



**2011-2012
Madera County Grand Jury
Final Report
Fairmead Landfill Properties Usage**

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Introduction:

During its follow-up investigation of the Fairmead Landfill operations, the Grand Jury learned that Madera County has acquired several properties adjacent to the landfill. These properties, located along Road 19 1/2, are intended to be used for future expansion of the landfill.

In its inquiries into the current usage of these properties, the Grand Jury interviewed members of the Board of Supervisors (BoS), real estate professionals, and staff of the Resource Management Agency (RMA), the County Administrative Office (CAO), and the Fossil Discovery Center. In addition, public documents were reviewed and recorded videos of BoS meetings were viewed.

Findings:

1. The Grand Jury found that the County no longer needs to expand the landfill within 5 years as previously expected.
 - a. The County has been granted a permit which allows the height of the landfill to increase to 70 feet.
 - b. The new allowable height for the landfill extends the need for future expansion to 10 or more years.
2. The Grand Jury found that the County has acquired all except 2 of the parcels located along Road 19 1/2.
 - a. One un-acquired parcel, located between 2 County-owned parcels, is 4.95 acres with a small, occupied residence.
 - b. The other un-acquired parcel, located at the north corner of Road 19 1/2, is 13.58 acres and also has an occupied residence.
3. The Grand Jury found that most of the acquired properties are undeveloped land or contain abandoned structures in varying stages of deterioration.
4. The Grand Jury found that the County has rented out 2 pieces of the acquired property.
 - a. Three acres have been rented for commercial storage of materials and equipment.
 - b. One parcel has been rented for residential occupancy.
5. The Grand Jury found that, on July 26, 2011, the BoS entered into Lease Agreement No. 9434-C-2011 with the landfill operator to permit the storage of materials and equipment for an unrelated business. The lease agreement:
 - a. is for 5 years;
 - b. allows for the use of 3 acres of undeveloped land;
 - c. requires monthly rental payments of \$1,500; and
 - d. may be terminated with 90 days written notice.

6. The Grand Jury found that Lease Agreement No. 9434-C-2011 is intended to provide revenue to the County General Fund in the amount of \$18,000 annually.
7. The Grand Jury found that, on December 15, 2009, the BoS entered into Agreement No. 9049-C-2009 to lease a residential parcel (APN 027-192-025) which the County had purchased in September, 2009. The lease agreement:
 - a. is month-to-month, not to exceed 5 years;
 - b. requires monthly rental payments of \$900;
 - c. specifies maintenance and upkeep responsibilities of the County and renter; and
 - d. may be terminated with 30 days written notice.
8. The Grand Jury found that the leased residential property consists of:
 - a. a parcel of land measuring 4.95 acres with dry pasture in the back; and
 - b. a single-family residence of 4,400 square feet, 6 bedrooms, and 3 bathrooms.
9. The Grand Jury found that the following are included as Recitals in the lease agreement for the residential property:
 - a. The County wished to rent the property only to employees of RMA with experience in grounds keeping or building maintenance for County properties.
 - b. Through RMA the County advertised the opportunity to rent the property to RMA employees.
 - c. The selected renter was the only person to offer to live on the property.
10. The Grand Jury found that other RMA employees were unaware of the rental opportunity for this residential property.
11. The Grand Jury found that the residential property renter, at the time of selection, was an RMA employee with experience in grounds keeping for County properties.
12. The Grand Jury found that the residential property renter is no longer employed by the County.
13. The Grand Jury found that the selected residential property renter expressed a possible interest in purchasing and moving the residence in the future.
 - a. At the December 1, 2009 meeting, the BoS action taken to proceed with rental of the residential property included direction that the lease agreement contain a provision giving the renter first option to purchase the residence for removal from the property.
 - b. No such option was included in the lease agreement.
14. The Grand Jury found that members of the BoS offered the following as justifications for selection of a particular person as renter of the residential property:
 - a. He would be a watchman for landfill and other County properties.
 - b. He has done a good job, and we should take care of our own.
 - c. He has offered a good rent.
 - d. He will take care of it, and he has the capability of fixing it up, making it better.

