

State of New York
Office of the Inspector General



Investigation of Allegations of Misconduct
By Jerry Cosgrove, Former Deputy Commissioner
Of the Department of Agriculture and Markets

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State Inspector General

I. SUMMARY OF FINDINGS

The State Inspector General determined that former New York State Department of Agriculture and Markets Deputy Commissioner Jeremiah “Jerry” Cosgrove directed his subordinates to alter a 2009 grant program in order to award \$100,000 to the New York Agricultural Land Trust (NYALT), a not-for-profit organization that had engaged Cosgrove’s wife, Judith “Judy” Anderson, for consulting services regarding farmland protection programs administered by Cosgrove. The Land Trust Grant program was established to help land trust organizations, like NYALT, carry out farmland preservation projects under another state program. Notably, these state grant funds would have helped NYALT pay Anderson’s consulting fees.

When Cosgrove learned that NYALT did not qualify to receive any funds, Cosgrove pressured his subordinates to alter the agency’s established application review process and conduct a second round of scoring. One witness recalled that Cosgrove exclaimed that “if they [NYALT] don’t receive funding, heads are going to roll.” Then, upon learning that there were insufficient funds available to award a grant to NYALT, Cosgrove insisted that he wanted NYALT funded immediately. Cosgrove’s insistence prompted his staff to double the total grant funds in order ensure that there was enough money for NYALT. Cosgrove’s subordinates acquiesced to his demands out of fear of retribution, including termination from Agriculture and Markets.

Compounding the egregiousness of Cosgrove’s actions, the Inspector General’s investigation revealed that Cosgrove was well aware early on in his employment with Agriculture and Markets of the potential ethical issues posed both by his wife’s employment by NYALT and his own prior employment in the private sector. Indeed, that awareness led him to obtain an informal advisory opinion in his favor from the New York State Commission on Public Integrity (COPI) in 2008. In doing so, however, Cosgrove provided COPI with inaccurate information and omitted critical details. Specifically, Cosgrove failed to disclose significant facts regarding his role in a contract between Agriculture and Markets and his former employer, the American Farmland Trust

(AFT). He further omitted crucial details about his wife's work for NYALT, which had several matters pending in the Farmland Protection Implementation Grant (FPIG) program – a program then supervised by Cosgrove. Based on the misleading information it received from Cosgrove, COPI concluded that Cosgrove's state employment did not create a conflict of interest with respect to NYALT and AFT.

Cosgrove subsequently used COPI's informal advisory opinion to defend himself against assertions of possible ethical breaches raised by Agriculture and Markets' employees. Cosgrove cited the existence of the opinion as evidence of propriety of his conduct, but he refused to reveal the actual opinion. In addition, having procured the informal opinion through the provision of inaccurate and incomplete information, Cosgrove proceeded to ignore COPI's guidance regarding how to avoid conflicts of interest arising from his role at Agriculture and Markets and his interactions with AFT and NYALT, the land trust organization that retained his wife for her consulting expertise.

Cosgrove's conduct regarding AFT created, at a minimum, an appearance of impropriety, and at times presented an actual conflict of interest between Cosgrove's State duties and his involvement with his former employer. Further, Cosgrove worked on both sides of a contract in which Agriculture and Markets agreed to pay AFT \$50,000 for consulting services. His improper conduct also included his involvement in the renewal of the agency's contract with AFT, actually approving the contract in the department's computerized contract management system.

Cosgrove also oversaw Agriculture and Markets' programs on which his wife worked on behalf of NYALT, and for which she was paid, at times, with state funds. Records established that from approximately October 2007 through October 2010, NYALT paid Anderson over \$150,000, a large percentage of her income during that period. Money from the bank account of Anderson's private consulting firms was periodically deposited into an account she shared with Cosgrove. Further raising ethical concerns, Cosgrove improperly approved member item contracts which provided several

thousands of dollars to NYALT, at least a portion of which reimbursed it for payments to Anderson.

As a result of Cosgrove's actions and the Inspector General's investigation, the Department of Agriculture and Markets has suspended the Land Trust Grant program, terminated Cosgrove's employment, and made significant changes in its contract management process and other policies. The Inspector General has referred its findings to COPI, which has jurisdiction over violations of the Public Officers Law. A copy of this report is also being provided to the Albany County District Attorney for his review.

II. ALLEGATION

In July 2010, the Inspector General received an anonymous complaint alleging that Agriculture and Markets Deputy Commissioner Jerry Cosgrove steered the award of \$100,000 under the agency's Land Trust Grant program to NYALT, an organization that retained his wife as a consultant. Specifically, Cosgrove allegedly had an additional \$500,000 added to the existing \$500,000 Land Trust Grant program allocated for 2010, thereby making funds available for NYALT when it would not otherwise have received funding. Cosgrove also reportedly prepared the specification for the Land Trust Grant program request for proposals (RFP). Cosgrove allegedly was involved in the Land Trust Grant program despite the conflict of interest due to his wife's connection to one of the applicants for the state funding.

During the ensuing investigation, the Inspector General received allegations of additional conflicts of interest involving Cosgrove and NYALT, as well with the American Farmland Trust.

III. BACKGROUND

A. Methodology

The Inspector General conducted over 25 interviews of Agriculture and Markets' executives, supervisors, and staff, as well as individuals associated with NYALT. Cosgrove and his wife, Judy Anderson, were also interviewed under oath. Additionally, the Inspector General analyzed thousands of pages of documents from Agriculture and Markets, including RFPs, bid proposals, bid score sheets, e-mails and contracts. The Inspector General issued subpoenas to several organizations that had retained Ms. Anderson and to other institutions in order to obtain relevant ledgers, invoices, e-mails, bank statements, and other pertinent materials. The Inspector General also conducted a forensic analysis of Cosgrove's state-issued computer.

B. The Department of Agriculture and Markets' Farmland Protection Program

Agriculture and Markets, with over 500 employees, is the state agency which regulates the agriculture and food industries. It also formulates state policy in fields such as food safety, soil conservation, and farmland preservation. The agency administers the New York State Agricultural and Farmland Protection Program through its Agricultural Protection and Development Services division.

In 1970, the New York State Constitution was amended to add the protection of agricultural lands as a state asset. Based upon this amendment, the New York State legislature enacted New York State Agriculture and Markets Law Article 25-AA, creating Agricultural Districts and several "Right to Farm" regulations. These districts were established to provide support to the agricultural operations within the state and help ensure that farm activity continues to be a significant sector in the state's economy.

In 1992, the Agricultural Protection Act was passed, creating Agriculture and Markets Law Article 25-AAA and fostering additional agricultural and farmland

protection programs. One such program assists municipal governments in developing agricultural and farmland protection plans while another assists local governments in implementing their farmland protection plans by providing funding for the purchase of development rights on farms using a legal document called a conservation easement. Through the purchase of development rights, which is directed through the Agricultural and Farmland Protection Program, the farmland is preserved in perpetual trust and remains agriculturally viable.

Among several facets of this program is the Farmland Protection Implementation Grant (known in the industry as “FPIG”), which provides state funding from the Environmental Protection Fund, for the purchase of development rights of privately owned agricultural land. When he was appointed Deputy Commissioner of Agriculture and Markets in 2007, Jerry Cosgrove was put in charge of the Agricultural and Farmland Protection Program.

C. Jeremiah “Jerry” Cosgrove

Jerry Cosgrove served as Deputy Commissioner for Agriculture and Markets from March 5, 2007, until his termination on October 6, 2010. Before becoming a Deputy Commissioner, Cosgrove developed an extensive background in agricultural policy and protection.

Cosgrove was raised on a dairy farm in Clinton, New York. He graduated from Cornell University’s School of Agriculture and Life Sciences in 1981, and from Cornell School of Law in 1988. After a stint as a bond lawyer, Cosgrove in 1992 began his employment with the American Farmland Trust (AFT), a national organization that promotes farmland protection.

Cosgrove spent 15 years in the employ of AFT and became its Northeast Regional Director. In this capacity Cosgrove oversaw AFT’s New York State legislative efforts

and spearheaded the development of AFT's farmland preservation efforts, and farm policy and conservation programs within the Northeast.

In particular, Cosgrove advocated for the enactment of legislation to create the Land Trust Grant program, which would provide state funding to land trusts to assist in the development of land preservation projects. One such land trust, NYALT, is a non-profit organization that retained Cosgrove's wife, Judy Anderson, for consultation on farmland preservation programs like the FPIG program.

D. New York Agricultural Land Trust (NYALT)

NYALT is a not-for-profit organization under section 501(c)(3) of the Internal Revenue Service code that was incorporated in 2006. NYALT was created with the guidance of David Haight, AFT's New York Director. At the time NYALT was created, Haight was a subordinate of Cosgrove at AFT.

NYALT is a statewide land trust that, among other activities, facilitates the conservation of farmland through funding from Agriculture and Market's FPIG program. NYALT assists both counties and local municipalities and land owners in the extensive legal and procedural steps to conserve farmland, primarily in central New York. NYALT, therefore, is involved in the purchase agreement between the land owner, municipality, and state program, and also serves as a steward of the preserved farmland, ensuring that the land is maintained and utilized in accordance with the purchase agreement.

When it started, NYALT had no full-time employees and instead relied on the volunteered services of board members and concerned citizens. At the suggestion of AFT's David Haight, in January 2007 NYALT retained the expert services of Judy Anderson, Jerry Cosgrove's wife. For her first year of providing consulting services, Anderson's work with NYALT was funded through a contract with AFT.

E. Judith “Judy” Anderson

Judy Anderson is a nationally recognized expert in the land conservation and farmland protection field, speaking on the subject at national conferences and events. A former Executive Director of the Columbia Land Conservancy, Anderson also serves as a program chair to the New York Land Trust Alliance.

Anderson provides organization development and farmland protection expertise through her consulting firm, Community Consultants, which she founded and which is based in Kinderhook, New York. In addition to Anderson, the company has one part-time employee. Anderson’s clients have included several land trusts and land conservation organizations in New York, including Otsego Land Trust, Tug Hill Tomorrow Land Trust, Agricultural Stewardship Association, Schoharie Land Trust, the Woodstock Land Conservancy, and NYALT.

Anderson continued as a paid consultant for NYALT until September 2010, when she ended her professional relationship with NYALT and three other land trusts,¹ at the request of her husband, made within days of his learning of the Inspector General’s investigation.

