



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – July 17, 2013

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## Department of Conservation and Recreation Long-Term Permit and Lease and Employee Housing Programs

For the period July 1, 2010 through June 30, 2011



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## INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Department of Conservation and Recreation (DCR) was created by Chapter 41, Section 1 of the Acts of 2003 as a state agency within the Executive Office of Energy and Environmental Affairs (EEA), responsible for the administration and oversight of state parks, forests, reservations, and recreational facilities (e.g., skating rinks, swimming pools, bike trails). As stated on its website, DCR's mission is "to protect, promote and enhance our common wealth of natural, cultural and recreational resources." For fiscal year 2011, DCR reported that it collected approximately \$13.5 million in general fund revenues for the Commonwealth through fees and other charges for use of these public resources.

During fiscal year 2012, DCR requested that the Office of the State Auditor (OSA) conduct an audit of its Long-Term Permit and Lease (P&L) Unit programs after becoming aware of flaws in the unit's ability to effectively administer and oversee certain leases, permits, and other agreements. These flaws included fees going uncollected and agreement expiration dates being ignored, both resulting in lost revenue to the Commonwealth. DCR attributed these flaws to restructuring issues associated with the 2003 merger of the Metropolitan District Commission and the Department of Environmental Management that resulted in the creation of DCR, coupled with ongoing resource constraints since that time. In response to DCR's request, OSA initiated an audit of DCR that included a review of both DCR's P&L Unit programs and a separately managed Employee Housing program for which we also identified similar issues.

While we believe the evidence obtained by our audit provides a reasonable basis for our findings and conclusions, as described in our report, uncertainties expressed by DCR management regarding the potential unreliability of data in DCR's P&L Unit's list of use agreements create a risk that not all use arrangements have been identified and included in our audit testing. As a result, our audit was not able to fully identify the extent of unpaid fees in instances where documentation was missing.

### ***Highlight of Audit Findings***

- Because of an inadequate billing and receivable system and a lack of written policies, procedures, and necessary internal controls from 2005 to 2011, as of June 30, 2011 DCR was not collecting delinquent use agreement fees owed the Commonwealth by various users such as concessionaires, skating rink operators, utilities and tower users, boat and yacht clubs, and other public and private entities using DCR properties and facilities.

- DCR has not included late-payment-penalty and interest provisions in all P&L use agreements, has not enforced such provisions in use agreements where they have been added, and has not established regulatory provisions that the Office of the State Comptroller (OSC) requires as a precondition to collection of late-payment penalties.
- Fair user fee rates have often not been established; this has resulted in potential lost revenue. Specifically:
  - DCR has not complied with Executive Office for Administration and Finance regulations applicable to rental fee rates for providing housing to employees.
  - DCR has not updated fee rates established as far back as 1923 for utility providers.
  - As of June 30, 2011, the Division of Capital Asset Management and Maintenance (DCAMM) and DCR had not developed and finalized a methodology for setting fair user fees for boat and yacht clubs in a timely manner as required by Chapter 65 of the Acts of 2010.
- Twenty-five of 127 (20%) DCR properties/facilities tested continued to be occupied and used after use agreements had expired.
- Twenty of 127 (16%) DCR properties/facilities tested were occupied and used for one to five years even though no use agreement had been executed.
- DCR did not ensure that required liability insurance coverage was obtained and documented for 67 of 115 (58%) use agreements tested that called for user liability insurance coverage.
- DCR did not always conduct and document property inspections during fiscal year 2011 for its cottage and skating rink programs. This was contrary to DCR's undocumented policies applicable to skating rinks and to one of DCR's three cottage locations. We also found that DCR's inspection policy under certain use agreements, such as those for boat and yacht clubs, was inadequate in that it allows, but does not require, property inspections by DCR. As a result, noncompliance with use agreement terms, or other unauthorized use of certain DCR property, may remain undetected.

### ***Recommendations of the State Auditor***

We recommend that DCR:

- Develop written policies and procedures to ensure that (1) user fees due the Commonwealth are being properly and accurately billed and paid and that all delinquent user fees are being promptly identified and resolved; (2) fair use fees are charged and collected from utility providers; (3) use agreements for all of DCR's properties are properly executed and renewed in a timely manner and exceptional situations such as the retroactive extension of certain boat and yacht club agreements are processed with OSC and any other relevant oversight agencies; (4) all required Certificates of Insurance are on file and meet with use agreement requirements; and (5) all required inspections are completed.

- Follow up on and resolve all past unpaid fees identified during the audit and conduct a physical inventory of all DCR properties and facilities covered by the P&L Unit and Employee Housing programs and reconcile the physical inventory to existing executed use agreements so that discrepancies such as missing or expired agreements can be resolved and a central register of all use agreements can be created. The physical inventory should be repeated periodically so that any differences between the inventory and register can be researched and resolved.
- Develop a comprehensive register that tracks all pending and completed P&L Unit and Employee Housing program agreements, including their expiration dates. The register should be updated regularly to reflect all pending awards, newly executed agreements, and terminated agreements. Furthermore, the register should be used as a control to identify expiring agreements and ensure that a current agreement exists for all DCR properties/facilities used by third parties and DCR employees in compliance with DCR policy.
- Strengthen controls over all executed use agreements in conjunction with the recommended register. The register should be shared with DCR's Revenue Unit to ensure that all fees are billed through the Commonwealth's Billing and Accounts Receivable System or appropriate alternative mechanisms such as payroll deductions applicable to Employee Housing agreements; that a corresponding receivable account is established in the Massachusetts Management Accounting and Reporting System for all fees stipulated in use agreements; and that all unpaid fees are identified and properly resolved by payment, debt collection, or write-off on a timely basis. In conjunction with that register, information should be tracked on agreements subject to insurance certificate documentation and property inspections so that documentation is secured in a timely manner and inspections are scheduled and performed as required by DCR policy.
- Where applicable, consider including language in future or renewed high-ground use agreements that requires third-party users to pay fees directly to DCR rather than indirectly through the high-ground permittee.
- Include provisions for late payment charges in departmental regulations and agreements and institute the necessary policies and procedures and related internal controls to ensure that late payment charges are enforced, properly calculated, and billed.
- Obtain independent appraisals every five years to determine the fair-market-based rental fees that should be charged for employee housing. In addition, DCR should adjust housing rental fees every year between appraisals based on applicable consumer price indexes.
- Conduct a comprehensive review of DCR utility provider records to ensure that they are complete and up to date and perform an assessment to determine fair user fees that should be included in new, updated agreements for all utility providers.
- Ensure, in conjunction with DCAMM, that a methodology for developing fair user fees for all boat and yacht clubs is developed and implemented for new agreements.

- Ensure that all housing agreements are current and signed by the Secretary of EEA.
- Ensure that all required property inspections are conducted.
- Perform a risk assessment to determine the extent to which inspections should be performed for all program categories and, based on that assessment, implement appropriate formal written inspection policies and procedures.

***Agency Progress***

During our audit, DCR management collected \$198,111 of the \$366,863 in outstanding fees identified by our audit. Collection efforts are ongoing for the remaining \$168,752. Further, DCR reported that, as a result of OSA's audit, P&L Unit staff has begun consolidating and reorganizing the unit's filing systems and started several important initiatives, including drafting updated policies and procedures; creating a Finance Transmittal Sheet to better track payments and documents shared with the DCR Revenue Unit; and meeting regularly with DCR Revenue, Legal, and Operations staff. DCR staff has also highlighted several key challenges that it is working to address, the most significant being the lack of a proper database to register and track all aspects of use agreements under the program's control. Further, DCR officials told us that provisions in the state's fiscal year 2013 budget will specifically allow DCR to increase the amount of staff and resources directed to the P&L Unit. DCR is anticipating several additional benefits from the increased resources, including the ability to increase oversight of its use agreements. DCR also reports that, together with DCAMM, it has now completed development of a fee-setting methodology for boat and yacht club agreements and that that methodology is currently undergoing a required approval review by the Commonwealth's Office of the Inspector General.

## OVERVIEW OF AUDITED AGENCY

The Department of Conservation and Recreation (DCR) was created in 2003 when its two predecessor agencies, the Metropolitan District Commission (MDC) and the Department of Environmental Management (DEM), were merged by Chapter 41, Section 1, of the Acts of 2003 to form a single agency. Both the MDC and the DEM had previously been responsible for entering into use agreements for various properties, such as park and reservation concession stands, skating rinks, boat clubs, cottages, and utility towers, under their jurisdiction. Currently, the Long-Term Permit and Lease (P&L) Unit staff within DCR's Office of the General Counsel is responsible for the administration and oversight of the P&L Unit's programs for these properties, including ensuring that all use agreements are properly executed in a timely manner and in compliance with applicable laws, rules, and regulations. DCR's Division of State Parks is responsible for the administration and oversight of the Employee Housing program, which provides housing to 13 DCR employees at 13 different state parks. The DCR Revenue Unit (within DCR's Administration and Finance Department) is responsible for the billing, collection, and recording of all P&L Unit fees and the collection and recording of Employee Housing Program fees. A complete list of the use type program categories and types of legal agreements established by DCR for use of these properties appears in Appendix I.

For fiscal year 2011, DCR reported approximately \$13.5 million in general fund revenues for the Commonwealth through fees and other charges for use of DCR property and facilities. These revenues are from various sources, including approximately \$2.8 million in fees associated with DCR's P&L Unit programs, as well as revenues of approximately \$75,130 from the DCR Employee Housing Program. These programs were subject to our audit. Although not included in our audit, other DCR general fund revenues include payments associated with DCR-operated skating rinks and charges for parking and entrance fees at DCR state reservations.<sup>1</sup>

DCR provided the following background information regarding its decision to request the audit:

- In the opinion of current DCR managers, the decision to create the consolidated P&L Unit was not accompanied by a thoughtful process merging inconsistent MDC and DEM policies

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<sup>1</sup> In addition to these general fund revenues, DCR receives a variety of federal grant revenues such as those used to support DCR efforts to eradicate the Asian Longhorned Beetle, as well as trust fund revenues such as water supply protection reimbursements received from the Massachusetts Water Resources Authority. Such non-general-fund revenues were not included in our audit.

and procedures and create an organizational structure with clarity on how responsibilities would be performed. Existing arrangements were often simply carried forward under the consolidated DCR.

