



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

*Making government work better*

Official Audit Report – Issued June 14, 2018

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## Department of Conservation and Recreation

For the period July 1, 2015 through June 30, 2017





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

*Making government work better*

June 14, 2018

Mr. Leo Roy, Commissioner  
Department of Conservation and Recreation  
251 Causeway Street  
Boston, MA 02114

Dear Mr. Roy:

I am pleased to provide this performance audit of the Department of Conservation and Recreation. This report details the audit objective, scope, methodology, findings, and recommendations for the audit period, July 1, 2015 through June 30, 2017. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Conservation and Recreation for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Matthew A. Beaton, Secretary, Executive Office of Energy and Environmental Affairs

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## LIST OF ABBREVIATIONS

BGC	Boston Garden Corporation
CMR	Code of Massachusetts Regulations
DCR	Department of Conservation and Recreation
DEM	Department of Environmental Management
MDC	Metropolitan District Commission
MMARS	Massachusetts Management Accounting and Reporting System
OSA	Office of the State Auditor
OSC	Office of the State Comptroller
P&L	Long-Term Permits and Leases
TRA	TR Advisors

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of the Department of Conservation and Recreation (DCR) for the period July 1, 2015 through June 30, 2017. In this performance audit, we followed up on issues identified in our previous audit of DCR (No. 2012-0276-3S) to determine what measures, if any, DCR's management had taken to address those issues. During the prior audit, which looked at DCR's Long-Term Permits and Leases programs, OSA identified issues with DCR's administrative process related to the establishment, billing, and collection of user fees for the long-term lease of DCR properties; the setting and implementation of related late-payment penalties; the updating of use agreements to fair rates; the physical use of DCR properties; the administration and oversight of contractual use agreements; the inspection of properties that DCR leases; and the adequacy of the insurance coverage associated with these properties.

During our current audit, we found that DCR had taken measures to fully address only one of the seven issues we identified in our prior audit (one that dealt with the timing and method of payments by DCR employees who were participating in DCR's Employee Housing program). DCR discontinued this program in 2014. DCR has not taken measures to fully address four of the issues we had previously identified.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">7</a></b>	DCR does not effectively collect all user fees.
<b>Recommendations</b> <b>Page <a href="#">9</a></b>	<ol style="list-style-type: none"><li>1. DCR should refer all delinquent accounts receivable that are more than 120 days overdue to an agency for collection.</li><li>2. DCR should establish written policies and procedures for the collection and recording of its user fees and also establish monitoring controls to ensure that these policies and procedures are adhered to.</li></ol>
<b>Finding 2</b> <b>Page <a href="#">11</a></b>	DCR has not established proper user fees for utility providers.
<b>Recommendations</b> <b>Page <a href="#">12</a></b>	<ol style="list-style-type: none"><li>1. DCR should continue developing a method to determine fair user fees that should be included in new, updated agreements for all utility providers.</li><li>2. DCR should develop written policies, procedures, and internal controls to ensure that fair user fees are charged to, and collected from, utility providers.</li></ol>

<b>Finding 3</b> <b>Page <u>13</u></b>	DCR does not properly administer its use agreements for all properties.
<b>Recommendations</b> <b>Page <u>14</u></b>	<ol style="list-style-type: none"><li>1. DCR should follow up on, and resolve, all expired use agreements.</li><li>2. DCR should develop and follow written policies and procedures to ensure that use agreements for all of its properties are properly executed and renewed before they expire.</li></ol>
<b>Finding 4</b> <b>Page <u>15</u></b>	DCR does not perform inspections of all leased properties or ensure that all of its lessees comply with liability insurance requirements.
<b>Recommendations</b> <b>Page <u>16</u></b>	<ol style="list-style-type: none"><li>1. DCR should establish and implement the necessary policies and procedures to ensure that all required certificates of insurance are on file and meet use agreement requirements.</li><li>2. DCR should keep a certificate of insurance on file for each agreement that has a user liability insurance obligation.</li><li>3. DCR should consider establishing a formal requirement of periodic inspections of all of its leased properties.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

The Department of Conservation and Recreation (DCR) is authorized by Section 1 of Chapter 41 of the Acts of 2003. It operates under the direction of the Executive Office of Energy and Environmental Affairs and is responsible for the administration and oversight of state parks, forests, reservations, and recreational facilities (e.g., campgrounds, swimming pools, and bike trails). According to its website, DCR's mission is "to protect, promote and enhance our common wealth of natural, cultural and recreational resources for the well-being of all." The number of full-time DCR employees has been reduced from approximately 1,120 in 2007 to about 850 in 2017.

