenues such as grants, donations, and investment income) and reviewed supporting documentation for the revenues received. This \$6.1 million was collected at six Office regions and two individual parks located within two other Office regions.

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 as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Section 55.13 of Arts and Cultural Affairs Law.

**Reporting  
Requirements**

A draft copy of this report was provided to Office and Trust officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report, along with our rejoinders to certain of their 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 and the Executive Director of the Trust 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 include Frank Houston, John Buyce, Bob Mainello, Heather Pratt, Richard Podagrosi, Andre Spar, Anne Marie Miller, Joe Robilotto, and W Sage Hopmeier.

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## Audit Findings and Recommendations

### Revenues from General Park Use

The Trust was established to receive contributions, gifts, grants, and bequests to be used to further conservation, outdoor recreation and historic preservation, and to work in conjunction with other public and private agencies having mutual interests in programs and projects intended to preserve and improve the natural and historic resources of the State. Funds generated by Office activities, including issuing permits, renting park facilities, and using park resources, are State funds to be deposited into Office accounts. However, we found that a total of \$829,000 received from Office activities, such as general park use and permit fees issued for the use of park facilities by outside persons, groups, or businesses, and from the sale of recyclable materials collected by Office staff, was incorrectly deposited into the Trust's accounts, rather than into the appropriate Office account.

#### *Empire-Fulton Ferry State Park*

We identified approximately \$493,000 received at the Office's Empire-Fulton Ferry State Park (EFF) in the New York City Region, which had been deposited into a Trust account but should have been deposited into Office accounts. EFF, which is located in Brooklyn along the East River between the Brooklyn and Manhattan Bridges, provides beautiful views of the lower Manhattan skyline. These funds were received as fees for the use of EFF for weddings, photography shoots, and other events in which the Trust had no involvement.

According to Parks, Recreation, and Historic Preservation Law, the Office has the authority to enter into agreements with not-for-profit corporations to provide for the operation, maintenance or other services for any park, recreational facility, historic site or program. Office management entered into a Revocable Permit with the Brooklyn Bridge Park Conservancy (Conservancy) to function as the Office's event coordinator to promote EFF, attract patrons and issue permits. Under this agreement, the Conservancy remitted all EFF revenues to the Trust. Expenses for events and ferry maintenance were deducted from revenues collected and the remaining net proceeds were shared equally by the Trust and the Conservancy.

While the Conservancy provided services in return for a portion of the fees, we found that the Trust provided no real services for the moneys that it received. These funds were generated from State park (i.e., EFF) activities and should have been deposited into Office accounts. The

Office needs to recover the balance of \$493,000 in EFF monies incorrectly deposited into Trust accounts and better monitor EFF revenues to help ensure future revenues are properly deposited into Office accounts. Trust and Office officials informed us, since the end of our fieldwork, the Office no longer has jurisdiction over EFF and the property is in the process of being transferred to the Brooklyn Bridge Park Development Corporation, a subsidiary of the Empire State Development Corporation, as part of an economic development project.

#### *Permit Fees*

The Office is authorized by law to establish permit fees for the use of State parks. All such fees are required to be paid, pursuant to the State Finance Law, into the Office's State Park Infrastructure Fund, with the exception of certain fees which must be paid into its Patron Services Account. There is no legal authority to pay permit fees to the Trust. However, we identified \$283,000 in permit fees for the use of various parks that was erroneously deposited into the Trust's accounts. Of the \$283,000, \$172,000 had also been identified by the Office's Long Island Region staff, in response to our prior audit (2007-S-80), as funds which were wrongly deposited in Trust accounts. We also found Trust staff had reviewed existing accounts and met with Office staff in several regions to clarify what revenues should be deposited in Trust accounts.

