



Department of Environmental Protection Office of Inspector General

May 5, 2023

Report A-2122DEP-016

Audit of Agreements CA-0415 and CA-0315 with Coral Reef Park Company, at John Pennekamp and Bahia Honda State Parks

INTRODUCTION

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of Agreement CA-0415 (CA-0415) between the Department of Environmental Protection (Department) Division of Recreation and Parks (Division) and Coral Reef Park Company (Concessionaire) at John Pennekamp State Park (John Pennekamp) and Agreement CA-0315 (CA-0315) between the above parties at Bahia Honda State Park (Bahia Honda). This audit was initiated by the Office of Inspector General.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit included select Concessionaire activities and financial records during the period beginning January 1, 2021, to December 31, 2021.

The objectives of the audit were to:

- Determine the accuracy of reported gross sales
- Determine the Concessionaire's compliance with the Agreements
- Evaluate management oversight of concession activities and performance under the Agreements

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, and internal operating procedures
- Conducting an analysis of Concessionaire and Park records to include Concessionaire activities and financial documents
- Interviewing the Concessionaire, Park and Division staff, and conducting a site visit at both Parks

BACKGROUND

CA-0415 was executed on May 29, 2015 and will expire on April 30, 2035. CA-0415 was amended on August 13, 2020. CA-0415 provides Food and Beverage Service, Merchandise Resale, Recreational Equipment Rentals, Event Management Services, Boat Tours (glass bottom, SCUBA and snorkel), Rental of Boat Camping Space, Snorkel and Scuba Certifications and Wi-Fi Services. The Concessionaire's monthly commission for John Pennekamp is 13% of total gross sales but not less than \$600,000 annually.

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The Concessionaire has maintained a contract with the Department at Bahia Honda since August 1, 1983. The current Agreement CA-0315 between the Department and the Concessionaire at Bahia Honda was executed on May 29, 2015 and will expire on April 30, 2035. CA-0315 provides Food and Beverage Service, Merchandise Resale, Recreational Equipment Rentals, Event Management Services, Boat Tours, Marina Management, Slip Rentals and Wi-Fi Services. The Concessionaire's monthly commission for Bahia Honda is 13% of total gross sales but not less than \$150,000 annually.

According to Monthly Reports of Gross Sales for 2021, the Concessionaire reported \$5,411,677.04 in gross sales and paid \$706,509.80 in commission fees to the Department for operations at John Pennekamp. The Concessionaire reported \$1,702,959.22 in gross sales and paid \$221,384.69 in commission fees to the Department for operations at Bahia Honda.

RESULTS OF AUDIT

During the audit, we reviewed documentation from the Concessionaire and Department for the months of January 2021 through December 2021 to determine compliance with the Agreements. In our review we found the following:

Accuracy of Reported Gross Sales

To determine the accuracy of reported gross sales, we compared the Monthly Report of Concessionaire's total gross sales to the Concessionaire's general ledger and amounts reflected in the Department of Revenue reports for the months of January through December 2021.

Reported Gross Sales Comparison for January through December 2021			
Agreement	Monthly Report of Concessionaire's Gross Sales	General Ledger Gross Sales	Department of Revenue (DR-15) Reports Gross Sales
CA-0415	\$5,411,677.04	\$5,411,814.03	\$5,411,677.37
CA-0315	\$1,702,959.22	\$1,702,959.22	\$1,702,959.22

Based on our audit, there were minor discrepancies between the general ledger and the reported gross sales amounts reported to the Department of Revenue for CA-0415. However, the Concessionaire's monthly reported gross sales were consistent with gross sales reported on the Department of Revenue Tax Reports. For CA-0315, reported gross sales were consistent with the Concessionaire's Department of Revenue Tax Reports and general ledger.

We reviewed sales data for the sample months September 2021 and October 2021. To determine the accuracy of reported gross sales for the sample months, we compared daily sales reports to daily point of sale reports to verify sales were recorded correctly on the general ledger. Based on our review, the daily sales data was generally recorded on the general ledger accurately with the following exceptions.

For operations at John Pennekamp there were four days within the sample months that the daily sales reports did not match the daily point of sale reports. Of those four discrepancies, three were due to vending machine sales being documented in the daily sales report but not processed

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through the point of sale system. One was an error in which a discount was given but not entered into the point of sale system. The cash deposits reflected the amounts after the errors were rectified on the daily paperwork.

For operations at Bahia Honda there were six days within the sample months that the daily sales reports did not match the daily point of sales reports. Of those six discrepancies, five noted the error within the daily report and one was a transposition of numbers. The cash deposits reflected the amounts after the errors were rectified on the daily paperwork.

Additionally, for both operations we verified that all daily deposits were completed by comparing deposit slips, bank statements and daily paperwork.

Agreement Compliance and Management Oversight

Commission Fee Payments

Under Special Conditions Paragraph F of each Agreement, the Concessionaire shall pay the Department a monthly commission fee equal to 13% of Total Gross Sales for all its operations on behalf of the Department. Additionally, according to General Conditions Paragraph 17, the payment shall be submitted by the 20th of each month. Based on the commission payments reviewed, we verified the minimum guarantee was met and monthly commission fees were paid as required.