- Administrative complexity was exacerbated by a gradual loss of institutional knowledge. Over the past several years, the number of program staff personnel has decreased significantly from the total of 13 staff members responsible for managing use arrangements at the time of the 2003 merger. By 2009, P&L Unit staff included just one program manager and one paralegal. These two staff members, with the help of the Deputy General Counsel, are responsible for all aspects of the administration and oversight of the unit's programs.

In DCR's opinion, these factors rendered the P&L Unit unable to effectively administer and oversee certain leases, permits, and other agreements. This resulted in fees going uncollected and agreement expiration dates being ignored, both resulting in lost revenue to the Commonwealth. In response to DCR's request, the Office of the State Auditor initiated an audit of DCR, which included a review of both DCR's P&L Unit programs and a separately managed Employee Housing Program for which similar concerns were also identified. Given current staffing levels, DCR's goal for the P&L Unit going forward is twofold: to continue issuance and administration of current-year permits and to improve financial and reporting compliance systems for current and future permits and leases. Status assessment of past permits and leases, in coordination with the Revenue Unit, will allow staff to reduce its backlog and improve overall performance.



## AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In the fall of 2011, the Department of Conservation and Recreation (DCR) contacted the Office of the State Auditor (OSA) and requested that OSA conduct an audit of its Long-Term Permit and Lease (P&L) Unit. DCR made this request based on concerns it had over this unit's fees going uncollected and agreement expiration dates being ignored. The Commonwealth lost potential revenue as a result of both issues. In response to this request, in accordance with Chapter 11, Section 12, of the Massachusetts General Laws, OSA conducted a performance audit of DCR for the period July 1, 2010 through June 30, 2011. Although the majority of our audit work was limited to our established audit period, during our review of the unpaid fees in DCR's P&L Unit we found that this problem existed as far back as fiscal year 2005, and it was therefore necessary to conduct audit testing outside our established audit period in order to obtain a full understanding of the fees that have remained uncollected. Further, initial documentation review and discussions with DCR managers indicated that similar concerns existed for a separately managed DCR Division of State Parks Employee Housing Program through which certain DCR employees rent housing in homes located on DCR property. The scope of our audit was therefore expanded to include the Employee Housing Program.

We conducted this 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.

Our objectives were to determine whether DCR has:

- Established adequate internal controls to ensure that all potential fees for the P&L Unit and Employee Housing program agreements are accurately billed, collected, and recorded and that unpaid fees are identified and properly resolved on a timely basis, in compliance with the agreements and applicable state laws, regulations, and policies.
- Established adequate internal controls to ensure that all agreements for the P&L Unit and Employee Housing programs for the use of DCR property by third parties and DCR employees are properly executed on a timely basis in compliance with applicable laws, regulations, and policies.

- Established adequate internal controls to ensure compliance with liability insurance and property maintenance provisions established in its use agreements.

In order to meet our objectives, for the areas reviewed, we assessed DCR's internal controls; interviewed DCR management and other staff to obtain an understanding of the P&L Unit and Employee Housing programs; and reviewed applicable laws, regulations, and policies applicable to these programs. DCR management provided us with a list of the P&L Unit program agreements (10 program categories) and a current list of the Employee Housing program agreements. However, unlike the Employee Housing list, which was complete and current, we were advised by DCR management that the P&L Unit list had not been updated since it was prepared in October 2010 (with the exception of the High Ground [Telecommunication Towers] category).

We reviewed all 11 program categories to determine whether fees were included in the agreements. Our review identified nine program categories to be included in our testing based on the fact that some, if not all, of the agreements in each category included a fee. The two excluded program categories that do not include a fee are DCR-operated skating rinks (eight) and Friends and Partnership Agreements with organizations dedicated to supporting specific DCR properties through volunteer work, fundraising, programs and events, and advocacy (12).

For purposes of our audit, due to the data reliability uncertainties identified by DCR management, including the unreliability of its P&L Unit agreement list, our review was limited to DCR supporting documentation maintained for all agreements included on the lists provided by DCR for the nine tested program categories. For this reason, a risk exists that there may be some agreements that are not included in the list and hence not included in our sampling and substantive testing. Our review consisted of determining:

- The status of each agreement as of June 30, 2011 (i.e., active versus expired/terminated).
- The fee provisions for each agreement.
- The liability insurance and property maintenance provisions for each agreement.

With assistance from DCR staff, we removed all inactive agreements from our population of agreements. The following represents the revised summary of agreements, by program, and fees due DCR in fiscal year 2011 based on available supporting agreement documentation:

Program	Number of Agreements	Number of Fee-Paying Agreements	Total Fees Due in Fiscal Year 2011
Boat and Yacht Club	28	28	\$ 232,001
Concession	79	79	552,399
Cottage	173	173	500,460
High Ground	76	31	927,716
Legislatively Authorized Lease	54	11	323,268
Memorandums of Understanding	64	5	33,278
Skating Rinks	34	16	145,520
Utility Provider	16	16	9,918
Employee Housing	<u>13</u>	<u>12</u>	<u>75,129</u>
Total	<u>537</u>	<u>371</u>	<u>\$2,799,689</u>

In order to verify compliance with use agreement requirements, we selected a judgmental sample of 127 of the 537 agreements (24%) using the data included on the DCR lists provided to us at the beginning of the audit. The factors used to identify our sample included whether the agreements were fee-paying or non-fee-paying agreements (104 of the 127 were fee-paying as of June 30, 2011), the amount of the fees, and whether the agreements were expired or unexpired. We reviewed the agreement files and fee-payment histories to determine whether fees due in fiscal year 2011 were accurately paid, agreements were properly executed, and other agreement requirements were met. For the remaining fee-paying agreements (totaling 267), we reviewed the fee payment history to determine whether fees due in fiscal year 2011 were accurately paid.

Although our audit procedures were designed to obtain reasonable assurance that our audit objectives pertaining to DCR lease agreement compliance, management control, and transaction identification and documentation would be met, the extensive control environment, documentation, and potential data reliability limitations identified in this report's Audit Findings section limited our ability to obtain reasonable assurance that DCR had otherwise maintained adequate management control and complied with applicable laws, rules, and regulations for the areas tested. Although we believe that the evidence obtained by our audit testing and analysis provides a reasonable basis for our overall findings and conclusions, evidence was not always sufficient to formulate conclusions on other matters pertaining to our audit objectives, such as fully identifying the extent of potential unpaid fees in instances where documentation was missing.

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## AUDIT FINDINGS

### 1. INADEQUATE INTERNAL CONTROLS OVER THE BILLING AND COLLECTION OF USER FEES, RESULTING IN UNPAID FEES, INADEQUATE LATE-PAYMENT PENALTIES, AND QUESTIONABLY LOW FEE PROVISIONS

Our audit found that the Department of Conservation and Recreation (DCR) had not established adequate internal controls for the processing of use fees and late payment penalties on use agreements in its Long-Term Permit and Lease (P&L) Unit and Employee Housing programs. Also, DCR has not established written policies, procedures, and regulations relating to billing and fee collection, use of late-payment penalties, and policies on how to request write-offs of fees it has deemed to be uncollectible, and DCR does not maintain an accurate register all of its use agreements. In addition, DCR's billing and accounts receivable system does not ensure that a bill is issued for all use fees owed. Moreover, DCR was not aware, and has not made use, of available standard aged accounts receivable reports in the state accounting system that can be used to monitor the timeliness of payments and identify unpaid fees that should be referred for debt collection. Because of these control deficiencies, DCR was often unaware of unpaid use fees and did not diligently pursue use-fee collections or routinely refer overdue fees for debt collection as required by the Office of the State Comptroller (OSC). Also, in some instances use fees have been set below amounts required by regulation or set at rates not consistent with fair-market-based pricing principles, whereas certain other use fees have not been updated for extended multiyear periods. For these reasons, we found numerous instances in which use fees had not been paid, late payment penalties had not been imposed, or the fees established for certain users appeared to be questionably low, resulting in lost revenue to the Commonwealth and potential inappropriate benefit to private parties using DCR property. As described in the Overview of Audited Agency section of this report, DCR managers attributed the internal control deficiencies and resulting lost revenues identified by our audit to longstanding organizational restructuring and resource issues.

#### a. Use Agreement Fees Are Not Being Effectively Administered, Resulting in Unpaid Fees

DCR's administration of use agreement fees does not comply with OSC regulations and policy requirements. Specifically, the Massachusetts Management Accounting and Reporting System (MMARS), the state's accounting system, includes a subsystem known as the Billing and Accounts Receivable System (BARS) used for billing, recording, and managing the collection of revenue, including fees collected by state agencies such as DCR. OSC regulation 815 Code of

Massachusetts Regulations (CMR) 9.05(2)(c) requires that departments such as DCR issue bills to all debtors. Section 9.05(1) of this regulation states, in part:

*Departments shall maintain detailed records for all accounts receivables, debts and other legislatively authorized<sup>2</sup> charges for goods or services.*

And:

*Departments are responsible for making diligent efforts to collect legislatively authorized accounts receivable and debts due the State.*

OSC's Receivable Recognition and Reconciliation Policy, which supplements this regulation, requires that all earned revenue/accounts receivables activity must be recorded in MMARS at least on a summary basis and that departments record detailed transaction-level information in either MMARS or alternative departmental billing and accounts receivable systems that have been approved by OSC.

OSC's Delinquent Debt Cycle Policy also elaborates on the regulatory requirements, as follows:

*Departments are responsible for making diligent efforts to collect legislatively authorized, aged earned revenue/account receivables owed the Commonwealth. These efforts include, but are not limited to, the following debt collection cycle: initial billing, dunning, intercept, and debt collection. . . . The billing cycle notifies the debtor of a receivable that is owed the Commonwealth. . . .*

*A write off is a transaction approved and performed by [OSC] that removes uncollectible receivables from the Commonwealth's financial records. Write offs are necessary, as the Commonwealth should not carry uncollectible receivables on its records beyond a reasonable time.*

OSC's General Counsel explained these regulatory and policy requirements further in an e-mail to the Office of the State Auditor (OSA),<sup>3</sup> stating:

*[F]ailure to receive payment for any rents or other payments owed is a state finance law issue since payments are owed for the use in the fiscal year in which the use has occurred and failure to pay is revenue that the Commonwealth has not received in the fiscal year in which the use occurred. DCR does not have the right to waive or defer payment without legislative authorization.*

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<sup>2</sup> In OSC policy and guidance documents, the term "legislatively authorized" is used in the broad sense, covering any business activity authorized by the legislature. DCR uses the same term to cover more narrowly defined revenue transactions entered into at the express direction of the legislature as described in Appendix I.