DCR received state appropriations of \$86.8 million and reported other revenue of approximately \$22.3 million in fiscal year 2016. In fiscal year 2017, it received state appropriations of \$90.3 million and reported other revenue of \$23.6 million. Its other revenue included approximately \$4.8 million in fiscal year 2016, and \$5.8 million in fiscal year 2017, from fees associated with its use agreements. DCR also generates lesser amounts of revenue from the operation of skating rinks and the collection of parking and entrance fees at DCR-managed state reservations.<sup>1</sup>

### Use Agreements

DCR was created in 2003 when its two predecessor agencies, the Metropolitan District Commission (MDC) and the Department of Environmental Management (DEM), merged to form a single agency. Both MDC and DEM had previously been responsible for entering into use agreements for various properties under their jurisdictions, such as park and reservation concession stands, skating rinks, boat clubs, cottages, and utility towers.

Currently, DCR's Long-Term Permits and Leases (P&L) Unit is responsible for the administration and oversight of use agreements for its properties, to ensure that all use agreements are properly executed in a timely manner and in compliance with applicable laws, rules, and regulations. During our audit period, DCR had four full-time staff members in its P&L Unit. The DCR Revenue Unit, consisting of six individuals, is responsible for the billing, collection, and recording of all use agreement fees. In April 2014, DCR hired a contractor to provide a tenant management system, known as the MRI application, which DCR uses to maintain an official record, or register, of all use agreements; set up recurring

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1. In addition to this general fund revenue, DCR receives various types of federal grant revenue as well as trust fund revenue such as water supply protection reimbursements received from the Massachusetts Water Resources Authority. Such non-general-fund revenue was not included in our follow-up audit.

invoices for lease payments; track cash receipt payments; record revenue; and manage accounts receivable, as well as to send out all associated invoices for payment. Payments are then remitted to DCR, which in turn sends a monthly banking report to the contractor so it can credit payments received for each existing use agreement within the MRI application. In addition, the contractor manages an application called LandTracker that allows DCR employees to view P&L assets (e.g., boathouses, towers, skating rinks, and pools) and the use agreements (e.g., leases, licenses, legislatively authorized leases,<sup>2</sup> and high-ground agreements<sup>3</sup>) that are associated with those assets.

The table below summarizes the use agreements, by program, and the fees owed to DCR in fiscal year 2017 based on available supporting documentation.

Program	Number of Agreements	Number of Fee-Paying Agreements	Total Fees Due
Boat and Yacht Club	32	32	\$ 829,901
Concession	82	68	950,647
Cottage	151	151	412,960
High Ground	114	49	1,099,003
Legislatively Authorized Lease	10	5	617,770
Memorandum of Understanding*	202	38	1,369,479
Skating Rinks	36	28	447,475
Utility Provider	96	46	130,791
Advertising	5	2	23,983
<b>Total</b>	<b><u>728</u></b>	<b><u>419</u></b>	<b><u>\$ 5,882,009</u></b>

\* A Memorandum of Understanding is a mutually beneficial agreement to use DCR facilities or property, established with either a public entity or a private for-profit or nonprofit entity.

2. Leases for the use of DCR property are sometimes directly authorized or mandated by acts of the Legislature, bypassing regulatory provisions and competitive selection processes.
3. High-ground (telecommunication tower) permits are issued to private and public telecommunication entities to construct towers on DCR property or install equipment on existing DCR towers.



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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain activities of the Department of Conservation and Recreation (DCR) for the period July 1, 2015 through June 30, 2017.

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.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where it is discussed in the audit findings.

Objective	Conclusion
1. Did DCR implement corrective actions to adequately address all the issues identified in our previous audit report (No. 2012-0276-3S) pertaining to its Long-Term Permits and Leases (P&L) programs?	<b>No; see Findings <u>1</u>, <u>2</u>, <u>3</u>, and <u>4</u> and <u>Other Matters</u></b>

We gained an understanding of the DCR internal controls we deemed significant to our audit objective and evaluated the design of these controls. In addition, we performed the following procedures:

- We asked DCR officials about all outstanding use agreement fees related to the prior audit. We verified all payments and write-offs for these fees by querying the Massachusetts Management Accounting and Reporting System (MMARS) and comparing the data obtained to the documentation DCR provided to us regarding these fees to determine whether these payments were made.
- We selected a nonstatistical judgmental sample of 8 of the 24 monthly revenue reports of Long-Term Permits and Leases Unit revenue from the audit period. We verified that the cash receipts were properly recorded and accounts receivable were being updated.
- We asked P&L Unit management about the revision of the fair market rate changes for boat and yacht clubs, utilities, and employee housing. We verified the P&L Unit's revised boat and yacht club fees and confirmed that all boat and yacht club users were charged the new rates for both fiscal years of our audit. We reviewed all 89 accounts that had been outstanding for 120 days or

more to determine whether DCR had referred them to the Office of the State Comptroller for intercept<sup>4</sup> or to a debt collection agency.

