

LAND LEASE COMPLIANCE IN DANA POINT HARBOR

SUMMARY

The Grand Jury reviewed the performance of Orange County as the lessor of two master land leases of the county's valuable property at Dana Point Harbor. The Grand Jury examined the properties under lease and evaluated lease compliance regarding cash income, property maintenance and complaint procedures. Both 30-year master leases expire in 2001 and are up for renewal.

The Grand Jury found discrepancies in the way the Dana Village Properties and Dana Point Marina Company Master Leases are managed and audited. Discrepancies may result in significant revenue loss to the county. Some of the discrepancies are due to the way the master leases were structured 30 years ago and are not solvable at this time. Other discrepancies can and should be solved immediately.

The resolvable discrepancies include:

- lack of staffing for lease compliance at the county Public Facilities and Resources Department.
- non-existent compliance enforcement for cash accountability at the launching ramps and bait sales.
- lack of written procedures for maintenance facilities and lease compliance.
- no documented customer complaint procedures.

The Grand Jury made recommendations that would resolve the discrepancies:

- Increased Public Facilities and Resources Department staffing levels be applied to lease management.
- On-site control measures for the cash transactions at the Dana Point Harbor be immediately started and audits be performed on a recurring, random basis.
- Maintenance compliance procedures be documented and enforced.
- Complaint procedures be documented and protocols established for resolution of complaints.

The results of such changes will be a better oversight of the master leases at Dana Point harbor and improved maintenance of public facilities. Additionally, making the recommended changes would insure that future revenue streams from the lease would be maximized for the county and its citizens.

Problems resulting from oversights or omissions in the original master leases issued in 1971 should be corrected in future contracts as part of the terms and conditions of any new master lease award. These solutions should include, but may not be limited to:

- A periodic preventive maintenance schedule for major assets under lease.
- The setting of maintenance minimums for hard usage items.

INTRODUCTION AND PURPOSE

The Grand Jury evaluated the performance of Orange County as landlord of the County's valuable property at Dana Point Harbor to assure that management of the harbor properties was in the best interest of the County and its citizens. The objectives were to determine whether the properties:

- Were maintained properly;
- Provided the proper revenues to the county from the vendors; and
- Had procedures for complaints and their resolution.

The Grand Jury focused on the County's performance as lessor of two master land leases at Dana Point Harbor—Dana Point Marina Company and Dana Village Properties. This focus was appropriate because both 30-year master leases expire in 2001 and are up for renewal. The Grand Jury examined the properties under lease and evaluated lease compliance regarding cash income and maintenance and also looked at compliance procedures and customer complaint protocols.

METHOD OF STUDY

The Grand Jury met and interviewed staff of the Public Facilities and Resources Department, county officials as well as lessees' staff, and community members. The Grand Jury read and researched master leases and their amendments, lease compliance reports, audits, maps, planned corrective action memos, and newspaper articles. The Grand Jury visited Dana Point Harbor and the master lease properties.

BACKGROUND

The County of Orange is one of the largest landowners and landlords in the County. The Harbors, Beaches and Parks Division, Public Facilities and Resources Department (PFRD) manages and maintains county-owned parks and recreation areas that are important public resources. The county extends leases on many of these parks and beaches in order to improve and maintain the areas, provide concession services to the public, and generate revenue for the county. The PFRD manages over 140 leases, which generate about \$11 million in annual revenue for the county. The two master leases examined in this report generate about \$1.28 million dollars annually for the county.

Leases, especially the larger master leases, are complex and encompass a wide range of issues, requirements, guidelines and restrictions for the lessee and the lessor. Examples include:

- how much parking is required,
- types and amount of lighting,

- sizes and number of signs,
- how cash transactions are handled.

Compliance monitoring for the county is assigned to one part-time person in PFRD. Proper, effective lease oversight requires two separate and distinct factors. First, the monitor must be fully aware of the myriad guidelines, requirements and restrictions of the lease. Second, the monitor must have lease compliance as a job responsibility. Parks and Recreation personnel, and Sheriff's Harbor Patrol, among others, come into informal contact in the harbors with the lessees and the properties they lease. However, PFRD cannot rely on informal contact with the lessees by these employees for compliance monitoring. These county employees from other agencies are unaware of the various lease provisions and would not normally be aware of violations occurring in their presence.

Master Leases in Dana Point Harbor—Two master leases in Dana Point Harbor govern much of the harbor properties and facilities. The Dana Village Properties and the Dana Point Marina Leases are 30-year leases that were signed in 1971. They are up for renewal in 2001. The Grand Jury found that negotiations are underway for sole-source extensions to these leases to the present lessees. As structured in 1971, the current lessees have the right of first refusal if the county opens competition for the leases.