We acknowledge the Long Island Region staff for reacting to our prior audit and identifying the permit fees that were incorrectly deposited into the Trust accounts. We credit the Trust's efforts to identify other erroneously deposited revenues. As a result, the Trust has already transferred about \$750,000 to the State. Office officials in all regions should examine their operations in a similar manner and identify any permit fees that are being wrongly deposited into Trust accounts. They should immediately end this practice and transfer such funds to the appropriate Office accounts.

#### *Recyclable Materials*

We found \$53,000 incorrectly being deposited into the Trust's accounts from the sale of Office recyclable materials (i.e., scrap metal) collected by Office staff at four regions. Trust officials acknowledged that in some instances revenue from recyclable materials, such as scrap metal from park facilities, was mistakenly deposited into Trust accounts. They indicated that this area was discussed as part of their meetings with Office staff to clarify revenue procedures, as well as other revenue sources such as filming proceeds and other special events.

## **Sponsorships**

While the Trust is authorized to raise funds for State parks and may also participate in activities that promote the parks, the Trust and the Office are two separate and distinct entities. For revenues to be considered Trust income, there needs to be some active involvement by the Trust in generating the revenues and deciding how they will be spent. During our review, we found revenues being deposited into Trust accounts for Office-sponsored events and programs. These events were held at individual parks and Office officials coordinated and staffed the events. Such events include races, fishing tournaments, concerts, air shows and firework demonstrations. Included also were programs run by individual parks, such as workshops and tours.

Office and Trust officials stated the Trust acted as a co-sponsor for these events, and for this reason the revenues were deposited into the Trust's accounts. After reviewing the documentation for the events and speaking with Office officials, we found the extent of the Trust's involvement in these events was primarily to process the events' cash receipts and related disbursements. The Trust was not involved in other activities for these events. Trust staff did not create, develop, or organize these events; nor did they actively promote or manage these events. We found the Trust received a total of \$1.8 million in revenues from Office-sponsored programs and events at six of the eight locations we sampled during our audit period.

Processing financial transactions and contracts for Office events does not establish an active sponsorship role. While the Office and the Trust may have similar missions, and the Trust can be used to contribute to and support the Office's mission, they are separate entities whose funds are not interchangeable; nor should they be commingled. When this occurs, it results in circumventing the budgetary and control processes established by the State to ensure the funds will be used for their intended purpose. If the Trust is truly to be a sponsor or cosponsor of events, its involvement needs to be more than processing financial transactions.

In response to our preliminary findings, Trust officials recognized that there is often a lack of clear visibility of the involvement and role of the Trust in certain programs, activities, and events for which the Trust is involved. They further stated that the Trust is aware of this problem and working to better promote and accurately reflect its role in sponsored activities.

## **Bethpage State Park - Black Course Golf Revenues**

The Bethpage State Park (Bethpage), located in the Office's Long Island Region, has five golf courses, the most famous of which is the Black Course. In 2002, the Black Course became the first publicly-owned and operated course to host the U.S. Open. It also hosted the 2009 U.S. Open.



Group golf outings can be booked at any of the Bethpage courses. There is a premium charged for such outings, above and beyond the normal greens fees. Group outings at the Black Course, however, are handled differently. In addition to the regular outing and greens fees that are paid to the Office, the Office requires groups to make a substantial payment (i.e., \$50,000 for a half-day and \$100,000 for a full-day outing) to the Trust.

For the period April 1, 2006 through February 26, 2009, the Trust received a total of \$850,000 from corporate golf outings held on the Black Course at Bethpage. These revenues resulted from the additional required charge for the private use of the Black Course. This charge was characterized by Office officials incorrectly as a donation to the Trust. However, we found the payment was really a fee charged for the exclusive use of the Black Course, not an optional voluntary gift to the Trust. Revenues such as these, generated through the operation of Office facilities, must be deposited into Office accounts.