Cash Register Receipts

According to both CA-0415 and CA-0315, cash register receipts shall clearly state the attraction, rental or service purchased and be designed to capture all pertinent sales data, such as: receipts for date and time, items or service purchased, amount of sale, amount of sales tax collected, total collected, and cashier's identification and have a numbering sequence by point of sale. At both John Pennekamp and Bahia Honda, the Concessionaire's sales receipts contain a number sequence, captures data such as date and time, amount of purchase, amount of sales tax, total collected and cashier identification. Although the sales receipts do list items and services purchased by category, the descriptions used are very broad and do not provide specific items or services.

Park Admission Fees

Special Conditions, Paragraph F of CA-0415 and CA-0315 states in part, "*Total Gross Sales*," for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, vending and services generated as a result of the Concessionaire's operations at or associated with the Park...*Total Gross Sales shall not include:...* 4. *pass through fees, which include: a. admission fees collected by the Concessionaire on behalf of the Department.* During the site visit to John Pennekamp, it was determined that Park admission fees are not collected from day use visitors arriving by boat. At Bahia Honda, the admission fees are collected from day use visitors arriving by boat; however, the Park admission fees are not submitted to the Park in full, as required. The admission fee is recorded as a sale; therefore, the Concessionaire only submits 13% of the total admission fee collected. Neither Agreement requires the Concessionaire to collect an admission fee for overnight campers.

Minimum Accounting Requirements

According to CA-0415 and CA-0315, *The Concessionaire shall establish and maintain bank accounts (checking, savings, etc.) that are used solely for operations for this Concession Agreement and are separate from any other Concession Agreement and non-Concession Agreement operations.* The Concessionaire has established and maintains fifteen bank accounts

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that are used for Coral Reef Park Company operations. Of the fifteen, eight bank accounts are utilized for CA-0415 and seven bank accounts are utilized for CA-0315. During our review, we identified bank transfers between the operations at John Pennekamp and Bahia Honda. Other than the transfers between park operations, for the eight bank accounts at John Pennekamp and the seven bank accounts at Bahia Honda all bank activity is for the sole purpose of each Agreement respectfully.

According to the Minimum Accounting Requirements in CA-0415 & CA-0315, *At a minimum, customer refunds shall be documented by customer signed sales slips indicating receipt of the refund; and, the document shall state the reason for the refund; identify the cashier making the refund; date stamp and time the refund, and be maintained electronically within the point of sale system. If the customer does not have his copy of the sales receipt, a pre-numbered refund receipt signed by the customer shall be issued.* During the sampled months of September and October 2021, we reviewed refund documentation from both operations. At John Pennekamp we sampled two days from each month. All refunds were retained with copies of original transaction receipts by the Concessionaire. The Concessionaire does not require a signature from the customer; however, the point of sales system stores the information for the employee completing the refund. The manager completing the refund does document the reason for the refund. At Bahia Honda, refund transactions are documented with the daily paperwork. In a sample from September 9, 2021, the original transaction receipt was not stored with the daily paperwork; however, the additional required information was present excluding the customer signature as the refund was completed over the phone.

Purchasing Card Industry (PCI) Requirements

Per both CA-0415 and CA-0315 the Concessionaire is *responsible for complying with the PCI Data Security Standards, which include a set of comprehensive requirements for enhancing payment account data security, at the Concessionaire's sole cost and expense.* Based on the reviewed PCI documentation provided by the Concessionaire, we verified the Concessionaire met PCI requirements under both Agreements.

Profit and Loss Statement

The profit and loss statement was provided to the Division within 90 days after the close of the calendar year as required for both CA-0415 and CA-0315.

Limited Engagement Document

As required by both CA-0415 and CA-0315, the Concessionaire obtained and submitted, at its sole cost and expense, a limited engagement document, prepared in accordance with the Agreed Upon Procedures for a Certified Public Accountant. The limited engagement document was submitted to the Park Manager on June 24, 2022, for John Pennekamp and June 27, 2022, for Bahia Honda.

Minimum Operational Requirements

During our site visit, we observed the Concessionaire's operation and conducted interviews to evaluate the Concessionaire's compliance with the Minimum Operational Requirements and Procedures outlined in Exhibit A of both Agreements.

Exhibit A, Minimal Operational Requirements and Procedures, of both CA-0415 & CA-0315 states in part, that the Concessionaire's *minimum operating hours will be 8 a.m. to 5 p.m. Eastern, daily, 365 days a year, including weekends and holidays.* At both locations operating hours were posted near the front of the concession buildings and no deviations were made to operating hours. The

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Concessionaire maintains the telephone and Wi-Fi for both operations. Both Concessionaire locations had adequate staffing for the operation and a work schedule is maintained for the staff.

All space and equipment (including rental equipment) appeared to be well maintained and certified for all Concessionaire facilities, to include removal of litter from facilities and surrounding areas as required by Exhibit A of both Agreements. We verified the Concessionaire completes an inventory for all operations yearly. Both Park Managers advised that all cleaning, maintenance, and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides are approved by the Department. However, no pre-approvals were provided by the Park Managers when requested.