The Dana Point Marina Company Master Lease covers launch ramp activities, parking, and related activities in the Dana Point Harbor at the Embarcadero Marina area. Among other activities, the lessee operates the boating facilities such as slips, boat sales, and launch ramp activities located in Dana Point Harbor. In total, the Dana Point Marina Company Master Lease generated about \$9.52 million dollars in annual gross receipts (fiscal year ending December 1998 for slip rentals, and fiscal year ending February 1999 for Embarcadero activities). The county received about \$1.61 million dollars as its portion of this gross revenue in accordance with terms of the master lease.

The Dana Village Properties Master Lease encompasses such activities as sportfishing and merchandise sales, various marina-related merchants, restaurants, and bait and tackle sales. The Dana Village Properties Master Lease generated about \$10.4 million dollars gross receipts (fiscal year ending February 1999) of which the county received about \$371 thousand dollars in accordance with the terms of that master lease.

Revenue Generation by the Two Master Leases—The two master leases under discussion have generated significant revenue for the county over the life of the leases. Table 1 summarizes the money earned by the county over the past four years.

TABLE 1

REVENUE GENERATION FROM TWO DANA POINT MASTER LEASES

| <u>Fiscal Year Ending</u> | <u>Annual Gross Receipts</u> | <u>Annual County Revenue</u> |
|---------------------------|--------------------------------|------------------------------|
| | DANA VILLAGE PROPERTIES | |
| Feb 1996 | \$9.209 million | \$323 thousand |
| Feb 1997 | \$9.224 million | \$324 thousand |
| Feb 1998 | \$10.283 million | \$370 thousand |
| Feb 1999 | \$10.423 million | \$371 thousand |
| | DANA POINT MARINA CORP. | |
| Feb 96 & Dec 95 | \$8.476 million | \$1.492 million |
| Feb 97 & Dec 96 | \$9.183 million | \$1.527 million |
| Feb 98 & Dec 97 | \$8.189 million | \$1.550 million |
| Feb 99 & Dec 98 | \$9.518 million | \$1.610 million |

Note: All Figures Rounded

Records and Accounts Compliance—Section 13 of the General Conditions of the master leases specifies that the lessees shall... *at all times during the terms of this agreement, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature...The records must be supported by source documents such as sales receipts, cash register tapes, purchase invoices, or other pertinent documents.*

All retail sales and charges shall be recorded by means of cash registers or other comparable devices, which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals...Totals registered shall be read and recorded at the beginning and end of each day.

The Grand Jury observed no lease compliance regarding cash transactions for boat launches and bait sales. No receipts were issued; no cash registers were used for transactions. Grand Jury interviews with lessee personnel reconfirmed these observations. Both activities are operated as cash only.

Boat Launch Activities operate out of the launch ramp entrance gate at Dana Point Harbor on a cash basis for entry fees. There is no proper recording of these cash receipts, which is a violation of the terms of the lease. During weekday regular business hours when traffic is low, the entry gate is not manned. The customer places the entry fee (currently \$10.00 for one vessel) into an automated gate machine. The entrance arm then rises, allowing entry to the launch area. The gate has a speaker intercom on the gate that connects with the Embarcadero office, and customers could use this box to request a receipt. There are no posted signs stating this information, and it is unclear how many patrons have actually requested receipts. The lessee has not kept records as to how many receipts were issued.

On busy days, such as weekends and holidays, a gate attendant is on site and takes cash from those entering. The attendant allows entry by using a key to actuate the entry gate arm. No receipts are offered nor mentioned; no information is available on how many receipts are requested of this attendant because of the lack of records. No cash register is used in these transactions.

Bait Sales are made from a bait barge in the harbor for cash. The attendant provides a scoop of bait for cash. No register is used and no receipts are issued.

Annual cash sales for the fiscal year ending February 1999 reported to the county by the lessees in these two areas were:

- Boat launch gross receipts: \$357,552.
- Bait sale gross receipts: \$304,204.

Cash sales from prior years are comparable to the figures above.

Maintenance, Compliance and Complaint Procedures—The lessees are obligated under the terms of the master leases to: *...keep and maintain the...Premises...and all improvements of any kind which may be erected, installed, or made thereon in good condition and in substantial repair. It shall be the Lessee's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.*

Maintenance deficiencies are brought to the attention of the lessee in several ways, but these ways all go through PFRD. Maintenance deficiencies are observed, noted and documented by PFRD personnel on inspection trips, or when brought to their attention by the Harbor Patrol, citizens or customers. Deficiencies noted by PFRD lead to the generation of a “County of Orange Lease Inspection Report” which is forwarded to the lessee for resolution.

