



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

FINANCIAL, ETHICAL, AND EXCLUSIVE USE CONCERNS ABOUT THE NPS' AGREEMENT WITH THE WOLF TRAP FOUNDATION FOR THE PERFORMING ARTS



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

SEP 04 2018

To: David Bernhardt
Deputy Secretary of the Interior

From: Mary L. Kendall *Mary L. Kendall*
Deputy Inspector General

Subject: Special Report – Financial, Ethical, and Exclusive Use Concerns About the NPS’
Agreement With the Wolf Trap Foundation for the Performing Arts
Report No. 2017-WR-037-A

During our evaluation of whether the National Park Service (NPS) complied with applicable policies, laws, and regulations in spending philanthropic partner funds, we identified concerns regarding the agreement between the NPS and the Wolf Trap Foundation for the Performing Arts, a nonprofit organization. In this memorandum, we describe concerns about financial arrangements, ethics, and exclusive use and include six recommendations for the NPS to consider as it renegotiates its agreement with the Foundation. We will address the use of philanthropic partner funds in our subsequent evaluation report.

Background

In 1966, Congress authorized the NPS to establish the Wolf Trap National Park for the Performing Arts, located in Vienna, VA. It is the only national park that exists solely for the performing arts. In 1968, the Foundation was created to manage performances at the Park. Unlike other nonprofit organizations that have agreements with the NPS, the Foundation refers to itself as a legislative partner rather than a philanthropic partner, though we found no evidence that the Foundation was created by a legislative action of Congress.

The NPS has an agreement with the Foundation that specifies the responsibilities of both parties. Specifically, the NPS is responsible for maintaining Park grounds and the Filene Center (the outdoor amphitheater), while the Foundation is responsible for programming, staging, and fundraising. One NPS official referred to the agreement as a “kitchen sink” agreement due to its broad scope. The current agreement expires in October 2018.

In fiscal year 2016, the NPS allocated \$4.2 million for the Park and awarded the Foundation \$594,000 to hire stagehands and other theatrical personnel.

Findings

The Foundation Appeared To Be Self-Supporting but Still Received Federal Funds

The current agreement states that the Foundation should be self-supporting and that it should gradually stop receiving Federal support as soon as it is able to handle financial obligations on its own. The Foundation appears capable of supporting itself, as it:

- Has been in operation for 50 years
- Generated \$40 million in revenue during fiscal year 2016 (\$2.7 million after expenses)
- Employs 94 paid staff (of whom 25 are permanent)
- Has the highest paid executive director (\$580,300 per year) of the 28 philanthropic partners we visited for which we obtained executive pay data

In 1971, the NPS agreed to pay the Foundation \$75,000 for stagehands and other theatrical technicians to support the performance season and agreed to consider future payments based on Foundation reports submitted each year. According to the NPS' history of the Park, at the time that the NPS agreed to support the 1971 performance season, the Secretary of the Interior and NPS officials stated that they were reluctant to open the door to providing such subsidies, fearing that they would come at the expense of other agency needs.¹

In 2005, we audited the Foundation's agreement and reported that the NPS had provided approximately \$20 million in financial assistance to the Foundation since the first performance season in 1971. Since 2005, the NPS has continued to pay for stagehands and other theatrical technicians. In fiscal year 2016, the Park provided \$594,000 for these positions. In its budget justifications for fiscal year 2018, however, the NPS proposed eliminating funds for the Foundation's usher and stagehand positions since they did not directly relate to the NPS' mission and it would allow the NPS to use those funds for Park operations and program investments.

The Foundation Gave Free Tickets to the Secretary, Raising Ethical Concerns

Under the current agreement, the Foundation gives the Secretary eight free tickets for each performance. For the upcoming 2018 season, the average price of eight tickets is valued at \$543. According to the Park's website, the venue hosts more than 80 shows each year, placing the total annual value of the tickets given to the Secretary at more than \$43,000.