According to Exhibit A of CA-0415 and CA-0315, Minimum Operational Requirements and Procedures, the Division was required to provide written pre-approvals for operations and services provided by the Concessionaire including menu items, resale merchandise, hours of operation, rental equipment, boat tours and boat tour schedules, staff schedules, cleaning supplies and Wi-Fi services. Neither Park Manager was able to provide the pre-approval documentation.

During our site visit, we verified that the Concessionaire's operations are only utilizing facilities granted in CA-0415 and CA-0315. At John Pennekamp, the Concessionaire provides the required food and beverage services through a food truck operation. At Bahia Honda, the food service area is located within the gift shop. At both operations there is a standard menu of items. The Concessionaire nor Park Managers could provide pre-approval documentation for the menu items as required in Paragraph 2.a.1 of Exhibit A.

At John Pennekamp and Bahia Honda, the Concessionaire provides the following items for resale: ice, snacks, T-shirts, hats, sunglasses, sunscreen, snorkels, masks, Self-Contained Underwater Breathing Apparatus (SCUBA) equipment, bug repellants, souvenirs, charcoal, and other appropriate items as required by both Agreements. However, the Concessionaire nor Park Managers could provide pre-approval documentation for the resale items not specifically listed in both Agreements as required in Paragraph 2.b of Exhibit A. These items include, but are not limited to, medication, beach/water toys and swim wear. The Park Managers and Concessionaire described a verbal process for getting new merchandise approved.

During the site visit at John Pennekamp, recreational rental equipment was observed to include kayaks with paddles, paddleboards with paddles, beach chairs, snorkeling equipment, SCUBA equipment, and fishing equipment. Visitors who rent a boat are required to provide a driver license which is kept with all participants' waiver documents. At Bahia Honda, recreational rental equipment was observed to include kayaks with paddles, paddleboards with paddles, beach chairs, and snorkeling equipment. At both locations, safety equipment, including whistles, were available for each rental activity. The recreational rental and safety equipment appeared well maintained at inventory levels to accommodate the operation. An employee works at the rental operations until all visitors have returned. Prior to launch, all participants renting a kayak or canoe, sign an Assumption and Acknowledgement of Risk -Release of Liability and Indemnity Agreement of Risk (waiver), which includes rules and regulations for operating rentals.

It was determined that bicycles and beach chair setups (each of which consists of two chairs and one umbrella) are not available to rent at either location as required by Exhibit A, Section C.1.c and d, of Agreements CA-0415 and CA-0315. The Concessionaire explained that bicycles were offered for a short time but that the proximity to the highway was a safety issue and led to theft.

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Although beach chairs are available to rent, the required beach chair setups, each of which consists of two chairs and one umbrella are not offered.

At John Pennekamp, the Concessionaire offers glass bottom, snorkeling, diving, and interpretive boat tours. At Bahia Honda, the Concessionaire offers snorkeling and interpretive boat tours; however, glass bottom boat tours are currently not being offered at Bahia Honda as required in Paragraph 2.e of Exhibit A of CA-0315. At both locations, the boats are operated on consistent schedules and routes and are provided by means of safe, comfortable, well maintained, U.S. Coast Guard approved watercraft that is compatible with the docking facilities provided at each Park. The Concessionaire provided current Certificates of Inspection issued by the United States Coast Guard for each vessel.

Paragraph F of Exhibit A in both CA-0415 and CA-0315 requires the Concessionaire to manage boat camping space. The Concessionaire provides marina management and slip rental services including marina docking and mooring balls at John Pennekamp. The Concessionaire also provides a pump out station and electricity to boat campers. At Bahia Honda, the Concessionaire provides marina management and slip rental services which includes electricity for boat campers.

According to Exhibit A, Minimum Operational Requirements and Procedures, of CA-0415 and CA-0315, the Department was required to provide written pre-approvals for the Environmental, Safety, and Maintenance and Repair Plans. For CA-0415, we obtained copies of the three Plans; however, none of the Plans contained a date or the Department's pre-approval. The Plans associated with CA-0315 were provided by the Park Manager with the approval date of November 2022; however, the Safety Plan had not been approved by the Department Safety Officer. During the audit, all Plans were approved by the Park Manager and Department Safety Officer.