The Office does enter into other arrangements which permit not-for-profit entities to use Office facilities for fund raising purposes. As a result, we believe the Trust can have the ability to use the Black Course for fundraising activities if it is an active participant for these events (e.g., initiating, organizing and planning the events and budgeting for the use of funds) as part of a formal agreement with the Office. During our audit we found little involvement on the Trust's part to raise funds from the use of the Black Course. In the future, if the Trust and Office come to a formal agreement allowing the Trust to utilize the Black Course for fundraising purposes and the Trust actively conducts fundraising activities, then these funds can be deposited into the Trust's accounts. In addition, the Trust's Board of Directors and the Trust's management will also need to annually budget their intended use of fundraising revenues.

### **Concession Operations**

Gift shops and other concession operations at Office parks and historic sites are generally operated by private vendors under contract with the Office. However, we observed that in certain instances when a private contractor could not be found, a number of concessions were being operated by Office staff with the revenues deposited into Trust accounts. Although the Trust handled most of the nonpersonal service expenses associated with the operation of these shops (e.g., the cost of merchandise), there was no contractual agreement between the Office and the Trust to operate these shops and no effort was made to return any excess revenues to the Office to defray its costs. We estimate the salaries of Office staff who were running the concessions at four of the six Regions we visited to total approximately \$100,000 during our audit period.



Office officials explained that the small concessions and gift shops the Trust was typically involved in were those in which the volume of patrons and sales were low, and that the cashiering duties consumed a negligible amount of Office staff time. However, they acknowledge that some of these operations have grown larger in terms of both sales volume and dedicated staff time than when originally established. Recognizing this to be the case, the Office submitted a bill, and the State Legislature enacted a new law in August 2009 that permits the Office to directly operate these concessions if a private vendor cannot be found and the Commissioner deems it necessary to serve the public's interest. The proceeds realized from these sales are to be deposited into the Office's Patron Services Account. We recommend that the Office review all such arrangements and determine which entity will be responsible for running each concession. Subsequent to our audit, Office and Trust officials informed us that they had entered into a staff-sharing agreement which should facilitate their ability to operate these concessions.

Trust and Office management need to take several actions to create a fiscal environment that differentiates and accurately represents each entity's financial activity:

- Recommendations**
1. Transfer the balance of Empire Fulton Ferry monies into the appropriate Office account and monitor similar future arrangements to help ensure funds are deposited into the proper accounts.
  2. Identify permit fees that have been wrongly deposited into Trust accounts and transfer them to the appropriate Office accounts.
  3. Transfer funds incorrectly deposited into the Trust's accounts from the sale of Office recyclable materials and monitor the sale of such materials to help ensure the resulting revenues are properly deposited into Office accounts.
  4. Implement a formalized fundraising strategy that includes active involvement by the Trust in generating the revenues.
  5. Develop a formal agreement to facilitate the Trust's use of the Black Course, at Bethpage State Park and other Office facilities, for fundraising activities.
  6. The Trust's Board of Directors and Trust's management should develop annual budgets for their intended use of fundraising revenues.
  7. Reimburse the Office for staff costs related to the operation of Trust concessions.

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## Agency Comments



September 7, 2010

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

Dear Mr. Houston,

The Natural Heritage Trust (Trust) and the Office of Parks, Recreation, and Historic Preservation (State Parks) have reviewed the draft audit report 2009-S-11, entitled "Sources of Trust Revenues."

Enclosed please find the Trust and State Parks response to the draft report. Be assured that both the Trust and State Parks are committed to ensuring that all public and private resources are appropriately accounted for. We welcome the independent review of your agency and believe that some of your recommendations will be helpful as the Trust continues to evolve and foster more private investment in the State Parks system.

Thank you for the opportunity to respond to the report. If you have any questions or require any additional information please contact Sarah Purcell, the Trust's Program Manager at (518) 474-2997 or Brian Jackson, State Parks Office of Internal Audit at (518) 473-3390.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Roth".

Alexander J. Roth  
Executive Director, Trust

A handwritten signature in black ink, appearing to read "P. Finn".