<sup>3</sup> January 10, 2013 e-mail from the OSC General Counsel.

Our audit found that DCR's internal controls over the administration of fees associated with its use agreements are not sufficient to ensure compliance with the above OSC requirements. Specifically, when P&L Unit personnel notify the DCR Revenue Unit of a fee-paying agreement, the Revenue Unit uses BARS to issue bills and establish a corresponding receivable (debt owed the Commonwealth) in MMARS as required by the OSC Receivable Recognition and Reconciliation policy. However, for a variety of reasons, the P&L Unit staff does not always notify the Revenue Unit of all known executed P&L agreements and related user-fee terms such as annual fee increase provisions. We found that in many instances this is because DCR has executed use agreements containing variable fee arrangements, such as agreements with skating rink operators where fees owed to DCR are based on a percentage of the rink operator's gross revenues and are therefore not known in advance. In such cases, state agencies can, with OSC approval, design alternative tracking and processing systems to ensure that the obligation to calculate and secure the required payment is tracked and acted on in a timely manner. However, DCR has not done so; instead, it simply relies on skating rinks to calculate fee payments and submit them on time. When the Revenue Unit has not been notified, the result is that bills may not be issued even though issuance is required by the previously cited 815 CMR 9.05(2)(c). Not notifying the Revenue Unit also results in instances in which bills are not issued for other types of agreements. For example, DCR management acknowledged that fee amounts stipulated in agreements are not billed for Memorandums of Understanding (MOUs), some legislatively authorized leases, and utility provider agreements.

DCR has also not established formal written policies and procedures for the billing and collection of use fees but rather relies on undocumented policies and procedures. DCR's reliance on undocumented, unwritten policies and procedures does not meet the minimum standards established by Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states, in part:

*Documentation of the agency's internal control systems should appear in management directives, administrative policy, and accounting policies, procedures and manuals.*

DCR management has acknowledged this deficiency, noting that in the past they had not prioritized the development of written policies and procedures. DCR officials further stated that, in conjunction with the other corrective measures taken in response to our audit, it will develop and document policies and procedures in order to comply with Chapter 647.

Further, our audit determined that DCR lacked written policies and procedures pertaining to uncollectible accounts receivable write-offs. We found that in some cases, fees were not collected for extended periods because payment obligations were disputed and were being reviewed by DCR managers. In other instances, they had been recorded in BARS but DCR Revenue Unit staff had not made effective use of available BARS reports, such as its aged accounts receivable reports, to monitor unpaid bills/receivables. DCR managers acknowledged that they were not aware of the existence of standard BARS reports available for aged receivables management. As a result, DCR could not ensure that all delinquent receivables were promptly identified, followed up on, and/or referred to a debt collection agency and that all receivables that were subsequently deemed to be uncollectible were properly referred to the OSC for write-off.

Finally, we found that, although DCR has a contract with a state-approved debt collection agency, it did not routinely refer overdue user fees for collection after 120 days as required by OSC policy<sup>4</sup> because DCR was not aware that the overdue debts existed. DCR officials also told us that they were not aware of the OSC Delinquent Debt Cycle provision regarding the requirement to write off uncollectible receivables.

As a result of these problems, our audit identified at least \$366,863 in current and past unpaid fees that DCR had not collected as of June 30, 2011. Moreover, DCR was only aware that \$49,620 of these unpaid fees was actually outstanding. Our examination of all fee-paying use agreements on DCR's P&L Unit and Employee Housing lists for payments due in fiscal year 2011 disclosed 58 instances of unpaid fees, totaling \$200,913. A closer examination of the payment history for these 58 instances dating back to fiscal year 2005, the earliest year for which records were still available, showed an additional \$165,950 in unpaid fees due for prior years. Furthermore, uncertainties expressed by DCR regarding the potential unreliability of data in DCR's P&L Unit list of user agreements create a risk that not all use arrangements have been identified and included in our audit testing. As a result, additional unpaid fee amounts may not have been identified. The following table presents a summary of identified unpaid fees by program for the fiscal year ended June 30, 2011:

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<sup>4</sup> OSC MMARS Policy: Accounts Receivable/Delinquent Debt Cycle, last revised November 1, 2006.

Program	Number of Unpaid Fee Instances	Unpaid Fees Due in Fiscal Year 2011	Unpaid Fees Due in Prior Fiscal Years	Total Unpaid Fees
High Ground	2	\$ 76,731	\$ 88,360	\$165,091
Concessions	20	62,277	27,529	89,806
Skating Rinks*	5	23,650	4,150	27,800
Utility Provider	16	8,799	11,315	20,114
Legislatively Authorized Leases	3	2,601	3,200	5,801
Employee Housing	1	1,734	2,890	4,624
Memorandums of Understanding	2	2,500	1,500	4,000
Cottages <sup>5</sup>	7	17,620	0	17,620
Boat and Yacht Clubs	<u>2</u>	<u>5,001</u>	<u>27,006</u>	<u>32,007</u>
Totals	<u>58</u>	<u>\$200,913</u>	<u>\$165,950</u>	<u>\$366,863</u>

\* Skating Rink fees are based on a percentage of the rink's gross revenues; therefore, financial documentation must be provided to support the calculation of the fee amount paid. In some instances, the amounts are estimates that are explained in the text of our report.

Of the total \$366,863 identified as unpaid user fees, DCR was only aware of the \$17,620 owed under the Cottages Program and the \$32,000 owed in the Boat and Yacht Clubs Program for a club located at Wollaston Beach in the DCR Quincy Shores Reservation. We identified the additional \$317,243 in unpaid user fees and provided the details to DCR. Using the information developed in our audit as well as already known unpaid fee information, DCR management initiated collection efforts during our audit; these resulted in the following delinquent user fees being collected for three of the above program categories:

Program	Total Unpaid Fees	Fees Paid during Audit
High Ground	\$165,091	\$165,091
Concessions	89,806	32,520
Boat and Yacht Clubs	<u>32,007</u>	<u>500<sup>6</sup></u>
Totals	<u>\$286,904</u>	<u>\$198,111</u>

Examples of some of the unpaid fee situations we identified and presented to DCR managers include the following:

<sup>5</sup> Because of non-payment of fees, DCR has revoked these permits.

<sup>6</sup> DCR reported that an additional \$500 was collected in April 2013, after the end of our audit period.



***Skating Rink – Unpaid Fees Totaling \$10,000 (estimate)***

A skating rink management company and DCR executed a lease that allowed the company to operate a DCR rink in Newburyport from June 20, 2002 to June 6, 2027. The fee is 3% of gross revenues, to be paid monthly. DCR management contacted the rink management company only after we identified the existence of an unpaid fee. The company remitted a \$10,000 lease payment for the period June 20, 2009 to June 19, 2010. However, no lease payment was paid for the period June 20, 2010 to June 19, 2011. During the audit, DCR management contacted the management company and was advised that the company is working with its new accountant to provide required financial documentation in order to calculate the required fee amount due.

***High Ground – Unpaid Fees Totaling \$128,000***

A telecommunication entity (permittee) and DCR executed a permit agreement in 2004 (renewed in 2009) that allowed the permittee to install a telecommunication tower on DCR's Blue Hills Reservation property and to enter into sub-agreements with third-party users to use space on the tower. Specifically, Section 7(a) of the agreement states, in part:

*[Permittee A] agrees to pay the DCR, in addition to the Principal Fee, a portion of all fees (User Fees) that [Permittee A] receives from third parties who occupy, presently and prospectively, space in the Building or on the Tower and said portion of each User Fee due to the DCR shall be calculated in accordance with the following:*

*Eighty percent (80%) of the User Fee received from [Third Party A]*

In addition, Section 7(b) of the agreement states, in part:

*[Permittee A] shall transfer the portion of the User Fees, as previously described, to the DCR within thirty (30) days of their receipt*

In 2005 the permittee executed a sub-agreement with a third party to use space on the tower to operate a radio station. During the audit, we noted that DCR had not received fees relating to the third-party user since 2009. We reviewed this matter with DCR management, who explained that they were unaware that the third-party fees had not been paid. Subsequently, DCR management contacted the permittee in March 2012 to ascertain the status of its third-party agreement. At that time, the permittee apprised DCR of the following:

- The permittee had begun the process of renegotiating a new sub-agreement with the third party in November 2009, which was to include an annual user fee of \$80,000.

- The new sub-agreement had not been completed.
- During the new sub-agreement negotiations, the third party continued to use the tower.
- Third-party user fees were not collected because the new sub-agreement was not in place.

As a result, DCR had not received user fees totaling \$128,000 (80% of total user fees) for the two-year period November 1, 2009 through October 31, 2011.

In May 2012, the permittee notified DCR that a new third-party sub-agreement was signed on April 6, 2012 (effective November 2009) and that it had received payment from the third party for all fees due. On June 15, 2012, over two months later, unpaid user fees totaling \$128,000 were submitted to DCR.

***Employee Housing – Unpaid Fees Totaling \$4,624***

Our audit found that one of the 12 DCR employees participating in its Employee Housing Program did not always make monthly rent payments of \$578 as stipulated in DCR's agreement for housing located at DCR's Wompatuck State Park. Our examination disclosed that only 9 of 12 monthly rent payments were received in fiscal year 2011 and that only 19 of 24 monthly rent payments were received for fiscal years 2009 through 2010, resulting in underpayments of \$1,734 and \$2,890, respectively, in monthly rent payments. Also, we determined that five monthly rent payments totaling \$2,890 were missing in fiscal year 2012. As a result of our work, DCR and the employee executed a repayment plan for the unpaid rental fees.

We also found that monthly rent payments for five DCR employees, all located at state parks formerly under the jurisdiction of the Metropolitan District Commission (MDC), were paid by means of a payroll deduction. The other seven DCR employees, including the employee housed in Wompatuck State Park, were allowed to make monthly rent payments by check. In these instances, all seven receive housing at state parks formerly under the jurisdiction of the Department of Environmental Management. This check-payment arrangement is contrary to Executive Office for Administration and Finance (EOAF) regulation 801 CMR 4.03(1)(d), which requires that the housing charge be paid by payroll deduction. DCR commented that it was not aware of that regulatory requirement. (See Appendix IV for additional examples of unpaid fees.)

Without an effective billing and receivable system and necessary administrative controls, DCR has little assurance that all user fees due the Commonwealth are being properly and accurately paid and that all delinquent user fees are being promptly identified and resolved.