IV. COSGROVE’S ABUSE OF AUTHORITY AND CONFLICTS OF INTEREST

The Inspector General found numerous instances where then-Deputy Commissioner Jerry Cosgrove engaged in actions which created either a direct conflict of interest or the appearance of a conflict of interest between his official state responsibilities and his personal relationships or his personal interests. Simply put, Cosgrove favored NYALT, the not-for-profit organization that paid his wife over \$150,000 while he was Deputy Commissioner, and AFT, his former employer. In addition, Cosgrove appears to have pressured and intimidated staff to alter the grant program in a manner which resulted in the award of a \$100,000 state grant to NYALT.

¹ Agricultural Stewardship Association, Otsego Land Trust and Tug Hill Tomorrow Land Trust.

The investigation further revealed that Cosgrove was not only aware of the potential and actual conflicts of interest posed by his relationships with AFT and, through his wife, NYALT, but had taken steps to neutralize himself from criticism therefrom. Specifically, shortly after undertaking employment with Agriculture and Markets – and in response to the stated concerns of his new colleagues – he sought and received an informal advisory opinion from COPI stating that his employment at Agriculture and Markets posed no violation of the Public Officers Law. In doing so, however, he provided inaccurate and incomplete information to the ethics oversight agency, used the ill-gotten opinion letter to blunt criticism from subordinates and, in the end, failed even to follow the advice COPI had provided regarding how to avoid the potential conflicts of interest he faced.

A. Cosgrove’s Misconduct Regarding the Land Trust Grant Program

Former Deputy Commissioner Cosgrove appears to have engaged in several acts of misconduct during the course of the development of the Land Trust Grant program and during the grant awarding process. He created an appearance of impropriety and engaged in actual conflicts due to his wife’s consulting work for NYALT. Evidence further reveals that he coerced his subordinates into awarding a \$100,000 grant to NYALT when it was otherwise not eligible to receive any grant funds.

1. Cosgrove Works to Create the Land Trust Grant Program

When Cosgrove was working as AFT’s Northeast Regional Director, he tried unsuccessfully to persuade New York State officials to pass legislation creating a Land Trust Grant program. The Inspector General reviewed Agriculture and Markets’ legislative tracking documents pertaining to Land Trust Grant legislation and found that as early as February 2006, Cosgrove, while employed by AFT, sought the support of Agriculture and Markets for Land Trust Grant legislation. The legislation would provide state funds for New York State land trusts in order to enhance capacity to complete

Farmland Protection Implementation Grant (FPIG) projects. Agriculture and Markets' officials raised concerns regarding stipulations of the first draft legislation proposed by Cosgrove. The legislation was not supported at the time by Agriculture and Markets, and the matter lay fallow until Cosgrove was appointed Deputy Commissioner in March 2007 by then-Governor Eliot Spitzer.

As a Deputy Commissioner, Cosgrove headed the Dairy, Food Safety and Agriculture Protection and Development Services divisions, including the Agricultural and Farmland Protection Program. After his appointment as Deputy Commissioner in 2007, Cosgrove actively participated in the drafting of new legislation to create a Land Trust Grant program. Similar to the legislation he proposed before his appointment, the legislation proposed granting funding to land trusts for organizational development.

The Inspector General found that the draft legislation explicitly mentioned NYALT as a potential recipient of state funding for farmland preservation. According to legislative bill drafts examined by the Inspector General, Cosgrove personally inserted NYALT into the proposed Land Trust Grant legislation. In doing so, Cosgrove attempted to directly fund his wife's employer and enhance the organization's ability to pay for her consulting services. At no time did Cosgrove raise a conflict of interest or recuse himself from this bill drafting process.

Nevertheless, when counsel's staff at Agriculture and Markets objected to direct funding of NYALT in favor of providing funding to land trusts pursuant to a competitive award process, Cosgrove agreed to remove any mention of NYALT from the bill. The new legislation was subsequently approved and signed into law in 2008, thus creating New York State's Land Trust Grant program (technically known as "State Assistance Payments to Not-for-Profit Conservation Organizations").

New York State Agriculture and Markets Law § 325-a requires that awards of land trust grants be made "on a competitive basis through a request for proposal [RFP] process." Funds awarded pursuant to this RFP can be used for any or all of the following

purposes that are directly related to the accomplishment of the eligible activities, including:

- hiring new staff;
- increasing existing staff resources from part-time status to full-time equivalent;
- providing support for existing staff responsibilities; or
- purchasing equipment (e.g., computers and database systems) to better facilitate the implementation and stewardship of farmland protection projects, but only up to \$5,000 per year provided that the total amount requested does not exceed 10 percent of the total grant award.

Significantly, the statute specifically provides that “state assistance payments awarded pursuant to this section shall not exceed fifty thousand dollars to any applicant in any fiscal year, and shall not exceed five hundred thousand dollars to all applicants in any fiscal year.”² The new program was placed in Agriculture and Markets’ Agriculture Protection Unit, which Cosgrove directed.

2. Creating the Application Process for Land Trust Grant Funding

Once the Land Trust Grant legislation was approved, Cosgrove undertook the initial steps in creating the basic framework that would be used to distribute grant funds to land trust organizations. The law required that the grant award process be “competitive” through a request for proposal (RFP) process. However, a potential conflict of interest existed from the inception due to the fact that Cosgrove was developing an application process for funding that could profit his wife and the organizations that employed her, all of which potentially could, and eventually did, apply for land trust grant money.³

² Agriculture and Markets Law § 325-a(6).

³ Public Officers Law § 74(2) provides: “No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or

New York, via the State Procurement Council, has promulgated Procurement Guidelines to assist agencies in making purchase of goods or services, or awarding competitive grants, in accordance with the law by providing basic, systematic principles regarding procurement practices.⁴ They state that “Procurements are an expenditure of public monies, and public employees must always ensure that all procurements are conducted so as to not cause any concern that special considerations have been shown to a vendor. Actions such as providing a vendor with information that is not available to other vendors . . . could be construed as showing favoritism to a vendor, and may violate state law.”

The Procurement Guidelines further state that “procurement staff have several methods available to them for gathering and exchanging information with potential bidders, prior to issuing a solicitation or making a purchase. These methods enable information-gathering while promoting openness, fairness, and transparency.” The most common information-gathering options are a Request for Information (RFI), a Request for Comment (RFC), a draft Request for Proposal (draft RFP), and a roundtable session. The Guidelines recommend that as a “best practice when gathering information,” an agency should issue a notice in the New York State Contract Reporter, newspaper and trade journal “to ensure that a level playing field among potential bidders is provided.”

Additionally, Agriculture and Markets’ policy at the time stated: “Divisions must not consult with any prospective bidder in developing an RFP . . . This may be perceived as offering that contractor an unfair advantage and will exclude that vendor from submitting a bid.”

engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.”

⁴ See <http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>. Procurement Guidelines are established by the State Procurement Council pursuant to State Finance Law § 161(2)(d). The Council is responsible for study, analysis and development of recommendations to improve state procurement policy and practices, and for development and issuance of guidelines governing state agency procurement. Membership includes the State Comptroller, Director of Budget, Commissioners of Economic Development and General Services; seven heads of large and small state agencies appointed by the Governor; and, eight at-large members and two non-voting members appointed by legislative leaders. By statute, the Commissioner of the Office of General Services serves as chair of the Council.

The Inspector General determined that Cosgrove failed to follow the Procurement Guidelines and agency policy. As the Request for Proposals (RFP) was developed by Cosgrove and his staff, the potential conflict of interest became real. Cosgrove showed his wife an initial framework of the RFP and she, in turn, offered suggestions to improve it. One of her suggestions was a provision allowing state funding of “organizational policy development” – precisely the work Anderson was performing for NYALT. With this provision added to the RFP, NYALT could potentially win state funds that would cover or reimburse the cost of Anderson’s work for NYALT. The Inspector General found no evidence that Cosgrove solicited advice from other potential bidders by any of the methods enumerated in the Procurement Guidelines. Rather than ensuring a fair and level playing field, Cosgrove exhibited favoritism toward NYALT by seeking input from his wife at the outset of developing the RFP.

3. Anderson Guided NYALT’s Response to the RFP

On March 23, 2009, Agriculture and Markets released the RFP seeking responses due no later than May 11, 2009. With advice and assistance from Anderson, Ken Smith, NYALT’s Executive Director at the time, prepared the proposal in response to the RFP. Anderson, as NYALT’s paid consultant, provided guidance regarding the scope of NYALT’s work and its budget needs in its funding request to Agriculture and Markets. Consequently, multiple conflicts of interest arose: Anderson had provided input to her husband as he drafted the RFP and she subsequently provided advice to her employer as it responded to the RFP. Furthermore, Cosgrove’s subordinates were to score the RFP responses, including NYALT’s, and award the grant funds, which, if awarded to NYALT, would help pay his wife’s consulting fees.

Smith informed the Inspector General that he realized that there appeared to be a conflict of interest:

It was clear to me that there would be concern that Jerry is determining on that who got the grant and ultimately some of that money is flowing to Judy. If

someone had a grievance with Judy or Jerry it would be pretty easy for them to say, “This is inappropriate. There is a problem here.”

Further creating an appearance of a conflict of interest, Anderson was identified by name as a consultant working for NYALT and whose scope of work included the very same type of activities for which NYALT applied for grant funds. In addition to help fund NYALT’s executive director position, NYALT’s application stated that it was seeking the grant funds to “increase organizational capacity by providing funds for training to improve technical capabilities in mapping, baseline documentation, and financial systems for tracking grant awards” and to “develop policies and procedures, guidance documents, and outreach materials.”

Anderson’s testimony to the Inspector General revealed that her role at NYALT included the type of work for which NYALT sought state funding in its grant application. Anderson testified that she was “helping the organization understand the appropriate language, the appropriate techniques, the documents, the steps to go through, how to do the land planning, how to put the documents together.” Anderson added, “I was coaching them on how to create an organizational budget. I was coaching them on how to establish policies on checks and balances.” Anderson continued:

As a startup organization [that has] never done these projects before. I’m helping them create these documents. Create the letters. Understand the terminology, the language. Understand how to do land planning. Understand project budgeting, organizational budgeting.