- We performed a nonstatistical test of 64 out of 725 use agreements to determine whether they had been signed; whether unexpired, active insurance binders were on file; whether insurance binders listed DCR as the additional insured; and whether property inspections had been conducted.
- We reviewed the prior audit finding regarding all 20 use agreements (16 concession stands and 4 skating rinks) that had been found not to have current use agreements as of June 30, 2011 to determine their status as of June 30, 2017.

In 2014, OSA performed a data-reliability assessment of MMARS. As part of this assessment, we tested general information technology controls for system design and effectiveness. We tested for accessibility of programs and data, as well as system change management policies and procedures for applications, configurations, jobs, and infrastructure.

During our current audit, we performed analytical procedures, such as comparing and reconciling available revenue summary totals in the applicable DCR accounts in the MRI application operated by DCR's contractor, to confirm that the MMARS information we used was consistent with other source documentation (e.g., bank statements, canceled checks, and billing invoices). For the MRI application, we reviewed certain information system general controls for security management, access controls, and configuration management. For LandTracker (a repository application for tracking properties and use agreements), which had not been fully implemented by DCR's contractor during our audit period, we performed tests for security management, access controls, and configuration management, and we compared hardcopy use agreements with information in LandTracker. Based on the above factors, we concluded that the data used were sufficiently reliable for the purposes of our audit.

We used nonstatistical sampling to help us achieve our audit objectives and therefore did not project our results to the various populations.

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4. Intercept is an action that the Office of the State Comptroller can take through MMARS to withhold funds, such as state tax refunds owed or scheduled to be paid to a debtor, to discharge a debt owed to the Commonwealth.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Department of Conservation and Recreation does not effectively collect all user fees.

In our prior audit, we found that the Department of Conservation and Recreation (DCR) did not maintain an accurate official record, or register, of all its use agreements and—because of an inadequate billing and accounts-receivable system and a lack of written policies, procedures, and internal controls—did not collect delinquent use agreement fees owed the Commonwealth. As of our current audit period, this issue had not been fully resolved.

In April 2014, DCR hired a contractor that works with the agency to maintain a register to track use agreements, issue monthly invoices, and process the associated payments. However, DCR does not always refer overdue use agreement fees for collection within the prescribed time period and does not record the total accounts receivable and total ("summary") amount of use agreement fees it collects in the Massachusetts Management Accounting and Reporting System (MMARS). DCR could use that information to identify and track overdue fees. Specifically, when we reviewed 89 accounts receivable that had been outstanding for 120 or more days, we found that DCR had not referred any of them to the Office of the State Comptroller (OSC) for intercept or to a debt collection agency. Our audit identified approximately \$600,000 in current and past unpaid fees that DCR had not collected as of June 30, 2017 as a result of these problems. In fact, the amount of unpaid fees owed to the Commonwealth increased from approximately \$168,000 at the time of our last audit to approximately \$600,000 as of the end of fiscal year 2017. The fees owed during the current audit period are shown below.

DCR Program	Number of Unpaid Fee Instances	Unpaid Fees Due in Fiscal Year 2016	Unpaid Fees Due in Fiscal Year 2017	Unpaid Fees Due in Prior Fiscal Years	Total Unpaid Fees
High Ground	15	\$ 45,472	\$ 69,347	\$ 360	\$ 115,180*
Concessions	11	48,400	2,251	181,975	232,626
Skating Rinks	2	(778)	6,001	0	5,223
Utility Provider	35	12,767	13,791	0	26,559*
Memorandum of Understanding	7	35,135	2,743	12,750	50,628
Cottages	14	43,100	900	72,900	116,900
Boat and Yacht Club	5	0	55,848	0	55,848
<b>Total</b>	<b>89</b>	<b>\$ 184,097*</b>	<b>\$ 150,882*</b>	<b>\$ 267,985</b>	<b>\$ 602,964</b>

\* Discrepancies in totals are due to rounding.

## Authoritative Guidance

According to Section 9.03(1) of Title 815 of the Code of Massachusetts Regulations (CMR), "State Department Billing Entities are responsible for making diligent efforts to collect legislatively and legally authorized Accounts Receivables and Debts." Specifically, 815 CMR 9.05(2) establishes departmental internal debt collection procedures, according to which each agency must demonstrate diligent efforts to collect debt. Diligent efforts are defined to include, at a minimum, the initial billing, payable in 30 days; three written billing and dunning notices 1, 30, and 60 days after the payable date; and a final notice 120 days after the payable date.

According to 815 CMR 9.04, once the proper notice has been given to the debtor, state agencies such as DCR are required to refer debt that is 120 days past due for intercept:

*State Department Billing Entities processing Debts through the MMARS State Accounting System will automatically assign Debts systemically to Intercept when the Debt is 120 days past due, unless the Debt has been flagged as exempt from Intercept.*

They can also simultaneously submit the debt to a debt collection agency.