***Recommendation***

In order to address our concerns on this matter, we recommend that DCR:

- Follow up on and resolve all past unpaid fees identified during the audit.
- Conduct a physical inventory of all DCR properties and facilities covered by the P&L Unit and Employee Housing programs and reconcile the physical inventory to existing executed use agreements so that discrepancies such as missing or expired agreements can be resolved and a central register of all use agreements can be created. DCR should perform a physical inventory periodically thereafter so that any differences between the inventory and register can be researched and resolved. This will ensure that the register is complete and accurate.
- Strengthen controls over all executed use agreements by developing a comprehensive register of all known P&L Unit and Employee Housing program agreements. The register should be maintained and updated regularly.
- Share the register with the Revenue Unit to ensure that bills for all use agreements are issued through BARS or appropriate alternative mechanisms such as payroll deductions applicable to Employee Housing agreements, that a corresponding receivable account is established in MMARS for all fees stipulated in use agreements, and that all unpaid fees are identified and resolved on a timely basis.
- Utilize the BARS aging accounts receivable report in MMARS to monitor all unpaid receivables and examine all overdue receivables to determine their accuracy.
- Adhere to OSC's Delinquent Debt Cycle policy by ensuring that all delinquent receivables aged over 120 days are referred for required debt collection processing. Those receivables that are subsequently deemed to be uncollectible should be requested for write-off in compliance with OSC policies and procedures.
- Establish appropriate control procedures to ensure that skating rink operators submit required financial information monthly to DCR and are billed in accordance with use agreements. If applicable, unpaid fees should be referred to a state-approved debt collection agency for collection.
- Where applicable, consider including language in future or renewed high-ground use agreements that requires third-party users to pay fees directly to DCR rather than indirectly through the high-ground permittee.

- Develop written policies and procedures and internal controls to ensure that all user fees due the Commonwealth are being properly and accurately billed and paid and that all delinquent user fees are being promptly identified and resolved.
- Comply with EOAF regulations by ensuring that all employee housing rental payments are paid by way of an employee payroll deduction.

### ***Auditee's Response***

As a result of this audit, DCR decided to eliminate the Employee Housing Program in April 2013. Employees in the program have been given a six-month transition period. Also, DCR has initiated collection efforts and various control enhancements as recommended; however, because of uncertainties regarding future DCR administrative resource levels, it has not yet developed a schedule for full implementation of these enhancements.

### ***Auditor's Reply***

Based on its response, DCR is taking measures to address our concerns on this matter. Further, although we understand the difficulties with limited resources, we nonetheless urge DCR to proceed with its enhancements as expeditiously as possible.

### **b. DCR Did Not Properly Establish or Enforce Late-Payment Penalties**

Our audit found that, contrary to OSC's Delinquent Debt Cycle Policy, DCR has not established necessary regulatory provisions as a precondition to collecting late-payment penalties imposed on delinquent use payments. Consequently, because DCR did not establish the necessary regulatory provisions, any enforcement action might be problematic. In addition, we noted that late-payment penalty fee and interest provisions were not built into all P&L Unit agreements.<sup>7</sup> Moreover, although late-payment-penalty provisions had been included in certain agreements, DCR did not enforce such provisions in agreements where they had been added.

Prudent business practices promote the use of late-payment penalties and interest fees as an effective method to encourage the prompt payment of amounts owed to Commonwealth agencies. Where such penalties are missing, Commonwealth agencies such as DCR are more likely to encounter late payment or nonpayment problems. OSC permits the use of penalty

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<sup>7</sup> Such provisions are not applicable to Employee Housing agreements, since EOAF mandates that employee housing rent be paid through payroll deductions. As described in our audit findings pertaining to Employee Housing program amounts, delinquent payments could have been prevented in the past and should be prevented in the future by use of the payroll deduction payment mechanism.

charges where state agencies promulgate regulations providing for their use. OSC's Delinquent Debt Cycle Policy states, in part:

*Only departments that have regulations that allow them to charge for late fees and interest will be allowed to include them as part of the receivable amount. The amounts departments can charge are usually written in their regulations.*

However, DCR has not established regulatory provisions as required by OSC if such charges are to be made. Instead, DCR has simply included language in some, but not all, P&L Unit agreements that states that such charges may be made. We found such language only in Boat and Yacht Club Program agreements and in a limited number of High Ground Program agreements. In practice, DCR has not imposed these charges in instances where payments have been late or unpaid, even where late-payment fees have been provided for in use agreement language. To do so would actually be questionable in the absence of the regulatory provisions mandated by OSC. When we asked DCR managers for additional information regarding late-payment fee arrangements, they told us that legal staff responsible for drafting and executing P&L Unit use agreements simply included language for whatever agreement provisions were requested by individual managers responsible for each program category within the P&L Unit. DCR had not established a uniform policy requiring inclusion of late-payment fee provisions in all P&L Unit agreements.

DCR also lacks formal policies and procedures and related controls to ensure that late payments are promptly identified and that appropriate late payment fees are calculated and billed. As described in subsection (a), DCR's billing and accounts receivable systems and controls have not recorded all use-agreement payment obligations and, even where obligations have been recorded, DCR is not using available BARS aging accounts receivable reports to identify the status of unpaid or late payments. If DCR were to promulgate regulations providing for use of late-payment fees and interest charges in conjunction with all P&L Unit use agreements, DCR's current billing and accounts receivable system deficiencies would have to be corrected in order to successfully implement the charges.

Without an effective management system in place, including documented policies and procedures and associated internal controls to detect late payments and bill all late fees due, DCR cannot ensure that all potential fees due the Commonwealth are being properly collected.

***Recommendation***

In order to address our concerns on this matter, we recommend that DCR:

- Adopt late-fee and interest-charge regulatory provisions consistent with OSC policies and include appropriate language in all P&L Unit agreements.
- Develop written policies and procedures and internal controls to detect late payments and calculate and bill late fees.

***Auditee's Response***

DCR plans to explore the adoption of new regulations that would allow for the collection of late fees in accordance with OSC policies. Additionally, DCR plans to review agreements to determine which ones would benefit from late-fee provisions once regulations are adopted. Finally, DCR plans to include policies and procedures around late fees when it develops its internal controls.

***Auditor's Reply***

Although we are encouraged by DCR's plan to adopt new late-fee regulations and to review agreements that would benefit from late-fee provisions, we again urge DCR to implement late-payment-penalty provisions in all P&L Unit agreements with fees to encourage the timely receipt of revenues due the Commonwealth. To that end, DCR should carry out corrective action as expeditiously as possible.

**c. User Fees Are Not Being Established in Accordance with State Requirements or Do Not Reflect Fair Rates, Resulting in Lost Revenue to the Commonwealth**

OSC has interpreted state finance law to require that, when DCR property is used by private parties, use should be properly authorized and compensated. According to the aforementioned e-mail guidance provided to OSA by OSC, for the purposes of this audit:

*Legislatively and constitutionally, private use of state land or state resources under the Anti-Aid Amendment [Articles 18, 46 and 103 of the State Constitution] creates a mandate that no private individual or company may receive a benefit without authority. The authority traditionally comes from legislation, an open and fair procurement or other authorization such as permits or licenses.*

However, we found that, contrary to these requirements, DCR has not established fair user fees for some of its programs, which has resulted in potential lost revenue to the Commonwealth. Depending on the property and type of use, DCR or its predecessor agencies were in some

instances authorized or directed by the Legislature to make property available to a specific user, under terms and conditions that the Commissioner deemed proper (in some cases after consultation with the Department of Capital Asset Management and Maintenance [DCAMM]). In these instances, the use of property was expressly exempted from competitive-bidding requirements. In other instances, the Legislature either authorized DCR to make property available for consideration other than a specified fee, or determined that a public purpose warranted an agreement without a fee. Responsibility for fee determination has also sometimes been legislatively delegated to agencies such as EOAF in the case of the Employee Housing Program, or to DCR and/or DCAMM in the case of the Boat and Yacht Clubs Program. Our audit examined applicable standards for the fee arrangements established for each program category and identified certain instances in which fees appeared to be lower than warranted by either specific regulatory provisions or the general standard identified by OSC. Those instances involve the following program categories:

***Employee Housing Program***

Independent appraisals of fair-market-based rental rates and annual Consumer Price Index (CPI) adjustments are required by EOAF regulation 801 CMR 4.03(1)(d), Rents and Meals to be Paid by State Employees, which states, in part:

*The housing charge for the premises shall be established by the agency and shall equal the fair market rent for the premises as established by an independent appraisal. An independent appraisal shall be performed at the initial inception of the housing agreement and at least once every five years thereafter.... At the end of the first term and every year thereafter, until a new independent appraisal is performed, the housing charge shall be adjusted based on the consumer price index annual average for all urban consumers (CPI-U) Boston, Massachusetts, or an equivalent successor index, as published by the Bureau of Labor Statistics, U.S. Department of Labor or its successors.*

Although this regulation applies to DCR's Employee Housing Program, DCR has not conducted an independent appraisal to establish fair-market-based rental fees for 12 Employee Housing Program properties for at least 10 years, nor has it annually adjusted the fees it was charging for these properties based on any changes in the CPI. DCR management explained that independent appraisals and CPI adjustments were not conducted due to several organizational changes and staff turnover over the past eight years. However, without appraisals and adjustments, DCR cannot assure the Commonwealth that housing charges are equal to fair-market-based rents or have been adjusted based on the CPI annual average. During the audit,

DCR management told us that a review was underway to determine the extent to which this program would continue in the future.

### ***Utility Provider Program***

The start dates for DCR's 16 Utility Provider Program agreements range from 1923 to 1991. These agreements have automatically renewed every year since the agreements were executed, and the established fee amounts have not changed from the amounts stipulated in the original agreements. DCR does not have documented policies and procedures in place to ensure that fair user fees are charged and collected from these users. In addition, due to incomplete records, DCR management believes there may be instances of utility companies using property at state parks without DCR's knowledge. DCR management acknowledged that this situation has been caused by a lack of monitoring and focus on the Utility Provider Program for a long time. Until a review is conducted to determine fair user fees, there is no assurance that DCR is collecting all potential revenue from utility providers. Also, without complete records that identify all instances where utility providers are using property at state parks, DCR cannot bill and collect all revenue that may be due.