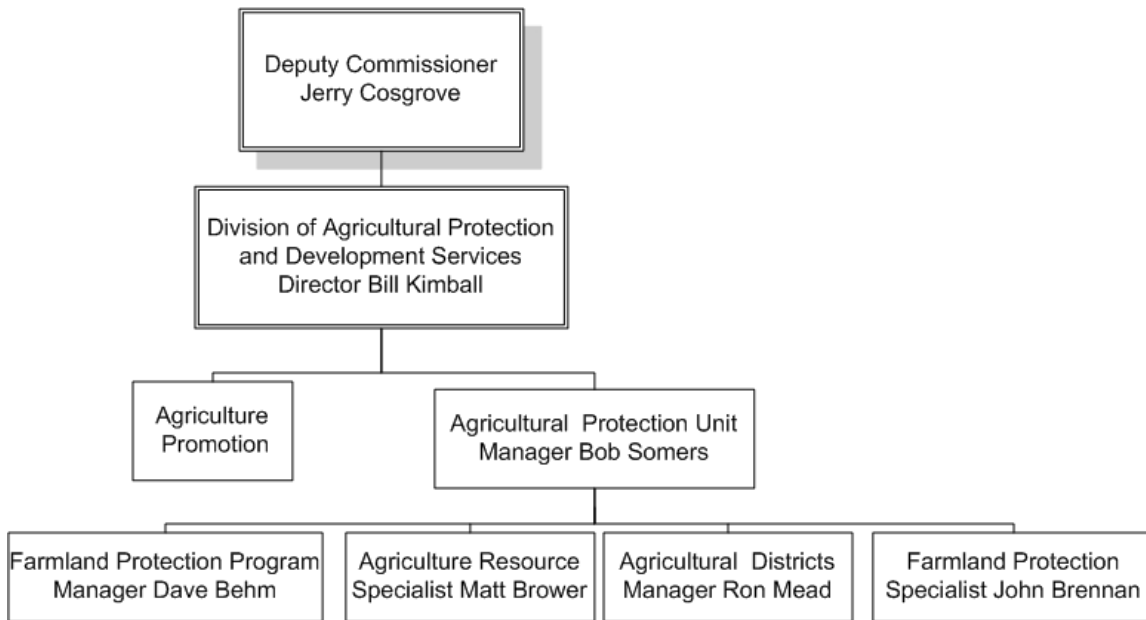
The Inspector General’s review of Anderson’s invoices confirmed that her work for NYALT was consistent with the type of services for which NYALT sought state funding.

Smith acknowledged that Anderson’s name appeared in NYALT’s Land Trust Grant RFP submission. He said he considered dropping her name from the RFP response, but left it in along with a description of Anderson’s work for NYALT: “farmland protection project oversight and organizational development.”

Anderson claimed she did not see NYALT's final submission to Agriculture and Markets and therefore was not aware that her name appeared in the formal RFP response. Anderson further advised the Inspector General that, to her knowledge, NYALT was not going to pay her with Land Trust Grant funds. However, in testimony to the Inspector General, Smith contradicted Anderson's claim. Smith averred that he expected NYALT to use the state funds to pay for Anderson's consulting work. Regardless, whether the money was specifically designated for Anderson's bills, Agriculture and Markets' staff reviewing NYALT's response were placed in the precarious position of having to score an application which appeared to seek funds to compensate their supervisor's wife, or at the very least, an organization for whom she consulted.

4. Initial Scoring of Grant Applications Disqualifies NYALT for Funding

After the May 11, 2009 response deadline, Agriculture and Markets' officials proceeded with the scoring of the 17 proposals submitted in response to the RFP. After the responses were logged and the completeness of the response packets verified, the responses were forwarded for scoring by Agriculture Protection Unit staff: David Behm, Farmland Protection Program Manager, and John Brennan, a Farmland Protection Specialist. Behm's and Brennan's scoring process was supervised by Agricultural Protection Unit Manager Bob Somers. (The organization chart below shows the hierarchy within the pertinent division and unit of Agriculture and Markets.)



Behm and Brennan noted that on page two of NYALT’s RFP response, Judy Anderson’s work with NYALT was described. As a result, both Behm and Brennan believed Anderson’s work for NYALT would be supported by any funding provided by New York State. Behm and Brennan said they were aware that Anderson was Cosgrove’s wife. Behm described the use of Anderson’s name in NYALT’s proposal as “odd” because NYALT knew she was “Jerry’s wife” and that using her name would create a potential conflict of interest. Despite this apparent conflict, Behm and Brennan said the appearance of Anderson’s name in NYALT’s RFP response had no impact on their scoring of NYALT’s proposal.

Under the evaluation process Agriculture and Markets utilized for this procurement, each evaluator scored the proposals on a scale of zero to 100, with an average score of 70 required to be eligible for funding. However, because only a total of \$500,000 (\$250,000 for each year of the grant) in funds was available, not all proposals exceeding the threshold of 70 would necessarily receive an award.

Both Behm and Brennan scored NYALT’s proposal toward the low end of the scale. Behm noted that the NYALT grant proposal was seeking funding for organizational development and not capacity growth related to FPIG. Behm did not find

the proposal to be focused on farmland protection work and, therefore, he scored the proposal a 70, the minimum required for funding. Behm stated, “I didn’t find this application compelling,” but it was “good enough” to meet the scoring threshold of 70.

Similarly, Brennan found NYALT’s response to be deficient. He described the response as “not very good” and lacking detailed responses to the criteria specified in the RFP. Explaining that the NYALT submission “just did not cut it,” Brennan gave the proposal a score of 60.

After Behm and Brennan completed their evaluations, pursuant to agency procedures, the scores were reviewed in a group session by Behm, Brennan, and Somers, the scoring process supervisor. Of the 17 organizations that had submitted responses to the RFP, 10 received scores of 70 or higher and were therefore eligible to receive funding. However, due to limits on funding available, only the highest-scoring seven of the 10 eligible proposals were selected for a grant award. NYALT received an aggregate score of 65, below the funding threshold. Thus, NYALT, along with the six other organizations whose proposals received an average score below 70, were ineligible for a grant award.

5. Cosgrove Exclaims: “Heads Are Going To Roll”

On June 10, 2009, the scores and rankings were shown to Cosgrove at his request. According to Behm, Cosgrove’s immediate reaction was to question the results and to ask why NYALT was not funded. Behm described Cosgrove as having a “knee jerk reaction” to the scores. Behm e-mailed Somers and Brennan that afternoon describing what had transpired, and he concluded, “Stay tuned. . . .”

Cosgrove immediately initiated a series of conversations with his subordinates in an effort to steer an award of grant funds to NYALT. Given his wife’s role with NYALT, however, Cosgrove never should have reviewed the scores, let alone become involved in the ranking process. Public Officers Law § 74(3) (e), provides that “[n]o

officer or employee of a state agency . . . should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.” Additionally, Public Officers Law § 73(15) states: “No . . . state officer or employee . . . shall (a) participate in any state contracting decision involving the payment of more than one thousand dollars to that individual, any relative of that individual, or any entity in which that individual or any relative has a financial interest. . . .”

Cosgrove certainly had a financial interest in NYALT. The Inspector General’s analysis of the bank account records of Community Consultants, Cosgrove’s wife’s firm, revealed that NYALT provided over 50 percent of her income. In fact, between approximately October 2007 and October 2010, Anderson received over \$150,000 from NYALT. Moreover, funds from Anderson’s Community Consultants account were periodically deposited into a joint bank account shared by Anderson and Cosgrove. Furthermore, Cosgrove unquestionably was aware of the significance of the Land Trust Grant to NYALT. In January 2009, a NYALT board member e-mailed Cosgrove informing him that the grant funds would be a “very significant contribution to NYALT for implementing the state’s farmland protection program [FPIG] at the local level. Thank you for your help. . . .”

Cosgrove, however, did more than just “help” NYALT. During the morning of June 11, 2009, Cosgrove wrote an e-mail to Behm’s supervisors, Bob Somers and Bill Kimball, the Director of the Agricultural Protection Services Division at Agriculture and Markets. In the e-mail, Cosgrove said that he had reviewed the Land Trust Grant rankings and expressed his concern that the scoring did not reflect “the level of activity on state funded projects and breadth of geographic coverage by the land trusts.” Cosgrove went on to request “copies of the grant applications so we can review them more thoroughly in advance of a group discussion on the application and scores.”

In his testimony to the Inspector General, then Agriculture and Markets Commissioner Patrick Hooker said, “It’s pretty clear he [Cosgrove] shouldn’t have known anything and yet at some point he was informed of the results.”

The Inspector General questioned Cosgrove regarding whether he should have reviewed the scores in light of the fact that his wife was a consultant to NYALT, to which he replied, “In hindsight, probably not.” When the Inspector General asked Cosgrove whether he should have recused himself from the RFP and scoring process, Cosgrove testified:

Cosgrove: Hindsight, in 20/20, to be on the safe side. Yes. Obviously recusal is always the more prudent course in terms of the appearance of conflicts of interest issue.

Inspector General: Do you think there would be an appearance of conflict of interest in this instance?

Cosgrove: Again, I don’t believe so, and I feel that if my staff felt that there was, they would have said something directly [to me].

As described later in this report, Agriculture and Markets’ staff had repeatedly raised with Cosgrove their concerns about potential conflicts of interest arising from Cosgrove’s relationship with NYALT and its consultant, his wife, only to be rebuffed by Cosgrove.

Cosgrove’s involvement with the application evaluation process later became even more heavy-handed. On or about June 15, 2009, Cosgrove met with Kimball and Somers. Somers, a 17-year veteran of Agriculture and Markets, described to the Inspector General what transpired:

[Cosgrove] looked at the scoring . . . He called Bill Kimball and myself to his office and we sat down at his table and he said, “This is unacceptable,” and that NYALT should have received funding and he said that he knows that, in his opinion, Dave Behm and John Brennan low-balled them [NYALT], so they would not receive funding. And he said that “if they don’t receive funding, heads are going to roll.”

When questioned by the Inspector General about his statement, Cosgrove provided the following testimony:

You know, should I have said that? No, you know, but looking at the facts, being frustrated by the, you know, the situation at the time, there was probably something that could have been construed to that, but I don't think I would ever use the phrase "heads will roll." That's not nomenclature that I would use.

Regardless of the precise words used, Cosgrove's conduct negatively impacted his subordinates. Somers testified that he was "frightened" by Cosgrove's actions. Somers portrayed Cosgrove as "very angry" with a "beet red" face. Somers took Cosgrove's words and demeanor as a "clear directive from him to me" to make changes to the finalized ranking of applicants.