Peter C. Finn  
Deputy Commissioner for  
Finance and Administration, State Parks

Enclosure

cc: Commissioner Ash  
Tom Lukacs, Division of the Budget  
Andy Beers  
Trust Audit Committee

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**Natural Heritage Trust and  
New York State Office of Parks, Recreation, and Historic Preservation  
Response to Office of the State Comptroller Audit Report  
Sources of Trust Revenues  
2009-S-11**

The Natural Heritage Trust (Trust) is a public benefit corporation of the state as set forth in Article 55 of the Arts and Cultural Affairs (ACA) law. The Trust also has been designated a 501(c)(3) charitable organization by the Internal Revenue Service. This allows the Trust to accept tax-deductible donations to support a wide variety of parks, recreation, cultural, land and water conservation and historic preservation purposes. The Legislature created the Trust for the purpose of establishing an entity which could accept private donations and utilize those funds for public purposes. As enabled by law, the Trust can sponsor programs and fundraise for the benefit of projects statewide, to raise private dollars in support of its agency partners. Moreover, in addition to providing private donors with the tax benefits that go along with contributing to 501(c)(3) charity, the Trust can ensure to those donors that funds raised for a specific purpose are expended per the donor's intentions (something a state agency cannot guarantee).

**General Comments**

The Trust takes pride in the fact that within the auditor's scope period it has been custodian to over \$35 million in funds which have advanced numerous parks, conservation and historic preservation projects, as well as recreational opportunities throughout New York State. The majority of these funds represent contributions derived from a combination of private individuals, charitable foundations, Community and Friends Groups, local businesses and multinational corporations.

There are also instances where the Trust functions in capacities which complement its agency partners' respective missions in ways other than receiving and administering gifts. Selected sections of ACA law applicable to this audit and role and function of the Trust include 55.07 (5) which authorizes the Trust's agency partners to request the assistance of the Trust in managing and improving agency resources, including real and personal property and 55.07 (9) which authorizes the Trust to work cooperatively with other entities having similar, mission-compatible interests and purposes.

Although the Trust and State Parks appreciate the auditor's efforts to understand the relationship between the Trust and its agency partners some of the described conditions in the draft audit report do not recognize accurately the powers afforded to the Trust by statute, or are incomplete and misleading to the reader. Further, the Trust and State Parks memorialized its working relationship in a Cooperative Agreement, which was approved by the Office of the State Comptroller on September 29, 2009. The Cooperative Agreement memorializes duties and obligations of the Trust and State Parks regarding the sharing of personal and non-personal services, third party contracting, and revenues. The

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<b>Comment</b>
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\* See State Comptroller's Comments, page 27.

Cooperative Agreement is just one example of how both the Trust and State Parks have worked proactively to organize and restructure current and future processes.

Both the Trust and State Parks take exception to the claim that \$3.5 million was incorrectly deposited in the Trust. Although the auditors make some valid points regarding the way some funds were collected, the audit findings do not lead to this conclusion.

#### Comments on Described Conditions

The following are comments regarding the portions of the report where the Trust and State Parks feel the need to clarify the described conditions, findings and recommendations, or differ in opinion with that of OSC.

#### Empire Fulton Ferry State Park

The objective of this partnership was to ensure that the funds generated by the not-for-profit managing Empire Fulton Ferry (the Conservancy) would contribute specifically to the betterment of the site and its patrons.

The auditor's characterization of the arrangement between the Trust, State Parks and the Conservancy is incomplete. The Conservancy (not State Parks or the Trust) provided the staffing resources to administer events booked by the Conservancy. The net-proceeds available after paying the expenses associated with the private events (the events for which permits were issued to the third parties through the auspices of the Conservancy, something with which the auditors take exception) were split between the Conservancy and the Trust. However, these funds were not used in an unrestricted manner as the draft report suggests.

