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INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN ACTIVITIES OF
THE NEW BEDFORD OCEANARIUM CORPORATION
SEPTEMBER 1, 1993 THROUGH JUNE 30, 2003

OFFICIAL AUDIT
REPORT
NOVEMBER 6, 2003

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The New Bedford Oceanarium Corporation (NBO) was originally incorporated in 1993 as a private, not-for-profit corporation, The Greater New Bedford Zoo & Aquarium Corporation. According to its Articles of Organization, the NBO was established “To manage or assist in the management of public and/or non-profit zoos, aquariums, and similar habitats for animals and fish operated for public educational purposes.” Since its original organization, the NBO has amended its Articles of Organization twice, first on January 30, 1997, when the agency’s Board of Governors voted to change the name of the organization to The New Bedford Aquarium Corporation, and on June 5, 2001, when the board voted to change the name of the organization to the New Bedford Oceanarium Corporation. According to publications issued by the NBO, the organization’s current mission is as follows:

To create a world-class Oceanarium that will educate as it entertains, that will foster scientific research and awareness of our oceans, and that will generate jobs and economic development for the SouthCoast region.

The scope of audit included reviewing certain administrative and operational activities of the NBO during the period September 1, 1993 through June 30, 2003. Our special-scope audit, which was conducted in accordance with applicable generally accepted government auditing standards for performance audits issued by the Comptroller General of the United States, had the following specific objectives:

1. A determination of whether the NBO has established and implemented adequate and effective management controls over certain agency activities, including:
 - Policies and procedures to ensure internal administrative and accounting controls over NBO revenues, expenses, and fixed assets;
 - Policies and procedures to ensure that resource use is consistent with laws and regulations; and
 - Policies and procedures to ensure that resources are safeguarded and efficiently used.
2. An assessment of the NBO’s business practices and its compliance with applicable laws, rules, and regulations as well as the various fiscal requirements of its state contract.

We found that during our audit period, the NBO expended the monies it received under its state contract in accordance with the terms and conditions of this contract. We also, based on our review of internal controls and our selected tests of transactions, did not identify any improper or questionable use of agency funds in the areas reviewed. However, our audit identified that the NBO could improve its internal controls in the areas of contract administration, human resource management, and potential conflict-of-interest issues.

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INTRODUCTION

Background

The New Bedford Oceanarium Corporation (NBO) was originally incorporated in 1993 as a private, not-for-profit corporation, the Greater New Bedford Zoo & Aquarium Corporation. According to its Articles of Organization, the NBO was established “To manage or assist in the management of public and/or non-profit zoos, aquariums, and similar habitats for animals and fish operated for public educational purposes.” Since its original organization, the NBO has amended its Articles of Organization twice, first on January 30, 1997, when the NBO’s Board of Governors (Board) voted to change the name of the organization to The New Bedford Aquarium Corporation, and on June 5, 2001, when the board voted to change the name of the organization to the New Bedford Oceanarium Corporation. According to publications issued by the NBO, the organization’s current mission is as follows:

To create a world-class Oceanarium that will educate as it entertains, that will foster scientific research and awareness of our oceans, and that will generate jobs and economic development for the SouthCoast region.

The NBO is overseen by a Board of Trustees (Trustees) and a Board of Governors (Board). According to the NBO’s corporate bylaws (adopted September 9, 1999), the Trustees include the incorporators of the corporation and any such other individuals elected by the Trustees. The number of Trustees cannot exceed 127 at one time, and each Trustee serves for a period of three years. Trustees provide oversight to the NBO’s operations but are not allowed to vote on matters affecting the NBO unless they are also members of the organization’s Board of Governors. According to the NBO’s corporate bylaws, the Board of Governors (Board) consists of not less than five nor more than 31 Trustees who are elected annually by the existing Trustees. The Board has control over the entire management of the property and affairs of the NBO (see Appendix I for a listing of the NBO’s Trustees and Governors). In addition to the Trustees and Board, the NBO also had nine full-time, one part-time, and one full-time-temporary¹ staff members as of the end of our audit period.

¹ The NBO may hire full-time, part-time, and adjunct employees. The NBO defines part-time employees as employees who work between 20 and 30 hours per week and are entitled to fringe benefits. Adjunct employees, which the NBO currently does not have on staff, are part-time employees who work less than 20 hours per week and are not entitled to benefits.

During the past seven fiscal years (July 1st through June 30th), the NBO has received funding from various governmental and private sources, as indicated in the table below:

Summary of Revenue*

Fiscal Years 1997 through 2003

Fiscal Year	Contribution Income	Fundraising Event Revenue	Outreach Function Income	In-Kind Revenue	Education Grants	Other Revenue
2003	\$575,919	\$75,860	\$8,482	\$63,093	\$987,223	\$ 0
2002	1,160,201	0	0	85,325	51,790	799,367**
2001	1,050,204	99,743	0	58,310	0	2,200,633**
2000	1,468,950	0	0	131,073	0	25,000
1999	256,845	0	0	31,027	0	0
1998	193,129	71,381	0	3,139	0	0
1997	<u>22,400</u>	<u>6,325</u>	<u>0</u>	<u>2,500</u>	<u>0</u>	<u>0</u>
Totals	<u>\$4,727,648</u>	<u>\$253,309</u>	<u>\$8,482</u>	<u>\$374,467</u>	<u>\$1,039,013</u>	<u>\$3,025,000</u>

* These figures were provided by NBO staff based on information in the agency's profit and loss statements. At the time this information was provided, the NBO's fiscal year 2003 financial records had not been audited; therefore, these figures may be subject to adjustment.

** These revenue figures comprise the \$3,000,000 in funding that the NBO received under its contract with UMass Dartmouth discussed below.

The NBO's goal is to construct an aquarium and in the process create jobs and economic growth for the New Bedford community. Although the NBO was organized in 1993, the aquarium project did not receive any state or federal funding prior to 1997. During this fiscal year, the Commonwealth appropriated \$300,000 under Section 104 of Chapter 204 of the Acts and Resolves of 1996 to the Massachusetts Office of Business Development to conduct a study relative to converting the Commonwealth Electric Power Plant on Common Street in New Bedford into an aquarium and related-use facility, and the NBO raised additional funds during this fiscal year for this purpose. Because this first \$300,000 in state funding was not actually provided to the NBO, it does not appear as revenue or expenses in the accounts of the agency.

According to NBO records, this funding was expended on a feasibility study conducted by Cambridge Seven Associates Inc. (CSA) to ascertain whether it was economically feasible for an aquarium to survive in the New Bedford area. This study, the results of which were issued by CSA in July 1997, analyzed a number of variables, including the demographics within the region, tourism,

tourism attractions within the region, the success of comparable projects, potential visitation and financial viability, revenue potential and the economic impact on the local community. In general, this study concluded that, at the mid-range of the projected attendance at the aquarium (1,363,000 annually), the NBO would have a positive net cash flow and would have a positive effect on the Massachusetts economy by creating hundreds of new jobs and increasing net spending by visitors within the Commonwealth by over \$67 million annually. As a result of this feasibility study, the NBO's Board decided to go forward and pursue additional funding for the project, (a history of the project prepared by the NBO appears in Appendix II).

On July 1, 2000, the NBO entered into a \$3 million contract agreement with an agency of the Commonwealth, the University of Massachusetts Dartmouth (UMD). The purpose of this contract was to provide funding to the NBO to pay for capital costs associated with the construction of an aquarium on the site of the former Commonwealth Electric power plant on Cannon Street in New Bedford. In return for this funding, the NBO agreed to the following:

- Designate and utilize the University of Massachusetts Center for Marine Science and Technology (CMAST) and the Intercampus Graduate School of Marine Science (IGSMS) as the primary research arm for the aquarium-related research;
- Work with CMAST and other research institutions to develop joint research projects;
- Join CMAST and UMD in its economic development efforts to attract marine science technology related business to the SouthCoast region of the Commonwealth;
- Develop and provide internships and cooperative educational opportunities to UMD undergraduate and graduate students;
- Work together with UMD and CMAST to build educational programs in marine science, environmental science, and other academic disciplines; and
- Develop and maintain a joint committee on education and research with CMAST to promote and oversee activities and programs established thereafter, provided that no less than 50% of the membership of the joint committee shall be from UMD.