According to Bill Kimball, Cosgrove was "very, very, very excited, upset, angry," because NYALT did not score high enough to qualify for funding. Kimball characterized Cosgrove's actions as "stunning" and "animated." He had never before or since seen Cosgrove act in such a manner. Kimball testified that in the meeting Cosgrove made explicit threats to the continued employment of Behm and Brennan. "I do believe he did say something like 'heads are going to roll.'" Kimball said that Cosgrove "spoke in those terms." To Kimball, Cosgrove wanted changes to occur to the scoring process so that NYALT would receive funding. "I knew we were in trouble." Kimball explained:

This guy's a deputy commissioner. He's my boss. He's acting in this fashion. Over time, I've become a lot less sympathetic as I think about this. I'm thinking, Jerry, you really put me, put us, in a hell of a spot here.

Compounding the coerciveness of his statements, over the course of his tenure at Agriculture and Markets, Cosgrove had emphasized his political connections. According to Kimball and Somers, Cosgrove repeatedly reminded both men that he (Cosgrove) had been appointed to his position by then-Governor Spitzer. Kimball testified that Cosgrove

would say, “The governor put me here” as a way of stressing his political connections and clout in state government. At this same time, Somers and Kimball knew that Agriculture and Markets was developing a list of employees who could be laid off if staff reductions were mandated. Given Cosgrove’s statements, Somers reported that he took this threat as a “real possibility.”

6. Scoring System Altered at Cosgrove’s Request

Cosgrove initially wanted Agriculture and Markets to conduct a new round of scoring for the RFP, which would replace the scoring already conducted by Behm and Brennan. Even though Kimball believed Cosgrove’s proposal “wasn’t the right way to go about doing it,” and understood that it violated Agriculture and Markets’ policy, Kimball and Somers acceded to Cosgrove’s request to assign two more employees to conduct additional scoring of the RFP responses. In this new round of scoring, Ronald Mead, Program Manager for the Agricultural Districts, and Matthew Brower, Agricultural Resource Specialist, read and scored the RFP applications from NYALT and the other land trust applicants. Scores by Brower and Mead were then combined with the scoring previously conducted by Behm and Brennan.

Like other Agriculture and Markets’ employees in the Agriculture Protection Unit, Brennan said the decision to add two more scorers was a blatant attempt to benefit NYALT. Brennan opined that the steps taken were “a way to increase the scores so that NYALT would be funded. I can’t say it any plainer.” “It was very unusual to have this re-scored . . . and it seems ‘Jerry-rigged’ to get above a certain threshold.”

This action contravened established agency procedure. Kimball testified that two additional scorers were added to the evaluation process because Cosgrove had “hammered us . . . This isn’t the way this is supposed to work.” Kimball explained his acquiescence to Cosgrove’s demands for rescoring by testifying: “Jerry can be pretty intimidating . . . He could make it far too easy to cave . . . It’s hard to go up against your boss.”

Kimball further testified that, in hindsight, he should have sought approval from other executives at Agriculture and Markets before adding the two new scorers. However, due to Cosgrove’s attitude and pressure, Kimball admitted that he took the “path of least resistance.” Kimball characterized his own actions as “disappointing.”

After the additional scoring by Brower and Mead, NYALT received an average score of 70.8 and qualified to receive funding.

At Cosgrove’s request, Somers reviewed NYALT’s application and found it disappointing and lacking in substance. Somers explained, “In theory, NYALT should have received a very high score.” NYALT had a large number of open easements and pending purchases of farm development rights in the Farmland Protection Implementation Grant (FPIG) program and therefore would be a land trust seeking funding under the grant program in order to build staffing capacity. However, Somers found NYALT’s proposal lacking in detail and not responsive to the RFP’s requirements. Somers testified, “I went back to Jerry [Cosgrove] and I said whoever wrote the proposal for NYALT did a very poor job. Whoever prepared the application didn’t read the questions.” Somers described the NYALT applications as a “poor attempt at writing.”⁵ Nonetheless, according to Somers, Cosgrove demanded that NYALT’s application be funded, stating: “I don’t care what it says, I want them funded.”

7. Cosgrove Instigates an Increase of Funding from \$500,000 to \$1 Million

The Inspector General questioned Cosgrove about how NYALT went from being ineligible for funding to meeting the funding threshold requirements.

Inspector General: Can you explain to us . . . the process in which they [NYALT] did get funded? How their score did get above a 70?

⁵ Several other Agriculture and Markets’ employees who had reviewed NYALT’s grant application reported to the Inspector General that it was a weak application, particularly when compared to the others.

Cosgrove: That I can't tell you. I had a conversation with Bob Somers. Bob proposed, "Let's take a step back . . . let's fund all the groups."

The Inspector General found Cosgrove's explanation to be incomplete and incredible. Despite its new aggregate score of 70.8, NYALT remained ineligible for a grant because too little money was available for all of the eligible land trust proposals. When Somers informed Cosgrove of the situation, Somers suggested that NYALT could apply for funding in the following year. According to Somers, Cosgrove simply demanded, "I want it [NYALT] funded now." Somers described Cosgrove as "emphatic" and that Somers responded that "the only way that NYALT would ever be reached is if funding was increased."

After this second meeting with Cosgrove, Somers decided that in order to fund NYALT, the funding for the grant would need to be increased to a total yearly award of \$500,000, for a total of \$1 million over two years. Somers knew that increasing the funding would allow the NYALT application to receive funding and also decrease the administrative burden of the Farmland Protection Unit because a second procurement would not have to be conducted in the following year. Somers informed Cosgrove of the funding modification and Cosgrove directed Somers to "pursue that line" of increasing the grant program's funding.

Somers proposed the increase in funding for the program from its original two-year total of \$500,000 to \$1 million to Agriculture and Markets' fiscal office and counsel's office. Both approved the modification to the funding. Somers noted that when deciding to modify the funding level of the grant, Cosgrove's threats to Behm and Brennan's jobs, as well as the possibility of forthcoming layoffs were, "always in the back of my mind." Somers said he was "careful" in how he requested the funding increase. He said he did not want to give any hint that Cosgrove had pressured him and Kimball. If someone learned of Cosgrove's threats, Somers testified, he was concerned that Cosgrove would seek "retribution."

After Somers's consultation with Agriculture and Markets' counsel's office and fiscal unit, the agency increased the total funding to \$1 million for two years (\$500,000 per year). Consequently, at between \$30,000 and \$50,000 per award, five more land trusts were eligible to receive funding, bringing the total number of awardees to 12. NYALT was the lowest-scored applicant to qualify for funding.

Somers testified that this process was "distasteful" and, at the time, he was "hoping" that the increase in funding would be denied by the fiscal unit or counsel's office, so that the actions demanded by Cosgrove would not occur. Somers stated that he "didn't want to take the heat" from Cosgrove.

Director of Fiscal Management Lucy Roberson said she was not aware that the funding increase was proposed in order to benefit NYALT. She believed the funding change would allow a greater number of grant applicants to receive funds immediately. Still, Roberson expressed concerns when she realized that the funding change would benefit NYALT. "Now I know why you're [the Inspector General] here," Roberson averred, "because NYALT is of particular interest to an individual in the front office," Jerry Cosgrove.

Concerns were also raised by an agency attorney, after she learned that NYALT would not be funded unless Agriculture and Markets approved the proposed increase in Land Trust Grant funding. She called the funding increase "odd and convenient," so she advised General Counsel Ruth Moore. However, neither knew what had transpired behind the scenes. Counsel's office determined that the proposal comported with the terms of Agriculture and Markets Law § 325-a, and, therefore, approved the funding increase. Other executives in Agriculture and Markets, including then-Commissioner Patrick Hooker, were similarly unaware of the full extent of the conflicts of interest which Cosgrove had ignored as he pushed for funding for NYALT.

The Inspector General asked Cosgrove to explain the funding increase. He claimed that Somers "suggested" that the funding for the program be increased from a

total of \$500,000 to \$1 million in order to ease the administrative burden on program staff and fund more applicants. Cosgrove testified that the changes proposed by Somers “seemed like a good solution, so that we could get the funding out to more groups.” In addition to increasing the funding, Cosgrove noted that the proposals would also be re-scored. However, the Inspector General confronted Cosgrove with allegations that staff had perceived his demands as threats to terminate the jobs of certain employees:

Inspector General: Do you think his [Somers] suggestion to increase the funding was based on a perceived threat by you [concerning Dave Behm’s job]?

Cosgrove: No, I never threatened Dave Behm’s job. Have I been frustrated with Dave Behm over the years? To be honest, yes.

The next question yielded a more revealing answer from Cosgrove.

Inspector General: Do you think the fact that you had your conversation with Bob Somers, in which you were upset that NYALT wasn’t getting funded, could have influenced their subsequent decisions on making sure there was more funding?

Cosgrove: Well, it certainly influenced their decision in terms of expanding the base of funding. Now, obviously, if you’re allocating \$250,000 versus \$500,000.

Indeed, Kimball and Somers testified that they felt threatened by Cosgrove’s exclamation that “if they [NYALT] don’t receive funding, heads are going to roll.” This demand was followed by Cosgrove’s later insistence to Somers, “I want it [NYALT] funded now.” Given what seem to be clear violations of his obligations as a public officer, Cosgrove’s actions aimed at benefiting NYALT and his wife implicate not only the Public Officers Law but may implicate the Penal Law as well.⁶

⁶ See, e.g., NY Penal Law § 195.00(1) (A public servant is guilty of the crime of official misconduct “when, with intent to obtain a benefit or deprive another person of a benefit, he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized.”)

8. Commissioner Orders an Internal Investigation in 2009

When concerns were raised about Cosgrove's possible influence in the score results in July of 2009 during the Land Trust Grant funding process, then-Agriculture and Markets Commissioner Patrick Hooker ordered General Counsel Ruth Moore to conduct an internal review of the Land Trust Grant procurement process. Moore's brief review found no improper activity by Cosgrove or scoring irregularities in NYALT's proposal for the Land Trust Grant funding. However, the Inspector General has found Moore's investigation to be flawed because it was based on cursory discussions with interested employees, included no review of documents and focused narrowly on whether scores had been changed rather than the broader issues of whether Cosgrove had acted ethically in the face of the apparent conflicts of interest he faced or exerted undue influence on the process.