The Grand Jury found no procedures for handling citizen or customer complaints regarding care and maintenance of the facilities under the master leases. Customers could voice or file complaints to representatives of the lessee. The lessee is not bound by the master lease to communicate with customers or notify the county of their complaints. Customers can voice or file complaints to PFRD. However, there are no signs, notices nor information at the harbor telling a potential complainant where to file a deficiency report, with whom to file, or a number to call. The PFRD personnel are concerned about making such information available. The apparent fear was that there would be an inordinate amount of crank calls or calls from people who demanded an unreasonable level of service.

The Grand Jury reviewed 38 Lease Inspection Reports and Memos relating to the two master leases. The inspection reports/memos covered a time period of September 1989 through February 1999. This averages out to about a report every 3 and 1/3 months. One written response to the county from the lessee regarding those inspection reports was made available to the Grand Jury. One could infer that the lessee rarely responds or that the county does not keep complete records or that the county doesn't follow up on actions taken by lessee in response to inspection reports.

There is no master lease requirement for preventive maintenance by the lessee.

FINDINGS

Under *California Penal Code* Sections 933 and 933.05, responses are required to all findings. The 1998–99 Orange County Grand Jury has arrived at 5 major findings. Responses are required from the **Public Facilities & Resources Department** on all the findings. The 1998-99 Orange County Grand Jury found:

1. Land lease compliance for Orange County’s multimillion-dollar harbor assets is monitored by a very small staff in the **Public Facilities & Resources Department**—one person, part time.
2. Lease compliance enforcement for cash transactions involving boat launching and bait sales under the Dana Village Properties and Dana Point Marina Master Leases is non-existent. The lessee acquires cash from launching fees and bait sales. No recording of this cash flow is made by cash register or its equivalent as required by the master leases. Receipts are not issued for bait sales and only on request for launch activities. The county makes no on-site audits of these activities.
3. Maintenance records and compliance documentation are incomplete, hand-written or typed, and difficult to access and cross-reference. No computer database is in use for this purpose.
4. There is no periodic preventive maintenance requirement in the master leases.
5. No written procedures exist for receiving or processing customer complaints about harbor facilities under lease. No information is available at the harbor to advise customers as to the where and how to file complaints and to whom to address them. No county complaint handling system exists.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Responses are required from the **Public Facilities and Resources Department** to each of the following recommendations. Based on the findings, the 1998–99 Orange County Grand Jury recommends that:

1. The **Public Facilities and Resources Department** immediately increase its land lease compliance and enforcement staff to levels commensurate with monitoring and maintaining annual multi-million dollar leases businesses. (Findings 1, 2 and 3.)
2. Compliance enforcement for cash transactions at the boat launch ramp and bait sales be invoked at once. There is no lease compliance in these areas in accordance with the terms of the master leases. Additionally, the county should establish covert, random on-site audits and observations of boat launching and bait sales cash operations. (Findings 1 and 2.)

3. Maintenance records and compliance documentation be computerized. Development of maintenance records should be made in an appropriate database or spreadsheet on a personal computer to ensure accurate, centralized record keeping. Rapid cross-referencing and compliance monitoring across all leaseholders should be used for follow-ups on complaints. (Findings 1 and 3.)
4. Establish published procedures for receiving and processing customer complaints about harbor facilities under lease. Post information at the harbor to advise customers as to where and how to file complaints and to whom to address them. Establish a complaint handling protocol that logs complaints, establishes actions as appropriate, and documents follow-up. This protocol should be computerized. (Findings 1 and 5.)
5. New master leases be negotiated with terms and conditions to include considerations and inclusions of:
 - Preventive periodic maintenance schedules on high usage, high wear and high value items. Maintenance minimums should be set for hard usage items.
 - Improvement in cash control including random, unannounced audits of cash only operations.
 - Establishment of a protocol for complaints and their resolution. (Findings 2, 4 and 5)

APPENDIX

Dana Point Harbor Master Lease. February 2, 1971, between Dana Point Marina Company (Lessee) and County of Orange (Lessor).

Dana Point Harbor Master Lease General Conditions.

Dana Point Harbor Master Lease. Dated June 1, 1971 between Dana Village Properties (Lessee) and County of Orange (Lessor).

Dana Point Harbor, Parcel Five Lease. Dana Village Properties, LTD. and San Clemente Sportfishing, Inc. (dba Dana Wharf Sportfishing). June 1, 1971.

County of Orange Lease Inspection Reports and Memos regarding Dana Village Properties, Inc.

A total of thirty-seven separate reports, encompassing September 27, 1989 to February 24, 1999.

Lease Compliance Overview; Undated, PFRD.

Lease Compliance Inspection Procedures, PFRD/Real Property. Undated.

Lease Audits Policy/Procedure No. F6-31.1.GSA/Real Estate Property Management, dated October 21, 1985, Revised February 24, 1992.

Dana Village Properties, Parcel Five, Gross Receipt Statements. (1996–99).

Dana Point Marina Corp., Parcels 3, 3.11, 4.02, Gross Receipt Statements (1995–99).