The NBO started drawing funds under this contract in December 2000 and had expended the entire \$3 million by May 2002. According to agency records, the expenditures made by the NBO with these funds were in various areas relative to the planning and design of the aquarium that is to be located on the site. The following table summarizes the amounts expended in each of these areas:

Summary of Expenditures Charged against the UMass Contract**

Description	Amount*
Architectural Services	\$ 985,074.43
Construction-Related Services	1,349,451.77***
Environmental	131,775.81
Structural	36,014.74
Site Plan	2,375.00
Coring & Drilling	14,189.00
Permitting	155,907.23
Engineering	115,575.19
Legal	136,377.20
Pre-Opening Management Services	<u>181,250.00</u>
Total	<u>\$3,107,990.37</u>

* In addition to the \$3 million that the NBO received under its contract with UMass, the NBO also expended an additional \$107,990 in agency funds.

** Information was extracted from the NBO's classification of expenses submitted to UMass for payment.

*** According to NBO officials, during January 2001 Beacon Skanska Inc. (Skanska) became the general contractor for the project. Subsequent to this date, the majority of the project costs managed by Skanska for engineering, architecture, and other related services were characterized by the NBO as construction costs.

Originally, the oceanarium project was going to occupy approximately 130,000 square feet of space and cost approximately \$125 million. However, the NBO's Chief Operating Officer (COO) stated that, due to difficulties in the NBO's obtaining all of the necessary funding to complete this project (see Project History, Appendix II), the NBO is in the process of scaling back the size of the project to a cost of approximately \$66.5 million. In fact, in May 2003, the NBO's architect delivered to its Board its redesign for a scaled back oceanarium project, and the Board voted in its May 2003 meeting to proceed with the construction of the scaled-back design presented by the architect.

Audit Scope, Objectives, and Methodology

The scope of our audit was to examine certain administrative and fiscal activities of the NBO during the period September 1993 to June 2003. Our special-scope audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and

included procedures and tests considered necessary by the Office of the State Auditor (OSA) to meet these standards. Our audit was conducted in conjunction with the state's Office of the Inspector General (OIG), which independently reviewed certain aspects of the operation of the NBO that were mutually agreed upon by the OIG and OSA, including the contract between the NBO and the Oceanarium Planning and Development Corporation.

Our objectives consisted of the following:

1. A determination of whether the NBO has established and implemented adequate and effective management controls in certain areas of its operations, including:
 - Policies and procedures to ensure internal administrative and accounting controls over NBO revenues, expenses, and fixed assets;
 - Policies and procedures to ensure that resource use is consistent with laws and regulations; and
 - Policies and procedures to ensure those resources are safeguarded and efficiently used.
2. An assessment of the NBO's business practices and its compliance with applicable laws, rules, and regulations as well as the various fiscal requirements of its state contracts.

In order to achieve our audit objectives, we first assessed the system of management controls established and implemented by the NBO over its operations. The purpose of this assessment was to obtain an understanding of management's attitude, the control environment, and the flow of transactions through the NBO's accounting system. The assessment was used in planning and performing our audit tests. We then held discussions with NBO officials and reviewed organizational charts and internal policies and procedures. We also reviewed all applicable laws, rules, and regulations. Finally, we examined the NBO's financial statements, budgets, invoices, and other pertinent financial records to determine whether expenses incurred by the NBO during our audit period were reasonable, allowable, allocable, properly authorized and recorded, and in compliance with all applicable laws, rules, and regulations and the terms and conditions of the agency's state contracts.

Our review was not made for the purpose of forming an opinion on the NBO's financial statements. We also did not assess various aspects of the NBO's operations such as the financial viability of the construction of the aquarium. Rather, our report was intended to report findings and conclusions regarding the NBO's internal control environment; compliance with applicable laws, rules, and

regulations; and specific processes, methods, and internal controls that could be made more efficient and effective in the areas reviewed. Our review at the NBO was limited to the following six areas in order to provide a timely reporting of these issues:

- Agency staffing and compensation levels
- Contract administration activities excluding the contract between the NBO and the Oceanarium Planning and Development Corporation, which is being reviewed by the OIG
- Administration of grant funds
- Related-party activities
- Fundraising
- Investigation of specific concerns raised in the media and from other sources

Finally, the OSA is authorized under its enabling legislation, Chapter 11, Section 12, of the General Laws, to perform audits of entities such as the NBO that contract with the Commonwealth to “determine compliance with the provisions and requirements of such contracts or agreements and the laws of the commonwealth.” This statute further mandates that “the state auditor shall have access to such accounts at reasonable times and said department [OSA] may require the production of books, documents, vouchers, and other records relating to any matter within the scope of such audit.”

During the conduct of our fieldwork, the NBO, for the most part, provided us with all of the documentation that we requested in a timely manner. However, at times, NBO officials were unable to supply us with requested documentation because NBO staff had difficulty retrieving some requested pre-1997 documents. Most of the agency’s staff had been employed by the NBO for a period of less than two years and were therefore unable to answer certain questions about activities conducted by the agency prior to this period. Therefore, our ability to perform sufficient audit testing in certain areas was partially impaired, and the audit results and opinions expressed in this report are based solely on the documentation that the NBO provided to the audit team.

AUDIT RESULTS

1. CONTROLS OVER CONTRACT ADMINISTRATION NEED TO BE IMPROVED

During our audit period, The New Bedford Oceanarium Corporation (NBO) awarded contracts totaling \$4,710,524 to 36 consultants. However, the NBO had not developed and implemented formal written policies and procedures relative to administration of its contracts. Our audit revealed a number of deficiencies in the NBO's contract administration activities, including some consultant contracts being awarded without competitive procurement procedures, a lack of formal written contracts with some consultants, incomplete contract files that did not identify the qualifications of each consultant, inadequate monitoring of consultant performance, and inadequate documentation relative to some consultant invoices. Without adequate controls over its contract administration, there is inadequate assurance that the NBO's objectives are met in the most economical and efficient manner; its transactions are properly authorized, recorded, and reported; and consultants are adhering to all contractual terms and conditions.

Generally Accepted Accounting Principles (GAAP) require organizations to establish adequate internal controls over all aspects of their operations, including the administration of contracts. Our review of the internal controls that the NBO had established over its administration of contracts revealed several deficiencies. First, the NBO had not developed formal written policies and procedures relative to the administration of contracts. Instead, the NBO relied on a "recommended" Policy on Contract Review and Approval that requires the entire Board of Governors (Board) and/or its Executive Committee to approve professional service contracts over specified amounts as well as contract amendments that exceed 10% of the original contract amount. For example, this policy requires the Executive Committee of the Board to approve all professional service contracts in excess of \$100,000 and the entire Board to approve professional service contracts over \$1 million (the Chief Executive of the NBO has the authority to approve contracts below \$100,000). However, the NBO does not have any formal policies and procedures requiring agency staff to utilize effective contract administration practices such as competitive procurement practices when procuring goods and services over specified amounts and executing formal written contracts with contractors. According to the NBO's Chief Operating Officer (COO), only certain agency officials have been delegated authority to contract for goods and services. However, the COO did not provide us with documentation (e.g., a Board vote), to substantiate this assertion. The COO added that the individuals who are

authorized by the NBO to negotiate contracts on its behalf know the agency and the products and services that need to be procured. The COO further added that there is a control in place that requires Board approval for the award of all professional services contracts over specified amounts.

During the period September 1, 1993 through June 30, 2003, the NBO awarded contracts totaling \$4,710,524 to 36 consultants (see Appendix III for details on consultant expenditures).