During the audit, DCR management told us that they have made an initial, informal contact with the staff at the state Department of Public Utilities (DPU). They are also planning to meet with DPU and City of Boston officials during the coming year to determine the methodology for assessing fair user fees and identifying all instances in which utility companies are using property at state parks. The planned contacts would also include discussions regarding resources needed and policies and procedures for addressing agreements with utility providers for facilities on DCR property.

### ***Boat and Yacht Clubs Program***

Historically, DCR and its predecessor agencies have allowed private nonprofit boat and yacht clubs and university boating programs to construct privately owned facilities such as buildings and piers on state park and reservation property at 28 waterfront sites located in eastern Massachusetts. The use arrangements and low user fees granted to such organizations as part of this practice have been a source of continuing controversy over the years, especially as the desirability and value of waterfront locations have increased over time. As described further in Appendix I, fee arrangements were modified and substantially increased for most facilities in



2004, and in 2010, the legislature directed DCR and DCAMM to develop a new methodology for establishing fair user fees in conjunction with long-term agreements of up to 30 years' duration for these use arrangements. However, we learned that as of June 30, 2011, DCAMM and DCR still had not developed and finalized a methodology for setting fair user fees for all 28 boat and yacht clubs as required by Chapter 65 of the Acts of 2010, Section 1, which states, in part:

*[T]he commissioner of capital asset management and maintenance may, in consultation with the commissioner of conservation and recreation, lease or enter into other agreements for a term not to exceed 30 years with an organization currently operating a yacht club or other boating facility....*

In addition, Chapter 65 of the Acts of 2010, Section 2 states, in part:

*[T]he commissioner of capital asset management and maintenance, in consultation with the commissioner of conservation and recreation, shall develop a methodology for setting a fair rental payment....*

Regarding boat and yacht clubs, DCR officials told us that, although staff resource limitations had delayed work with DCAMM, meetings with DCAMM were then underway to develop a methodology for setting fair user fees.<sup>8</sup> Without a methodology for setting fair user fees, DCR may not be collecting the appropriate level of revenues from all boat and yacht clubs.

### **Recommendation**

In order to address our concerns about fair user fees, we recommend that DCR:

- Request an independent appraisal to determine the fair-market-based rental fees that should be charged for employee housing. Subsequent appraisals should be conducted at least once every five years.
- Devote necessary resources to adjust Employee Housing Program rental fees every year between appraisals based on the CPI for Boston, Massachusetts, or an equivalent successor index, as published by the Bureau of Labor Statistics, the U.S. Department of Labor, or its successors.
- Conduct a review to ensure that DCR's records include all instances in which utility providers are using DCR property.

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<sup>8</sup> As reported under Agency Progress in the Introduction and Summary of Findings and Recommendations section of this report, DCAMM and DCR subsequently completed development of a fee-setting methodology, which DCR reported is now undergoing review by the Office of the Inspector General as required by Section 3 of Chapter 65 of the Acts of 2010.

- Conduct an assessment to determine fair user fees that should be included in new, updated agreements for all utility providers.
- Develop written policies and procedures and internal controls to ensure that fair user fees are charged and collected from utility providers.
- Devote necessary resources to ensure that a methodology for developing fair user fees for all boat and yacht clubs is developed and implemented for new agreements.

### ***Auditee's Response***

DCR agrees with the above recommendations and is in the process of planning for their implementation. Part of that planning involves the establishment of realistic target dates for completion. Additionally, DCR notes that during the course of the audit, DCAMM and DCR developed a fee methodology that is currently being reviewed by the Inspector General's Office. Upon approval, the methodology will be finalized and new user fees will be established with each boat and yacht club. Also, as stated above, DCR has decided to eliminate the Employee Housing Program in April 2013 and has given program participants a six-month transition period.

### ***Auditor's Reply***

Based on its response, DCR is taking measures to address our concerns on this matter.

## **2. DCR IS NOT ENSURING THAT CURRENT, PROPERLY EXECUTED USE AGREEMENTS EXIST FOR ALL USERS OF DCR PROPERTY**

Our audit found that DCR has not established adequate internal controls (e.g., policies and procedures, a register of all P&L Unit and Employee Housing program agreements) over the administration of its use agreements to ensure that leases for all of its properties are properly executed and renewed in a timely manner as required by state regulations and policies. For example, at the time of the audit, all 12 of DCR's Employee Housing Program use agreements had expired, three as long ago as 2003. However, DCR continued to allow the employees to occupy the houses without current executed agreements. Other examples in which use agreements had expired but continued use was permitted included one for a parking lot and 28 for boat and yacht clubs. In addition, contrary to 801 CMR 4.03(1), none of the Employee Housing Program agreements provided was signed by the Secretary of Energy and Environmental Affairs (EEA), the responsible oversight secretariat office for DCR. There were also cases in which DCR had attempted to resolve Boat and Yacht Club Program agreement-expiration problems by inserting retroactive provisions

into extension agreements completed more than two months after the expiration of the existing agreements rather than by entering into formal settlement agreements as required by OSC. In other instances, DCR authorized the use of its property for concession or skating rink purposes without ever executing a formal use agreement. In addition, although the causes and details of the inappropriate agreement situations vary, a significant contributing causal factor for DCR's inability to detect expired agreements was the absence of a complete and current register of all P&L Unit and Employee Housing Program agreements that can be used as a monitoring control to ensure that expiring agreements are promptly identified and resolved. Specifically, we noted the following:

**a. DCR Properties Continued to Be Used after the Use Agreements Expired**

Our review of 127 use agreement files found that in 25 instances (20%), the agreement had expired but the property had continued to be occupied and used for extended periods. These included 12 Employee Housing agreements, three concessions, four legislatively authorized agreements, two boat and yacht club agreements, and four MOUs. Moreover, we found an additional 26 boat and yacht club agreements for which DCR addressed short-term agreement expiration lapses through the inappropriate use of retroactive extensions. Detailed below are examples of expired agreements identified during our examination:

***Employee Housing Agreements***

The 801 CMR 4.03(1), Rents and Meals to be Paid by State Employees, (1) Housing Charges, states, in part:

*(a) State agencies may enter into housing agreements with state employees for the occupancy of state property only if such occupancy has been determined by the Secretary for that agency to be in the best interest of, and necessary for, the operation of the agency and for the benefit of the Commonwealth.*

*(b) All agreements for employee housing shall be in writing for a term of one year and shall be executed by the employee, the head of the agency with care and control of the state property and the Secretary of that agency....*

*(c) The housing agreement shall contain a clearly articulated statement supporting the occupancy of the premises by the employee in accordance with the requirements of 801 CMR 4.03(1)(a). Execution of the housing agreement by the Secretary for the agency will satisfy the determination requirement in 801 CMR 4.03(1)(a).*

For the purpose of verifying compliance with these regulatory requirements, we asked DCR to provide us with all 12 Employee Housing Program agreements. However, DCR could only

provide five of the 12 agreements, stating that the remaining seven agreements had been misplaced. We found that all five of the agreements provided had expired (three in 2003, one in 2005, and one in 2011), and DCR staff indicated that the remaining seven agreements had expired in 2004. In all 12 instances, DCR allowed the employees to continue to occupy the houses without an executed use agreement. In addition, contrary to the aforementioned regulation, none of the provided agreements were signed by the EEA Secretary. DCR stated that it was not aware of the regulatory requirement.

### ***Leased Parking Lot***

According to DCR, the MDC, one of its two predecessor agencies, executed a lease that provided property in Newton for a private parking lot as a result of a 1968 legal settlement. Our audit determined that the property remains in use even though the lease expired in 2008. The lease commenced on November 1, 1968 and expired on October 31, 2008 at \$600 per year plus approximately \$300 per year in levied taxes. Our review of DCR records disclosed that in July 2008 the lessee requested a lease extension. However, we found no documentation or evidence that DCR had taken any action in response to the lessee's request, and there was no documentation in the file indicating why no action was taken. In addition, DCR records indicate that the last user-fee payment for this property remitted to DCR was in November 2007. DCR management indicated that they were not aware of the lease expiration and request for renewal, which the lessee had made to prior DCR managers.

After OSA found documentation in DCR's records and brought it to DCR's attention, DCR contacted the lessee to resolve the situation. However, DCR indicated that use arrangements for the lot may change, since DCR is currently using a portion of the lot for the staging of an environmental/landscaping project. DCR stated that it was reviewing the situation with its Planning Bureau and Waterways Office to determine whether a new agreement was appropriate and, if so, what form and terms should be considered.

### ***Boat and Yacht Club Permits***

DCR executes permits for the use of 28 boat and yacht clubs and sailing pavilions located on DCR property in eastern Massachusetts. Our audit noted that one permit was for a sailing pavilion operated by a local university on the Charles River Basin. The use agreement commenced on January 1, 2004 and expired on December 31, 2004 at \$1 for the year. However,

DCR has allowed the university to continue using the site after the agreement expired, and the fee has not been increased even though our review of DCR records disclosed that a revised fee schedule methodology implemented effective in 2005 resulted in significantly increased annual fees for the other 27 boat and yacht clubs and sailing pavilions. DCR acknowledged that it was aware that the agreement had expired and that the fee had not been increased. DCR P&L Unit managers stated that over the seven-plus years since the agreement expired, they had made several attempts to remedy the situation and attributed the extended delay to management and staff turnover. During the audit, DCR stated that it was in the process of executing an agreement for the sailing pavilion with an updated fee consistent with the revised fee schedule methodology.

In a second case, a boat and yacht club located at Wollaston Beach in DCR's Quincy Shore Reservation refused to execute annual agreements after 2004 because the club did not agree with the fee increase methodology implemented for 2005. DCR has permitted the club to continue using the site and to accrue \$32,000 in unpaid fees through calendar year 2011.<sup>9</sup> DCR stated that an annual agreement was executed for calendar year 2012 and that it is in the process of resolving the issue of prior unpaid fee amounts.

Fee increases were accepted in 2005 by 26 other boat and yacht clubs (see Appendix III), and single-year use agreements had been executed for each through calendar year 2010, when Chapter 65 of the Acts of 2010 was enacted. As described in Audit Finding 1(c), that legislation mandated that DCR and DCAMM develop a new pricing methodology to be used in conjunction with agreements having a duration of up to 30 years. Rather than executing timely extensions of the existing single-year agreements to allow time to develop the new pricing terms, DCR allowed the existing agreements to expire while permitting the boat and yacht clubs to continue use of the sites. It was not until March 9, 2011 that DCR mailed one-year extension agreement letters to the organizations (see list in Appendix II). Those extension letters included the following language:

*The effective date of this permit shall be January 1st of the calendar year during which this Permit is issued by and signed on behalf of DCR by the duly authorized Commissioner of the DCR, regardless of the actual date of execution by both parties.*

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<sup>9</sup> The \$32,000 is included in the Boat and Yacht Club Program unpaid fee total of \$32,007 appearing in the table in Audit Finding 1(a).