During our research, we found that the Foundation has provided free tickets to the U.S. Department of the Interior since at least the late 1970s. According to the NPS' history of the park, the Inspector General concluded in 1979 that the Department would be better served by strictly prohibiting free tickets for employees and recommended that the agreement be revised to

¹Mackintosh, Barry, *Wolf Trap Farm Park: An Administrative History*, NPS, 1983.
<http://npshistory.com/publications/wotr/adhi.pdf>

forbid free or discounted tickets to Department personnel.² Despite the recommendation, the agreement renewed at the time stated that the Foundation would give the NPS eight free tickets for each Park performance.

The Foundation Did Not Contribute to Deferred Maintenance Needs

The current agreement between the NPS and the Foundation states that maintenance is the responsibility of the NPS. The Park has two major deferred maintenance needs, however, that are mutually beneficial to both parties and are directly related to the Foundation's activities.

The first deferred maintenance need is to renovate the Filene Center's theatrical stage rigging system, which is used to lift the stage, scenery, lighting equipment, sound equipment, orchestra shell, and numerous other heavy items above the stage floor and suspend them over the heads of the performers. The current system was installed in 1984 and is over 30 years old. The cost to replace the stage rigging system is estimated at \$3.8 million.

The second deferred maintenance need at the Park is to renovate the Filene Center's exterior by replacing the existing Douglas-fir siding with new fire-treated wood clapboard. The renovation would modernize the Filene Center at a cost of \$3.4 million.

These projects are beneficial to both the Park and the Foundation because they will improve critical infrastructure required to conduct performances in the Park.

The Foundation Had Exclusive Use of the Park Without the Appropriate Permit

NPS policy requires special-use permits for activities that take place in a park but provide a benefit to a group rather than the public at large; the NPS typically charges for the special-use permits. During our visit to the Park, we observed two instances in which the Foundation had exclusive use of the Park but no special-use permit: use of the Encore Circle Lounge and use of the billboard at the Park entrance.

The Foundation operates the Encore Circle Lounge for members who annually donate between \$3,500 and \$25,000 to the Foundation. We found that the Foundation advertised the Encore Circle Lounge as a "private facility adjacent to the Filene Center, where donors can relax and entertain guests throughout the evening." In addition, the Foundation used the large billboard at the entrance of the Park to advertise its privately owned property called The Barns, which is located across the highway from the Park.

The Foundation Used Revenue From Cellular Towers to Benefit Its Operations

Beginning in 1994, the Foundation entered into agreements with cellular companies to place cellular towers on the Filene Center. At that time, the NPS and the Foundation believed that their current agreement enabled the Foundation to enter into these lease agreements directly with cellular companies and to retain the revenue. Since 1995, the Foundation has collected revenues totaling \$2 million from its leases. No formal process or written agreement was

² Ibid.

established for collecting and accounting for the funds, just an understanding between the Park and the Foundation that these funds were to be considered donations to the Park for mutually beneficial Park projects.

The NPS later determined that these lease agreements were a violation of law. To resolve this issue, the Foundation provided the NPS a listing of \$1.6 million in expenditures that it considered donations for mutually beneficial Park projects. The NPS determined that these funds were used on Park projects and, in 2011, relieved the Foundation of its obligation to repay that amount. We found, however, that not all expenditures were related to mutually beneficial projects. Specifically, \$388,000 of the \$1.6 million was spent on improvements to the Encore Circle Lounge, which solely benefited the Foundation and its operation. In addition, we question the decision and the legal authority to forgive the entire \$1.6 million because it was revenue generated on Park property, making it Federal revenue.

Conclusion and Recommendations

Our findings demonstrate that the Foundation, unlike other NPS partners we visited, benefits from its arrangement with the Park.

On July 3, 2018, the NPS provided a response to our draft report. Based on its response, we consider Recommendations 1 – 3 and 5 resolved but not implemented and Recommendations 4 and 6 unresolved and not implemented. We will refer all recommendations to the Office of Policy, Management and Budget (PMB) for tracking. See Attachment 1 for the NPS’ full response and Attachment 2 for the status of recommendations.

We recommend that the NPS:

1. Determine whether the Foundation is self-supporting.

NPS response: The NPS concurred with our recommendation and considers the Foundation’s activities under the current agreement to be satisfactory and self-supporting, thus the second half of our original recommendation to include specific steps and a timeline for the Foundation to become self-supporting is no longer applicable. The NPS funds awarded to the Foundation are provided as part of the National Capital Region Arts and Cultural Affairs program, which is a congressionally directed program.