Because of the lack of adequate controls in this area, during our audit we reviewed all the documentation that the NBO was maintaining relative to the contracts it awarded to a random sample of 19 consultants, which totaled \$1,558,708 during fiscal years 1997 through 2003. Our review of this documentation revealed the following deficiencies:

- There was no documentation to substantiate that any of the 19 contracts for consultant services in our sample was procured using a competitive-bidding process. Rather, NBO officials stated that the individuals within the NBO who needed goods or services would contact the contractor directly and negotiate the terms of the agreement. Because the NBO did not use competitive procurement procedures when procuring these services, there is inadequate assurance that the agency is getting the best products or services at the lowest possible cost.
- The NBO did not enter formal written contracts with four of the 19 consultants in our sample who were paid a total of \$320,864 during the period of our review. By not entering into formal written contracts with these individuals, the NBO lacked a mechanism to monitor each contractor's performance and to protect itself from any legal issues (e.g., non-performance of work, liability claims for property damage or personal injury) made by either the NBO or the contractor) that could arise. One of these consultants, who was purportedly functioning as the NBO's Executive Director on a consulting basis, would simply submit a monthly invoice that stated, "Retainer for professional services \$10,000," with no indication as to the hours worked, the services provided, or the hourly rate of compensation.
- There was no evidence of how the NBO established the rates of compensation for any of the consultants.
- The NBO only had documentation as to the qualifications of the individuals being hired for five of the 19 consultants in our sample. Without such documentation (e.g., résumés), the NBO and its contributors cannot be assured that the consultants hired by the NBO were qualified to provide the services for which they were paid.
- There was no evidence that the NBO assessed each consultant's performance.

- We found many instances in which consultants submitted invoices that lacked the detail necessary to determine whether the billings were appropriate. For example, in addition to the invoices submitted by the NBO's former Executive Director mentioned above, a consultant hired by the NBO to function as its Project Manager would submit invoices that merely stated the following: " Services rendered by JK as Project Manager for period ending September 7, \$4,375."

Regarding these matters, the NBO's COO stated that he realized the NBO does not have adequate written policies and procedures in this area, and that he intends to address this in the near future. In fact, during July 2003, the agency's COO provided the audit team with a new contract review and approval process for the agency's Board and its committees. However, this new policy does not address various operational activities, such as the need for competitive procurements and formal written controls.

Recommendation

In order to address our concerns relative to this matter, we recommend that the NBO establish and implement comprehensive contract administration polices and procedures. Such controls will become even more important when the actual construction of the project begins and contracts are awarded by the NBO for this purpose.

2. HUMAN RESOURCE POLICIES AND PROCEDURES NEED TO BE IMPROVED

We found that the NBO needed to improve controls over certain areas of its human resource management. Specifically, the NBO had not established job descriptions and performance goals for the majority of its staff positions and was not conducting all staff evaluations in the manner prescribed by its own internal policies and procedures. We also found that although the fringe benefits provided to NBO staff generally appear to be reasonable, some benefits, such as the agency's retirement plan, seem generous when compared to the benefits provided by similar organizations.

As stated in Audit Result No. 1, Generally Accepted Accounting Principles (GAAP) requires organizations to establish adequate internal controls over all aspects of their operations, including the administration of human resources. Our review of the internal controls that the NBO had established over staff compensation revealed a number of deficiencies. Specifically, according to NBO officials, the NBO did not have a policy that required it to conduct performance evaluations of agency staff prior to June 1, 2001, when the NBO implemented an

“Employee Policy” handbook. Section IX of this handbook, entitled Compensation Administration, states the following:

Each position will have a formal position description and will be assigned a salary grade and range based on market conditions. Position descriptions will be recommended by the Executive Director/President and approved by the Board of Governors.

- *Pay raises are awarded in the following manner:*

(a) Promotional increases occur when a person is promoted to a position with a higher degree of responsibility or when an existing position is reclassified to a higher grade due to a change in duties where the incumbent remains in the position.

(b) Merit increases are based on the individual's performance against goals established at the employee's annual performance evaluation.

(c) The amount of pay increases should conform to the annual guidelines established in the pay increase budget as prepared by the Executive Director/President and approved by the Personnel Committee, Finance Committee and the Board of Governors.

(d) Exceptions to the pay range and pay increase budget require the approval of the President of the Board of Governors and the ratification of the Board of Governors.

(e) Salary increases for the Executive Director/President are recommended by the President of the Board of Governors and approved by the Personnel Committee and the Board of Governors and approved by the Personnel Committee and the Board of Governors.

During our audit we reviewed the personnel files of the 17 full- and part-time NBO employees who filled 15 positions during our audit period and noted that only five of the 17 employee files contained a job description. Moreover, 12 (60%) of the 20 employee evaluations that should have been in the files were missing.

We also found that only five (30%) of the 17 employee files contained performance goals, and there was no information in any of the files that documented how each employee's starting salary was established. Further, we attempted to determine whether the NBO's COO was providing pay increase budgets to the Board for its approval. However, we found that most of the NBO staff had not been in their positions long enough to be given salary increases.

We compared the fringe benefits being provided to NBO staff to similar organizations. According to NBO officials, the NBO established its current fringe benefits package in June

2001. The agency's COO told us that the NBO uses a Member Compensation Survey published by the American Zoo and Aquarium Association (AZA) to determine compensation levels for most of its staff. During our audit, we reviewed the AZA's 2002 survey, which was conducted by the AZA at over 120 institutions, for approximately 2,000 rates of compensation and benefit plans for 35 positions within the industry. Notable participants in this survey included the New England Aquarium, the National Aquarium at Baltimore, the Seattle Aquarium, and the Florida Aquarium. Currently the NBO's fringe benefits package includes the following:

1. Paid leave based on a 35-hour work week:

Sick	6 days per year
Personal	3 days per year
Holidays	12 days per year
Vacation	10 days, years 1 -5 15 days after 10 years 20 days after 15 years

Note: All current employees for the NBO except one are considered "exempt employees" by the NBO and do not have to submit time sheets and are entitled to 20 vacation days during their first year of employment.

2. Health insurance (the NBO pays 90% of the cost for individual coverage and 83% of the cost for family coverage)
3. Life insurance equal to one year's salary (no employee co-payment)
4. Long-term disability insurance equal to 60% of an employee's gross monthly income (no employee co-payment)
5. Dental expense reimbursements up to \$600 per year (no employee co-payment)
6. Severance pay after one year of continuous service:

Years Completed	Severance Amount
1 - 5	Two weeks salary
6 - 10	Three weeks salary
11 or more	Four weeks salary

7. A 403B defined contribution retirement plan in which each employee's contributions are matched two for one up to a maximum of 6% of the employee's gross salary.

According to NBO records, the NBO spent the following amounts on certain fringe benefits during our audit period:

NBO

Summary of Certain Fringe Benefits Expenses

Fiscal Year	403B	LTD/Life Insurance	Health Insurance	Dental	Total
2003*	\$48,519	\$18,740	\$73,432	\$2,697	\$143,388
2002	9,648	13,734	49,338	3,042	75,762
2001	0	895	10,597	45	11,537
2000	0	0	2,828	0	2,828
1999	<u>0</u>	<u>0</u>	<u>1,733</u>	<u>0</u>	<u>1,733</u>
Total	<u>\$58,167</u>	<u>\$33,369</u>	<u>\$137,928</u>	<u>\$5,784</u>	<u>\$235,248</u>

*These figures, which were extracted from the NBO's financial records, are unaudited.

Based on our review of the fringe benefits provided by NBO staff, we found that some vacation and holiday pay appear to be consistent with those of similar organizations detailed in the 2002 AZA survey, whereas others appeared to be more generous. For example, according to the 2002 AZA survey, only 15% of the respondents to the survey allow their employees to vest in their agency's retirement plan immediately as the NBO does. Further, according to the AZA survey, 24% of the reporting organizations do not make any matching contributions to their employees' retirement plan, and the majority of those that do match at a level of between 50% and 100%, rather than the 200% rate established by the NBO. Finally, unlike the NBO, none of the 2002 AZA survey respondents indicated that they offered severance packages to their employees or fully funded long-term disability insurance.

According to the NBO's COO, the NBO has begun to conduct staff evaluations. Regarding the matter of fringe benefits, NBO officials stated that the agency established salary levels and established a formal fringe benefit plan to attract and retain qualified employees around June 2001. According to the agency's Director of Administration and Finance, the NBO hired a benefit specialist, Benefits by Design (formerly Paradine Benefits Group), to establish a benefits package that was comparable to industry averages. The Director also stated that she conducted a telephone survey with local colleges, higher education facilities, and related organizations to obtain a comparison of retirement plans from other related non-profit entities. The benefit and retirement packages that were developed by the benefits specialist and the Director of Administration and Finance were submitted to the Board, which reviewed and approved them.

Recommendation

In order to address our concerns relative to these matters, the NBO should establish adequate controls over human resource administration. At a minimum, such controls should include detailed job descriptions, established pay scales for each position, a formal evaluation process, and at least annual evaluations for all staff. Finally, the NBO should periodically review the fringe benefits it provides to staff to make sure their benefits are affordable, reasonable, and comparable with those provided by similar organizations.