OSC's Receivable Recognition and Reconciliation Policy states,

*MMARS is the official record of the Commonwealth for receivable and customer information. Departments must take special care to ensure that the information that is entered into MMARS for any receivable is accurate and complete.*

Further, this policy requires departments such as DCR that are authorized to post summary transactions in MMARS to update transaction records at least monthly to ensure that MMARS accurately reflects outstanding accounts-receivable balances.

## Reasons for Issues

DCR management attributed problems with fee administration to a lack of adequate staffing, stating that since 2009, the agency's staff has decreased by approximately 300 individuals. However, DCR has also not established written policies and procedures over these activities to ensure that all user fees due the Commonwealth are properly and accurately billed, paid in a timely manner, and properly recorded and that all delinquent user fees are promptly identified and resolved.

## Recommendations

1. DCR should refer all delinquent accounts receivable that are more than 120 days overdue to an agency for collection.
2. DCR should establish written policies and procedures for the collection and recording of its user fees and also establish monitoring controls to ensure that these policies and procedures are adhered to.

## Auditee's Response

*In response to issues identified in the first audit, in 2014, DCR contracted with TR Advisors ("TRA") for real estate advisory services, and that contract, as amended, terminated in June 2016. DCR then entered into a new contract with TRA for the period July 2016 through June 30, 2019, with two additional option years.*

*DCR notes the following with respect to the information shown in the [table in Finding 1]:*

- *the source of this information in the draft audit report chart primarily was TRA's rent roll (i.e., a list of the user agreements in the TRA database and associated data relating to those agreements, information which is continually being updated) and TRA's aged delinquencies list.*
- *TRA began billing on behalf of DCR in October 2015, four months into the period covered by this Audit. As a result, the information obtained by the auditors from the TRA reports does not fully reflect FY16 billing and collection activity.*
- *TRA reports do not reflect all payments received by DCR—for example, payments made by wire transfer are not reflected in TRA's reports.*
- *Certain permittees and lessees, such as rink operators, ski operators and some concessions, are not invoiced as they pay fees based on a percentage of revenues. Those payments are also not reflected in TRA's reports.*
- *Boat and yacht club permits were significantly delayed during Calendar Year 2016 due to the time needed for the internal approval and implementation process for the decision to extend the term of those permits from one year to five years.*
- *Cottage permit applications and invoices are provided simultaneously, typically at the end of a calendar year for the upcoming calendar year. In Calendar Year 2017, cottage permittees were newly required to confirm that only authorized permittees were requesting cottage permit applications. Due to this new administrative requirement, the cottage permit process was substantially delayed that year, and the corresponding invoices likewise were delayed.*
- *In addition, several abatement/credit requests have been made and are in process, which will reduce the amount of monies owed as shown in the [table];*
- *Significant payments are often made after June 30 each year (the audit period encompassed FY16 and FY 17, ending on June 30, 2017).*
- *In addition, the chart includes amounts from 2010 from the prior audit. As we note below, some of these unpaid fees will be submitted for intercept and collection.*

*DCR has engaged in active efforts to reduce uncollected fees. As noted, the agency contracted with TRA to: send out timely billing statements; create on-line access in order to analyze reports in real time; and [produce] a hard-copy monthly report with the rent roll and a status of all accounts. DCR staff also coordinates and monitors payment on accounts by permit type. If payments are not received, DCR staff does not issue a renewal to that permit, until payment is made. In addition, once credits and fee corrections have been processed and approved, this amount will likely be less than \$80,000, a substantial decrease from \$600,000, the approximate amount identified as "unpaid fees" by the [Office of the State Auditor, or OSA] as of the end of the Audit Period. Staff will continue in their efforts to collect all monies owed, and we fully expect this amount to be further reduced.*

*DCR Administration & Finance received guidance from the Office of the State Comptroller ("OSC") in regards to the process for posting summary receivable transactions into MMARS by revenue source code, and is now receiving financial detail from TRA by revenue source, for purposes of reconciling TRA totals to MMARS totals. As a result of these improvements, DCR is posting summary receivables transactions in MMARS, which will trigger the automatic intercept provisions set forth in 815 CMR 9.04 and 9.07.*

*DCR Administration & Finance and the DCR Long-Term Permits and Leases ("Permits and Leases") unit are working with TRA to establish a procedure for identifying and monitoring unpaid accounts receivable which are over 120 days overdue, and we anticipate that this will be finalized in FY19. DCR also intends to procure a contract with an outside collections firm that is consistent with 815 CMR 9.05. Once finalized, these new processes will be included in DCR's updated Internal Control Policies. DCR Administration & Finance and DCR Permits & Leases will meet on a monthly basis with TRA representatives to discuss outstanding issues and to coordinate the collection process.*