E-Verify Employment Eligibility Verification and Sexual Predator and Offender Checks

The General Conditions, Paragraph 35, of CA-0415 and CA-0315 states in part, *The Concessionaire shall use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of: a. All persons employed by the Concessionaire, during the term of this Agreement, to perform employment duties within Florida; and, b. All persons (including subcontractors) assigned by the Concessionaire to perform work pursuant to this Agreement. The Concessionaire shall include this provision in all subcontracts it enters into for the performance of work under this Agreement.* Paragraph 36, states in part, *The Department shall conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees and subcontractors of Concessionaire prior to executing this Agreement. The Concessionaire shall keep a copy of its investigation records in Concessionaire's personnel files that will be available to the Department during the Concessionaire's regular office hours.* At John Pennekamp there were 58 employees on the Concessionaire's payroll in September 2021. Of those employees, E-Verify employment eligibility verifications and sexual predator and offender searches were completed and maintained in the Concessionaire's personnel files for 33 employees. Of the 25 employee files not maintained 9 employee files were destroyed in Hurricane Irma and reproduced when requested during the audit. There were 16 employees on the payroll that employee files were not provided. At Bahia Honda there were 13 employees on the Concessionaire's payroll in September 2021. Of those employees, E-Verify employment eligibility verifications and sexual predator and offender searches were completed and maintained in the Concessionaire's personnel files for 8 employees. The 5 employee files not maintained were destroyed in Hurricane Irma and were reproduced when requested during the audit.

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Utility Requirements

According to both CA-0415 and CA-0315, *The Concessionaire shall be responsible for the costs of all utilities associated with its operations within the Park.* Utilities are identified, but not limited to, in both Agreements as electricity, water/sewer, garbage, telephone/internet, and vending machines. Based on our review, we verified that both John Pennekamp and Bahia Honda are making payments directly to the service provider for electricity, garbage, phone, and internet services. Water and sewer are paid by each Park and then billed to the Concessionaire monthly. We verified the Concessionaire is reimbursing the Department for these utilities. According to both Agreements, the *Concessionaire shall pay a monthly fee to the Park of \$20.00 per machine not requiring heating element or refrigeration, and \$30.00 per machine requiring heating element or refrigeration, unless the machine is located in an area where electricity is paid for by the Concessionaire.* At John Pennekamp there are seven vending machines (3 drink, 2 washers, 2 dryers) that are located in areas in which electricity is not directly paid by the Concessionaire. Two of the seven machines do not contain a heating or cooling element. The Concessionaire is currently paying \$90 for three vending machines with heating or cooling. The Concessionaire is currently not being invoiced by the Park for two \$20 machines and two \$30 machines which is a total of \$100 monthly. At Bahia Honda, all vending machines operating at the Park are utilizing electricity paid directly by the Concessionaire.

Security Deposit Bond

We verified the Security Deposit Bond in the amount of \$240,000 effective dates of November 30, 2021 - November 30, 2022, was on file as required by Special Conditions, Paragraph E of CA-0415. We verified the Security Deposit Bond in the amount of \$52,000 effective dates of October 31, 2021 – October 31, 2022, was on file as required by Special Conditions, Paragraph E of CA-0315.

Insurance Coverage Requirements

The Concessionaire had obtained valid business licenses for all operations and maintained the required insurance certificates in the amounts specified under the Agreement.

Quarterly Evaluations

Chapter 5.2 Section 8 Quarterly Evaluations of the Division of Recreation & Parks Operations Manual states in part, *Quarterly Reports are used to assess the concessionaire's performance and facilities and ensure that the terms outlined in the agreement are being followed.* We reviewed Concessionaire Quarterly Evaluations that were completed during the audit period. Both Park Managers documented positive results for all areas regarding the Concessionaire's performance and compliance with the Agreement. However, Park Management failed to notate the Concessionaire was lacking in areas such as E-Verify employment eligibility, Sexual Predator and Sexual Offender searches being completed and filed for all employees, Safety Plan revision and submission, services outlined in the Agreement not being offered and compliance with the capital improvement process at both John Pennekamp and Bahia Honda.

Accessibility and Inclusion Policy

According to both Agreements, the Concessionaire is required to make their Accessibility and Inclusion Policy and Plan available to Concessionaire employees, the Park Manager, and Park visitors regarding individuals with disabilities. We observed the Plan was available at both Parks as required.

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Capital Improvement Requirements

In accordance with Exhibit B, Paragraph 7 of CA-0415, the Concessionaire will provide at least \$1,500,000 in *Capital Improvement Costs for the purpose of enhancing Facilities at the Park ("Capital Improvement Funding")* as follows: a. *The Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2015, unless the parties mutually agree to extend this deadline.* b. *If the parties cannot agree on the Capital Improvements, the Concessionaire shall pay to the Department the Capital Improvement Funding prior to April 30, 2020.* c. *If the parties agree on the Capital Improvements, the Concessionaire shall complete the Capital Improvements no later than April 30, 2020. If the agreed upon Capital Improvements are valued at less than the Capital Improvement Funding, the Concessionaire shall pay to the Department the remaining balance of the Capital Improvement Funding prior to June 30, 2025.* d. *Constructed Capital Improvements shall immediately become the property of the Department. Capital Improvement Costs shall amortize each year on April 30 based upon the capitalized Capital Improvement costs then incurred at a rate of one seventh thereof for a period of seven years, provided all such Capital Improvement Costs are fully amortized by March 30, 2035.* Based on our review, an extension through March 1, 2021, had been approved by the Division. However, there was no documentation showing any further extensions or an agreed upon Capital Improvement project. Per the Park Manager, the Concessionaire and the Division are in the planning process for a centralized building that will house the concession operation, as well as a Park visitor center.