OIG reply: Continued Federal funding prevents the Foundation from being self-supporting. We understand that the NPS has little control over the congressionally directed funds in the National Capital Region Arts and Cultural Affairs program, but the Foundation is not considered to be self-supporting as long as it receives Federal dollars. For the recommendation to be considered implemented, the NPS must inform the Congress in its annual budget justifications that the NPS considers the Foundation to be self-supporting and does not require Federal support. We, therefore, modified the recommendation, eliminating the wording, “and, if not, include specific steps and a timeline in the new agreement for the Foundation to

become self-supporting.” We consider this recommendation resolved but not implemented and will refer it to the PMB to track implementation.

2. Obtain an ethics review and legal opinion to determine the appropriateness and use of the eight free tickets provided to the Secretary of the Interior for each Park performance

NPS response: The NPS concurred with our recommendation and has engaged an ethics officer within the DOI Office of the Solicitor to obtain an ethics review.

OIG reply: We consider this recommendation resolved but not implemented and will refer it to the PMB to track implementation.

3. Determine whether the Foundation should help offset the deferred maintenance needs of the Park

NPS response: The NPS concurred with our recommendation and has already taken steps to address deferred maintenance needs with the Foundation in its May 2018 memorandum of intent. The NPS also anticipates that the new cooperative agreement will shift the NPS’ and Foundation’s roles related to facilities management and maintenance.

OIG reply: We consider this recommendation resolved but not implemented and will refer it to the PMB to track implementation.

4. Obtain a legal opinion to determine whether the NPS has authority to provide the Foundation exclusive use of Park sites, such as the Encore Circle Lounge and the billboard

NPS response: The NPS indicated that it consulted with the Office of the Solicitor regarding this finding and recommendation and will update public materials and websites regarding the authorized activities as appropriate.

OIG reply: The NPS was silent on its concurrence and has not obtained a legal opinion or indicated that it planned to obtain a legal opinion. We consider this recommendation unresolved and not implemented and will refer it to the PMB for resolution and to track implementation.

5. Ensure the new agreement identifies the proper legal authorities for all the activities covered in the arrangement between the Park and the Foundation

NPS response: The NPS concurred with our recommendation. The new agreement, and any other agreement entered into by the Park and the Foundation, will be supported by proper legal authorities and those authorities will be identified in the agreement.

OIG reply: We consider this recommendation resolved but not implemented and will refer it to the PMB to track implementation.

6. Obtain a legal opinion to determine whether the NPS had authority to forgive the \$1.6 million in Federal revenue

NPS response: The NPS' response did not address our recommendation to obtain a legal opinion and instead relied on the work it conducted in 2011 to determine how the Foundation spent the revenue from the cell towers.

OIG reply: We consider this recommendation unresolved and not implemented and will refer it to the PMB for resolution and to track implementation. Based on the NPS' response, we requested that our Office of General Counsel (OGC) perform a legal review. Our OGC concluded that the agreement did not contain evidence that the NPS met all of the requirements for ratification under the legal authority the NPS relied upon, Federal Acquisition Regulation (FAR) § 1.602. For example, among other things, the agreement did not state that the NPS had determined that appropriated funds "were available at the time" of the expenses, under FAR § 1.602-3(c)(6), which is a prerequisite to ratification. We will send the OGC's review to the NPS separately from this report. We will also send the OGC's review to the PMB when we refer this recommendation.

If you have any questions regarding this report, please contact me at 202-208-5745.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

Attachments (2)

cc: Susan Combs, Senior Advisor to the Secretary
P. Daniel Smith, Deputy Director, National Park Service

The National Park Service's response to our report follows on page 2.