3. THE NBO'S CONFLICT-OF-INTEREST POLICY COULD BE STRENGTHENED

We found that the NBO has established a conflict of interest policy that incorporated almost all of the guidelines issued by the state's Office of the Attorney General (OAG). However, we believe this policy could be made more effective by specifically addressing potential questions regarding the interrelationship between board members' investments and the NBO's investment decisions.

The OAG has issued a publication entitled, "The Attorney General's Guide for Board Members of Charitable Organizations" that provides guidance as to the proper conduct of individuals who serve as board members of non-profit organizations such as the NBO. Regarding conflict-of-interest situations, this guide states, in part:

You, or a business you control or benefit from financially, may be considering whether or not to engage in a transaction with the charity on whose board you are sitting. A situation of this type presents a potential conflict between your own financial interests and your duty as a board member to be absolutely loyal to the charity. It also may look questionable to the public.

Because of these problems, a board member or related entity should be cautious about entering into a business relationship with the charity the board member is overseeing, and the board should be very cautious about allowing the charity to enter into such a relationship. Such a transaction should not occur unless the board determines it is clearly in the best interest of the charity. Prior to the board vote, the board member should fully disclose his or her financial interest to the entire board, and the board member should not vote on any aspect of the arrangement or be present when it is being discussed or voted upon.

This means:

You should ensure that your board has a policy for dealing with conflicts of interest.

The policy should include a procedure for the annual written disclosure by all board members of their business involvements with the charity and their other board memberships, both for-profit and charitable. The information disclosed should be circulated to all board members and be updated throughout the year as necessary.

Your conflict-of-interest policy should address the issues raised if board members have or might acquire investments that may affect or be affected by the charity's investment decisions.

Prior to July 2002, the NBO had incorporated the following conflict-of-interest policy into its bylaws:

(1) No person shall be disqualified from holding any office by reason of any interest. In the absence of fraud, any Governor, Trustee or officer of this Corporation individually, or any individual having any interest in any concern in which any such Governors, Trustees, officers, or individuals have any interest, may be a party to, or may be pecuniarily or otherwise interested in, any contract, transaction.

(a) Such contract transaction, or act shall not be in any way invalidated or otherwise affected by that fact;

(b) No such Governor, Trustee, officer or individual shall be liable to account to this Corporation for any profit or benefit realized through any such contract, transaction or act; and

(c) Any such Governor of this Corporation shall not be counted in determining the existence of an quorum at any meeting of the Governors or of any committee thereof which shall authorize any such contract, transaction, or act, and shall to vote to authorize the same;

The term "interest" including personal interest and interest as a director, officer, stockholder, shareholder, trustee, member or beneficiary of any concern; the term "concern" meaning any corporation, association, trust, partnership, firm person or other entity other than this corporation.

In comparison, it is clear that the NBO's conflict-of-interest policy contained in its bylaws does not meet all of the guidelines offered by the OAG. Effective July 29, 2002, the NBO adopted a new conflict-of-interest policy for its Board and staff that incorporated almost all of the guidelines issued by the OAG. While this new policy is more comprehensive and clearly provides better controls over conflict of interest situations involving Board members and Trustees, the NBO's new policy could be made stronger by specifically addressing issues raised if board members have or acquire investments that may affect or be affected by the NBO's investment decisions. During our audit, we conducted testing in certain areas (see Other Matters) and did not identify any potential conflict-of-interest situations in the areas reviewed.

Recommendation

The NBO should develop and implement a conflict-of-interest policy that meets all of the guidelines established by the OAG. Specifically, the NBO should consider amending its current conflict of interest policy to address those instances where agency staff, Board members and/or Trustees acquire investments that may affect or be affected by the NBO's investment decision. The agency's policy should require prior disclosure of these activities to the Board, and include other safeguards to ensure that staff, Board members and Trustees do not derive or give the appearance that they have derived excessive benefits from these investment activities. Once this policy is implemented, NBO staff should establish controls to ensure agency compliance.

4. OTHER MATTERS

During the conduct of our audit work, matters were brought to our attention regarding the administration of the NBO. These concerns, the audit work we conducted to address them, and our conclusions thereon are detailed in the following sections.

a. Concern: The NBO Awarded a Contract to a Business Owned by a Board Member to Produce Sports Gear

During our audit, we reviewed the NBO's financial records for the past five years and spoke with NBO staff regarding this matter. Based on our audit work, we determined that a member of the agency's Board owns a company called Ahead Headgear Inc. Beginning in November 2001, this Board member's company on several occasions provided personalized caps to the NBO at no cost. As of June 30, 2003, this company had donated 151 caps, which the Board member in question said had a retail value of \$20 each. NBO officials told us that the NBO gives a cap to any individual who purchases an annual "Angelfish" membership (\$250 per year) or above from the NBO. In addition to these caps, agency records indicated that the NBO purchased 36 sweatshirts at \$15 each from this company on December 16, 2002, and an additional three \$15 sweatshirts on March 2, 2003, representing total purchases of \$585 from this company. According to the NBO's Director of Administration and Finance, the \$15 cost is Ahead Headgear's wholesale price, and the company provides any lettering that is done on the sweatshirts at no cost. NBO officials told us that these sweatshirts were resold at NBO fundraising events for \$30 each.

The Board member in question does not have a formal written contract with the NBO to provide this merchandise to the agency. Rather, the NBO simply issues Ahead Headgear Inc. a purchase order to procure these items on an as-needed basis. Consequently, it could not be determined whether these and any subsequent purchases are in violation of the NBO's conflict-of-interest policy, which allows Governors, Trustees, and Officers to contract or conduct transactions with the NBO as long as they do not participate in the authorization of such contracts or transactions.

NBO officials stated that they would be reporting this related-party activity in the agency's fiscal year 2003 financial statements. In addition, we believe that the NBO should take measures to ensure that the full Board is aware of this related-party activity and takes measures to ensure that any future purchases from this company do not represent a conflict-of-interest situation.

b. Concern: The City of New Bedford Donated \$25,000 to the Oceanarium, Which May Be a Violation of the City's Budgetary Laws

The \$25,000 in question was not a direct donation by the City of New Bedford. Rather, on July 1, 1999, the NBO entered into a Sub-Recipient Agreement with the city. The agreement was financed by funds the City received from the federal government under the provisions of Title I of the Housing and Community Development Act of 1974, as amended. Under the terms and conditions of this agreement, the city agreed to provide the NBO with \$25,000 to fund various planning activities, including a feasibility study relative to the construction of the aquarium. All of the work required under this agreement was to be completed by June 30, 2000.

During our audit, we reviewed the invoices submitted by the NBO to the city relative to this agreement and found that the NBO did receive the entire \$25,000 in payments from the city. However, the invoices submitted by the NBO did not specifically indicate how these funds were expended. According to information provided to us by NBO officials, the \$25,000 was used in the following manner:

Conceptual Design Services	\$ 5,965
Payments to Two Consultants to Conduct Fundraising Activities	<u>\$19,035</u>
	<u>\$25,000</u>

As can be seen from the information above, the majority of this funding (\$19,035) was spent on fundraising activities. On July 31, 2003, we questioned the Director of the New Bedford Office

of Housing and Community Development about the \$25,000 in funding that the city provided to the NBO. In response, on August 8, 2003, the Director provided us with a letter that stated, in part:

I have reviewed the scope of services as set forth in Appendix A of the Grant. I have also reviewed Fund Consultants, Inc.'s proposal for consulting services to the Oceanarium as well as the work product and documentation provided in the request for reimbursement.

Based on my review of these documents, it is my opinion that the work performed by Fund Consultants that was reimbursed through a portion of the \$25,000 grant was to create a document entitled "Plan of Action For a Capital Campaign." This document discussed various aspects of the proposed Oceanarium Project. The document then discussed funding feasibility and identified potential funding and financing sources. It is my understanding that in reviewing the requests for reimbursement for these services your office did not construe these activities to be "fund-raising activities" but rather part of an overall feasibility analysis for the project. Since these activities did not constitute fund-raising but rather provided information essential to a complete feasibility analysis they would be eligible expenses. It is my opinion that your analysis of the nature of these actions was correct.