In accordance with Exhibit B, Paragraph 7 of CA-0315, the Concessionaire will provide at least \$500,000 in *Capital Improvement Costs for the purpose of enhancing Facilities at the Park ("Capital Improvement Funding")* as follows: a. *The Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2015, unless the parties mutually agree to extend this deadline.* b. *If the parties cannot agree on the Capital Improvements, the Concessionaire shall pay to the Department the Capital Improvement Funding prior to April 30, 2020.* c. *If the parties agree on the Capital Improvements, the Concessionaire shall complete the Capital Improvements no later than April 30, 2020. If the agreed upon Capital Improvements are valued at less than the Capital Improvement Funding, the Concessionaire shall pay to the Department the remaining balance of the Capital Improvement Funding prior to June 30, 2025.* d. *Constructed Capital Improvements shall immediately become the property of the Department. Capital Improvement Costs shall amortize each year on April 30 based upon the capitalized Capital Improvement costs then incurred at a rate of one seventh thereof for a period of seven years, provided all such Capital Improvement Costs are fully amortized by March 30, 2035.*

The Concessionaire has provided \$213,969.65 in Capital Improvement Cost for CA-0315. An estimate for Decking for an additional \$136,150.00 was provided in November 2018; however, the project has not started. In addition, there were no extensions granted for the remainder of the required Capital Improvement Costs.

Monroe County Surcharge Collection

Section 380.0685, Florida Statute states, in part, *The Department of Environmental Protection shall impose and collect a surcharge of 50 cents per person per day, or \$5 per annual family auto entrance permit, on admission to all state parks in areas of critical state concern located in a county which creates a land authority pursuant to s.380.0663 (1), and a surcharge of \$2.50 per night per campsite, cabin, or other overnight recreational occupancy unit in state parks in areas of critical state concern located in a county which creates a land authority.* At John Pennekamp, the Concessionaire is collecting the \$2.50 docking fee per night, per boat. However, the required \$.50 per person entry fee is not being collected by the Concessionaire. At Bahia Honda, the Concessionaire is collecting the \$2.50 docking fee per night, per boat as well as the required \$.50 per person entry fee. All fees collected are submitted to the Department monthly.

CONCLUSION

Based on our audit, reported gross sales during the audit period were generally supported by the Concessionaire's general ledger and point of sale transaction detail. Reported amounts were consistent with sales reported to the Department of Revenue. Compensation and monthly commission fees were paid as required during the audit period. The Concessionaire generally complied with requirements in the Agreement, with some exceptions. We noted weaknesses in the areas of bank accounts not being used for the sole purpose of the Agreement, lack of written pre-approvals maintained by the Department, refunds, lack of rental items and services required in the Agreement, E-Verify Employment Eligibility Verification, and Sexual Predator and Offender searches. We also noted weaknesses in Park management oversight of Concessionaire activities and performance in the following areas: Quarterly Evaluations, capital improvements, oversight of the services required by the Agreements, incorrect billing for vending machines, required pre-approvals, Park Entry Fees, and Monroe County surcharge collection. Our review noted some areas where controls could be strengthened. Our findings and recommendations are listed below.

FINDINGS AND RECOMMENDATIONS

Finding 1: Receipts and Refund Documentation – Receipt items are not clearly stated, and refund receipts do not contain all required information, as stated in Exhibit C of Agreements CA-0415 and CA-0315.

According to CA-0415 and CA-0315, *At a minimum, cash register receipts shall: a) Clearly state the attraction, rental or service purchased. Both Agreements also state in part, customer refunds shall be documented by customer signed sales slips indicating receipt of the refund; and, the document shall state the reason for the refund; identify the cashier making the refund; date stamp and time the refund, and be maintained electronically within the point of sale system.* Although sales receipts at both operations list items and services purchased by category, the descriptions used are very broad and do not clearly state the attraction, rental or service purchased.

At both John Pennekamp and Bahia Honda, refunds and voided receipts are kept by the Concessionaire with daily paperwork. A supervisor's approval is required for all refunds and voided transactions. However, at John Pennekamp refunds are processed through the point of sale system and can be processed electronically without the customer present which prevents the requirement of a customer signature being present on original receipts as specified in the Agreement. The point of sale system records the user that completes the refund or void in a transaction history log, but no physical signature is present on the retained receipts. At Bahia Honda some refunds are completed by phone which prevents the customer from signing for the refund.

Recommendations:

- 1.1 We recommend the Division work with the Concessionaire to ensure sales slips contain all information required in the Agreements.

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Division Response: The Division concurs with the finding and will work with the concessionaire to ensure sales slips contain all information required in the Agreements.

- 1.2 We recommend the Division work with the Concessionaire to ensure records supporting all refund transactions with customer signed sales slips indicating the receipt and reason for the refund are maintained as required in the Agreement.

Division Response: The Division concurs with the finding and will work with the concessionaire to ensure records supporting all refund transactions with customer signed sales slips indicating the receipt and reason for the refund are maintained as required in the Agreement.

Finding 2: Bank Accounts – Bank accounts are not used for the sole purpose of each Agreement as required in Exhibit C of Agreements CA-0415 and CA-0315.