Moore testified to the Inspector General that she queried Cosgrove regarding his involvement with the RFP. He admitted that he was "very involved in the development of the RFP," Moore said. She noted that Cosgrove had been involved with the legislation in addition to developing the RFP. At that time, Moore testified, she believed Cosgrove had been involved early in the RFP process but that he was "not involved in the ranking process." Still, Moore said, she admonished Cosgrove not to be involved any further. According to Moore, Cosgrove replied, "OK, just make sure that they don't mess it up."

At that time, Moore said she was unaware that agency procedures had been violated when the scoring was recalculated using two new scorers. She testified that she thought there had been four scorers from the beginning. Moore also revealed that she was not told that Cosgrove had intimidated his subordinates, ordered the addition of two scorers or demanded that NYALT be funded.

Moore determined that Cosgrove was "supportive" of the funding proposal, but it was her "impression" that the idea came from others in the agency. Moore said that the

ranking and funding issues were on “separate tracks” and that she “probably wasn’t connecting the dots....”

Somers stated that he did not inform Moore of the threats made by Cosgrove. Somers related, “I never did. Because I just knew what would happen. I knew that [an agency attorney] would request a review, and I was afraid that something adverse would happen to all of us, at that time.” Somers described the Land Trust Grant procurements as a “rotten” process and stated that he had a “fear” that “nothing would happen” to counter Cosgrove’s threats.

Somers reported that Cosgrove’s threats and the impact they had on his actions were “always on your mind” and that he found the situation “very troublesome.” Somers added that “I was afraid that if he [Cosgrove] knew that I was involved in providing any information to counsel’s office for a potential ethics investigation he would come down hard on me.” Prior to the recorded portion of his second interview, Somers advised the Inspector General that during his previous interview he was reluctant to provide information to the Inspector General because he was afraid of Cosgrove’s reaction. At the time of Somers’s initial interview, Cosgrove was still his supervisor and Somers believed that if Cosgrove found out Somers had provided the Inspector General with information regarding his concerns, Cosgrove would react negatively.

Regarding Somers’s claims that he was threatened by Cosgrove, Cosgrove asserted to the Inspector General, “I would not threaten my staff; I raise issues; we have dialogue, and I think that they all know that I’m open to discussion and that’s why I was pleased when Bob Somers sort of suggested expanding the scope trying to fund more groups rather than make what I would consider difficult decisions.”

As a result of her investigation, Moore recommended to First Deputy Commissioner Robert Haggerty that certain agency officials be informed that Cosgrove should and would be recusing himself on matters involving NYALT. Subsequently, by way of a July 30, 2009 memorandum, Haggerty so advised Kimball, Moore, and the

fiscal office director, with Haggerty and Cosgrove copied on the memorandum. Moore also informed COPI of the steps the agency had taken to avoid a conflict of interest. Significantly, this communication occurred after Cosgrove had already taken steps to unduly influence the RFP process to NYALT's benefit. As accurately described by one Agriculture and Markets' employee, the agency's response was "a little late."

Moore explained that the onus was on Cosgrove to act ethically and responsibly: "It's incumbent upon him [Cosgrove], to say, in light of what he knew before [from COPI] that [he] can't be part of the approval, or the ranking, or signing off on the contract, signing off on the vouchers, any of that." Moore said it was her "understanding" that he should have stayed clear of all of it.

After the counsel's office and fiscal unit approved the increase in two-year Land Trust Grant funding to \$1 million, in September 2009, then-Commissioner Patrick Hooker formally approved the increase. Hooker, who was unaware that Cosgrove had demanded the increase in order to fund NYALT, attributed the increase to "anticipation" and "enthusiasm" within the land trust community. As noted above, as a result of the funding increase, NYALT and four more land trusts were eligible to receive funding in 2009, bringing the total number of awardees to 12. NYALT was the lowest-ranked of the applicants to qualify for funding. Proposed contracts were sent to all of the awardees, which executed them and returned the contracts to Agriculture and Markets for final approval.

Cosgrove told the Inspector General, "I've spent my professional career working for the betterment of farmland protection. If I had thought that my actions were going to jeopardize the program, I would not have proceeded in that way. There's no question to me, I was looking at the programmatic impacts." Cosgrove's assertions notwithstanding, his actions did have a detrimental impact on the fair administration of the Land Trust Grant awards and led to its demise. In July 2010, the Inspector General received an anonymous complaint and launched this investigation into the Land Trust Grant award process. Once Hooker learned of the evidence indicating that Cosgrove had demanded

the funding increase in order to secure funding for NYALT, Hooker halted the Land Trust Grant program before any money was dispersed to the land trusts. Hooker also terminated Cosgrove's employment with Agriculture and Markets in October of 2010.

B. Cosgrove Was Aware Previously of Ethical Concerns Raised By His Wife's Employment By NYALT and His Own Prior Employment By AFT

Compounding the egregiousness of Cosgrove's actions with respect to NYALT's Land Trust Grant program funding application, the Inspector General found that Cosgrove was aware before the RFP process even commenced that his wife's employment by NYALT – and his own previous private sector employment by AFT – created potential conflicts of interest for him in his new job at Agriculture and Markets. Yet not only did he fail to take appropriate action to avoid engaging in conflicts of interest, he actively took steps to obfuscate and conceal the ethical quandaries he faced.

When Cosgrove left his private-sector job with the American Farmland Trust (AFT) to become a Deputy Commissioner in Agriculture and Markets in March 2007, he became subject to the Public Officers Law and the “reverse-revolving door” rule established in Public Officers Law § 74(3).⁷ This rule places certain restrictions on individuals who join the state workforce and interact in an official government capacity with their immediate prior private-sector employer in order to avoid conflicts of interest or the appearance thereof. Within a few months of his appointment, several Agriculture and Markets' employees noticed actions by Cosgrove regarding AFT that appeared to violate the reverse-revolving door rule. Staff also raised concerns about possible conflicts of interest arising from Cosgrove's involvement in FPIG projects handled by NYALT, where his wife was a paid consultant. As a result of these concerns, executives with Agriculture and Markets persuaded Cosgrove to seek an informal advisory opinion from COPI regarding his relationship with his former employer, AFT, and NYALT and other land trust organizations across New York that retained his wife Judy Anderson's consulting business, Community Consultants.

⁷ Relevant portions of Public Officers Law § 74(3) are set forth in the appendices to this report.

COPI issues advisory opinions interpreting Public Officers Law §§ 73, 73-a, and 74, Civil Service Law § 107, and Legislative Law Article 1-A.⁸ Upon request, COPI issues “formal opinions” approved by a majority of members. Formal opinions, which are made public, are binding on both COPI and the individual requesting the opinion in any subsequent proceeding, provided the requesting individual acted in good faith and the opinion is based on accurate material facts. Each formal opinion discusses the application of the law to the particular facts presented in the request and serves as precedent for future cases.

When formal opinions have established precedent or the law is clear, COPI will issue “informal advisory opinions.” Written by the Executive Director or designee, informal opinions are not binding on either COPI or the requesting individual, but serve as guidance. The Executive Director is authorized to determine whether there is controlling precedent or whether the scope of the inquiry requires a formal opinion. Individuals who receive informal opinions may request a formal opinion from COPI. COPI’s opinions, as clearly stated therein, are based on the “facts that you [the requester] have provided to the Commission.”

1. Cosgrove Withheld Facts Regarding His Role on the AFT Contract

In his 2008 request for an informal advisory opinion, Cosgrove sought clarification from COPI regarding what is known as the “reverse-revolving door” rule. COPI, in several formal opinions, has addressed the tension between the need to prevent conflicts of interest or their appearance, as required by Public Officers Law § 74, and the State’s need for skilled employees recruited from the private sector.⁹ COPI’s determinations in these opinions have become known as the “reverse-revolving door” rule. For example, COPI has held that the period of examination for a potential conflict

⁸ See: <http://www.nyintegrity.org/advisory/index.html>. Relevant to this investigation, Public Officers Law §§ 73, 73-a and 74 set forth a code of ethics and standards of conduct for public employees which prohibit them from, among other things, engaging in a conflict of interest or even the appearance of such a conflict.

⁹ See, e.g., Advisory Opinion Nos. 94-11, 98-09 and 07-04.

of interest is two years from the date of termination from the prior employment.¹⁰ The rationale was that the potential for a conflict is diminished with the further passage of time beyond that date.

In one relevant opinion, Advisory Opinion No. 98-9, COPI declined to create a presumption of required recusal for this two-year period. Rather, COPI determined that, within two years, should a state employee have to engage in a matter that pertains to a prior employer, a further inquiry should be made by COPI. This second determination would consider the nature of the prior relationship between the employee and the prior employer, the nature and importance of the employee's role in the matter in which he or she is being asked to participate, including the discretion to be exercised, and the sensitivity of the matter to be considered by the employee. COPI determined that each of these factors is to be considered in any potential conflict issue that may arise with a prior employer.

In this case, Cosgrove, as a Deputy Commissioner for Agriculture and Markets, interacted with his former private employer, AFT, pursuant to a consulting contract between Agriculture and Markets and AFT. COPI received the factual information for its opinion from Cosgrove through a telephone conversation with him and an e-mail exchange. The substance of the telephone conversation was reduced to writing in an e-mail to Cosgrove. As requested by COPI, Cosgrove reviewed and edited the e-mail and returned the revised e-mail to COPI. This e-mail contained the facts upon which COPI based its informal opinion. In doing so, however, Cosgrove provided incomplete and inexact facts.

For example, Cosgrove made inaccurate assertions to COPI regarding his work in 2006 when he helped AFT negotiate a consulting contract with Agriculture and Markets. The Inspector General uncovered evidence that Cosgrove, first at AFT, and then at Agriculture and Markets, worked on both sides of a contract pursuant to which

¹⁰ Advisory Opinion No. 94-11.

Agriculture and Market agreed to pay AFT \$50,000 per year for consultant services. This appears to be an actual conflict of interest, in violation of Public Officers Law § 74.

Cosgrove, however, misled COPI when he advised it: “I did not have any role in the negotiation of the contract nor any other direct involvement with this contract.” In fact, Cosgrove was AFT’s senior representative at an October 2006 meeting between Agriculture and Markets’ personnel and AFT regarding the contract’s scope of work. Cosgrove also reviewed and approved a renewal of AFT’s contract in December 2007, yet another fact Cosgrove failed to disclose to COPI. Unaware of these pertinent omissions, COPI concluded that Cosgrove’s state employment did not create a conflict of interest with respect to NYALT and AFT in violation of the Public Officers Law.