Although the Director's letter indicates that he believes that the \$9,362 paid to Fund Consultants Inc. was appropriate, it does not address the appropriateness of the remaining \$9,673 that was paid to the other consultant.

During our audit, we also spoke with an official from the U.S. Department of Housing and Urban Development (HUD), who stated that HUD would be looking into this matter.

c. Concern: A Former Board Member Resigned over Conflicts of Interest Allegedly Observed at the NBO

According to the NBO's COO, the Board member in question never submitted to the Board a formal letter of resignation. NBO officials did provide us with a copy of an e-mail from this Board member to another NBO trustee on October 16, 2002. This e-mail stated, in part:

We have not continued our support of the Oceanarium for a couple of years now. We were contributors a few years ago. My interest waned when I put in a bunch of work on our internet and marketing presence, doing an RFP, interviewing and selecting vendors and finally selecting one of the best [firms] in the country who had done several major web sites for aquariums.

This selection, and time on my part was not used and the decision was made to use. . . someone locally. That was a major issue of me in the leadership of the project. Thus, [I] have not participated since then. [I] felt then, as [I] do now, that trustee expertise was not leveraged for excellence. [I] was also on the Board of Governors and moved off, [I] don't recall being notified of this change either. [I] basically have many issues

with organization, on how it is run, how it operates and many innate conflicts of interest [I] see at the board level. . . .

According to NBO officials, this board member was the Chair of the Board's Internet/Marketing Committee, which was established by the Board to create a web site to help market the NBO through the use of the Internet. According to NBO officials, the former Board member endorsed a proposal submitted to the committee from the Berndt Group, which proposed to create the NBO's web site at a cost of \$250,000. The committee also received proposals from Temple Games, Inc., which proposed to develop a web site at the cost of \$50,000, and Hurley, Chandler and Chaffer (HC&C), which proposed to create a website at no cost as part of the marketing work the company was already providing for the NBO. The NBO ultimately decided to award the web site development project to the HC&C.

NBO officials stated that HC&C's proposal was selected because HC&C was already acting as consultants to the NBO and offered to create a web site at no additional cost. Although NBO officials acknowledge that the consultant recommended by the former Board member proposed to develop a more technically interactive website, the Board believed that the web site design offered by HC&C would meet the agency's current needs. During our audit, we confirmed that no additional billings were submitted by HC&C to the NBO relative to the development of the website. However, it should be noted that the NBO Board voted to approve a proposal from Sprintout, which is owned by an individual who works for HC&C, to host the NBO's web site at a cost of \$350 per month. The hosting services included:

- Professional consultation on web site development and all related issues
- Site modification
- Site maintenance, including routine changes and additions to content
- Assist on posting press releases to the website
- Site hosting on Sprintout servers

This company hosted the NBO web site from May 2000 through March 2002, at which point the NBO stopped using this company's services.

As noted above, the Board member's e-mail did not indicate any other specific allegations of conflicts of interest that we could review. Consequently, during the conduct of our audit work

we attempted to contact this Board member by telephone but were unsuccessful. However, as noted in Audit Result No. 3, we believe that the NBO could take measures to improve its controls over potential conflict-of-interest situations.

d. Concern: The NBO May Be Inappropriately Renting Office Space from Compass Bank, an Alleged Related Party, for \$50,000 per Year and Is Paying Excessive Rent

Our review of the NBO's financial records and lease agreements indicated that on November 1, 2000, the NBO entered into a lease agreement with Compass Bank Inc. Under the terms and conditions of this lease, which is automatically renewed annually (unless terminated by either party with 30 days written notice), the bank currently provides the NBO with 1,704 square feet of office space located at 63 Union Street, New Bedford, including furnishings, some utilities, and parking spaces at a cost of \$1 per year. We also found that in its financial statements the NBO was identifying \$48,000 as an annual in-kind contribution from the bank for this rental space. When asked how this \$48,000 figure was established, NBO officials stated that the vice-president of the bank originally informed the NBO that the fair market value of the space was \$24 per square foot and that the NBO's private accounting firm used this information to calculate the annual amount to be disclosed in the agency's financial statements. The vice-president of the bank also told us that, according to the bank's tax consultants (Deloitte & Touche), the bank does not receive any tax or other benefits for donating this space to the NBO.

Regarding the concern that the Compass Bank is a related party, we found that one of the current members of the NBO's Board was an original incorporator of the Compass Bank. In 1998, when the Compass Bank went public, this individual resigned his position as a board member of the bank. Subsequently, in January 2000, this individual became a member of the NBO's Board. However, although this individual no longer served as a board member of the Compass Bank prior to joining the NBO Board, several Compass Bank officials stated that he still maintains a business relationship with the bank by occasionally providing outside legal counsel services.

Nevertheless, our audit revealed nothing that indicated the Board member in question was involved in any activities that may represent a possible conflict-of-interest situation. However, given this individual's prior and current association with the NBO's bank and his current

affiliation with the NBO, this individual should take all necessary measures to ensure that he does not engage in any activities that would represent a potential conflict of interest.

e. Concern: A Former NBO Executive Director May Have Worked as an Associate of a Private Real Estate Consultant Firm While He Was Also Being Paid to Function as the NBO's Full-Time Executive Director

During our audit, we spoke with a current NBO Board member who was formerly the Director of Development at Spaulding and Slye, LP (S&S), a commercial real estate consultant firm. This individual worked at S&S during the time period in which a former Executive Director of the NBO was also allegedly working there. Regarding this matter, the former Director of Development provided us with a letter dated August 6, 2003 from the former President of S&S, in which the former President stated, in part:

In response to a question raised by your office as to whether or not [a former NBO Executive Director] worked for Spaulding & Slye please be advised of the following:

In spring of 1999 [the former NBO Executive Director] was paid by Spaulding & Slye to begin working on the Oceanarium project prior to his being hired as the Executive Director. Spaulding & Slye was never reimbursed by the Oceanarium for the two payments made to him, and in fact, this amount and Spaulding & Slye's fees were donated in-kind to the Oceanarium.

Spaulding & Slye never paid [the former NBO Executive Director] for any work, other than indicated above.

In addition to this letter, S&S provided us documentation that indicated that S&S paid the NBO's former Executive Director \$5,000 per month for the months of May and June 1999. However, according to the NBO's financial records, this individual did not begin to receive compensation from the NBO until July 1999, and therefore it does not appear that this individual received duplicate payments for services he provided to the NBO. Further, we saw no evidence of the NBO's making any payments to S&S for this individual's services. However, in the absence of S&S financial records, the representations made by the former President of S&S in this letter could not be confirmed. The former Director of Development also stated that the former Executive Director and the current Board Chairperson did have a business relationship in a nonprofit organization called Island Alliance Inc. The former Director of Development added that, due to a lack of office space at Island Alliance Inc., the NBO's former Executive Director and current Chairperson would occasionally hold Island Alliance board meetings at S&S.

f. Concern: Three Board Members May Be Involved in Questionable Real Estate Transactions with the NBO

During our audit, we reviewed information being maintained by the Office of the Secretary of the Commonwealth to determine whether there were any business affiliations between the three Board members in question. Based on our review, we found that these board members are involved (have ownership or voting rights) in several businesses together, including Dario's Espresso Café LLC, Faunce Corner Executive Center LLC, and SBB Realty LLC. Our audit work in this area was limited to identifying those instances where these three Board members were listed as either board members, officers, or principals of organizations. This special-scope review would not disclose instances in which these three individuals may be working together in investments or other business activities that were not under the umbrella of an established business entity operating within the Commonwealth.

According to NBO records, none of the businesses mutually owned by these three individuals conducted business with the NBO during the audit period. The business address listing for the three businesses in which the Board members in question have a mutual interest is One Merrill's Wharf, which is also the address of the Bourne Counting House. According to the records we reviewed at the New Bedford Registry of Deeds, one of the three Board members in question purchased the Bourne Counting House in February 2001 and, according to this individual, is using it for office space. This Board member stated that the building had been on the market for many years and that he purchased it through a private sale. He added he spent \$2.4 million dollars acquiring and rehabilitating the vacant building. During our audit, we toured the Bourne Counting House and did not identify any NBO-related activities being operated out of this facility.