According to both Agreements, *The Concessionaire shall establish and maintain bank accounts (checking, savings, etc.) that are used solely for operations for this Concession Agreement and are separate from any other Concession Agreement and non-Concession Agreement operations.* We identified bank transfers of funds between the operations at John Pennekamp (Agreement CA-0415) and Bahia Honda (Agreement CA-0315). According to the Concessionaire, these transfers are made when a sole company payment is made from one account and the cost needs to be distributed to the other Park. In addition, bank transfers between the two Concessionaire accounts are made when there is a need for additional funding by one Park. All other activity is solely related to operations under each Agreement.

Recommendations:

- 2.1 We recommend that the Division work with the Concessionaire to ensure bank accounts are used as required by the Agreements.

Division Response: The Division acknowledges the finding and intends to seek clarification from the Office of General Counsel regarding the intent and meaning behind the Agreement's requirement to maintain separate accounts.

Finding 3: Pre-approvals – Pre-approvals from the Department were not obtained per Agreements CA-0415 and CA-0315

Under both Agreements, the Concessionaire is required to obtain pre-approval for menu items, resale merchandise, hours of operation, rental equipment, boat tours and boat tour schedules, staff schedules, cleaning supplies, and Wi-Fi. The Concessionaire is also required to submit a draft Maintenance and Repair Plan, Environmental Protection Plan, and Safety Plan for review and approval by the Department, prior to initial operations. During the audit, there was no pre-approval documentation provided and all three Plans for both Parks were approved during the audit process.

Recommendations:

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- 3.1 We recommend the Division work with Park management to ensure pre-approvals are obtained and Maintenance and Repair Plans, Environmental Protection Plans, and Safety Plans meet Division expectations as required.

Division Response: The Division concurs with the finding and will work with Park management to ensure pre-approvals are obtained and Maintenance and Repair Plans, Environmental Protection Plans, and Safety Plans meet Division expectations as required.

Finding 4: Required Services – Rental items and services required by CA-0415 and CA-0315 are not offered by the Concessionaire.

According to CA-0415 and CA-0315, *Concessionaire shall provide recreational equipment rentals... c). unisex bicycles, varying in style to accommodate different ages and sizes of riders; d). beach chair setups, each of which consists of two chairs and one umbrella.* Agreement CA-0315 states in part, *Concessionaire shall provide glass-bottom boat, snorkeling and diving tours and other similar tours with pre-approval by the Park Manager.* During the audit, it was determined that bicycles and beach chair setups (each of which consists of two chairs and one umbrella) are not available to rent at either location as required by Exhibit A, section 2.c.1.c and d, of Agreements CA-0415 and CA-0315. In addition, glass-bottom boat tours are not offered at Bahia Honda as required by Exhibit A, section 2.e, of Agreement CA-0315. The Concessionaire explained that bicycles were offered for a short time but that the proximity to the highway was a safety issue and led to theft. Although beach chairs are available to rent, the beach chair setups, each of which consists of two chairs and one umbrella, are not offered.

Recommendations:

- 4.1. We recommend the Division work with the Park Manager and Concessionaire to ensure that required services outlined in the Agreement are being provided. If the Division has determined that these services are no longer required, the Agreement should be amended to reflect updated service requirements.

Division Response: The Division concurs with the finding and will work with the Park Manager and Concessionaire to ensure that required services outlined in the Agreement are being provided or amend the Agreement to meet the Division's current need for services.

Finding 5: Vending Machine Fees – Vending machine fees for John Pennekamp are not being paid by the Concessionaire as required by CA-0415.

According to CA-0415, *Concessionaire shall pay a monthly fee to the Park of \$20.00 per machine not requiring heating element or refrigeration, and \$30.00 per machine requiring heating element or refrigeration, unless the machine is located in an area where electricity is paid for by the Concessionaire.* There are seven machines (3 drink, 2 washers, 2 dryers) that are located in areas in which electricity is not directly paid by the Concessionaire. Two of the seven machines do not contain a heating or cooling element. The Concessionaire is currently paying \$90 for three vending machines with heating or cooling. The Concessionaire is currently not being invoiced by the Park for two \$20 machines and two \$30 machines which is a total of \$100 monthly.

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Recommendations:

- 5.1** We recommend the Division work with the Park Manager and the Concessionaire to ensure the Concessionaire is invoiced for the correct amount of vending machines as required.

Division Response: The Division concurs with the finding and will work with the Park Manager and the Concessionaire to ensure the Concessionaire is remitting the correct number of vending machines as required.

- 5.2** We recommend the Division work with the Park Manager to determine the amount owed for vending machine fees due to incorrect billing by the Park and collect the amount due.

Division Response: The Division concurs with the finding and will work with the Park Manager to determine the amount owed for vending machine fees due to incorrect billing by the Park and collect the amount due.

Finding 6: Admission Fees – Admission fees for day visitors arriving by boat are not submitted to the Department as required by Special Conditions paragraph F of the Agreement.