DCR explained this practice to OSA by stating:

*[I]n many instances it is not feasible to require an operator to cease operations pending execution of a new agreement. The best business practice would be to ensure that no gaps exist between expiration and renewal dates. DCR continues to work at addressing the large volume of agreements and their corresponding effective dates. Since no law or regulation appears to prohibit an agreement with a retroactive expiration date, when executing an amended or updated agreement DCR believes having an effective date that relates back to the expiration date, with no gap in coverage, is important. In doing so, the operator affirmatively agrees to accept responsibility during that time, such that if a personal injury or property damage claim arises at a later date, the operator (and not the Commonwealth) bears responsibility for the site, which requires the operator, and importantly its insurance carrier, to satisfy any claims or demands, thereby limiting to the extent possible the exposure of the public treasury.*

DCR also reported that no other state office or division had advised DCR of any statute or regulation that would prohibit use of a retroactive effective date. However, the previously discussed e-mail guidance OSA obtained from OSC's General Counsel characterizes DCR's practice as questionable and suggested that DCR should have instead adhered to the formal legal settlement process established by OSC for use in addressing potential financial or legal claims. The OSC General Counsel offered the following guidance regarding the legal issues involved:

*Similar to driving without a license, there is no "retroactive" effective date. You either have a license or permit or you do not. Any actions that occur during the lapse would be without a permit or license (authority) unless the legislation authorizing the permit or associated regulations authorize the ability to allow continued use without a permit or license or give DCR the discretion to have this flexibility. If not, then the retroactive date is not effective to automatically deem a permit or license "effective" for any lapse. Instead, the parties would have to have a more formal legal settlement language, with release language, that all claims that may have arisen will be treated for the purposes of litigation or duty to pay, as having occurred under the authority of a properly granted permit or license and that both parties agree to this as a final settlement of all claims. This may cover some issues, and insurance companies may not acknowledge this language as sufficient to mandate payment in the event of liability, therefore there still may be some risk.*

Based on this guidance from OSC, we conclude that DCR's lease-extension practice is questionable. Moreover, it is inconsistent with DCR's description of its unwritten policy, which is to do one of the following for expiring agreements, depending on the program involved:

- Execute an agreement extension;
- Negotiate and execute a renewal agreement;
- Issue a Request for Proposals (RFP) to solicit bids to use the property/facility for a specific purpose; or

- Terminate the agreement and discontinue the use of the property/facility.

In discussing this finding and the guidance provided by OSC, DCR's General Counsel noted that for certain types of use agreements, such as those involving privately owned buildings located on DCR property, immediate cessation of use is not always feasible while new agreement or settlement terms are being developed. He asserted that the Commonwealth's standard Settlement and Release process, which "is structured for settling out a prior performance... does not square with the continuing nature of the use and occupation of DCR land." However, the DCR General Counsel also stated that, if such cases arise in the future, DCR would consult with and obtain approval from OSC regarding a prudent approach to implement under the circumstances.

Without agreements properly executed on a timely basis, liability-related legal protections may not be in effect for all parties. Also, without the EEA Secretary signing all housing agreements, there is no assurance that occupancy has been determined by the Secretary to be in the best interest of, and necessary for, the operation of the agency and for the benefit of the Commonwealth. Had DCR adhered to its unwritten policy, many of the above problems would have been averted.

#### **b. DCR Properties Were Used without an Executed Use Agreement**

Our examination of the 127 agreement files in our sample also identified 20 instances (16%) in which permittees have been using a DCR property/facility from one to five years to operate either a concession (16 instances) or a skating rink (four instances) without an executed agreement. In all cases, DCR published an RFP to use the property and, after reviewing the submitted proposals, issued an Award Letter to inform the permittee that its proposal had been accepted, but never executed a formal agreement as required by DCR's unwritten policy. DCR management indicated that limited staff resources prevented the completion of full executed permit agreements in a timely manner. RFP submissions and resulting award letters do not themselves constitute full legal contractual agreements. Without a properly executed legal agreement, the legal rights and responsibilities of all parties remain ambiguous and may not be fully enforceable.

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***Recommendation***

In order to address our concerns for expired agreements and agreements not properly executed, we recommend that DCR:

- In consultation with OSC, follow up on and resolve all instances in which use agreements were found to have expired or not to have been properly executed.
- Develop written policies and procedures and internal controls to ensure that use agreements for all of its properties are properly executed and renewed in a timely manner and that exceptional situations such as the retroactive extension of certain boat and yacht club agreements are processed with OSC and any other relevant oversight agencies.
- Develop a comprehensive register that tracks all pending and completed P&L Unit and Employee Housing program agreements, including their expiration dates. DCR should update the register regularly to reflect all pending awards, newly executed agreements, and terminated agreements. Furthermore, DCR should use the register as a control to identify expiring agreements and ensure that a current agreement exists for all DCR properties/facilities used by third parties and DCR employees in compliance with DCR policy. Where agreements are allowed to expire without renewal, all use of DCR property and facilities should terminate unless DCR has consulted with OSC and any other relevant oversight agencies and has obtained approval for continued use due to special circumstances.
- Ensure that all housing agreements are current and signed by the Secretary of EEA.

***Auditee's Response***

DCR continues to evaluate the staff and resources of the program. A new Program Coordinator II will be starting in June 2013, and that person will be responsible for implementing many of these recommendations.

Also, as stated above, DCR has decided to eliminate the Employee Housing Program in April 2013 and has given program participants a six-month transition period.

***Auditor's Reply***

Based on its response, DCR is taking measures to address our concerns on this matter.

**3. INADEQUATE CONTROLS OVER PROPERTY INSPECTIONS AND NONCOMPLIANCE WITH LIABILITY INSURANCE REQUIREMENTS**

Our audit determined that DCR lacked the necessary internal controls to ensure compliance with liability insurance and property maintenance provisions established in its use agreements. Failure to appropriately monitor and enforce these use agreement provisions creates a significant risk that the



interests of the Commonwealth and the public may not be properly protected, that Commonwealth assets may not be properly maintained and cared for, or that unauthorized use of DCR property may not be detected. Specifically, we noted the following:

**a. DCR Is Not Obtaining Required Documentation of Liability Insurance Mandated by Use Agreements**

DCR use agreements stipulate that:

- Permittees/lessees shall carry liability insurance in specified amounts.
- The Commonwealth/DCR shall be named as an additional insured party on the Certificate of Insurance.
- Permittees/lessees shall provide DCR with current Certificates of Insurance issued by an insurer qualified to conduct business in Massachusetts.

Despite these requirements, we found that DCR lacked the necessary internal controls such as policies and procedures to detect and deal with instances in which required Certificates of Insurance were not received or were received but did not comply with specific use agreement requirements, such as identifying DCR as an additional insured party. As a result, we found that, for 67 of 115 (58%) use agreements reviewed, DCR did not have current liability insurance certificates that included a user liability insurance obligation. In addition, we found that, contrary to DCR use agreements, five current Certificates of Insurance did not identify DCR as an additional insured party. Because DCR has not always obtained evidence of current liability insurance that complies with use agreement requirements, the Commonwealth may be liable for property damage or an injury to someone using state property if the property user fails to secure the liability insurance coverage required by the use agreement.

DCR management explained that, because of limited staff resources, it cannot effectively follow up on and resolve instances where Certificates of Insurance are not received or do not comply with use agreement requirements.

**b. DCR Internal Controls Relative to Property Inspections Need Improvement**

Our audit found that DCR does not require or perform property inspections for all P&L Unit program categories. Although DCR has recognized various risks associated with these property uses, it has not established any formal written policies or procedures relative to the use of

inspections as a risk mitigation tool. Moreover, our audit testing found that DCR's unwritten policies regarding the inspection of skating rinks and cottages at Myles Standish State Forest (MSSF) were not always followed. In other instances we found that DCR's unwritten inspection policies were not adequate in that certain use agreements, such as those for boat and yacht clubs, allow but do not require completion of property inspections by DCR even though the performance of such inspections would be in the public interest. For example, Skating Rink and Boat and Yacht Club program agreements refer to maintenance and other compliance requirements, including those related to hazardous waste and to prohibitions on site modifications without prior written DCR approval. In addition, in 2005 OSA's audit of issues involving cottages located on DCR property identified inspection deficiencies, including cases in which cottage permit holders were violating their use agreements by limiting public access to park land and water, and other cases in which state building codes and septic and wetland laws and regulations were not being followed.<sup>10</sup> Without properly completed inspections for skating rinks, cottages, and other use arrangements, there is inadequate assurance that DCR properties are being properly maintained in compliance with use agreements. Specific results follow:

### ***Cottage Program***

DCR management informed us that it is DCR's unwritten policy at MSSF to conduct inspections of all 133 of the forest's cottages at the beginning of the season (April) and at the end of the season (October). The inspections are documented on a DCR Cottage Inspection Checklist form. These inspections are intended to provide assurance that the buildings and lots are being properly maintained in compliance with use agreements. However, citing limited staff resources, DCR acknowledged that inspections have not always been performed as required by the policy. In fact, our examination of 14 use agreement files for cottages at MSSF disclosed 10 instances (71%) in which there was no documentation indicating that property inspections were performed during fiscal year 2011.

The unwritten policy in place at MSSF was implemented by an MSSF Superintendent, rather than as a formal DCR-wide cottage inspection policy. There is no policy for conducting inspections at the two other DCR locations with cottages (Peddocks Island, with 29 cottages, and Ashmere Lake, with 11), and, in fact, no such inspections were conducted there.

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<sup>10</sup> Department of Conservation and Recreation's Use and Permitting Program of Public Lands, Audit No. 2005-0276-3S.

The absence of a formal written DCR-wide inspection policy for the Cottage Program represents a significant control deficiency, and DCR's failure to perform inspections heightens the risk that problems identified by our 2005 audit may remain unaddressed. These conditions could negatively affect public health and safety as well as future budgeting for maintenance costs.