Again, the objective of this partnership was to ensure that the funds raised as a result of the operation of EFF would be used at that specific park. The Conservancy used its portion of the funds to provide free programming at EFF to the general public. Examples include "Movies With a View" which allowed the public to gather at the park to watch theatre-size films outdoors and environmental education programs for urban youth. The funds that remained in the Trust (with the endorsement of State Parks) also supported programming costs as well as building and site repairs at EFF which otherwise would not have occurred. Without the involvement of the Trust, there would have been no programming at EFF during this time period and funds would not have been raised for the betterment of the site. The Conservancy would not have allowed the State to hold the funds as the State would not have been able to restrict the funds and guarantee the use of funds for EFF. Likewise, State Parks was unwilling to allow the Conservancy to hold 100 percent of the funds and lose all control over program expenditures.

\*  
**Comment**  
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\* See State Comptroller's Comments, page 27.

The mechanism – the Special Permit- to the Conservancy with the State Parks and the Trust as the public partners allowed the Conservancy to appropriately budget for its annual expenses and programming needs and know that funds would be available for the required upfront costs for the following year. These actions were appropriate and allowed for under State Parks and the Trust's respective statutes. Further, State Parks and the Trust were successful in identifying an outside source to support the operations of the park—thereby saving General Fund and tax payer dollars, while also providing free programming to the public.

Actual revenues from the auditor's scope period (4/1/2006-2/26/2009) were \$448,153, not \$493,000 as stated in the draft report. Associated expenses in that same time period were \$396,347. As the draft report states, State Parks transferred jurisdiction of EFF to the Brooklyn Bridge Park Development Corporation in furtherance of Governor Patterson's initiative to consolidate management of the Brooklyn Bridge Park, the 1.3 mile waterfront park being developed along the Brooklyn waterfront from the Manhattan Bridge to Atlantic Avenue. The EFF account maintained by the Trust for EFF has been closed. Funds disbursed by the Trust have been expended on appropriate projects.

\*  
**Comment**  
3

#### Permit Fees:

This matter has been thoroughly addressed as a result of audit 2007-S-80. State Parks has issued guidance to the regions (Finance Bulletin 423-BA-08) which clarified the disposition of permit and other revenues of State Parks and the Trust. The narrative in the draft report should further note that the vast majority of those funds came to the Trust under a written directive of a prior Commissioner.

#### Sponsorship

The Trust assists State Parks by facilitating private sponsorship opportunities for fundraisers, programs, projects, and events. In regards to the narrative in the draft report, there are two distinctions that need to be made. First, to the extent that an activity is taking place in a park, facility, historic site, etc., State Parks and/or the Trust are providing a benefit to the public and considered co-sponsors. Second, it is the private sponsors that pledge support in the form of cash and in-kind goods and services. Typical private sponsors include community and Friends Groups, local businesses and large corporations.

As the draft report states in its Introduction and Background, "Since there is no 'earmarking' of funds in the PSA or SPIF based on where revenue is generated, fees collected in a particular park or park region do not have to be spent where the revenues are generated." State Parks cannot in good faith collect funds from private groups or entities that wish to sponsor and/or participate in given program, event or activity and ensure those funds will be put towards the particular program of interest to the sponsor

\* See State Comptroller's Comments, page 27.

and the participants. On the other hand, the Trust, by its very nature can ensure that the funds will be used for the purposes for which they are received. If a given region were to take funds from a local sponsor to support a specific local program and those funds were swept into the General Fund, further opportunities for public-private partnerships would decline severely if not disappear altogether. If the sponsorship funds were not dedicated to specific parks and activities, the events and activities would not occur and the public would be denied access to programming even though there is dedicated private support. Classifying these funds as "potential revenues of the state" as the draft report suggests is absolutely inaccurate and misleading.

