

Department of Fish and Game

Investigations of Improper Activities by State Employees, July 2005 Through December 2005

INVESTIGATION I2004-1057 (REPORT I2006-1), MARCH 2006

Department of Fish and Game's response as of February 2007

We investigated and substantiated the allegation, as well as other improper acts. The Department of Fish and Game (Fish and Game) allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds.

Finding #1: Fish and Game provided free housing to employees and volunteers and failed to report housing fringe benefits.

Fish and Game allowed several state employees and volunteers to reside in state-owned homes without charging them rent. Consequently, Fish and Game violated the state law prohibiting state officials from providing gifts of public funds. We identified seven volunteers and six employees who resided in state-owned homes in Fish and Game's North Coast Region but were not required to pay rent for a total of 718 months between January 1984 and December 2005. Because Fish and Game provided free rent to some employees and volunteers, the State did not receive more than \$87,000 in rental revenue to which it was entitled between January 1984 and December 2005.¹ Therefore, that amount represents a gift of state funds to the employees and volunteers residing in the state-owned homes and a loss in revenue to the State. State regulations provide that departments shall review the monthly rental and utility rates of state-owned housing every year and report those rates to the Department of Personnel Administration (DPA).

Based on a review of state-owned housing conducted by DPA, as well as on information provided by the departments to DPA, it appears that Fish and Game understated its employees' wages by more than \$867,000 each year from 2002 through 2005 because it did not report any fringe benefits for its employees who reside on state property at below-market rates. As a result, over the four-year period, state and federal tax authorities were unaware of the potential \$1.3 million in taxes associated with a total of nearly \$3.5 million in potential housing fringe benefits.

¹ This conservative amount is based on the nominal rents Fish and Game charges when it requires its employees to pay rent. However, if fair market value, as determined by the Department of Personnel Administration, were applied to the 718 months of free rent, this figure could be greater.

Investigative Highlights . . .

The Department of Fish and Game:

- » *Provided gifts of free rent of more than \$87,000 to employees and volunteers.*
- » *Failed to report housing fringe benefits totaling almost \$3.5 million over a four-year period.*
- » *Deprived state and federal taxing authorities of as much as \$1.3 million in potential tax revenues for tax years 2002 through 2005.*

Other state departments:

- » *May have failed to report housing fringe benefits of as much as \$7.7 million.*
- » *May have failed to capture as much as \$8.3 million in potential rental revenue.*

Fish and Game's Action: Partial corrective action taken.

Fish and Game reported that in August 2006 it began the process of adjusting rental rates to fair market values in accordance with DPA regulations and applicable collective bargaining agreements and began raising rental rates in October 2006. Fish and Game also reported that it last obtained appraisals approximately 14 years ago and in order for it to report accurate taxable fringe benefit information, it must first obtain current fair market appraisals for its properties. Fish and Game added that it has identified funding to obtain fair market appraisals and will do so after DPA establishes the master agreement for appraisers.

Finding #2: Other state departments have also failed to report housing fringe benefits.

Although we focus on Fish and Game's management of state-owned housing in this report, the housing review conducted by DPA shows that all 13 state departments that own employee housing may be underreporting or failing to report housing fringe benefits. For example, the Table shows that in 2003 state departments may have failed to report housing fringe benefits totaling as much as \$7.7 million, depriving state and federal tax authorities of as much as \$3 million annually in potential tax revenues. Additionally, because state departments have chosen to charge employees rent that is well below market rates, the State may have lost as much as \$8.3 million in potential rental revenue in that year.²

Table**Potential Income and Benefits Related to Rental Housing Units Held by State Departments, 2003**