Although none of the businesses involving these three individuals are currently doing business with the NBO, in the future, these three individuals and the NBO should take measures to ensure that they do not engage in activities that represent a potential conflict of interest.

g. Concern: An NBO Employee Received Payments While Simultaneously Working in Washington, D.C.

We found that a Maryland attorney was hired as a consultant by the NBO to assist in its fundraising campaign. This individual was contracted by the NBO as a part-time consultant and

worked on this project from October 1999 through January 2002, during which time he was compensated approximately \$56,000. Since this individual was compensated by the NBO as a part-time consultant, his invoices for his services identified the total number but not the specific hours worked. Consequently, there was inadequate documentation that would allow us to determine whether he was simultaneously working out of state while billing the NBO for his consulting services. However, according to NBO officials, this individual works primarily out of Washington, D.C. as he was hired to identify federal grants available to different nonprofit agencies and as a representative of the NBO to the federal government, particularly Congress. In addition, NBO officials provided us with documentation that identified specific projects relative to identifying and raising funds for the NBO that this individual was involved in.

h. Concern: The NBO's Lease with NSTAR May Be Inappropriate

On March 22, 2000 the NBO entered into a 99-year "Ground Rent" lease with the Commonwealth Electric Company (CEC) and Commonwealth Gas Company.² Under the terms and conditions of this lease, CEC was going to lease the use of land located at Macarthur Street in New Bedford and the structures on it. This lease included the use of an obsolete (demised) power plant building and property, excluding any oil tanks or land located in this area that CEC was currently leasing to Global Companies LLC. In return for the use of this property, the NBO agreed to pay CEC what it called "Ground Rent," which is defined in this lease agreement as follows:

"Ground Rent" with respect to the Demised Premises (hereafter defined) shall be that amount which is equal to the aggregate of (i) the final abandonment costs of the building and related facilities associated with Building as established on the books of the Landlord after final hearing in Department of Telecommunications and Energy (DTE) Docket No. 99-90 (ii) costs incurred by the Landlord for removal of asbestos in the Building and (iii) the book value as established on the books of the Landlord of the remaining land and improvements (if any) comprising the Demised Premises which is not included in (i) above. Ground Rent shall be amortized over a forty (40) year term (the "Ground Rent Amortization Period") commencing on the Rent Commencement Date at an interest rate of ten (10%) percent per annum and shall be due and payable as provide in Section 6 hereof. Upon the expiration of the Ground Rent Amortization Period, Ground Rent for the remainder of the Term shall be One (\$1.00) Dollar per annum.

² The Commonwealth Gas Company (CGC) was enjoined in this lease solely to the extent that easements are necessary with respect to properties owned by CGC.

The specified Ground Rent shall be determined during the Due Diligence Permit and Financing Period as soon as same be ascertained. . . .

According to the lease, the Due Diligence period is:

. . . .the period commencing on the Effective Date [March 22, 2000] and ending on the eighteenth month anniversary of such Effective Date, as same may be extended as hereafter provided. The Tenant shall have the right from time to time to extend the Due Diligence, Permit and Financing Period for up to an additional six (6) months (being the twenty-fourth month anniversary of the Effective Date) by one or more notices to the Landlord given at any time prior to the expiration of the Due Diligence, Permit and Financing Period and specifying the date of such extended Due Diligence, Permit and Financing Period.

The rental payments established during the Due Diligence period were to start on the date that the NBO is first open for admission to the general public but no later than six months after the date of substantial completion of the NBO. In addition to the Ground Rent, the NBO was obligated to pay all insurance, taxes, utility, maintenance, repair, and other expenses relating to its operation of the demised premises.

Once lease payments begin, the first amendment to the lease, dated March 14, 2002, establishes the Ground Rent at \$125,000 per year for the first 40 years and then \$1 per year for the remainder of the lease period. Regarding the lease payment costs, NBO officials indicated that federal regulations required that the lease payment amounts for this property be sufficient to ensure a fair return to CEC ratepayers. As such, the lease payments were negotiated between CEC and the state's Department of Telecommunications and Energy (DTE), after which the NBO simply agreed to the negotiated amount.

i. Concern: The Former City Solicitor of New Bedford Is Also a Member of the NBO Board, Which May Have Represented a Potential Conflict of Interest

During our audit, we found that the former City Solicitor of New Bedford was a member of the NBO Board. Consequently, on July 29, 2003, we spoke with the Secretary Treasurer/Executive Director of the City Solicitors and Town Council Association, which is the oldest and largest bar association in the state dedicated to municipal law. According to this individual, the association does not have any separate rules, regulations, or codes of conduct that City Solicitors must follow. Rather, City Solicitors are required to follow the regulations of the Supreme Judicial Court and Chapter 268A of the General Laws, the state's conflict-of-interest law. The Executive Director stated that, according to Chapter 268A, there is no conflict-of-interest situation unless

the City Solicitor acts as an agent of the NBO on matters dealing with the City of New Bedford. During our audit, nothing came to our attention that this individual acted in this manner. Moreover, the Board member in question stated that he never acted as an agent on behalf of the NBO in its dealings with the city and provided us with a letter dated July 17, 2001 from him to the Vice-Chairperson of the NBO in which he resigned his position as a member of the NBO's Board by stating, in part:

The project has taken a turn whereby funding and other matters will be required to be made by the City. Although as City Solicitor it would not be my decision to make such policy decisions, I may be called upon to render advice in such matters. I therefore must remove myself from such a potential conflict of interest situation.

This individual resigned his position as the City Solicitor for the City of New Bedford in March 2002, and was re-elected to the NBO Board in November 2002.

j. Concern: Related Parties May Be Engaging in Business Activities with the NBO

During our audit, we selected the names and address of all eight administrative staff of the NBO, all 28 members of the agency's Board of Governors, six Trustees and two ex-officio Trustees. We then compared this information with information being maintained by the Office of the Secretary of the Commonwealth, which included a listing of the principals and board members of businesses operated in Massachusetts. Based on this analysis, we found that that 36 of these 44 individuals appeared to be in some way affiliated with 81 different entities (e.g., for profit, non-profit, partnerships).

Our review of NBO financial records revealed that the NBO made payments to four of these 81 entities during our audit period: Power Options Inc., Ahead Headgear Inc., Cardoza Wine & Spirits Inc., and Sylvia & Company Insurance Agency. A summary of the related activities follows:

- The NBO purchased a \$50 membership in Power Options Inc. (PO), a nonprofit, environmental corporation whose former President is also the COO of the NBO. During our audit, the COO provided us with documentation that indicated that he was not involved with PO during the period in which this transaction took place.
- The NBO purchased 39 sweatshirts totaling \$585 from Ahead Headgear Inc., which is owned by a Board member. (See Other Matters, Section a.)

-
- The NBO purchased \$8,392 in goods from Cardoza Wine & Spirits, Inc. (Cardoza), which is owned by a Trustee. However, only \$229 of this total was purchased from Cardoza since this Trustee was elected to his position on November 21, 2002.
 - During February 1997, the NBO purchased a \$975 insurance policy through Silvia & Company Insurance Agency, of which an NBO board member is a principal (President/Clerk). NBO officials claimed that this insurance policy was brokered on a non-commission basis and subsequently disclosed this information in the NBO's audited financial statements. As of February 12, 1998, the NBO renewed this policy with the same company but used a different agency of which the Board member in question was not an agent.

Our review of the NBO's financial statements indicated that the transactions with Silvia & Company Insurance Agency were properly disclosed. In addition, NBO officials indicated that the other three transactions, which occurred during the current fiscal year, will be properly disclosed in the NBO's financial statements, as appropriate.

