



County of Orange  
California

Thomas G. Mauk  
County Executive Officer

July 17, 2007

Mike Penn, Foreperson  
FY 06/07 Grand Jury  
Superior Court of California  
700 Civic Center Drive West  
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Newport Harbor Moorings: Are They Held in the Public Trust or for Private Profit?"

Dear Mr. Penn:

Per your request, and in accordance with Penal Code 933, enclosed please find the County of Orange response to the subject report as approved by the Board of Supervisors. If you have any questions, please contact Theresa Stanberry at (714) 834-3727 in the County Executive Office who will either assist you or direct you to the appropriate individual.

Very truly yours,

Thomas G. Mauk  
County Executive Officer

Enclosure

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**2006-07 Grand Jury Report**  
**“Newport Harbor Moorings:**  
**Are They Held In The Public Trust Or For Private Profit?”**  
**Response to Findings and Recommendations**

**Response to Findings F1 and F6**

F-1 **Transfer of Mooring Permits:** Private profits are being made from the current procedures used in transferring the mooring permits located on the public tidelands in Newport Harbor. Because the mooring equipment and the vessel currently assigned to that mooring must be sold to the same person, when a vessel on a mooring is sold, the new owner transfers that mooring permit into his or her name, rather than vacating the mooring and allowing the waiting list to proceed in order.

*Response: Disagrees partially with the finding.*

The description of the mooring transfer procedure is incorrect and, therefore, the Finding is not accurate. Of the 1,235 individual moorings in Newport Bay, only 25 are located on Tidelands under the County’s control; and, only 18 of the 25 moorings are permitted on an annual basis; the other seven are for transient occupancy only. (These 25 moorings are the only individual moorings located on County-controlled Tidelands in Orange County.) The remaining 1,210 moorings in Newport Harbor are located on Tidelands under the City of Newport Beach’s control.

The County’s Tidelands in Newport Harbor were granted in trust to the County by the State in 1919; the County’s Ordinance for moorings is consistent with State Tidelands statutes. However, under a Joint Powers Agreement (JPA) between the County and City, the responsibilities for the moorings in Newport Harbor are specifically defined; the City provides financial management services and the County, through the Sheriff’s Harbor Patrol, provides administration and inspection services. As a consequence, the County administers the City of Newport Beach’s Ordinance and implementing procedures regarding mooring permit transfers. There is no requirement in the City’s Ordinance that mooring equipment and boats be sold together to the same person. However, the Ordinance subjects all mooring permit transfers to the approval of the City’s Harbor Resources Manager. Through that approval authority, the City has established implementing procedures allowing the transfer of the mooring permits if the mooring equipment and the boat are sold to the same person.

F-6 **Statutes and Regulations:** The County (1) follows State statutes and regulations concerning mooring and buoy permits and (2) along with the City of Newport Beach shares financial responsibility for funding the Harbor Patrol to provide management services; however, the County performs no oversight of the City’s regulations and procedures on a regular basis.

***Response: Disagrees partially with the finding.***

As noted above, the County, through the Sheriff's Harbor Patrol, administers (under a JPA) both the City and County moorings utilizing the Ordinance and implementing procedures established by the City. This is principally because the County controls only 25 of the 1,235 moorings in the harbor and all the moorings are located within the City. The County does not in general provide oversight of ordinances and procedures of cities within their respective city boundaries.

**Responses to Recommendations R-1 , R-2, R-6, R-8 and R-9**

R-1 **Statues and Regulations:** Tighten the regulations and procedures involved with Newport Harbor mooring permits and their transfers to ensure that all monies received which rightly belong to the public, stay within the public arena.

***Response: The recommendation will not be implemented (by the County) because it is not warranted or is not reasonable.***

If the City amends the City's Ordinance and implementing procedures to prohibit mooring permit transfers, the County will follow the amended Ordinance and procedures. If the City does not amend its Ordinance and procedures, the County has, among other options, the opportunity to terminate or modify the JPA when it expires on December 31, 2008.

As noted above, the County's Ordinance regarding moorings is consistent with State statutes, so no changes are required. Although the County, through the Sheriff's Harbor Patrol, administers both the City and County moorings under a Joint Powers Agreement (JPA), the City's Harbor Resources Manager is permitted under the City's Ordinance to approve mooring permit transfers.

R-2 **Public Access:** Consider public access to available moorings through adopting a more effective waiting list.

***Response: The recommendation will not be implemented (by the County) because it is not warranted or is not reasonable.***

See R-1 above.

R-6 **Mooring Permit Fees:** Establish a regularly scheduled independent appraisal for the fair market value of mooring permit fees, e.g., based on a percentage of the cost of a slip.

***Response: The recommendation will not be implemented (by the County) because it is not warranted or is not reasonable.***

The Board of Supervisors has the option to set annual mooring permit fees at the fair-market rate and, as noted above, to terminate or modify the JPA. However, as a result of a fee study done in 2001, the Board of Supervisors decided to set the annual mooring permit fees for the 18 County moorings at the same level charged by the City in order to provide for consistency and ease of administration. The Board, in the past, has similarly chosen to set fees at below fair-market rates.

- R-8 **City and County Ordinances**: The City of Newport Beach and the County of Orange should review their ordinances to make sure that they are consistent with each other.

*Response: The recommendation has not yet been implemented, but will be implemented in the future.*

The County will review with the City of Newport Beach our respective ordinances for consistency.

- R-9 **Waiting List**: Review and update the mooring waiting list.

*Response: The recommendation requires further analysis.*

The County, through the Sheriff's Harbor Patrol, administers both the City and County moorings in accordance with the City's ordinance and procedures. Working cooperatively with the City's Harbor Resources Manager, the Sheriff's Harbor Patrol plans to determine how best to make follow-up contact (on a periodic basis) with the mooring requestors and develop a fair procedure to purge or update old files.