It should be further noted that the types of programming referenced in the draft report are above and beyond that of typical park use or services. Patrons visiting a park, facility, or historic site that want to attend a program, participate in a project or special event sponsored or co-sponsored by State Parks, the Trust, a Friends Group or other community group must pay any vehicle use or other applicable fee. These programs serve as a catalyst to promote State Parks and historic sites by engaging the public in stewardship, outdoor recreation and education, and preservation. By not offering these programs, it is clear that some if not all of these additional revenues would be lost to State Parks.

\*  
**Comment**  
**4**

The draft report is critical of the Trust's role in sponsored programs. While it is accurate the Trust functions to process the receipts and associated disbursements, the Trust also prepares contracts and requests for proposals, provides legal services and assists in the marketing and promotion of certain programs, events and activities. The draft audit makes a number of statements about how the Trust should function, which are based completely on opinion, not in fact or legal citation. The actions of the Trust and State Parks are both appropriate and allowed for under each entity's respective statutes and further memorialized in the Cooperative Agreement approved by the State Comptroller.

#### Golf Outing Fundraisers

The Black Course represents a unique fundraising opportunity for the Trust and State Parks to raise funds in support of public golf. As the site of the 2002 and 2009 United States Open Championship, the Black Course occupies a privileged status in the world of professional golf. It is this special status and unique opportunity that State Parks and the Trust utilize to raise voluntary donations in support of public golf statewide.

The draft audit continually suggests that the contributions made to the Trust as part of the fundraisers held at the Black Course are fees. The donation made by the third party is not a fee. Legally, a permit fee imposed by a governmental entity must bear some relation to the cost of processing the permit and the cost of administering the service for which the permit is required. For example, a building permit fee may be based on the cost of processing the fee and the costs incurred by the municipality's inspectors to inspect the building for which the fee was required. Similarly, the Parks, Recreation and Historic Preservation Law (PRHPL) specifically authorizes State Parks to charge and receive fees for "the use" of facilities. State Parks is not authorized in statute to charge fees over and

\* See State Comptroller's Comments, page 27.



above that established for the use of a given facility. State Parks has an established greens fee for the use of the Black Course. Further, State Parks is not specifically authorized by law (neither PRHPL nor State Finance Law) to accept donations from private individuals, entities, or organizations. The Trust is the statutory mechanism created by the legislature for this purpose.

The donation made by the third party in the context of an outing on the Black Course is not related at all to the cost of processing the permit or the cost of administering the service, i.e., the outing on the Black Course. The greens fees, caterer's fees and professional shop fees – all the costs that a golfer would otherwise incur at a visit to the golf course – are paid by the third party directly to State Parks and appropriate vendor(s). The donation is above and beyond all regular fees charged by State Parks is completely unrelated to any costs incurred by State Parks, the Trust or any vendor in undertaking the outing.

OSC states that the donation is required and not voluntary. This is correct, as the donation is voluntary to the extent that participant chooses to attend. Charitable organizations routinely host events in which the price is stated up front. A corporation wouldn't for example attend a fundraising dinner where there was a pre-established plate or table cost and only pay the amount they feel like paying. Such an action would be ludicrous and unheard of in the fundraising world. The \$100,000 donation is akin to that portion of the ticket price for a charitable fundraiser (such as a golf outing) over and above the cost of the food and beverage served. While the amount representing the cost of the food and beverage is not deductible as a charitable donation, the portion of the ticket price over and above that amount is. Similarly, the donation, which is not related to any cost of the Black Course outing, is deductible as a charitable donation; the costs of the greens fee, food, beverage and pro shop amenities are not. If this donation were payable as a fee to Parks, the tax deductibility would be in jeopardy and the funds lost.

The Trust and State Parks thank you again for the opportunity to comment on this report. This response was also shared with the Trust's Audit Committee which, among its other responsibilities, is tasked with providing oversight to the Trust's audit processes and all matters related to financial practices of the Trust.