*The Permits and Leases unit has a Procedures Manual which contains detailed information on the work processes of the unit, including information pertaining to different types of agreements, the [Request for Proposals] process, file maintenance, insurance requirements, work flows, and the approval process. This Manual will include the process improvements identified above with respect to identifying and collecting unpaid accounts receivable. The Manual is in draft form, and we anticipate it will be finalized shortly. The final version will include relevant policies for the unit.*

## **Auditor's Reply**

Since TRA was the contractor DCR hired to issue monthly invoices and process the associated payments for use agreements, OSA reasonably relied on the data and records TRA provided to conduct our analysis in this area. Although DCR asserts in its response that the information in the TRA reports may not be accurate for a variety of reasons and can provide only an estimate rather than an accurate accounting of what DCR believes to be the actual outstanding balance, we believe these issues may not have had any significant effect on our reported outstanding balance of approximately \$600,000 as of the end of our audit period. During our audit, to assess the accuracy of the information in the TRA reports,

we reconciled the revenue collection information in the reports to the information in MMARS about the amount of DCR revenue collected and found the difference to be insignificant; the amount of TRA revenue collected for fiscal year 2017 was \$5,774,460, and the amount collected according to MMARS was \$5,802,991. This makes for a \$28,531, or 0.5%, difference. During our audit, we asked DCR's staff to reconcile the minor difference between these two amounts, but this was not done. Regardless of any discrepancy between the amount of our reported outstanding accounts-receivable balance and the actual balance, our concern is that during our current audit, OSA found that DCR did not always refer overdue use agreement fees for collection within the prescribed time period or record in MMARS the total accounts receivable and total amount of use agreement fees it collected.

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

## **2. DCR has not established proper user fees for utility providers.**

In our prior audit, we found that DCR had not updated the fee rates it had established as far back as 1923 for utility providers.<sup>5</sup> We also determined that, as of June 30, 2011, DCR had not developed and implemented a method for setting fair user fees<sup>6</sup> for boat and yacht clubs located on DCR properties in a timely manner.

During our current audit, we determined that DCR and the Division of Capital Asset Management and Maintenance had developed a method for setting fair user fees and then implemented them for all 28 boat and yacht clubs. However, although DCR has started the process of updating its user fees for utility providers, this process has not been completed. As a result, there is inadequate assurance that DCR is collecting all potential revenue from utility providers.

## **Authoritative Guidance**

DCR is charged by its enabling legislation with properly administering programs related to state parks, forests, reservations, and recreational facilities, including programs that involve the leasing of its facilities. Therefore, DCR has a fiduciary responsibility to the Commonwealth to ensure that it

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5. 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 some fees have not changed since the agreements were executed.

6. Fair user fees are fees that have been set at amounts required by regulation or at rates consistent with fair-market-based pricing principles.

establishes fair user fees for all of its facilities, including those used by utility providers, as it has done for its other lessees.

## Reasons for Noncompliance

Senior management stated that although DCR had hired a contractor in 2014 to assist it in working with the Department of Public Utilities to determine a method for assessing fair user fees and identifying all instances in which utility companies use property at state parks, this activity has yet to be completed because DCR has inadequate staffing levels. Further, DCR does not have written policies, procedures, and internal controls to help ensure that fair user fees are charged to, and collected from, these users.

## Recommendations

1. DCR should continue to develop a method to determine fair user fees that should be included in new, updated agreements for all utility providers.
2. DCR should develop written policies, procedures, and internal controls to ensure that fair user fees are charged to, and collected from, utility providers.

## Auditee's Response

*In September 2017, DCR executed a contract amendment with TRA to specifically conduct a targeted utility review project, under which TRA is reviewing utility company agreements and uses of DCR property to: identify and confirm current uses and locations; make recommendations to DCR regarding a proposed fee structure to ensure that DCR is charging fair user fees that reflect industry-accepted and uniformly applied market rates; assist DCR in developing standard form permit agreements for the various types of utility occupancy; and assist DCR in notifying and working with utility companies to create new or update existing agreements to reflect the new pricing structure and any other changes to the standard permit agreement terms and conditions. During the course of the audit, DCR informed the OSA staff of the ongoing utility review project and provided OSA with a copy of the contract amendment. Once the project is completed, DCR Permits and Leases intends to review its policies and procedures and make any necessary updates to ensure that they reflect DCR's processes with respect to its permit agreements with utility providers.*

## Auditor's Reply

During our audit period, DCR had not established proper user fees for utility providers. Although we acknowledge that DCR has been working with TRA since 2014 to update utility fee rates, during our audit period this was still an ongoing project. Based on its response, once this process is complete, DCR will implement our recommendation to make sure it has effective written policies and procedures that ensure that fair user fees are charged to, and collected from, utility providers.