DEPARTMENT	RENTAL UNITS	ANNUAL INCOME IF RENTED AT FAIR MARKET VALUE (FMV)	ANNUAL RENT CHARGED	LOST STATE REVENUE (DIFFERENCE BETWEEN FMV AND RENT CHARGED)*	TAXABLE FRINGE BENEFIT REPORTED	UNREPORTED TAXABLE FRINGE BENEFITS†
Department of Parks and Recreation	487	\$ 4,778,496	\$ 763,488	\$4,015,008	\$373,198	\$3,641,810
Department of Corrections and Rehabilitation	176	2,139,972	909,732	1,230,240	0	1,230,240
Department of Developmental Services	99	1,254,360	309,240	945,120	5,728	939,392
Department of Fish and Game	168	1,124,532	257,316	867,216	0	867,216
Department of Forestry and Fire Protection	72	559,332	218,400	340,932	53,078	287,854
Department of Mental Health	40	366,720	125,472	241,248	34,031	207,217
Division of Juvenile Justice	51	371,760	136,740	235,020	69,152	165,868
Department of Transportation	42	294,984	144,324	150,660	17,300	133,360
Department of Veterans Affairs	22	235,224	97,512	137,712	9,240	128,472
Santa Monica Mountains Conservancy‡	9	82,512	0	82,512	0	82,512
California Highway Patrol	6	41,184	12,732	28,452	0	28,452
Department of Food and Agriculture	5	29,18	5,844	23,340	0	23,340
California Conservation Corps	4	36,888	20,748	16,140	3,058	13,082
Totals	1,181	\$11,315,148	\$3,001,548	\$8,313,600	\$564,785	\$7,748,815

Source: 2003 Department of Personnel Administration Departmental Housing Survey.

* This amount represents what should have been reported to taxing authorities as a taxable fringe benefit.

† Taxable housing fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no taxable fringe benefit exists when employees pay fair market rates.

‡ No rent was charged for any department properties.

² Taxable fringe benefits exist when the rental rate charged is less than the fair market rate. Thus, no fringe benefit exists when employees pay fair market rates.

Department of Parks and Recreation's Action: None.

The Department of Parks and Recreation (Parks and Recreation) believes that the state regulations relevant to state-owned housing for employees not represented by collective bargaining agreements (non-represented employees) do not allow it to raise rental rates beyond those listed in the regulations and stated that non-represented employees reside in approximately one-third of its properties. However, after reviewing the information Parks and Recreation submitted to DPA, it appears that non-represented employees reside in less than one-tenth of its inhabited properties. Regardless, Parks and Recreation believes that in order for it to raise rental rates for its non-represented employees and not violate state regulations, DPA must update the rates listed in state regulations. Parks and Recreation added that many of the collective bargaining agreements, under which most of its remaining employee residents work, limit its ability to raise rental rates. However, DPA, the agency responsible for administering state housing regulations, has specifically given Parks and Recreation direction to raise rental rates to fair market value and acknowledges that it should do so in accordance with employee collective bargaining agreements. These agreements generally allow Parks and Recreation to raise rental rates by 25 percent annually up to fair market value. After receiving this direction, Parks and Recreation responded to DPA, requesting that DPA provide clear authority and policy direction to departments, and inform employee unions of this direction; however, DPA has not responded to this request.

Parks and Recreation also reported that it believes the fair market values used in DPA's review do not fairly represent the true value of its homes. We acknowledge that the fair market values used in DPA's review may not reflect the actual value of all department holdings; however, DPA was unable to use the actual fair market values because Parks and Recreation failed to determine and report to DPA accurate fair market value rates for all of its properties—rates it also needed to fulfill its responsibility to accurately report the housing fringe benefits realized by its employees. After reviewing the information it submitted to DPA, it appears that it provided fair market determinations for only 298 of the 817 properties it owns. Moreover, Parks and Recreation failed to indicate when the last appraisal was conducted for all but 90 of the 298 properties and had conducted appraisals on only 14 of those properties in the previous 10 years, thus demonstrating that it did not report accurate, up-to-date fair market rates to DPA.

Parks and Recreation also takes issue with the amounts identified by DPA as losses in state revenue and underreported fringe benefits because many of its employees live on state property as a condition of employment and therefore, there is no loss in rental revenue to the State or fringe benefit to report. However, after reviewing the information provided to DPA, it appears that Parks and Recreation did not clearly indicate which, if any, of its residents resided on state property as a condition of employment. Specifically, even though the survey guidelines instructed Parks and Recreation to indicate the reason for occupancy for each of its properties, it did not list as a reason condition of employment for any of its properties. Parks and Recreation has not reported any updated information since March 2006.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections), including the Division of Juvenile Justice, reported that DPA is anticipating awarding a contract for state-owned housing appraisal services that can be used by all state agencies. Corrections stated that it intends to obtain fair market appraisals for its properties through the contract, which is expected to be awarded by April 2007.