APPENDIX I

New Bedford Oceanarium

Board of Trustees

As of June 30, 2003

- *William N. Whelan, President and Chairperson
- *Jean F. MacCormack, Vice-Chairperson
- *Robert B. Feingold, Secretary
- *Albino Dias, Treasurer
- *Thomas G. Davis, Assistant Treasurer

- *Maureen Sylvia Armstrong
- *Benjamin B. Baker
- *Roger S. Berkowitz
- *Timothy A. Colby
- *Peter L. Johnson
- *William T. Kennedy
- *Scott B. Laurans
- *George J. Leontire
- *Carolee Matsumoto
- *Howard Miller
- *Joseph J. Nauman
- *J.B. Riggs Parker
- *Daniel A. Phillips
- *Diana W. Phillips
- *Carol Pimentel
- *Susan B. Peterson
- *Brian J. Rothschild
- *Ken Shwartz
- *Antone G. Souza, Jr.
- *Marion Wainer

- *Robert E. Wheeler
- *Margaret D. Xifaras
- Mary Barros
- Joseph Barry
- William Betts
- Joseph Blair
- Robert E. Bowen
- Anne B. Brengle
- John K. Bullard
- Richard Cardoza
- Peter Dimond
- Ian Duff
- Ana C. Dyer
- John W. Farrington
- Monte Ferris
- Laurence D. Fitzmaurice
- Christopher A. Fox
- Brian Howes
- Barry T. Hynes
- Gail Isaksen

- Lyn Keith
- Harvey Mickelson
- William Milbury
- Fred Purrington
- Jeffrey L. Raymon
- Bruce Rose
- Judi Roth
- Thaleia Tsongas Schlesinger
- James Sears
- Stephen Silverstein
- Cathleen Douglas Stone
- Donald A. Walsh
- Eileen Waxler
- David Weschsler
- Clifford P. Westburg
- Mark White
- Gordon H. Wolfe

*Indicates members of the NBO Board of Governors.

During August 2003, Mr. William T. Kennedy resigned his position as a member of the NBO's Board but remained as a trustee.

APPENDIX II

Project History

New Bedford Oceanarium (NBO) officials provided the following project history, whose accuracy was not verified by Office of the State Auditor staff.

In 1993, a group of business leaders, community leaders and regular citizens developed the notion of building an aquarium that would celebrate New Bedford's two century connection with the sea and, more important, serve as a means to create jobs and economic growth in a community that had been on the wrong side of most economic trends for some time.

In addition to the regulatory processes, designing and building a project of this magnitude also takes time, money and patience. Indeed, the original design of the project, which served as the basis for our application for the federal New Market Tax Credit application, represented the single most costly private construction project in the history of New Bedford. And while the project has been scaled back, it is still a major construction project in terms of both complexity and cost.

The work associated with these three tasks – designing the project, going through the regulatory process and then building the Oceanarium. Over 90% of all of our expenditures for the project have occurred since 1999. What follows is a compilation of major milestones in that effort:

1996

The first tentative steps toward building the Oceanarium were first evident in 1996. That year, as a result of the efforts of the original group of organizers, the Commonwealth contributed \$300,000 toward the cost of a project feasibility study. One requirement for funding was a \$100,000 match, which was accomplished.³ The \$400,000 pool of funds was used to pay the Office of Thomas J. Martin (which later changed its name to ConsultEcon, Inc.) and the architectural firm of Cambridge Seven, for the analysis, which took from July 1996 until July 1997 to complete. Encouraged by the conclusions of the report, the Board of Governors of the Oceanarium proceeded to next step.

1997

Early in 1997 the Board retained the architectural firm of Cambridge Seven for the purpose of doing the initial schematic design of what was then called the New Bedford Aquarium. It is important to note that the individuals doing the work shortly thereafter left that firm and created their own, called Chermayeff, Sollogub and Poole. The schematic design took approximately 22 months and produced drawings and models later used by the Board and the architect to make decisions about the cost and final design of the Aquarium. As the schematic design proceeded toward its conclusion, the Board began to raise questions with respect to the cost and resonance of the design.

³ This first, \$400,000 funding was not actually paid to the New Bedford Oceanarium, and thus does not appear as an expense on the books of the corporation. The funds were held by the Commonwealth and paid by the state upon a presentation of invoices.

1998

In August of 1998, the owners of the power plant (Commonwealth Electric Company, now a part of NStar) began negotiations with the Aquarium with respect to the terms and conditions of a long-term (99-year) lease for the land and buildings needed to build and operate the Aquarium. The negotiations lasted until March 2000, or a total of roughly 19 months. At the end of the negotiations the parties agreed to the lease, but further agreed the lease would not go into effect until the project received its full financing.

It is important to note that during this time frame the owner of the power plant was obligated to file with the state Department of Telecommunications and Energy (DTE) for approval to transfer this asset to the New Bedford Aquarium and for a determination of future rental payments associated with the lease. In the end the DTE approved the transfer and established the required rental amount of \$125,000 annually.

1999

In March of 1999, given questions that had arisen with respect to the feasibility of the project, the Board of Governors retained the Boston-based development firm of Spalding & Slye to review all aspects of the project, analyze its feasibility and make recommendations to the Board with respect to the cost and direction of the project. The team was directed by William Whelan, who was the President and CEO of the firm and, more important, a lifelong resident of the City of New Bedford. The firm released its report in April of that year (and also waived its fee).

In June of that year, the Aquarium held a series of "charettes", populated by experts and community leaders and led by the Executive Director of the New England Aquarium, to obtain feedback in terms of what those experts and leaders wished to see in terms of the design and exhibitory, the process taking about two months. Additional work on the schematic design occurred as a result of the charettes and feedback from the Board of Governors and industry experts.

2000

In January 2000 the Oceanarium released the results of the work of the architectural firm to generally positive reviews by the Board and the community. However, the Board was still concerned about the cost of the project and certain design features and met with the team of architects on several occasions to "tweak" the design and try to reduce costs, thus, work on the concept continued until April.

In April, based upon the schematic designs presented to the Board and subsequently amended, the Board released the architect to complete the design. Note, earlier in 2000, Bill Whelan, who had retired from Spalding & Slye, became Chairman of the Board and President of the corporation.

In May, the Board authorized the hiring of a firm to analyze subsurface conditions at the site, needed for any large construction project and, in particular, on projects built on fill. The analysis was completed in three months.

In September of 2000, the Board made a critical decision in hiring its full Design/Build Team, consisting of professional architects and engineers. Beacon/Skanska was chosen as the firm responsible for the construction and they agreed to negotiate with the Oceanarium, as it was now known, to develop a "Guaranteed Maximum Price" (GMP) contract upon completion and acceptance of the concept design. Beginning in the fourth quarter of 2000, the team began to

produce preliminary construction drawings, a process that continued until June 2002, roughly 20 months later.

2001

In January, the Oceanarium hired its first staff person to be directly involved with and responsible for permitting, design and construction of the Oceanarium. In addition, the Commonwealth of Massachusetts conditionally committed to contributing \$20 million to the project, via a letter from the Secretary of A & F to the Mayor of the City of New Bedford.

In April of 2001, the Oceanarium submitted to the Commonwealth of Massachusetts, its required Chapter 91 license application. Work on the Chapter 91 license continues to this day, 26 months later. It is expected, however, that the license will be issued by the state shortly. The Oceanarium also filed an "Environmental Notification Form" with the Commonwealth around this time, informing the appropriate state regulators of the project.

In May, the state notified the Oceanarium that the project would be required to file an Environmental Impact Report (EIR) with the Commonwealth, describing in detail the nature and possible environmental impacts of the project. The Oceanarium began work on this extensive report, which was filed in February 2002, roughly eight months later. Approval of the plan was received in March 2002.

In June the Oceanarium retained the services of a consultant to analyze various energy related issues (co-generation) for the project, as the size and nature of the facility raised a number of issues and possibilities. In addition, there are stringent regulations associated with the energy use of a building of this kind and, presuming we were involved in co-generation, stringent licensing requirements.

Later in 2001, in November, the New Bedford Oceanarium submitted its analyses, documents, and surveys to HUD, for the purpose of their review in the hope of securing a loan and grant related to the environmental issues associated with the land and buildings. 13 months later, in December 2002, we were notified that we were awarded the grant and loan.

Importantly, after almost a year of work, in December 2001 the Oceanarium received the analysis of its consultant, ConsultEcon, Inc., with respect to its market analysis, the economic impact on Massachusetts and New Bedford, and potential revenue. The consultant's report was encouraging and demonstrated the feasibility of the project.

In addition, in December, the Board of Governors after extensive negotiations, approved two key contracts with Beacon Skanska, Inc., the builder, and Chermayeff, Sollogub and Poole, the architect, to develop construction drawings sufficient to reach agreement on the Guaranteed Maximum Price construction contract (GMP); attorneys for the parties began negotiations over the terms and conditions of the construction contract, in conjunction with a review by the finance team.