### **3. DCR does not properly administer its use agreements for all properties.**

In our prior audit, we found several problems with the way DCR administered its use agreements, including allowing lessees to continue using or occupying a property even though the agreement had expired and allowing multiple lessees to use a property for a period of time without a use agreement. Without agreements properly executed on a timely basis, liability-related legal protections may not be in effect for all parties. During our current audit, we found ongoing problems in the following areas:

- Four properties leased under 4 of the 64 use agreements we sampled continued to be used with either expired or terminated use agreements. Two of these were agreements with utility providers, and the other two were skating rink agreements. Our review of all use agreements indicated that DCR was still not ensuring that all of them were active and up to date.
- Of the 64 use agreements we sampled, 4 were not executed with the DCR Commissioner's signature while the property was occupied. The agreements were 1 high-ground agreement, 1 boat and yacht club agreement, 1 legislatively authorized lease agreement, and 1 Memorandum of Understanding. In addition, we followed up on the prior audit's 20 cases in which use agreements had not been properly executed with the DCR Commissioner's signature (16 for concession stands and 4 for skating rinks). We determined that 5 of the concession stands still lacked executed use agreements and 9 of the 11 that had executed use agreements after the prior audit were now operating with expired agreements. In addition, though the 4 skating rinks that lacked properly executed use agreements in our prior audit had subsequently obtained them, all 4 use agreements had since expired.

#### **Authoritative Guidance**

Prudent business practices suggest that use agreements should be signed by all parties named in the agreement; that those that come up for renewal should be renegotiated and updated to reflect the needs of both the lessor and the lessee as well as the current business environment; and that use agreements should be in place before a property is occupied or used.

#### **Reasons for Issues**

DCR does not have written policies and procedures or a complete and updated register of use agreements to help ensure that all agreements are renewed in a timely manner. DCR senior management indicated that the agency was working with its contractor to improve its ability to register and track all aspects of use agreements that are under the control of DCR's Long-Term Permits and Leases Unit.

## Recommendations

1. DCR should follow up on, and resolve, all expired use agreements.
2. DCR should develop and follow written policies and procedures to ensure that use agreements for all of its properties are properly executed and renewed before they expire.

## Auditee's Response

*DCR agrees that it is important to have current agreements in place for users of DCR properties. However, we note that these agreements are typically the product of a negotiation between the parties to arrive at mutually acceptable terms, and that process may take a substantial amount of time. As discussed below, DCR has been addressing this issue by improving our internal processes.*

*Although the OSA report does not specifically identify which agreements were not fully executed, we will review our files and, to the extent those agreements are active and have not been signed, we will follow up to ensure that they are properly executed.*

*As noted above, DCR contracted with TRA in April 2014 for real estate advisory services. TRA has assisted DCR by scanning agreements and creating an initial database of information about those agreements. The database was enhanced by a program/application called Agreement Tracker, created to show agreements and related information to DCR staff until a more permanent or Commonwealth-based system may be implemented. The database and Agreement Tracker contain information about current and newly issued agreements, as well as those that are expired/inactive/terminated, and that information is used by Permits and Leases staff to monitor and administer DCR long-term permits and leases. Since 2014, staff has been cross-checking agreements with actual field information to determine which agreements should be renewed or archived and removed as an active agreement from the database. In addition, since 2014, Permits and Leases staff has been meeting with TRA staff on a monthly basis to review specific agreement information produced by TRA for the purpose of determining the status of agreements. Those meetings now include DCR Finance staff as well. For example, in 2013, the Permits and Leases agreements were scanned into the database; at that time, there were approximately 1,100 agreements. Currently, there are approximately 800 agreements in the database, reflecting staff's efforts to identify and eliminate inactive and expired agreements.*

*We also note that effective July 1, 2015, G.L. c. 92, § 33 was amended to increase the maximum term of a permit from 5 years to 10 years. The availability of a longer term has reduced the administrative work associated with renewing or extending permits, thereby enhancing DCR staff's ability to more effectively manage existing agreements and prepare new ones. In addition, the Boat and Yacht Club and Cottage permits, both of which had one-year terms, have had their terms extended to five years and two years, respectively.*

*Permits and Leases staff continues to draft templates with standard language for certain categories of agreements to decrease the amount of processing time for new agreements.*

*The Permits and Leases unit has a Procedures Manual which contains detailed information on the work processes of the unit, including information pertaining to different types of agreements, the [Request for Proposals] process, file maintenance, insurance requirements, work flows, and the approval process. The Manual will be revised to include the process improvements described above with respect to identifying and taking action on expired permits. The Manual is in draft form, and we anticipate it will be finalized shortly. The final version will include relevant policies for the unit.*

## Auditor's Reply

Based on its response, DCR is continuing to take measures to address our concerns in this area.