### ***Skating Rink Program***

DCR management stated that it is DCR's unwritten policy to conduct annual maintenance inspections at all Skating Rink Program facilities. These inspections, which are documented on a facility repair/maintenance report, monitor the condition of the premises and equipment and ensure the tenant's compliance with general maintenance obligations, completion of required capital repairs/improvements, and other lease terms. However, our review of 12 Skating Rink Program use agreements disclosed six instances (50%) in which there was no documentation that required inspections were completed in fiscal year 2011. DCR management attributed the failure to perform required inspections to inadequate staff resources.

### ***Other Programs***

Our review of other types of DCR use agreements, such as those used for the Boat and Yacht Clubs Program, noted the existence of appropriate provisions in the agreements regarding use and maintenance of DCR property and required compliance with all applicable federal, state, and local laws, regulations, and ordinances. For example, the agreements include a provision requiring that the permittee keep the premises free of all rubbish, refuse, paper, trash, and other waste or hazardous waste materials, and provisions prohibiting facility construction and modifications without prior written approval by DCR. Although use agreements include provisions permitting inspections by DCR and other duly authorized state and local agencies, DCR did not have appropriate policies and procedures and related controls in place to ensure that inspections are periodically performed to verify compliance with the terms of these use agreements.

### ***Recommendation***

In order to address our concerns for liability insurance deficiencies and property inspections, we recommend that DCR:

- Establish and implement the necessary written policies and procedures and internal controls to ensure that all required Certificates of Insurance are on file and meet with use agreement requirements. To that end, in conjunction with development of the use agreement register recommended in Audit Finding No. 2, DCR should formally document the status of compliance with Certificate of Insurance filing requirements for each agreement that has a user liability insurance obligation. This register should be used as a management tool to control and track the use agreements and ensure that all required Certificates of Insurance comply with use agreements and are properly retained on file.
- Ensure that there is adequate staff to complete all required property inspections.
- Review permits and other use agreements for all program categories to identify use requirements/restrictions that, if not complied with, could present unacceptable health and safety risks to the Commonwealth or the public. Based on that risk assessment, DCR management should implement appropriate inspection arrangements to ensure compliance and mitigate the potential risks identified.
- Develop written policies and procedures and internal controls to ensure that all required inspections are completed. To that end, in conjunction with the development of the use agreement register recommended earlier, DCR should formally document the status of compliance with inspection requirements for each agreement that has an inspection requirement. This register should be used as a management tool to control and track the use agreements and ensure that all required inspections are completed and documented. In addition, any needed corrective follow-up actions identified by inspections should be documented to ensure that property users adhere to the maintenance and related requirements set forth in the use agreements.

***Auditee's Response***

DCR is in the process of planning next steps for addressing the recommendations of this audit. That planning has centered around the need to conduct a risk assessment to evaluate the risks and liabilities associated with the P&L Unit. Beyond the risk assessment, DCR recognizes the need for internal controls as well as increased monitoring.

***Auditor's Reply***

We believe that DCR's planned use of a risk assessment process for designing and prioritizing control improvements is appropriate and important for addressing concerns we identified and for reducing risk exposure and improving governance, compliance, and greater efficiency of operations.

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## APPENDIX I

### Description of DCR Use Agreements and Program Categories

#### *Agreement Types*

- Permit Agreements – Agreements that authorize the use, operation, and/or management of Department of Conservation and Recreation (DCR) property or facilities for a commercial or noncommercial revenue-generating activity, with a revocable duration greater than five consecutive days and up to five years.
- Memorandum of Understanding (MOU) Agreements – Revocable agreements representing a mutually beneficial relationship, with a duration of up to five years, between DCR and an entity, city, town, municipality, or government agency.
- Lease Agreements – Legally binding agreements that document extended use of DCR property by a private entity and entail a change in legal or physical control of the property for a fixed number of years. DCR is only permitted to issue revocable agreements up to five years in duration except in cases where the Legislature has expressly authorized longer-term lease durations. In those cases, DCR, in conjunction with the Department of Capital Asset Management and Maintenance (DCAMM) – the Commonwealth agency with primary authority over property leases – can issue a lease for short- or long-term use or management of property by a designated lessee. Legislatively authorized leases are generally not revocable, except for breach or default of the terms of the lease, and require legislative approval to modify legislatively specified agreement terms.
- Employee Housing Agreements – Agreements that allow certain DCR staff to reside in homes on DCR property where it has been determined to be in the best interest of, and necessary for, the operation of the agency and the Commonwealth.

These agreements provide the users with access to DCR facilities and/or property for the following program categories,<sup>11</sup> each of which uses one or more of the above agreement types:

#### *Program Categories*

- Boat and Yacht Clubs – Permits are issued for privately owned buildings located on DCR property at 28 waterfront sites located in eastern Massachusetts. In 2004, with one exception, the fees were increased substantially based on a study performed by DCR. Criteria used to determine the new fees included the amount of area used, waterfront square footage, and membership levels. The new fees were included in a five-year permit agreement, with January 1, 2005 as the effective date. In 2010 the Legislature authorized DCAMM, in consultation with DCR, to enter into a lease or other agreement for a term not to exceed 30 years with all boat and yacht clubs that are currently on DCR property. DCAMM and DCR were to determine the fees by developing a methodology for setting fair user fees. To date, new leases based on fair user fees have not been executed. Instead, single-year

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<sup>11</sup> This list omits two additional program categories for which no permit/lease revenues are generated: DCR-operated skating rinks and Friends and Partnership Agreements with DCR support organizations.

permits/extensions have been executed for 2010 – 2012. DCR management advised that the same short-term agreements will be executed for 2013 pending the development and implementation of long-term leases covering future years.

- Concessions – Permits are issued for commercial activity at DCR-owned facilities and property. DCR regulations<sup>12</sup> require that a permit be given only after proposal responses are requested from at least three vendors. Requests for Proposals (RFPs) for a specific activity (e.g., food concession, recreational sport activity) at a specific location are posted through the Operational Service Division’s (OSD’s) Internet-based Commonwealth Procurement Access and Solicitation System (Comm-PASS). After the deadline for responses has expired, all responses (which include each concessionaire’s proposed fee payment) are reviewed and scored by assigned personnel, who make a recommendation to the Commissioner. Upon approval by the Commissioner, the Permit and Lease Unit issues an Award Letter to the selected concessionaire followed by the execution of a permit agreement.
- Cottages – Permits are issued for privately owned cottages located in three state parks. The fees for two of the park locations (Myles Standish State Forest and Ashmere Lake) are set by the Executive Office for Administration and Finance (EOAF) regulation 801 Code of Massachusetts Regulations (CMR) 4.02. According to DCR management, in 1970 the Legislature passed a law that allowed the Metropolitan District Commission (MDC) to take Peddocks Island via eminent domain from a number of owners. In 1992 the MDC organized a Peddocks Island Advisory Committee to respond to public controversy arising from the MDC’s plan to terminate cottage owners’ use of the park land. The MDC subsequently agreed to the advisory committee’s recommendation that the cottage owners be allowed a right to an annual permit until the death of the specific permitted owners of record.
- High Ground (Telecommunication Towers) Permits – Permits are issued to private and public telecommunication entities to construct a tower on DCR property or install equipment on an existing DCR tower. In the case of private telecommunication entities, DCR regulations (350 CMR 2.04) require that a permit be given only after responses are requested from at least three bidders. An RFP for a specific location is posted through the OSD Comm-PASS system. Responses are prioritized for approval based on each responding private entity’s proposed annual fee payment. In instances involving public telecommunication entities and certain educational and nonprofit entities, DCR receives a request from an interested entity and simply negotiates minimal in-kind services in return.
- Legislatively Authorized Agreements – Leases or permits for the use of DCR property are sometimes directly authorized or mandated by act of the Legislature, bypassing regulatory provisions and competitive selection processes. DCR management states that these agreements are particularly unique and complex in their terms and conditions and that, as a result, this group of leases presents some of the most significant management challenges. Fees as low as \$1 per year are sometimes stipulated in legislation. In other cases, DCR is authorized to work with DCAMM to develop an appropriate fee and agreement provisions. DCR management stated that there is no assurance that the list of legislatively authorized agreements they provided to us is complete and accurate. In some cases, DCR management could not provide the applicable legislation that authorized the lease.

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<sup>12</sup> 350 Code of Massachusetts Regulations (CMR) 2.04, Special Use Permits – Commercial Activity

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- Memorandums of Understanding (MOU) – Mutually beneficial agreements to use DCR facilities or property may be established with either a public entity or a private for-profit or nonprofit entity. Fees charged to private for-profit entities are negotiated between DCR and the entity, whereas fees are not typically charged to either public or nonprofit entities. All use agreements in this program category are executed through the MOU agreements mentioned above.
  - Skating Rinks – Leases or permits for 29 facilities have been established for DCR-owned skating rinks operated by either private or public entities. For 27 of the 29 facilities, the Legislature authorized DCAMM, in consultation with DCR, to utilize a competitive proposal process to establish leases for terms not to exceed 25 years. In one case, the Legislature authorized DCAMM, in consultation with DCR, to execute a lease for not less than a 20-year period at the same fee that existed for the previous lease (which expired in 2008) for that facility. In another case, the Legislature authorized MDC to enter into a lease upon terms and conditions determined to be just and expedient. Pursuant to that legislative authorization, a 25-year lease was executed in 1980 for \$1 per year. In 2005, the lease was amended by extending the term an additional 25 years, with the annual rent determined as 1% of gross revenues. For five additional rink facilities, permit agreements, rather than leases, were established in 2010, with operators selected through a competitive RFP process conducted by DCR. Fee amounts were determined based on the competitive responses.
  - Utility Providers – Permits have been issued for utility companies to use DCR property for gas pipelines and electricity-producing equipment under various agreements executed between 1923 and 1991 (mostly between 1951 and 1967). The agreements remain in force until revoked by the state, and the fees have not changed since the agreements were executed.
  - Employee Housing Program – DCR provides housing to 13 DCR employees at 13 different state parks. The houses were included in property acquired by the state for the state park system. Housing agreements are executed between DCR and each employee pursuant to EOAF regulation 801 CMR 4.03(1)(a), which authorizes state agencies to enter into housing agreements with state employees for the occupancy of state property only if such occupancy has been determined by the Secretary for that agency to be in the best interest of, and necessary for, the operation of the agency and for the benefit of the Commonwealth.