2. Cosgrove Misled COPI Regarding the True Nature of Anderson’s Work for NYALT

Since Agriculture and Markets’ officials had also expressed concerns regarding potential conflicts of interest between Cosgrove’s state duties and his wife’s work for NYALT, Cosgrove also sought advice from COPI on that issue. In seeking the advisory opinion from COPI, Cosgrove failed to describe accurately his spouse’s work for NYALT. Cosgrove further failed to inform COPI that AFT had paid Anderson for her work with NYALT during NYALT’s first months of existence. The Inspector General found that Anderson was under contract with AFT from January 15, 2007, to December 31, 2007, and AFT paid a total \$4,659.48 for her services rendered to NYALT. Moreover, COPI was not told that Anderson had significantly participated in NYALT’s involvement in the Farmland Protection Implementation Grant (FPIG) program administered by Cosgrove and his subordinate, Dave Behm.

Since NYALT’s inception, Anderson was involved in providing services to it through her consulting business, Community Consultants. Through this business, Anderson provided organizational development services to several land trusts – but chiefly NYALT – that actively participate in the FPIG program, which Cosgrove oversaw as Deputy Commissioner.

FPIG provides counties and municipalities¹¹ with state funding for the purchase of development rights on farms using a legal document called a conservation easement. When a county or municipality is awarded FPIG funds, it typically hires experts, such as a lawyer, and a land trust organization, such as NYALT, to facilitate the easement process. Prior to the final purchase of development rights, numerous steps, including a survey, appraisal, and the development of the conservation easement, must be completed. The conservation easement is held in perpetual trust by either the municipality or a third party such as a land trust. Agriculture and Markets has provided over \$100 million to date for the purchase of development rights projects.

Based on information supplied by Cosgrove, COPI's advisory opinion declared that Anderson assists land trusts in "structural development of the organization and is not involved in the Farmland Protection Program," nor is she the recipient of any funding from the FPIG program. The Inspector General found Cosgrove's statement that Anderson was not involved in substantive FPIG activity to be inaccurate. Anderson was indeed involved in more than simple "structural development of the organization." While Anderson described her work with NYALT during testimony before the Inspector General as "coaching" and providing organizational advice regarding policy, procedure and organization development, the Inspector General found that nearly half of her work with NYALT was directly related to the organization's FPIG projects.

Anderson conceded that she had reviewed and edited NYALT's FPIG documents. As part of the instant investigation, the Inspector General reviewed Community Consultants invoices issued to NYALT seeking payment for services rendered. Each invoice provided a detailed description of the services provided by Anderson. The Inspector General determined that Anderson provided services on more than a dozen FPIG projects. Among these were the first two conservation easements to be completed by NYALT, the Masters (Memory Lane Farm) property in Onondaga County and the Fruithurst Farm in Cayuga County.

¹¹ New legislation passed after the relevant time discussed in this report permits land trusts to directly apply to Agriculture and Markets for FPIG funding.

For example, a May 16, 2008 e-mail exchange regarding the Masters farm that was sent to Anderson and then to Cosgrove, reveals that Anderson was working on an FPIG matter, as well as subsequently working on two other open FPIG matters. Anderson's invoices also establish that she was working on the Masters project prior to Cosgrove informing COPI. Of note, these e-mails establish that Cosgrove was aware of Anderson's work on FPIG projects before he sought the advisory opinion from COPI. Cosgrove, however, failed to inform COPI of the true nature of Anderson's work for NYALT.

Lacking accurate information regarding Anderson's professional services, COPI's informal opinion advised Cosgrove, "based on the facts provided . . . there is no violation of Public Officers Law § 74 since you do not provide any oversight over the programs that your wife is involved with in each not-for-profit organization." COPI further explained that "since your wife is not paid by funds from the Farmland Protection Program [FPIG] and is not involved as a consultant to these not-for-profit organizations with respect to the Farmland Protection Program, a barrier would not be necessary."

As discussed below, Anderson continued performing the FPIG-related services as a paid consultant for NYALT until September 2010, when she ended her professional relationship with NYALT at the request of Cosgrove – an event which occurred within days of Cosgrove learning of the Inspector General's investigation.

C. Cosgrove Misuses COPI's Advisory Opinion to Deflect Scrutiny

The Inspector General found that Cosgrove used COPI's informal advisory opinion to defend himself against assertions of possible ethical breaches raised by Agriculture and Markets' employees. When challenged, Cosgrove would cite the existence of COPI's opinion as evidence of the propriety of his conduct without ever showing anyone the actual opinion.¹²

¹² Cosgrove also brought a copy of the advisory opinion to his interview with the Inspector General and raised it in his defense throughout the interview.

In June 2008, upon receiving COPI's opinion, Cosgrove sent an e-mail to Commissioner Patrick Hooker, First Deputy Commissioner Robert Haggerty, and General Counsel Ruth Moore. In his e-mail, Cosgrove claimed that COPI "concluded that there was no conflict with respect to my wife's work with NYALT because they do not receive any funds directly from the state. I may need to revisit this should the Department actually set up a grants program for nonprofits and should NYALT actually apply at some future point." Regarding AFT and the "reverse-revolving door" issue, Cosgrove informed Hooker, Haggerty, and Moore that there also was no conflict of interest, and that COPI "recommended that I recuse myself from any discussions about the renewal of the AFT contract" and "make sure" staff are aware of the necessity of his recusal. As discussed above, Cosgrove failed to abide by COPI's advice.

General Counsel Ruth Moore also serves as Agriculture and Markets' ethics officer. She requested that Cosgrove provide her with a copy of COPI's advisory opinion. Cosgrove never did so despite repeated requests from Moore. Without a copy of COPI's opinion, Agriculture and Markets was not aware that Cosgrove submitted incorrect information to COPI. Although the responsibility to comply with the Public Officers Law rests with the individual, Cosgrove's actions prevented his employer from assuring that he avoid conflicts of interest.

Not only did Cosgrove fail to avoid conflicts of interest, testimony revealed that Cosgrove sought to dissuade Agriculture and Markets' employees from raising his ethical breaches. He was so effective that staff interviewed by the Inspector General requested confidentiality when discussing his conduct. They reported that in 2008, after questions of conflicts of interest were raised by the agency's counsel's office and Cosgrove sought an informal opinion from COPI. Cosgrove was exasperated that a complaint had been made regarding potential conflicts and sought to identify the complainant. One employee testified that Cosgrove "called me into his office. He was very upset...Using foul language and demanding that I find out who turned him in to the Ethics Commission." According to another staff member, Cosgrove's actions created a "very effective wall of silence."

Furthermore, Agriculture and Markets' employees reported to the Inspector General that Cosgrove reacted irritably when they raised their concerns about his apparent conflict of interest with NYALT. Bill Kimball reported, for example, that Cosgrove told him that he had received an opinion from COPI, with Cosgrove adding, "I know what I can do. I am a lawyer, you know." Similarly, Bob Somers testified that Cosgrove told him: "I know what I'm doing. I have an ethics opinion. I'm an attorney." Somers noted that Cosgrove became annoyed with people raising ethical issues, and Somers recalled Cosgrove saying that he "didn't want to hear this again." Cosgrove's conduct led Agriculture and Markets' employees to become disheartened, believing that they had little recourse in addressing potential conflicts of interest.

D. Cosgrove Ignores COPI's Guidance and Engages in Conflicts of Interest

Despite the inaccurate information Cosgrove had supplied it, COPI, in its advisory opinion, provided Cosgrove with guidance on how to avoid conflicts of interest arising from his role at Agriculture and Markets and his interaction with his former employer, AFT, and the organization which retained his wife for her consulting expertise, NYALT. Cosgrove, however, failed to heed this advice.

1. *AFT*

In its informal advisory opinion, dated June 5, 2008, COPI instructed Cosgrove to recuse himself from participating in the renewal of AFT's contract with the state. The opinion states:

There may be a perception that you could be using your official position to secure unwarranted privilege or exemptions for AFT, or raise suspicion that you may be engaged in acts that violate the public trust concerning the renewal of the contract. Therefore, when the contract is considered for renewal, you must recuse yourself from those discussions and renewal process. The Department should issue a memorandum to staff advising them of your recusal and inform them to avoid discussing the renewal of the contract with you.

When informed by the Inspector General of this instruction from COPI, First Deputy Commissioner Robert Haggerty expressed surprise and stated, “I wasn’t aware of that and that wasn’t done.” The Inspector General found that Cosgrove failed to follow the main tenant of COPI’s opinion, that the onus to avoid conflicts of interest or the appearance thereof rested with him. Instead of recusing himself from the 2009 contract renewal discussions and process, Cosgrove actively participated in that process.

Haggerty testified that when he questioned who authorized the increase in funding for AFT from \$50,000 annually to \$75,000, he was told it was Cosgrove. An additional term was added to the AFT contract increasing the scope of work. However, neither Somers nor Behm – the only two agency employees besides Cosgrove involved in contract renewal process – knew by whom or how it was inserted into the contract. That term (Activity VI) called for AFT to “work with the Department to develop a report for the governor and legislature regarding the [specified] activities of the Commissioner of Agriculture,” yet no such report was ever produced. Computer records from the agency’s contract management system obtained by the Inspector General show that Cosgrove also approved the renewal of the AFT contract on January 13, 2009.¹³ All of this conduct occurred within the two-year period prohibited by the reverse revolving door rule.

COPI’s advisory opinion was partly based on Cosgrove characterizing his authority as limited, such as the “Division Director approves and signs all invoices that are submitted by AFT to A&M [Agriculture and Markets].” Cosgrove had advised COPI that he did “not approve or sign any invoices.” While it is true that Cosgrove did not sign invoices, he was integrally involved in overseeing payments to AFT. Behm reported to the Inspector General that he once questioned the content of an invoice submitted by AFT for payment for services rendered from July 1 – September 30, 2008. Behm noted that several items on AFT’s invoice were either ineligible costs for reimbursement, such as meals, or seemed unrelated to the contract’s scope. Behm verified several of the items

¹³ The contract management system (CMS) is a computerized means to track the review and approval of contracts by the relevant Agriculture and Markets officials. Cosgrove was required to provide an electronic signature (his initials “JPC”), indicating that he had reviewed and approved the contract.

with other agency staff who had knowledge of AFT's work for the department and then sent an e-mail to AFT's David Haight questioning the expenses. According to Bob Somers, after Behm's e-mail was sent, Cosgrove instructed Somers "to pay the things," and that Cosgrove "approved all the expenditures and that they were germane to the contract."