### **4. DCR does not perform inspections of all leased properties or ensure that all of its lessees comply with liability insurance requirements.**

In our prior audit, we found that DCR did not ensure that lessees of its properties adhered to the insurance and property maintenance provisions of their use agreements. Not appropriately monitoring and enforcing these 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. During our current audit, we found the following problems:

- Ten out of 64 use agreements we sampled that called for user liability insurance coverage did not have certificates of insurance<sup>7</sup> on file. Although the remaining 54 use agreements did have certificates of insurance on file, 12 did not identify DCR as the additional insured, which would ensure that DCR was covered in the event of an insurance claim against it. Because DCR does not always obtain evidence of current liability insurance that complies with use agreements, the Commonwealth may be liable for property damage or an injury to someone using state property.
- Of 64 use agreement files we reviewed, 59 (92%) had no documentation indicating that property inspections were performed. Without properly completed inspections for skating rinks, cottages, and other properties under use agreements, there is inadequate assurance that DCR properties are properly maintained.

## Authoritative Guidance

DCR use agreements stipulate the following:

- Permittees/lessees must carry liability insurance in specified amounts.

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7. Section 1 of Chapter 175L of the Massachusetts General Laws defines a certificate of insurance as "a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage."

- Permittees/lessees must provide DCR with current certificates of insurance issued by insurers qualified to conduct business in Massachusetts.
- The Commonwealth/DCR must be named as an additional insured party on the certificates of insurance.

Prudent business practices suggest that requiring lessees to abide by such terms obligates DCR to have controls in place to ensure that certificates of insurance are on file and that DCR is named as an additional insured party. They also suggest that properties associated with use agreements should be routinely inspected to detect any noncompliance with use agreements or other unauthorized use of DCR properties.

### Reasons for Noncompliance

DCR has not established policies and procedures for insurance certificates and inspections. In addition, DCR management stated that because of insufficient staffing levels, the agency cannot perform property inspections and monitor liability insurance requirements. These officials also pointed out that there is no requirement that DCR periodically inspect these properties. However, in OSA's opinion, periodic inspections of properties would be in the public's best interest, as they would allow DCR to detect any misuse of Commonwealth properties.

### Recommendations

1. DCR should establish and implement the necessary policies and procedures to ensure that all required certificates of insurance are on file and meet use agreement requirements.
2. DCR should keep a certificate of insurance on file for each agreement that has a user liability insurance obligation.
3. DCR should consider establishing a formal requirement of periodic inspections of all of its leased properties.

### Auditee's Response

*As discussed with OSA staff during the course of the audit, DCR does not have any obligation to conduct "inspections" of its leased or permitted property, nor do staff have the appropriate credentials to perform certain types of inspections (such as plumbing, electrical work, etc.). Because DCR Operations staff are generally present at the various DCR properties and are better positioned to be aware of issues as they arise, they notify Permits and Leases staff of issues relating to agreement compliance. Nevertheless, Permits and Leases staff does in fact conduct site visits for hockey rinks and fixed concessions to the extent feasible, and for DCR leases (when required by the lease terms). Permits and Leases staff does not conduct site visits for Boat and Yacht Club permittees or Cottage permittees, as those buildings are not owned by DCR, but are*

*owned by the permittees. Since November 2015, the Permits and Leases unit has had a written standard operating procedure for staff to follow in conducting site visits, which has been updated and revised twice since 2015, a copy of which was provided to OSA staff during the audit.*

*With respect to insurance, DCR's leases and long-term permits include standard provisions requiring the respective lessees and permittees to carry liability insurance in the amounts specified in those agreements. Those provisions include a standard requirement that the Commonwealth of Massachusetts / DCR be named as an additional insured. We note that municipalities are often self-insured and do not buy insurance, and in some cases, their agreements may not reflect that. In addition, federal agencies do not buy insurance. Going forward, we will ensure that the insurance requirements in our agreements properly reflect the insurance obligations of these types of permittees and lessees. We further note that where the insurance certificates were not physically in the agreement file, in some instances, DCR had received the insurance certificates electronically but had not yet been printed them out and included them in the file. In addition, in many cases, DCR staff were actively working with the permittees and lessees to have them obtain and provide corrected insurance certificates, i.e., proper endorsements, correct name of the certificate holder, etc.*

*DCR, with the assistance of TRA, has established a collection and reminder procedure to ensure that all required Certificates of Insurance are on file and meet with use agreement requirements. TRA has entered a field in the DCR agreement database to show whether insurance is current or soon to expire. On a monthly basis, TRA generates information from the database to use to send to DCR a list of agreements with insurance requirements which will expire in the next sixty (60) days. DCR staff discusses the list with TRA staff to decide whether letters need to be sent to the permittees and lessees. Once decided, letters are sent prior to expiration of the last known insurance term to permittees and lessees to remind them of their obligation to have updated insurance certificates sent to DCR. Insurance certificates received by DCR or TRA are transmitted to the other. Since instituting this process in 2017, there has been increased success in obtaining evidence of up to date insurance coverage.*