**Response to Recommendations:**

1. Transfer the balance of Empire Fulton Ferry monies into the appropriate Office account and monitor similar future arrangements to help ensure funds are deposited into the proper accounts.

*Response: State Parks no longer has jurisdiction over EFF. The applicable account maintained by the Trust has been closed. Funds disbursed by the Trust have been expended on appropriate projects.*

2. Identify permit fees that have been wrongly deposited into Trust accounts and transfer them to the appropriate Office accounts.

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**Comment**  
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\* See State Comptroller's Comments, page 27.



*Response: Agree. This matter has been thoroughly addressed as a result of audit 2007-S-80. State Parks has issued guidance to the regions (Finance Bulletin 423-BA-08) which clarified the disposition of permit and other revenues of State Parks and the Trust. State Parks and the Trust did a Trust revenue review in 2008. As a result, the Trust remitted \$836,304 to State Parks in 2008.*

3. Transfer funds incorrectly deposited into the Trust's accounts from the sale of Office recyclable materials and monitor the sale of such materials to help ensure the resulting revenues are properly deposited into Office accounts.

*Response: State Parks has discontinued the practice of depositing proceeds from the sale of recycled materials to the Trust. As part of the revenue review referenced in recommendation 2 above, the Trust and State Parks considered recyclable materials. It should be noted that the entire amount stated within the draft report was not from scrap metal. A sizeable portion was from patron-generated recyclables such as returnable bottles and cans, which are not state property. Given that some of these funds were from over four years ago and expenses greater than or equal to the stated amount were already expended in that time period, the Trust and State Parks determined that no additional transfer of funds was necessary.*

4. Implement a formalized fundraising strategy that includes active involvement by the Trust in generating the revenues.

*Response: Partially Agree. The Trust and State Parks have been working to identify "needs sheets" for capital projects. It should be noted that fundraising prospects and opportunities at parks and historic sites vary greatly, as each park and site is uniquely different – a one-size-fits-all strategy does not work.*

*With regards to fundraising campaigns, there are a number of considerations that must be taken into account. Among others, some considerations include existence of and activity of Friends Groups, local community interest, Regional Commission support and overall situational awareness. Capital projects are greatly underfunded given the current fiscal climate and the Trust and State Parks are exploring ways to enhance fundraising efforts. While the Trust agrees that it needs to be more visible in fundraising activities, OSC also needs to be mindful that donors are interested in supporting the park or historic site of their choice, not the Trust in general.*

5. Develop a formal agreement to facilitate the Trust's use of the Black Course, at Bethpage State Park and other Office facilities, for fundraising activities.

*Response: Agree. The Trust and State Parks have a formal process for how the Black Course fundraisers are conducted. State Parks and the Trust will continue to examine the usefulness of implementing similar processes for other fundraisers, given that the Cooperative Agreement is in place.*

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Comment  
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\* See State Comptroller's Comments, page 27.

6. The Trust's Board of Directors and Trust's management should develop annual budgets for their intended use of fundraising revenues.

*Response: Partially Agree. The Trust's Board of Directors annually approves the budget applicable to administrative revenue and associated expenses. While we agree that budgets for fundraising would be a helpful tool, the reality is this task would be far more complicated to implement.*

*According to Public Authorities Law, the Trust must prepare its budget for public review and comment at least 90 days in advance of its (April 1) fiscal year. The Trust is custodian of funds for approximately 200 different purposes. Some of the project funds held by the Trust remain in trust, sometimes for several years before work begins. This is because the additional funds needed to advance the project must come from the agency and/or other entities. Because the Trust's budget is due before the Executive Budget is released and an Enacted Budget is in place, there are too many uncertainties and factors for consideration for which Trust has no direct control. However, the Trust is working with State Parks to improve and coordinate the development of spending plans, where appropriate and feasible.*