## APPENDIX II

### Department of Conservation and Recreation Legislatively Authorized Leases<sup>13</sup>

	Lessee Name	Location
1	Worcester County 4-H Club	Spencer State Forest, Spencer
2	Butternut Basin, Inc.	E. Mountain SF, Great Barrington
3	Cape Cod Bay Properties *	Nickerson State Park
4	Cape Cod Repertory Theatre Company, Inc.	Town of Brewster
5	Charles River Watershed	2391 Comm. Ave, Newton
6	Community Boating *	Charles River Basin, Boston
7	Community Rowing, Inc.	Charles River, Boston
8	Crosby Mansion	Nickerson State Park
9	Department of Environmental Management *	Town of Ashland
10	Department of Environmental Management *	Streeter Point
11	Department of Correction	Myles Standish SP, Plymouth/Carver
12	Department of Environmental Management *	Lake Dennison State Park
13	Department of Natural Resources *	Shawme-Crowell State Forest
14	Department of Natural Resources *	Watson Pond
15	Department of Youth Services	Nickerson SP, Brewster
16	Town of Dracut	Lowell-Dracut-Tyngsboro SF
17	Duffy, Mark	Great Brook Farm, Carlisle
18	Gateway Quincy Associates	Neponset River Res., Quincy
19	Goshen Police Department *	DAR State Forest, Goshen
20	Haley's Café (Anthony of Malden)	Middlesex Fells Reservation
21	Hampshire County Commissioner	Deer Hill State Res., Cummington
22	Harvard University- Weld Boathouse	Charles River
23	Harvard University- Newell Boathouse*	Charles River
24	Harvard University	Broad Canal, Charles Riv. Basin
25	Haynes Management *	Upper Charles
26	James H. Bacon *	Birch Hill Dam, Royalston
27	Joseph M. Smith Community Health Center	Brighton/Allston
28	MBTA (Lechmere)	Viaduct, Boston/Cambridge
29	Lynn Historical Society	Lynn Heritage Park, Lynn
30	Mass. Eye and Ear Infirmary	Boston
31	Mass. Horticultural Society	Elm Bank, Dover
32	MassDOT	Bridges and Certain Thoroughfares
33	Mt. Wachusett Assoc.	Wachusett Mountain, Princeton

<sup>13</sup> This information was compiled by the Office of the State Auditor from documentation provided by the Department of Conservation and Recreation, and its accuracy was not confirmed by audit testing.



	Lessee Name	Location
34	Museum of Science	Charles River Basin, Cambridge
35	Town of Hull	Clock Tower Building and Carousel
36	Town of Natick	Cochituate SP, Natick
37	Neponset Land Trust	Neponset River Reservation, Boston/Milton
38	City of Newburyport *	Plum Island, Newburyport
39	City of North Adams*	Western Gateway Heritage SP, North Adams
40	Plymouth Airport *	Myles Standish SF, Carver
41	Plimoth Plantation, Inc.	Mayflower Park, Plymouth
42	Town of Sandwich	Shawme-Crowell SF, Sandwich
43	Ski Blue Hills Management	Blue Hills Ski Area, Canton
44	Sullivan, Mary	Castle Island, South Boston
45	Town of Canton	Canton Memorial Hall
46	U.S. Army	Birch Hill Dam
47	U.S. Army *	Camp Edwards
48	U.S. Army *	East Brimfield Lake Project
49	U.S. Army *	Fort Devens
50	U.S. Army *	Otis Air Force Base
51	University of Massachusetts *	Mt. Toby, Amherst
52	United States of America *	Camp Edwards
53	United States of America *	Otis Air Force Base
54	United States of America *	Shawme-Crowell State Forest

\* DCR was unable to provide copies of the authorizing legislation for various use arrangements that had been in place for many years (most of which had been established through DCR's predecessor agencies). However, DCR management asserted that it was their understanding that the legislation had been passed at each arrangement's inception.

### APPENDIX III

#### Department of Conservation and Recreation Boat and Yacht Club Agreements with Retroactive Effective Dates<sup>14</sup>

	Name	Mailing Address
1	Belmont Hill School/Windsor Boat House	350 Prospect Street, Belmont, MA 02478-2662
2	East Boston Yacht Club	0 Rice Street, East Boston, MA 02128-1567
3	South Boston Yacht Club	1849 Columbia Road, Boston, MA 02127-4375
4	Tufts University Boat Club	161 College Avenue, Medford, MA 02155
5	Boston Harbor Yacht Club	P.O. Box 103, South Boston, MA 02127-0002
6	Boston University Sailing Pavilion	125 Bay State Road, Boston, MA 02215
7	Buckingham Browne & Nichols Boat House	80 Gerry's Landing Road, Cambridge, MA 02138-5512
8	Cambridge Boat Club	2 Gerry's Landing Road, Cambridge, MA 02138
9	Charles River Yacht Club	P.O. Box 134, Cambridge, MA 02141-1348
10	Charlesgate Yacht Club	20 Cambridge Parkway, Cambridge, MA 02142-1220
11	Columbia Yacht Club	1825 Columbia Road, South Boston, MA 02127
12	Dorchester Yacht Club	100 Playstead Road, Dorchester, MA 02125
13	Massachusetts Institute of Technology (Harold Whitworth Pierce Boat House)	77 Massachusetts Avenue, Cambridge, MA 02139
14	Massachusetts Institute of Technology (Walter C. Wood Sailing Pavilion)	77 Massachusetts Avenue, Cambridge, MA 02139
15	Medford Boat Club	P.O. Box 6, Medford, MA 02156-0001
16	Mystic Wellington Yacht Club	P.O. Box 235, Medford, MA 02155-0002
17	Neponset Valley Yacht Club	P.O. Box 13, Milton, MA 02186-0002
18	Newton Yacht Club	P.O. Box 71, Newton, MA 02195
19	Puritan Canoe Club	75 Farragut Road, South Boston, MA 02127
20	Riverside Boat Club Cambridge	769 Memorial Drive, Cambridge, MA 02139
21	Riverside Yacht Club	52 Ship Avenue, Medford, MA 02155-7206
22	South Shore Yacht Club	P.O. Box 82, North Weymouth, MA 02191
23	Squantum Yacht Club	646 Quincy Shore Drive, Quincy, MA 02170
24	Union Boat Club	144 Chestnut Street, Boston, MA 02108
25	Watertown Yacht Club	P.O. Box 137, Watertown, MA 02471-0137
26	Winter Hill Yacht Club	P.O. Box 8, Somerville, MA 02143-0001

<sup>14</sup> Compiled by the Office of the State Auditor from documentation provided by the Department of Conservation and Recreation.

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## APPENDIX IV

### Additional Examples of Unpaid Fees

#### ***Skating Rink Program – Unpaid Fee of Undetermined Amount***

The Department of Conservation and Recreation (DCR) entered into a 20-year leasing agreement that allowed the Town of Arlington to operate a DCR skating rink from August 1, 2005 to July 31, 2025. During the first five years of the agreement, no payment was required. For the next five years, beginning August 1, 2010, a monthly user fee of 1% of gross revenues was due. However, we determined that user fees during the period August 1, 2010 to July 31, 2011 were not paid. Because there is no history of fee payments, an estimate of unpaid fees could not be determined. Although this matter was brought to DCR's attention during the audit, DCR was unsuccessful in its attempts to contact the Town to resolve this situation. Consequently, DCR is still investigating this matter.

#### ***High Ground Program – Unpaid Fee of \$37,091***

DCR entered into a license agreement with a telecommunications entity (licensee) in 2005 (renewed in 2010 for five years) that allowed the licensee to install a telecommunication tower on DCR property at the Middlesex Fells Reservation and to enter into sub-agreements with third parties (sublicensees) to use space on the tower. Specifically, Section 13(iii) of the agreement states, in part:

*Any SUBLICENSEE shall pay an annual licensee fee for the use of the LICENSEE'S antenna structure. The rate for such annual fee shall be equivalent to the current rental rate charged under any master agreements or other use agreements in place between the LICENSEE and any such SUBLICENSEE. Any such SUBLICENSEE shall split the payment of any such annual license fee as follows: the SUBLICENSEE shall pay fifty percent (50%) of the fee directly to the LICENSEE on a monthly basis and the SUBLICENSEE shall pay the other fifty percent (50%) of the fee directly to the LICENSOR [DCR] on a monthly basis.*

In 2008 the licensee executed an agreement with a sublicensee to use the tower for telecommunication purposes at an annual licensee fee of \$24,000, with a 3% annual increase thereafter. We determined that no licensee fees had been paid, resulting in a total of \$37,090.80 (50% of annual licensee total fees, including the 3% annual increase) due DCR for the three-year period ended October 2011. After the Office of the State Auditor notified DCR of this issue, DCR contacted the sublicensee, which paid the full amount owed on August 15, 2012.

***Concession Program – Unpaid Fee of \$23,400***

Based on a response to a Request for Proposals for a concessionaire at DCR's Lynn Shore and Nahant Beach Reservation, DCR sent an award notice to the permittee as notification that its proposal to operate the concession for five years beginning in 2008 for an annual fee of \$11,700 had been accepted. However, our audit determined that DCR never executed a formal permit agreement with the permittee (see Audit Finding No. 2b). Moreover, our examination showed that the concessionaire continues to use and occupy the DCR property even though no fees have been remitted since 2009, resulting in total delinquent fees of \$23,400 due DCR for fiscal years 2010 and 2011. Regarding this matter, DCR stated that the permittee requested a 90% fee abatement due to a displacement of the permittee's location and an apparent decrease in business due to ongoing construction. DCR has responded with a 50% counterproposal. The matter was still unresolved at the completion of our audit fieldwork.

***Concession Program – Unpaid Fee of \$7,200***

A concessionaire and DCR executed a permit agreement that allowed the concessionaire to operate at the DCR Hopkinton State Park from January 1, 2007 to January 31, 2012. The permit agreement called for an annual user fee for the first year of \$5,500 with an annual increase of 3% for the remaining years. Our analysis showed that the annual user fee for fiscal year 2011, totaling \$6,190 (including the 3% increase), was not paid. In addition, we determined that the permittee paid only the initial annual user fee of \$5,500 from 2008 to 2010. The annual 3% increase was not billed or collected. Accordingly, an additional \$1,010 in unpaid user fees is due DCR. After we brought this matter to DCR's attention, the concessionaire submitted the \$6,190 unpaid user fee for fiscal year 2011 to DCR on June 18, 2012; DCR has contacted the concessionaire regarding the remaining unpaid user fee of \$1,010.