Department of Developmental Services' Action: Pending.

The Department of Developmental Services (Developmental Services) reported that it will obtain fair market appraisals once DPA establishes a master agreement of licensed appraisers and has authorized departments to begin contracting for appraisals. Developmental Services also reported that it has evaluated its systems and processes for reporting fringe benefits to ensure it will be in compliance with reporting guidelines once it is able to establish and update its rental rates.

Department of Forestry and Fire Protection's Action: Partial corrective action taken.

The Department of Forestry and Fire Protection (Forestry) reported that it has taken several steps to resolve state housing issues since it reported information to DPA for its review in 2003. Specifically, Forestry reported that it now reviews rental rates each year and rents that are below fair market value will be raised by 25 percent annually in accordance with applicable collective bargaining agreements. It also reported that it currently reports taxable fringe benefits for residents in Forestry housing on a monthly basis. In addition, Forestry reported that the fair market rates used by DPA do not accurately reflect the true values of its properties because most are located within the boundaries of conservation camps primarily occupied by prison inmates; however, it acknowledged that annual appraisals are necessary to document the accurate value of each unit. Finally, due to increased rental rates and additional vacancies, Forestry reported that the difference between fair market value and actual rental income for all of its properties in 2005 was \$32,805 and that by increasing rents 25 percent each year, the difference will continue to decline. Forestry has not reported any updated information since March 2006.

Department of Mental Health's Action: Partial corrective action taken.

The Department of Mental Health reported that it updated its special order addressing employee housing in December 2006. This special order requires all four of its hospitals to perform appraisals of fair market rental rates for their properties by March 2007 and to reassess those rates annually. In addition, the special order requires its hospitals to report accurate taxable fringe benefit information in a timely manner.

Department of Transportation's Action: Corrective action taken.

The Department of Transportation (Caltrans) reported that it performed additional analysis to determine what amount of taxable fringe benefits it should have reported for 2003. It determined that the net total of additional income that should have been reported was \$1,232 for six of its employees residing in state homes. Caltrans added that as of April 2006, this amount was reported to the tax authorities.

Department of Veterans Affairs' Action: Corrective action taken.

The Department of Veterans Affairs (Veterans Affairs) reported that it conducted fair market assessments of its properties in September 2005 and that it submitted its corrected housing information to DPA in October 2005. Veterans Affairs also reported that it established new rental rates based on the assessments and informed its residents that the new rates would take effect March 1, 2006.

Santa Monica Mountains Conservancy's Action: Corrective action taken.

The Santa Monica Mountains Conservancy reported that it has only six employees, none of whom live on state property. It added that in lieu of rent, it currently allows non-state employees to reside on eight of its properties to provide and ensure resource protection, site management, facilities security and maintenance, and park visitor services.

California Highway Patrol's Action: Partial corrective action taken.

The California Highway Patrol reported that it has adjusted rental rates for its properties in accordance with applicable state regulations and that because all of its employees reside on state property as a condition of employment, it has not underreported housing fringe benefits.

Department of Food and Agriculture's Action: Corrective action taken.

The Department of Food and Agriculture (Food and Agriculture) reported that its employees currently reside on two state properties as a condition of employment. As a result, there is no fringe benefit to report for those residents. Food and Agriculture added that because these properties are located near popular resort areas, fair market values are not comparable to values of homes in surrounding communities.

California Conservation Corps' Action: Pending.

The California Conservation Corps (Conservation) reported that it will be conducting new appraisals to determine updated fair market values for its properties and that rental rates will be increased to the extent allowed by law and applicable collective bargaining units. Conservation also stated it would report on the fringe benefit amount—the difference between the rent charged and the fair market value determined by these new appraisals—for employees residing on its properties, and has informed affected employees of this fact. Conservation has not reported any updated information since March 2006.

Department of Personnel Administration's Action: Pending.

The Department of Personnel Administration (DPA) reported that it became aware that some departments, which attempted to contract for appraisal services, received bids that were too costly and not in the best interest of the State. As a result, in February 2007 DPA issued a request for proposal in an effort to solicit bids for a statewide master agreement of licensed appraisers. DPA expects to finalize agreements in June 2007 with the seven appraisal firms awarded contracts.