7. Reimburse the Office for staff costs related to the operation of Trust concessions.

*Response: The Trust's involvement in concessions is not a revenue raiser for the Trust. State Parks and the Trust provide this service only for the public good. Indeed, if the concession was profitable, a private party would run the operation. Moreover, the Trust does not quantify its staff time used for payment processing, accounting, sales tax reporting and other filings, and nor does the Trust attempt to bill such costs to State Parks. After merchandise and insurance costs associated with operating the concessions are paid, there are little to no residual funds left over. The funds that are left over have typically been used for the restocking costs for the following year. As the draft audit suggests, the Cooperative Agreement will help to facilitate similar future arrangements as the need arises.*

*In 2009, the Legislature granted State Parks the ability to engage in retail sales at the parks, which would allow the Trust to discontinue providing the service, consistent with the Comptroller's draft audit. However, the agency has not been provided the necessary budget authority (in the form of increased appropriations and spending authority) to be able to effect this desired change.*

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**Comment**  
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\* See State Comptroller's Comments, page 28.

## State Comptroller's Comments

1. The Cooperative Agreement took effect on September 29, 2009 and did not affect the transactions for the audit's scope period of April 1, 2006 through September 9, 2009. Although the Agreement memorializes the relationship between the Office and the Trust so that duties and obligations of each are more clearly defined, it does not empower either party to deposit what would normally be State revenue into Trust accounts.
2. We do not question the intent of the arrangement with the Conservancy, only the mechanism by which it was done and its ultimate affect of circumventing the State Finance Law and budget process. The fact is that these revenues were generated from the same type of activities (e.g., weddings, photography shoots, etc.) for which the Office collects State revenues at other parks. Had the Office contracted directly with the Conservancy to manage these operations, as it does for various other facilities across the state, its share of the proceeds would have been still been deposited in State accounts subject to appropriation.
3. Accounting records provided by the Trust during the course of our audit evidenced almost \$493,000 deposited in the EFF Trust accounts.
4. We recognize the Trust's role in facilitating private sponsorship for activities and events in State parks. However, the response does not address the essence of the audit finding, which is that if the Trust is truly to be a sponsor or cosponsor of events, its involvement needs to be more than a depository for the Office. In a prior response to these matters, Trust officials recognized that there is often a lack of clear visibility of the involvement and role of the Trust in certain programs, activities, and events for which the Trust is involved. They further stated that the Trust was aware of this problem and working to better promote and accurately reflect its role in sponsored activities.
5. Once again, we do not question propriety of capitalizing on the stature of the Black Course to raise funds, only the mechanism by which it is being done. If the \$100,000 fee truly represents a donation to the Trust, it should be accounted for as Trust revenue and disbursed subject to approval by its Board. Instead, these funds are held in accounts that the Trust classifies as the property of the Office and are disbursed at the direction of State employees.
6. Contrary to the response, the Trust and the Office do not have a formal process governing the use of the Black Course for fundraising activities, and this issue is not addressed in the Cooperative Agreement. Absent such a formal arrangement making these facilities available to the Trust for fundraising activities, and proper accounting and management of the resulting income as Trust revenues, the current arrangement violates the State Finance Law and circumvents the Legislature's authority under the State budget process. As such, the Trust should clearly not implement similar arrangements for other activities.

7. The timing of the State budget should not affect the Trust's ability to estimate its anticipated fundraising revenues, or the ability of its Board to allocate funds in support of specific projects and initiatives. The Trust's budget currently addresses only its administrative revenue and expenses because it does not consider funds deposited in its custodial accounts to be Trust revenues. Instead, these funds are accounted for as the property of an outside organization (e.g., the Office) and are used at the discretion of State employees. If the Trust wishes to maintain (as it has throughout its response) that these funds are really the proceeds of its fundraising activities, then they need to be accounted for as such and subject to the Trust's management and budgetary control. Conversely, if these revenues are not the property of the Trust subject to its direct control, then they must be State funds, which need to be deposited into State accounts and subject to Legislative appropriation.