United States Department of the Interior

NATIONAL PARK SERVICE
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JUL 03 2018

To: Mary Kendall
Deputy Inspector General

Through: Susan Combs
Senior Advisor to the Secretary *Susan Combs*
Exercising the Authority of the Assistant Secretary
for Fish and Wildlife and Parks

From: ^{FOR} P. Daniel Smith *P. Daniel Smith*
Deputy Director
Exercising the Authority of Director

Subject: NPS Response to the Office of the Inspector General *Draft Memorandum-Financial, Ethical, and Exclusive Use Concerns About the NPS' Agreement With the Wolf Trap Foundation for the Performing Arts*; Report No. 2017-WR-037-A

This memorandum responds to the Office of the Inspector General (OIG) Draft Memorandum-Financial, Ethical, and Exclusive Use Concerns About the NPS' Agreement With the Wolf Trap Foundation for the Performing Arts (Report No. 2017-WR-037-A) (Draft Memorandum).

Thank you very much for providing me with a copy of your Draft Memorandum. I appreciate you raising these issues with me, and the time you and your team put into putting this Draft Memorandum together.

As a preliminary matter, we believe it is important to put this issue into the context of the unique status of Wolf Trap National Park for the Performing Arts (Park), originally designated as Wolf Trap Farm Park. While other NPS units host performing arts events, they are generally secondary to the purpose of those parks. In 1966, Congress established the Park, a unit of the National Park System, as a result of Mrs. Catherine Filene Shouse donating a portion of her farm in Vienna, Virginia, to the United States government to create the first national park dedicated to the performing arts. P.L. 89-67, 80 Stat. 950 (Oct. 15, 1966) (establishing the Park "for the purpose of establishing in the National Capital area a park for the performing arts and related educational programs, and for recreation use in connection therewith.").

In 1968, at the request of then Interior Secretary Udall, Mrs. Shouse established the Wolf Trap Foundation to serve as the Park's nonprofit partner -- several years before the first public performance season, which was 1971. Since the Park's inception, a series of cooperative agreements between the NPS and the Foundation have guided joint execution of the public purpose. The NPS has been responsible for the overall management, park operation, visitor services such as providing ushers and park rangers, police and security, emergency medical services, and maintenance of the grounds and facilities in the Park. The NPS has also been

responsible for providing the technical aspects of performances and related activities, such as providing stage management and stagehands and major building and theatrical systems related to the theater's functioning. The Foundation's responsibilities have included contracting for the production and presentation of performing arts and related educational programs; handling ticket sales; providing visitor/patron services; and handling marketing, advertising, and media relations.

The Wolf Trap Foundation for the Performing Arts is one of the NPS's most long-standing and valued partners. The Foundation contributes an average of four times more funding and in-kind support for Park operations than the Federal government each year. The public has relied on this support since the Park's first performance season in 1971 and continues to do so. Over the years, the NPS has requested additional support from the Foundation, at times for costs that would traditionally be an NPS responsibility.

The current Cooperative Agreement with the Foundation expires on October 1, 2018. The NPS is working with the Foundation to negotiate a new agreement. During the new agreement development, NPS is discussing with the Foundation the need to shift even more facility maintenance costs and other operational responsibilities from the NPS to the Foundation.

SPECIFIC NPS RESPONSES TO THE DRAFT FINDINGS & RECOMMENDATIONS

Finding: The Foundation Appeared To Be Self-Supporting but Still Received Federal Funds

Recommendation 1. Determine whether the Foundation is self-supporting and, if not, include specific steps and a timeline in the new agreement for the Foundation to become self-supporting.

The NPS considers the Foundation's activities under the current cooperative agreement to be satisfactory and self-supporting with the understanding that each year the Foundation must solicit and receive a mix of donations, grants, bequests, and other fundraising and earned revenue to operate and present performing arts, educational programs, and to meet its operational and charitable commitments.

The Foundation was established to undertake the non-traditional government role of contracting and managing for artistic presentations. Accordingly, comparisons to other traditional NPS "Friends Groups" regarding overall budget, fundraising success, executive compensation, and role and mission are misleading. At its core, the Park is a live performing arts venue operating within a highly competitive business environment, which is substantially different from other national parks and their partners. Therefore, it would be more accurate to compare the Foundation with similar performing arts venues and performing arts organizations. For example, the Director of Ford's Theatre, also an NPS partner, is compensated at a comparable level to the Foundation's CEO; while the CEO of the Kennedy Center is compensated at a rate nearly double that of the Foundation's CEO.