Somers explained that Cosgrove dominated the Agriculture and Markets' Farmland Protection Unit and affected its ability to operate. Somers averred, "It was his [Cosgrove's] program; it was no longer the Department's program." "We did what Jerry said." As for paying AFT's invoice, Behm testified that Somers told him that Cosgrove directed Behm not to question the content of the invoice. "Jerry [Cosgrove] told Bob [Somers] to let me know that AFT does not have to explain to me what they're doing; that the very nature of their work in the outreach that they do, is consistent with the scope of work and that should suffice." Although AFT resubmitted a revised voucher and invoice in that instance, Behm followed Cosgrove's directive and never questioned another AFT invoice.

Cosgrove's conduct regarding AFT appears, at a minimum, to provide a "reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person" in violation of Public Officers Law § 74(3)(h).

2. NYALT

a. Cosgrove Misrepresents to COPI that Anderson's Work With NYALT Would Not Involve the FPIG Program

In its advisory opinion to Cosgrove with respect to NYALT, COPI determined that Cosgrove's position at Agriculture and Markets created no violation of Public Officers Law § 74 since Cosgrove did "not provide any oversight over the programs that [his] wife is involved with in each not-for-profit organizations." Furthermore, COPI

declared that “since [Cosgrove’s] wife is not paid by funds from the Farmland Protection Program [FPIG] and is not involved as a consultant to these not-for-profit organizations with respect to the Farmland Protection Program, a barrier would not be necessary.” In truth, Anderson provided NYALT extensive services directly related to the organization’s FPIG projects, which Cosgrove along with his subordinate Dave Behm oversaw.

When questioned by the Inspector General about conflicts of interest regarding his wife’s work for NYALT, Cosgrove stated, “It was the only directive, strong request, that I made to Judy [his wife] to relay to NYALT was that for whatever work she did that she not receive any state farmland protection program funding. . . .” Cosgrove explained that his interpretation of COPI’s opinion was that “as long as there was going to be no money going from the state farmland protection program [to his wife] there would be no conflict.” His narrow interpretation ignored COPI’s reliance on his representation that he would not be providing “any oversight over the programs that [his] wife is involved with” as a rationale for finding no violation of Public Officers Law § 74. Furthermore, NYALT could not ensure that Anderson was not paid with funds from Agriculture and Markets.

NYALT’s current Executive Director, Tom Larson, stated that when he learned of Anderson’s role with NYALT and her relationship to Cosgrove he found the circumstances to be odd and ripe with possible conflicts of interest. Larson explained, “I picked up on that right off the bat.” He noted, “You want to avoid having relatives doing anything.”

Larson described FPIG work as highly technical and that no other NYALT staff person or board member had the technical ability to perform the work. Specifically, Larson reported that on the Masters and Fruithurst FPIG projects, Anderson drafted and made edits to the conservation easement. Larson stated that he saw “where there was specific edits going back and forth.” According to Larson, Anderson also developed the land use plan for the Allen FPIG project. Larson reported that Anderson met with the landowner along with NYALT staff person Maureen Knapp. Larson characterized the Allen land plan as a “result of Judy’s work.”

Larson described Anderson as having an outsized role in NYALT. Larson noted, “I rarely have ever seen where a consultant . . . is driving the organization . . . It shouldn’t happen this way.” Invoices and bank records analyzed by the Inspector General reveal that, in total, Anderson received over \$150,000 from NYALT from October 2007 through October 2010, constituting over 40 percent of NYALT’s overall expenses. Larson opined that NYALT was organized to cater to Anderson’s consulting style. Larson described Anderson as having “direct involvement” in NYALT’s FPIG projects, performing what Larson called “specialty work.” He characterized the FPIG projects as “our work which is integral to Agriculture and Markets.”

The Inspector General’s examination of Anderson’s invoices revealed that she was immersed in FPIG project work before COPI issued its opinion and even more so after. Indeed, Anderson billed NYALT for over 500 hours of work on FPIG projects, as illustrated in the below chart, for which NYALT paid Anderson \$37,232.

PROJECT NAME	HOURS BILLED
Masters-Memory Lane	142.14
Fruithurst	82.75
Janas	65.19
Doody	42.52
Gulliver	38.63
Fisher	50.33
Allen (South portion)	26.69
Eagle Point (Blumer)	23.21
Keitzmann	13.78
Wilde	11.03
Freier	6.88
Hourigan	1.75
TOTAL HOURS BILLED =	504.90

The Inspector General found that in addition to funding received directly from Agriculture and Markets, NYALT received \$5,497.17 in reimbursement from Onondaga and Cayuga counties, respectively, via FPIG for Anderson’s work on the completed

Masters and Fruithurst projects. While these state funds did not go directly to Anderson, she clearly was paid for her FPIG-related work. Additionally, money from Anderson's Community Consultants bank account was periodically deposited into an account that she shared with Cosgrove.

Ken Smith, now the former Executive Director of NYALT, believed that there was a "firewall between Judith Anderson and actual [FPIG] project work," installed by NYALT at Anderson's request. Even at that, Smith still "viewed the situation as problematic." He explained that Agriculture and Markets' Dave Behm was involved in the review and approval stages of the ultimate completion of FPIG projects, and NYALT frequently interacted with Behm in revising the detailed package of documents that accompany an FPIG project. Anderson reviewed Behm's suggested edits to NYALT's FPIG documents; then she examined NYALT's revised documents; and she suggested additional changes to NYALT's documents. Smith further conceded that Anderson showed him how to perform various tasks to complete an FPIG project by providing instruction on a specific project, such as the Fruithurst Farm (discussed above). Both Smith and Anderson considered this "coaching" as opposed to actual project work.

While Anderson was supposedly restricted from direct work on FPIG projects, Smith reported that no restriction existed with regard to paying Anderson with funds received from Agriculture and Markets. Smith stated, "I am not aware that there was . . . a discussion of the need for a way to track money that made it clear that Ag and Markets' money was not flowing to Judith Anderson." Smith said that any "fire wall" at NYALT did not include "a separate account for Agriculture and Markets' money, so that it could be tracked."

NYALT's current Executive Director agreed. Larson stated that he "cannot guarantee" that Anderson never received any direct Agriculture and Markets' funding. "I cannot show people on paper how it was avoided." According to Cosgrove, it was his "understanding that no [state] money was going to flow. That was my request to her that there be no funding from the state through NYALT to her from the farmland protection

program funds.” Notwithstanding, NYALT commingled all its money, including funds from Agriculture and Markets, rendering it impossible for NYALT to comply with Anderson’s request not to be paid with state funds. It was, however, Cosgrove’s responsibility to avoid conflicts of interests – as he was the state official subject to the Public Officers Law – not Anderson or NYALT

E-mails from Anderson regarding NYALT’s FPIG projects provide further evidence of the conflict of interest. For example, in one e-mail to Ken Smith, NYALT’s executive director at that time, Anderson instructed NYALT to send her “blind copies” of e-mails sent to Agriculture and Markets’ officials regarding FPIG projects. In the e-mail, Anderson wrote “Copy me on those emails as blind copies [copies that don’t reveal Anderson’s e-mail address]. I don’t want to confuse people to think that I am the project lead. I can support you behind the scenes as a coach.” Despite Anderson’s attempt to lessen her public involvement in NYALT’s work, individuals within NYALT and at Agriculture and Markets were aware of Anderson’s significant impact on NYALT’s work product.

Dave Behm, the manager of the Farmland Protection Program, had received several e-mails in which Anderson had provided advice to NYALT on FPIG matters. Based upon those e-mails, Behm believed that Anderson was involved in NYALT’s FPIG projects. Behm reported that knowing Anderson was working on these projects placed him in an uncomfortable position since he was sometimes required to provide critical feedback to NYALT, only to be confronted with the fact that his supervisor’s wife, Anderson, was working on matters on which he was providing the constructive criticism. Behm stated, “It’s a very clear potential conflict of interest.”

b. Cosgrove Takes Inappropriate Actions In Connection With Legislative Member Items Awarded to NYALT

During the initial stages of the investigation, the Inspector General was alerted to several legislative initiatives (more commonly known as “member items”) that had been

awarded to NYALT. The member items, provided to NYALT from several legislators were a major source of funding to NYALT since the organization's inception in 2006.

Member items are awarded to various groups and organizations throughout the state based upon the determination of state legislators. Once the member item is awarded by the Legislature, a state agency with a subject area related to the scope of the member item, in this instance Agriculture and Markets, coordinates the development of a contract and proposed budget for the member item in coordination with the organization receiving the funding. In this case, the member items awarded to NYALT fell under the purview of Cosgrove and the Agricultural Protection Unit.

While the Inspector General found no evidence that Cosgrove engaged in any misconduct related to the awarding of member items to NYALT, several concerns were raised, including a perceived conflict of interest in Cosgrove approving the NYALT member item contract, reimbursements being directed to Anderson, and, most troubling, Cosgrove's attempt to expedite member item contract payments to NYALT.

Indeed, when questioned as to his actions related to member item contracts, Cosgrove expressed the opinion that his actions were incorrect, stating, "That shouldn't happen. I shouldn't have done that."

The Inspector General found that NYALT was awarded in total over \$130,000 in member items with all of the awards occurring after Cosgrove's appointment as Deputy Commissioner at Agriculture and Markets. Because NYALT commingled all of its funds, it is impossible to determine the amount of member item monies paid by NYALT to Anderson for her consulting services. However, the Inspector General's examination of Anderson's invoices uncovered some in which she specified that her work was for a member item contract. These invoices totaled over 25 hours of work, or more than \$2,300, directly billed to NYALT's member item contracts with Agriculture and Markets. Since there are insufficient records to trace the member item money going directly to Anderson, it is possible she received even more member item funds.

In addition, the Inspector General uncovered an incident in which Cosgrove attempted to expedite the payment of member item funding to NYALT. The Inspector General also found that Cosgrove provided approval for several of the NYALT member items in the Agriculture and Markets' contract management system, creating at least the appearance of a conflict of interest.