*As noted, the Permits and Leases unit has a Procedures Manual which contains detailed information on the work processes of the unit, including information pertaining to different types of agreements, the [Request for Proposals] process, file maintenance, insurance requirements, work flows, and the approval process. The Manual will be revised to include the process improvements described above with respect to ensuring that insurance certificates are routinely updated and maintained. The Manual is in draft form, and we anticipate it will be finalized shortly.*

## **Auditor's Reply**

OSA acknowledges that there is no specific requirement for DCR to perform inspections of all of its leased properties. However, we believe it is a prudent business practice to inspect all leased properties routinely to detect any noncompliance with use agreements or other unauthorized use of DCR properties. Further, although we acknowledge that there are some situations where certificates of insurance cannot be obtained, as in the case of self-insured municipalities, in those instances DCR

should note this fact in lessees' files so that there is documentation that DCR has determined that the lessees have proper insurance coverage.

Based on its response, DCR is continuing to take measures to address our concerns in this area.

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## OTHER MATTERS

### **The Department of Conservation and Recreation has not collected money it is owed under an agreement with TD Garden.**

During our audit, we became aware of research conducted by the Hyde Square Task Force, a stakeholder in the Jackson Square Recreation Center development project. The task force discovered that the New Boston Garden Corporation's (BGC's)<sup>8</sup> original use agreement with the then–Metropolitan District Commission (MDC) required BGC to conduct at least three charitable events per year in consultation with MDC<sup>9</sup> to raise money for recreation centers in Massachusetts and turn over a specified amount of the proceeds to MDC. This requirement was established by Section 7 of Chapter 15 of the Acts of 1993, “An Act Furthering the Establishment of Multipurpose Arena and Transportation Center,” which states,

*In consideration of the property interests and easements authorized to be transferred by this act, the new Boston Garden Corporation shall administer, produce, promote and sponsor no less than three charitable events per year at the New Boston Garden while the new Boston Garden is in operation which events shall be in consultation with the metropolitan district commission, and shall pay the net proceeds, after the deduction of expenses of said events, which expenses shall not include any rental payment for the use of the new Boston Garden, to said metropolitan district commission.*

However, since the establishment of this use agreement, the owners of TD Garden have not conducted these charitable events and turned over any funding to the Department of Conservation and Recreation (DCR). This has resulted in revenue lost to the Commonwealth. After our audit period, on December 28, 2017, a settlement agreement was established among the Executive Office of Energy and Environmental Affairs, DCR, and Delaware North Companies, Inc.—Boston, according to which the owner of TD Garden agreed to pay DCR \$1.65 million and hold at least three annual charitable events. Although the matter is under discussion by these three parties, DCR management indicated that there was still no agreement among the parties regarding how best to conduct the three annual charitable events.

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8. The New Boston Garden Corporation (now the Delaware North Companies, Inc.—Boston) was the owner of TD Garden when the act was signed.

9. On June 30, 2003, Governor Mitt Romney signed legislation that merged the Metropolitan District Commission and the Department of Environmental Management into the new Department of Conservation and Recreation.

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## Auditee's Comments

In its response to our draft report, DCR objected to the Office of the State Auditor (OSA) including this matter in our audit report because DCR contends that it was outside the scope of our audit and does not relate to the broader issue of permits and leases, “since Section 7 of Chapter 15 of the Acts of 1993 (the ‘1993 Statute’) imposed obligations upon the Boston Garden Corporation (‘BGC’) but did not require that BGC enter into a permit or lease with DCR’s predecessor, the former Metropolitan District Commission.”

DCR also provided the following comments:

*To the extent this matter is addressed in the final Audit Report, we note that, as stated in the draft Audit Report, DCR and Delaware North Companies, Inc.—Boston (“Delaware North”), entered into a settlement agreement executed . . . on December 28, 2017, in which Delaware North agreed to pay \$1.65 million into an escrow account, with such monies to fund the design and construction of an ice skating rink and recreational center in the Jackson Square area of the City of Boston, to resolve all claims arising from the 1993 Statute prior to December 28, 2017. Delaware North has made the required payment. In the settlement agreement, Delaware North further agreed to fulfill the statutory requirement of administering, producing, promoting and sponsoring no less than three charitable events per year and to pay the net proceeds to DCR beginning in calendar year 2018. As DCR noted by e-mail to the OSA, DCR and Delaware North are still in discussions regarding the resolution of Delaware North’s obligations on a going forward basis beginning in 2018. DCR anticipates that this matter will be resolved shortly.*