Similarly, with respect to NPS funds awarded to the Foundation, it is important to note that these funds are provided as part of the National Capital region arts and cultural affairs program, a

congressionally directed program that supplies NPS funds to multiple Capital Area performing arts venues, including the Park, Ford's Theatre, Carter Barron, and the National Symphony Orchestra. Originally the NPS was able to cover the full costs associated with stagehands by transferring the congressionally directed ONPS funds to the Foundation. Over time, the stagehand costs increased beyond the annual congressionally directed funding. These funds have accounted for only 25 percent of the annual costs of stagehands for the past several years, resulting in the Foundation directly covering the remainder. In 2017, the Foundation provided \$1.2 million in addition to the \$594,000 NPS funds to hire the stagehands. In total, the Foundation has contributed more than \$25 million in funds beyond the NPS funds they have received for hiring stagehands.

The NPS will ensure that the new cooperative agreement with the Foundation continues to comply with applicable laws and regulations regarding financial reporting and the use of program income, including compliance with the Park's enabling legislation, as amended, which requires the Foundation to "maintain accounts for Foundation activities outside of the Park separate from Foundation accounts for presentation of performing arts and related programs presented at the [Filene] Center and other areas of the Park" and to ensure that the Secretary of the Interior has access to the Foundation's records. 16 U.S.C. § 284d(c). The new agreement will also include compliance with regulations requiring income generated from activities under a cooperative agreement or earned as a result of the cooperative agreement, labeled "program income," to be used toward the program's current costs within the Park. 2 C.F.R. § 200.307.

To increase the oversight and accountability of philanthropic partner support in general, the NPS Washington Office is developing an online Partnership Web Portal and will be working to more clearly identify funds and contributions provided across the park system by philanthropic partners. The Partnership Web Portal will enable the NPS, the Park, and the Foundation to improve the tracking, monitoring, and reporting of the Foundation's program income and donations generated through their property assignment and Park activities.

Responsible Official: George Liffert, Superintendent, Wolf Trap National Park for the Performing Arts

Target date of completion: September 30, 2018

Finding: The Foundation Gave Free Tickets to the Secretary, Raising Ethical Concerns.

Recommendation 2: Obtain an ethics review and legal opinion to determine the appropriateness and use of the eight free tickets provided to the Secretary of the Interior for each Park performance.

Consistent with Recommendation 2, the NPS has engaged an Ethics Officer within the DOI Office of the Solicitor to obtain the referenced ethics review.

Responsible Official: George Liffert, Superintendent, Wolf Trap National Park for the Performing Arts

Target date of completion: The NPS expects to receive the requested opinion by July 2018, well before the target completion date of the new agreement.

Finding: The Foundation Did Not Contribute to Deferred Maintenance Needs.

Recommendation 3: Determine whether the Foundation should help offset the deferred maintenance needs of the Park.

The NPS concurs that it should determine whether and to what extent the Foundation should assist with deferred maintenance needs.

Although the existing agreement does not require the Foundation to offset any cyclic or deferred maintenance costs of the Park, the Foundation has provided notable support for Park infrastructure projects. Since the 1982 agreement, the Foundation has contributed more than \$18 million toward Park projects, including over \$6 million within the past seven years alone. These projects have included replacement of the Filene Center roof, contributing to the expansion of the main entrance gate, and the purchase and installation of five large video screens enhancing the visitor experience of live performances.

In May 2018 the NPS and the Foundation entered into a *Memorandum of Intent* to begin a master plan and compliance process to identify deferred maintenance needs and facility and visitor experience improvement alternatives for the Park. The Foundation is funding these initial plan development costs and indicated its intent to conduct a major capital fundraising campaign to raise private funds to implement the final plan. A major goal of the campaign will be to address components associated with the master plan's preferred alternative and deferred maintenance needs. The Foundation's campaign would also position the Park to remain relevant and artistically and financially viable in an increasingly competitive marketplace of performing arts venues in the greater metropolitan area.

Related to the development of the new cooperative agreement, in recognition of the changing federal appropriations landscape, the NPS and Foundation are discussing a fundamental shift in the NPS' and Foundation's roles related to facilities management and cyclic maintenance. The NPS Cooperative agreement authority provides for an opportunity to explore an enhanced role for the Foundation in that regard. Under the recently updated NPS cooperative agreement templates and guidance, if property or facilities are assigned, the partner is then responsible for their operation and routine maintenance for the term of the agreement. This new standard requirement for routine maintenance and operations will be a significant shift from the existing and former agreements in the terms and roles and responsibilities of the Foundation and the NPS.