In January of 2010, Cosgrove received an e-mail from a member of the NYALT board seeking Cosgrove's assistance in verifying the existence and expeditious payment of a member item awarded during the prior legislative year. Upon receiving this request for assistance, Cosgrove contacted Bill Ketzer, Agriculture and Markets Special Assistant for Intergovernmental Affairs. Cosgrove asked Ketzer if he could "track this down." Ketzer replied that he would.

Despite his affirmative response to Cosgrove's request, however, Ketzer testified to the Inspector General that this directive was "unusual" at best. While Cosgrove described his actions as seeking a "status report" from Ketzer, Ketzer characterized Cosgrove actions as "not typical." He noted that Cosgrove's actions put Ketzer in a "weird spot" and that, in his time as Director of Intergovernmental Affairs at Agriculture and Markets, he never had another Deputy Commissioner seek a "status report" of a member item, specifically a member item directed to the Deputy Commissioner's wife's employer. He stated, "I can't think of another instance where a Deputy Commissioner asked me to 'bird dog' a member item."

Ketzer was aware that Anderson worked for NYALT and he related that, armed with this knowledge and faced with Cosgrove's continued questioning as to the status of the member item, he grew increasingly uncomfortable. Cosgrove again requested that Ketzer obtain the "status" of the member items. Ketzer stated that after several inquiries by Cosgrove he thought to himself, "the picture's starting to come together in my mind that maybe there's some impropriety here and that I don't want to be part of this anymore." Ketzer said he never provided the requested information to Cosgrove.

Agriculture and Markets General Counsel Ruth Moore noted that after Cosgrove had received the advisory opinion from COPI in June 2008, Cosgrove was supposed to be removed from approving the agency's contracts with NYALT, specifically including member item contracts. However, Cosgrove failed to recuse himself from the approval of four of the six member item contract approvals during his tenure. Moore noted that Cosgrove should have been aware of his conflict of interest. Moore stated that "given this history . . . where his wife is involved, he should recuse himself." She continued, "Given the history, any contract with NYALT would be a red flag."

The Inspector General questioned then-Commissioner Hooker about Cosgrove's involvement with the member item contracts with NYALT. Hooker was surprised by Cosgrove's conduct, and replied, "Why it doesn't hit his [Cosgrove's] consciousness that he can't do that, I can not explain to you. You [Cosgrove] can't deal with the New York Agricultural Land Trust. What part of that don't you understand?" Hooker continued, "Why can't he [Cosgrove] make the leap from advocacy to governmental administration completely is a fair question." To Hooker, Cosgrove's actions were "perfectly frustrating."

With the exception of Cosgrove himself, every Agriculture and Markets official questioned by the Inspector General as to proper conduct regarding member items described "strict orders" to separate Agriculture and Markets' officials from legislative contact. As one official stated, "You do not cross the line and go over to anything dealing with the legislature." This policy was described as a "wall."

V. AGRICULTURE AND MARKETS IMPLEMENTS NEW POLICIES AND PROCEDURES

In response to Cosgrove's misconduct and the Inspector General's investigation, Agriculture and Markets has undertaken several modifications of the agency's contract management procedures. The steps taken include reducing the number of contract managers from approximately 40 to now roughly 25. The 25 contract managers are now

part of a “contract workgroup” that currently meets on a regular basis to address the challenges posed by the procurement process and contract management procedures.

Additionally, the development and writing of RFPs is now the responsibility of the program area seeking the procurement. RFPs must now conform to a standard format and editing process. From the beginning of the development of the RFP, a contract manager will be assigned. Executives like Cosgrove are no longer involved. New guidelines have also been established for communication with contractors, reporting requirements by contractors, and accountability for contract deliverables.

Some Agriculture and Markets’ employees said that in several prior instances, with deputy commissioners in previous administrations, pressure was placed on the Agricultural Protection Unit to change procurement results due to special interest and political influence. These prior incidents heightened their reluctance to raise concerns with the agency’s general counsel or other executives in Agriculture and Markets in the face of Cosgrove’s steering a Land Trust Grant to NYALT.

First Deputy Commissioner Haggerty emphasized that Agriculture and Markets’ executives no longer manage any contracts. Agriculture and Markets has also “standardized” the contract management process. The standardization of the process began with the development of an internally circulated contract management manual. The first chapter of the contract management manual discusses ethics and conflict of interest awareness. Tracy Robbins, Agriculture and Markets Director of Internal Audit, noted that agency staff is aware of allegations regarding Cosgrove and that this has led to an “open discussion” related to the need for awareness of ethics issues.

In the spring of 2011, Inspector General training staff provided several training sessions to all ranks of Agriculture and Markets’ employees. This training not only emphasized ethical obligations of state employees, but also instructed them on fraud detection. Agriculture and Markets’ new Commissioner, Darrel Aubertine, also has ordered all executive office staff to receive ethics training provided by COPI. Other

employees also received training from COPI. Haggerty stated that this directive is a “direct result” of allegations surrounding Cosgrove.

During the course of the investigation, the Inspector General recommended that Agriculture and Markets develop a written policy regarding procedures agency personnel must undertake in order to recuse themselves from agency business in which the individual has a real or perceived conflict of interest. Agriculture and Markets thereafter revised its policy to include guidance on how an employee must recuse himself or herself from a matter in order to avoid a conflict of interest.

VI. FINDINGS AND RECOMMENDATIONS

The Inspector General found that former Agriculture and Markets Deputy Commissioner Jerry Cosgrove improperly influenced a Land Trust Grant program procurement in order to steer an award to NYALT, the organization where his wife, Judy Anderson, was a paid consultant. When Cosgrove discovered that NYALT did not qualify to receive any funds, Cosgrove pressured his subordinates to change the review process and the scoring of a grant proposal submitted by NYALT. Intimidation by Cosgrove led his subordinates to request an increase in funding that ultimately helped NYALT secure a \$100,000 grant. The state grant funds, if disbursed, would have helped NYALT pay Anderson’s consulting fees.

The Inspector General’s investigation further revealed that Cosgrove was well aware of the existence of actual or potential conflicts of interest inherent in his overseeing matters at Agriculture and Markets that affected NYALT. Indeed, after ethical concerns were raised early in his tenure at Agriculture and Markets, Cosgrove sought an informal advisory opinion from COPI , but he omitted critical details and provided inaccurate facts. As a result, COPI was misled into concluding that there were no violations of the Public Officers Law. Cosgrove later used COPI’s informal advisory opinion to defend himself against assertions of possible ethical breaches raised by his subordinates.

Cosgrove also ignored COPI's advice in its advisory opinion on how to avoid conflicts of interest arising from his role at Agriculture and Markets and his interaction with AFT, his former employer, and NYALT. Cosgrove created an appearance of impropriety and engaged in conflicts of interest through his oversight of AFT's invoices paid by the agency and his involvement with the renewal of the AFT contract. Cosgrove expressly approved renewal of the contract despite COPI's explicit warning that he must recuse himself entirely from the process. Similarly, Cosgrove oversaw the agency's Farmland Protection Implementation Grant (FPIG) program, even though his wife worked on FPIG projects on behalf of NYALT, and NYALT was reimbursed by the state for her services. Cosgrove also improperly approved member item contracts which provided several thousands of dollars to his wife's employer, NYALT, for reimbursement of its payments to Anderson.

As a result of Cosgrove's actions and the Inspector General's investigation, Agriculture and Markets has suspended the Land Trust Grant program, which was slated to provide state funds to NYALT and 11 other land trust organizations, and terminated Cosgrove's employment.

The Inspector General's findings also have brought about significant changes in the contract management process and other policies within Agriculture and Markets. In addition, since the investigation Agriculture and Markets' employees have received ethics training from the Inspector General and COPI.¹⁴ State officers and employees are reminded of their obligation under Executive Law Article 4-A to promptly report to the Inspector General any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings.

¹⁴ The formal response of the Department of Agriculture and Markets to the Inspector General's findings is included in the appendices to this report.

The Inspector General is providing a copy of this report to COPI, which has jurisdiction over violations of the Public Officers Law, and to which the Inspector General previously has made a referral regarding these findings.¹⁵ A copy of this report also is being provided to the Albany County District Attorney for his review.

¹⁵ By statute passed by the Legislature on June 13, 2011 (the Public Integrity Reform Act of 2011), COPI will cease to function as the State's ethics oversight agency no later than 120 days after the bill is signed into law, with its functions passing on that date to the newly created Joint Commission on Public Ethics (JCOPE). It is understood that, upon the latter date, responsibility to pursue potential violations of the Public Officers Law by Cosgrove will pass to JCOPE.

APPENDIX A

Public Officers Law § 74(3) provides state employees with “standards” to avoid conflicts of interest. The following are relevant to the conduct described in this report:

* * *

- c. No officer or employee of a state agency ... should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
- d. No officer or employee of a state agency ... should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
- e. No officer or employee of a state agency ... should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
- f. An officer or employee of a state agency ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

* * *

- h. An officer or employee of a state agency ... should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

APPENDIX B

The response by the Department of Agriculture and Markets to the Inspector General's report appears on the following pages.



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE & MARKETS
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Andrew M. Cuomo
Governor

Darrel J. Aubertine
Commissioner

July 5, 2011

Ellen N. Biben
Office of the Inspector General
Empire State Plaza
Agency Building 2, 16th Floor
Albany, New York 12223

RE: NYS IG 0636-025-2010

Dear Inspector General Biben:

Thank you for the opportunity to review and respond to your report on the allegations of misconduct by Jerry Cosgrove. As noted in your report, the Department has instituted a number of procedural changes to help prevent a similar situation in the future:

The Department produced new contract manuals for both contract managers and contractors which emphasize the rules related to conflicts of interest and how to report potential conflicts. The manual outlines the procedure to be used when a Department employee must recuse himself or herself from the contract process.

The Department reduced the number of contract managers from 40 to 25 and reassigned contracts managed by political appointees to civil service staff to increase the level of understanding and consistency of the contract process.

The Department provided ethics training by both the Commission on Public Integrity and the Office of the Inspector General to all contract managers. In addition, I have ordered that all Department employees participate in ethics training. That process is on-going.

Equally, if not more important, Department management has tried to create an environment where staff are not afraid to report potential wrongdoing and even more, see it as an obligation as a public servant.

Once again, thank you for the courtesy.

Sincerely,

A handwritten signature in cursive script that reads "Darrel J. Aubertine". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Darrel J. Aubertine
Commissioner