2002

The year 2002 represents the culmination of a lot of the work begun in prior years. The Oceanarium was successful in its efforts to secure historic designation of the building and became eligible for Historic Preservation Tax Credits; the Oceanarium received its Final Environmental Impact Report Certificate from the Commonwealth; it reached agreement with the builder in terms of the GMP construction contract and it hired its first Chief Operating Officer, Chief Development Officer and Director of the Oceanarium.

In March of 2002, the Oceanarium filed with the New Bedford Conservation Commission for approval of the project, which was granted several months later, in May. The NBO's financing team also identified an investor (a Fortune 200 company), which was ready, willing and able to invest \$84,000,000 in the project in order to obtain the benefits associated with the two tax credit programs, the Historic Rehabilitation Tax Credits and the New Market Tax Credits. The Oceanarium also retained the services of a consultant to assist in determining the optimum space and layout requirements for food services and the retail shop to be located at the Oceanarium. The consultants were retained in April and produced their analyses several months later.

In June, Beacon Skanska, Inc., (now Skanska USA, Inc.) with staff from the Oceanarium began a "value engineering" process with a goal of reducing the cost of the project and insuring that the design was the most efficient and economical. That process lasted several months followed by a review by the Board of Governors and produced a construction cost savings of approximately \$5 million.

In July, the negotiations over the GMP construction contract reached an interim conclusion, and the GMP was forwarded to the finance team for review by the potential investor. That review resulted in additional negotiations and resulted in an unexecuted GMP contract, subject to execution at the time of the finance closing.

In August of 2002, and after approximately four months of labor, the Oceanarium through its finance team, submitted its application to the U. S. Treasury Department for the award of New Markets Tax Credits, a critical component of the Oceanarium financing plan.

In September, and in light of ongoing discussions between the Oceanarium and NStar with respect to the outright purchase of 28+ acres of land and about seven buildings, the Oceanarium issued an RFP for firms to develop a Site Master Plan, to begin the process of planning development beyond the Oceanarium itself. [Note: this aspect of the project has been placed on hold].

In October, several events of note occurred. First, the Army Corps of Engineers issued its permit for the proposed seawater intake pipe needed by the Oceanarium. In addition, the NBO filed with the state for a co-generation permit. Of importance, Skanska, Inc., began limited site mobilization in anticipation of beginning work on site remediation, namely, cleaning up the environmental contamination contained in the building prior to actual construction. Power was brought to the facility also in anticipation of construction. The building itself was (and continues to be) lit at night.

In November, the state held its final hearing on the Oceanarium's Chapter 91 permit and the Oceanarium and the New Bedford Harbor Commission entered into an agreement reserving for the NBO "options" to develop the site.

Also, of significant importance, ConsultEcon, Inc., produced its final marketing and feasibility analysis making a strong case for the ultimate success of the New Bedford Oceanarium.

2003

On February 2003, the Oceanarium began to interview firms to assist the Board of Governors and staff in conducting its capital campaign associated with the construction of the Oceanarium. A firm has been nominated by the Board's Development Committee, however, the matter is pending before the Board at this writing.

In March 2003, after delay and a final decision, the U. S. Treasury Department made its decisions with respect to the applications before it for award of the New Market Tax Credits; unfortunately, the Oceanarium was not selected, thus causing the Board to order the staff to present to it various options for moving forward. In March, the Board decided to follow a two-track policy, in essence keeping two options open: the Oceanarium as designed and the Oceanarium reduced in scale and cost. Work on the redesign commenced.

In March, the staff contacted several firms who were awarded New Market Tax Credits, but do not have projects, to determine if those firms would sub-allocate tax credits to the Oceanarium. Interest in the Oceanarium by two of the firms has been expressed and the firms have asked for documentation with respect to the new design and numbers associated with the scaled backed plan. And, in April, after extensive review, the state granted the Oceanarium its co-generation permit.

In May, the Oceanarium's architect delivered to the Board its redesign for a scaled back Oceanarium project. The Board voted in its May meeting to proceed on one track and designated the scaled back design as its design of choice. Staff begins work with Skanska, Inc. to cost out, in detail, the new design, a task that was largely finished by June, though some "tweaking" of the design continues. Also in May, the NBO contracted with ConsultEcon to produce an updated market and feasibility analysis based upon the new design, which was recently delivered to the Oceanarium.

In June, the staff of the Oceanarium met with the members of the New Bedford Economic Development Council to determine their interest in working with the Oceanarium to re-submit to the U. S. Treasury Department another application for the current round of tax credit awards. A meeting with the full NBEDC Board is scheduled for late June. Of single importance, the Oceanarium also met with the Commonwealth's Secretary of Administration & Finance to discuss the state's past commitment to the Oceanarium and the need for continued state capital funding for the project. At the meeting, the Secretary agreed to allow the Oceanarium to participate in the Commonwealth's capital budget process.

Work on the project continues. As demonstrated above, the project is large, complicated and difficult to realize. Progress is precarious and it is evident that each element of the plan must work in order to be successful. But the rewards of success for New Bedford and southeastern Massachusetts are great.

APPENDIX III

New Bedford Oceanarium

List of Consultants

September 1993 - June 30, 2003

Consultant Name	Date of Service Provided	Description of Services Provided	Amount of Payment
Adamowski & Adamowski, PC	February 2002	Accounting/Auditing	\$ 4,925
AST/Bryant Inc.	8/00 - 11/00	Executive Search	50,354
Bowen, Robert	6/97 - 2/99	Services as Executive Director	72,000
Buckley, Russ	8/00 - 8/01	Fundraising	35,071
Cassidy & Associates	2/03 - 4/03	Identify Fundraising Sources	22,500
Cavan Group, Inc	June 2002	Consulting	11,610
Chermayeff & Geismar Inc.	11/01	Architectural & Engineering	50,000
Chermayeff, Sollogub & Poole Inc.	2/00 - 2/01	Architectural & Engineering	964,157
Community Capital Group	5/01 - 10/01	Grant Application	15,008
ConsultEcon, Inc	4/99 - 5/03	Feasibility Study	122,233
Crowley, John J	12/01 - 5/03	Grants	34,220
Edwards & Angell, LLP	12/98 - 3/99	Legal Fees	656
ENSR International	5/00 - 5/03	Permitting	192,017
Environmental Sciences Service Inc.	7/01 - 9/02	Environmental Services/Surveying	139,711
Fanning, Thomas C.	2/01 - 4/01	Consulting/ Development of Spread Sheet	4,282
Fund Consultants Inc.	2/00 - 8/00	Development of Fundraising Plan	22,862
Garibaldi, Louis E.	2/02 - 9/02	Consultant (Oceanarium Executive Director)	15,587
Harlow, Richard	8/02 - 4/03	Community Educational Services	14,220
Hurley, Chandler & Chaffer Inc.	9/99 - 12/00	Printing/Design/Marketing	41,786
International Design for the Environmental Associates Inc.	5/99 - 5/02	Pre-Opening Management	170,000
Issacson Miller	12/00 - 9/01	Executive Search	118,907
The Jeremiah Group Inc.	2/02 - 4/02	Professional Services	8,075
Keane, James	6/00 - 12/00	Project Manager	63,511
KeySpan Energy Management Inc	9/01 & 7/02	Load Profile – Co-generation Plant	63,950
Lauermann Group Inc.	2/01 - 5/01	Strategic Planning / Marketing	4,776
Oceanarium Planning & Dvlp. Corp.	8/01 - 3/02	Consulting (Business Operations / Tax Credits)	364,000
Pettiti, Eisenberg, & Gamache PC	1/99 - 1/01	Accounting/Auditing	18,350

Rosenfield, Raymon, Restivo PC	12/97 - 2/02	Accounting/Auditing	30,365
Silverman, Larry	10/99 - 12/01	Develop Fundraising Plan	56,918
Simmons, Gloria Brown	12/01 - 6/02	Software Design	19,091
Skanska USA	12/98 - 5/02	Architectural & Engineering	1,694,450
Spaulding & Slye Colliers Int.	October 1999	"NB Environmental Book"	139
Studds, Gerry E.	6/99 - 6/01	Services as Executive Director	135,000
Tibbets Engineering Corp.	5/00 - 6/02	Engineering	106,293
Van Luling, John	2/03 - 3/03	Accounting	13,450
Waterfront Historic Area League Inc.	6/02 - 11/02	Application for National Historic Site Designation	<u>30,050</u>
			<u>\$4,710,524</u>