Special Conditions, Paragraph F of CA-0415 and CA-0315 states in part, "*Total Gross Sales,*" for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, vending and services generated as a result of the Concessionaire's operations at or associated with the Park...*Total Gross Sales shall not include:...* 4. *pass through fees, which include: a. admission fees collected by the Concessionaire on behalf of the Department.*

At John Pennekamp an admission fee is not being collected by the Concessionaire for day visitors arriving by boat. At Bahia Honda an admission fee is being collected by the Concessionaire for day visitors arriving by boat. However, the total amount of the admission fee is not being submitted to the Department. Rather, the admission fee is counted as gross sales and 13% of the admission fee is submitted to the Department.

Recommendations:

- 6.1** We recommend the Division work with Park management and the Concessionaire to ensure admission fees are collected and the full amount is submitted to the Department as required.

Division Response: The Division concurs with the finding and will work with Park management and the Concessionaire to ensure admission fees are collected and the full amount is submitted to the Department as required.

- 6.2** We recommend the Division work with Park management and the Concessionaire to determine and collect admission fees owed to the Department.

Division Response: The Division concurs with the finding and will work with Park management and the Concessionaire to determine and collect admission fees owed to the Department.

Finding 7: Monroe County Surcharge Collection – The Concessionaire is not collecting the Monroe County surcharge of 50 cents as required by Section 380.0685, Florida Statutes.

Paragraph 1 of the General Conditions of CA-0415 states in part, *The Concessionaire shall be responsible for compliance with: a) all applicable federal, state, and local laws, rules, regulations and ordinances.* Furthermore, Section 380.0685, Florida Statutes states in part, *State parks in area of critical state concern in county which creates land authority: surcharge on admission and overnight occupancy. — The Department of Environmental Protection shall impose and collect a surcharge of 50 cents per person per day, or \$5 per annual family auto entrance permit, on admission to all state parks in areas of critical state concern located in a county which creates a land authority pursuant to s. 380.0663(1), and a surcharge of \$2.50 per night per campsite, cabin, or other overnight recreational occupancy unit in state parks in areas of critical state concern located in a county which creates a land authority pursuant to s. 380.0663(1); however, no surcharge shall be imposed or collected under this section for overnight use by nonprofit groups of organized group camps, primitive camping areas, or other facilities intended primarily for organized group use.* The Concessionaire at John Pennekamp is collecting and submitting the required \$2.50 per night for overnight guest; however, the 50 cents per person surcharge is not being collected or submitted as required.

Recommendations:

- 7.1 We recommend the Division work with Park management and the Concessionaire to ensure Monroe County Surcharge requirements are being followed as required by Florida Statutes. In addition, the Division should ensure the surcharge collected is submitted to the Department in order for the surcharge collections to be provided to Monroe County.
- 7.2 We recommend the Division work with the Concessionaire to determine the amount of surcharge owed to Monroe County and collect the surcharge so that it can be provided to Monroe County per Florida Statutes.

Division Response: The Division acknowledges the finding and will consult with the Office of General Counsel to clarify understanding of Monroe County Surcharge requirements.

Finding 8: Capital Improvement Projects – Planning, execution nor extensions of Capital Improvement Projects are being completed per Exhibit B, Paragraph 7 of CA-0415 and CA-0315.

In accordance with Exhibit B, Paragraph 7 of CA-0415, the Concessionaire will provide at least \$1,500,000 in Capital Improvement Costs *for the purpose of enhancing the Facilities at the Park ("Capital Improvement Funding") as follows: a. The Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2015, unless the parties mutually agree to extend this deadline. b. If the parties cannot agree on the Capital Improvements, the Concessionaire shall pay to the Department the Capital Improvement Funding prior to April 30, 2020. c. If the parties agree on the Capital Improvements, the Concessionaire shall complete the Capital Improvements no later than April 30, 2020. If the agreed upon Capital Improvements are valued at less than the Capital Improvement Funding, the Concessionaire shall pay to the Department the remaining balance of the Capital Improvement Funding prior to June 30, 2025. d.*

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Constructed Capital Improvements shall immediately become the property of the Department. Capital Improvement Costs shall amortize each year on April 30 based upon the capitalized Capital Improvement costs then incurred at a rate of one seventh thereof for a period of seven years, provided all such Capital Improvement Costs are fully amortized by March 30, 2035. Documentation was provided showing Division approval for a Capital Improvement extension through March 1, 2021; however, no further documentation of plans or extensions was provided. During the site visit the Park Manager explained that there are plans to build a centralized building that contains the Concessionaire operations, as well as the Park's visitor center. Per the Park Manager, the Concessionaire and the Division are in the planning process for this project and all capital improvement funds will be allocated to that project.