Responsible Official: George Liffert, Superintendent, Wolf Trap National Park for the Performing Arts

Target date of completion: Memorandum of Intent signed May 14, 2018. New agreement target September 30, 2018.

Finding: The Foundation Had Exclusive Use of the Park Without the Appropriate Permit.
Recommendation 4: Obtain a legal opinion to determine whether the NPS has authority to provide the Foundation exclusive use of Park sites, such as the Encore Circle Lounge and the billboard.

Consistent with Recommendation 4, the NPS has consulted with the Office of the Solicitor regarding this issue. The NPS and Foundation will update public materials and websites regarding the authorized activities, as appropriate.

Responsible Official: George Liffert, Superintendent, Wolf Trap National Park for the Performing Arts

Target date of completion: Completed

Finding: The Foundation Had Exclusive Use of the Park Without the Appropriate Permit.
Recommendation 5: Ensure the new agreement identifies the proper legal authorities for all the activities covered in the arrangement between the Park and the Foundation

The NPS concurs that the new cooperative agreement, and any other agreement, entered into by the Park and the Foundation, will continue to be supported by proper legal authorities and that those authorities will be identified in the respective agreement. In Fall 2017, the NPS initiated consultation with the Office of the Solicitor regarding the anticipated new cooperative agreement governing the management of the Park. The NPS requested a review of its authority to permit the Foundation's current income-producing activities within the Park. At that time, the Solicitor's Office provided the NPS with preliminary guidance. The NPS will continue to work with the Solicitor's Office to ensure that all new agreements continue to be supported by proper legal authorities and that those authorities are correctly identified in those agreements.

Responsible Official: George Liffert, Superintendent, Wolf Trap National Park for the Performing Arts. Andrew Lubner, NCR Financial Assistant Chief and Warrant Officer
Target date of completion: The target date for signing the new cooperative agreement with the Foundation is September 30, 2018.

Finding: The Foundation Used Revenue From Cellular Towers to Benefit their Operations.
Recommendation 6. Obtain a legal opinion to determine whether the NPS had authority to forgive the \$1.6 million in Federal revenue.

The NPS, in conjunction with the Office of the Solicitor reviewed and sought to address this issue in 2011.

In September 2011, the NPS Comptroller's Office and the NPS Regional Contracting Officer performed a detailed review of invoices submitted by the Foundation, and confirmed that it spent \$1,494,357.11 of the revenues from the wireless antenna agreements on projects for the Park. The Contracting Officer accordingly ratified those expenditures and did not require the Foundation to repay the NPS for them. In order to avoid any question as to whether this process

resulted in NPS retaining funds that should have been deposited in the U.S. Treasury, the NPS deposited \$1,494,357.11 into the U.S. Treasury to compensate for the ratified funds.

In December 2011, following the submission of additional invoices from the Foundation, an amended ratification was signed in the amount of \$1,625,550.86, a change of \$131,193.75 from the initial ratification. In the course of preparing materials for this response, the NPS was unable to confirm the additional \$131,193.75 from the amended ratification was deposited into the U.S. Treasury, and subsequently deposited that amount in the Treasury.

As discussed in the December 2011 amended ratification, the Foundation provided the account balance of \$419,105.10, and was required to reimburse the NPS for that amount (which it did).

The Office of the Solicitor concurred in these findings.

Responsible Official: Jessica Bowron, NPS Comptroller
Target date of completion: Completed.

Conclusion:

We hope this information provides a fuller understanding of the NPS' partnership with the Foundation. We welcome the OIG's guidance on how to strengthen a new cooperative agreement with the Foundation, which is currently being developed to replace the existing 20-year agreement set to expire October 1, 2018.

Status of Recommendations

| Recommendations | Status | Action Required |
|------------------------|--------------------------------|--|
| 1 – 3 and 5 | Resolved but not implemented | We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track their implementation. |
| 4 and 6 | Unresolved and not implemented | We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track their resolution and implementation. |