In accordance with Exhibit B, Paragraph 7 of CA-0315, the Concessionaire will provide at least \$500,000 in Capital Improvement Costs for the purpose of enhancing the Facilities at the Park ("Capital Improvement Funding") as follows: a. The Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2015, unless the parties mutually agree to extend this deadline. b. If the parties cannot agree on the Capital Improvements, the Concessionaire shall pay to the Department the Capital Improvement Funding prior to April 30, 2020. c. If the parties agree on the Capital Improvements, the Concessionaire shall complete the Capital Improvements no later than April 30, 2020. If the agreed upon Capital Improvements are valued at less than the Capital Improvement Funding, the Concessionaire shall pay to the Department the remaining balance of the Capital Improvement Funding prior to June 30, 2025. d. *Constructed Capital Improvements shall immediately become the property of the Department. Capital Improvement Costs shall amortize each year on April 30 based upon the capitalized Capital Improvement costs then incurred at a rate of one seventh thereof for a period of seven years, provided all such Capital Improvement Costs are fully amortized by March 30, 2035.* To date, the Concessionaire has provided \$213,969.65 in Capital Improvement Costs. An estimate for Decking for an additional \$136,150.00 was provided in November 2018; however, the project has not started. In addition, there were no extensions granted for the remainder of the required Capital Improvement Costs.

Recommendations:

- 8.1** We recommend the Division work with Park management and the Concessionaire to ensure extensions are granted, as required by both Agreements.

Division Response: The Division concurs with the finding and will work with Park management and the Concessionaire to ensure extensions are granted, as required by both Agreements.

Finding 9: E-Verify Employment Eligibility and Sexual Predator and Offender check – E-verify and Sexual Predator and Offender checks were not completed as required by Paragraphs 35 and 36 of the General Conditions of both CA-0415 and CA-0315.

The General Conditions, Paragraph 35, of CA-0415 and CA-0315 states in part, *The Concessionaire shall use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of: a. All persons employed by the Concessionaire, during the term of this Agreement, to perform employment duties within*

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Florida; and, b. All persons (including subcontractors) assigned by the Concessionaire to perform work pursuant to this Agreement. The Concessionaire shall include this provision in all subcontracts it enters into for the performance of work under this Agreement. Paragraph 36, states in part, The Department shall conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees and subcontractors of Concessionaire prior to executing this Agreement. The Concessionaire shall keep a copy of its investigation records in Concessionaire's personnel files that will be available to the Department during the Concessionaire's regular office hours. At John Pennekamp, there were 58 employees on the Concessionaire's payroll in September 2021. Of those employees, E-Verify employment eligibility verifications and sexual predator and offender searches were completed and maintained in the Concessionaire's personnel files for 33 employees. Of the 25 employee files not maintained, the Concessionaire advised that 9 employee files were destroyed in Hurricane Irma and reproduced during the audit. There were 16 employees on the payroll that employee files were not provided. At Bahia Honda, there were 13 employees on the Concessionaire's payroll in September 2021. Of those employees, E-Verify employment eligibility verifications and sexual predator and offender searches were completed and maintained in the Concessionaire's personnel files for 8 employees. According to the Concessionaire, the 5 employee files not maintained were destroyed in Hurricane Irma and reproduced during the audit.

Recommendations:

- 9.1** We recommend the Division work with the Park management and Concessionaire to ensure E-Verify employment eligibility verifications and sexual predator and offender searches are completed as required.

Division Response: The Division concurs with the finding and will work with Park management and the Concessionaire to ensure E-Verify employment eligibility verifications and sexual predator and offender searches are completed as required.

Finding 10: Concessionaire Quarterly Evaluation – Park Managers failed to assess the Concessionaire's performance accurately in Quarterly Evaluations as required by Chapter 5.2 Section 8 of the Division Operations Manual

Chapter 5.2 Section 8 of the Division Operations Manual states in part, *Quarterly Reports are used to assess the Concessionaire's performance and facilities and ensure that the terms outlined in the agreement are being followed. During the walk through, the Park Manager will review and complete each item in the Concessionaire Quarterly Evaluation form and make notes where appropriate. Once completed, the Park Manager and Concessionaire will discuss and sign and date the form. Any deficiencies noted in the walk-through must be corrected by the Concessionaire. To document the deficiency, the Park Manager needs to issue a Notice of Non-Compliance.* We reviewed four quarterly evaluations from the audit period for both Park operations. In all eight quarterly evaluations, the Park Managers noted the Concessionaire was in compliance by marking "Yes" for Section 3.E.7 *Safety Plan provided to Park Manager and is revised and approved annually*, Section 6.A *Concessionaire provides the services outlined in the terms of the Agreement*, and Section 9.C *Any deviations from negotiated Capital Improvements are well documented and approved by the Department.* However, the Safety Plan was not updated in 2021, services outlined in the Agreements are not being offered, and capital improvements are not being executed as outlined in the Agreement. Additionally, all quarterly

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evaluations noted the Concessionaire had completed and maintained all E-Verify employment eligibility verifications and sexual predator and offender searches as required.

Recommendations:

- 10.1** We recommend the Division work with the Park Manager to ensure Concessionaire Quarterly Evaluations are completed with accurate information to support the actual performance and compliance of the Concessionaire.

Division Response: The Division concurs with the finding and will work with the Park Manager to ensure Concessionaire Quarterly Evaluations are completed with accurate information to support the actual performance and compliance of the Concessionaire.

STATEMENT OF ACCORDANCE

Statement of Accordance

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to § 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Jen Garretson and supervised by Candie M. Fuller.

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