- e. He will clean up all around.
 - f. He will assist with paleontology and provide security for the museum.
 - g. Security for the museum would cost more than the difference between the offered rent and a higher amount which might be obtained.
15. The Grand Jury found that none of the above justifications are included in the residential property lease agreement as requirements for the renter. The responsibilities specified in the agreement are those customarily required of any residential property renter.
16. The Grand Jury found that the contractor for operation of the landfill is responsible for all landfill property, including the acquired undeveloped parcels.
17. The Grand Jury found that the most important factors considered in determining the fair market value (FMV) rental amount for residential property are number of bedrooms, total square footage, condition, type of flooring, with or without air conditioning, and location.
18. The Grand Jury found that the rental amount offered and agreed upon for the residential property is far below the FMV for the property, even adjusted for landfill nuisances.
- a. The average published rental amount for 4 bedroom, 2 bathroom, less than 2,000 square feet houses without acreage in this area is \$1,500 per month.
 - b. The average published rental amount for 5 bedroom, 2 bathroom, up to 2,200 square feet houses without acreage in this area is \$1,665 per month.
 - c. The average published rental amount for 6 bedroom, 2 bathroom, up to 2,900 square feet houses without acreage in this area is \$2,035 per month.
 - d. The FMV rental amount for the 6 bedroom, 3 bathroom, 4,400 square feet house on 4.95 acres, adjusted for landfill nuisances, is estimated between \$2,000 and \$2,500 per month.
19. The Grand Jury found that the BoS excluded the lease of the residential property from normally required bidding procedures by following the procedures outlined in Madera County Code Section 2.92.020, as follows:
- a. posting a notice, dated December 4, 2009, in the office of the county clerk;
 - b. publishing the notice one time in a newspaper of general circulation within the county;
 - c. establishing a rental amount less than \$2,000 per month; and
 - d. limiting the term of the rental agreement to 5 years.
20. The Grand Jury found that Section 28 of the lease agreement for the residential property provides for month-to-month tenancy after expiration of the 5 year term.
21. The Grand Jury found that Section 20 of the lease agreement acknowledges that the residential property and all improvements on the property were in good order, repair and condition as of the date of occupancy.
22. The Grand Jury found that the renter of the residential property requested and utilized County equipment to perform weed abatement on the property.

23. The Grand Jury found that the Fossil Discovery Center has had no County employees as workers or volunteers since opening.
24. The Grand Jury found that the Fossil Discovery Center has no paid or volunteer security service.
25. The Grand Jury found that the District 1 Supervisor did not fully participate in the decision to lease the residential property to the selected renter.
 - a. At the December 1, 2009 BoS meeting, the District 1 Supervisor supported renting the property for 3 to 6 months while the County actively pursued the sale and removal of the residence.
 - b. The District 1 Supervisor was absent from the December 15, 2009 BoS meeting at which the lease agreement was acted upon.
26. The Grand Jury found that the required annual weed abatement on the undeveloped and abandoned properties had not been performed as of several days past the May 1, 2012 deadline.
27. The Grand Jury found that, under direction from a County official, County employees delivered a tractor and equipment which belong to the County to be used by the residential property renter for maintenance of the leased property.

Conclusions:

1. The Grand Jury concluded that the County owns property which is currently idle and which could be offered to rent for appropriate uses.
2. The Grand Jury concluded that the deteriorating structures on the acquired properties present potential safety hazards and liability exposure for the County.
3. The Grand Jury concluded that the County has not monitored the maintenance of its acquired properties to minimize risk and liability exposure.
4. The Grand Jury concluded that four members of the BoS had pre-selected the same individual to rent the residential property prior to the decision being made that the property should be rented.
5. The Grand Jury concluded that other potential renters were excluded from the residential property rental opportunity by the County's failure to adequately advertise the opportunity, as well as the tailoring of selection criteria to fit a particular individual.
6. The Grand Jury concluded that members of the BoS had no factual basis nor reasonable expectation that any of the justifications given for selection of a particular individual as renter for the residential property would become reality.

7. The Grand Jury concluded that the County made no attempt to establish the FMV rental amount for the residential property or to maximize the revenue to be derived from it.
8. The Grand Jury concluded that the BoS knew, or should have known, that the FMV for rental of the 5 acres with a large residence was much greater than \$900 per month, given that 18 months later it rented out 3 undeveloped acres located nearby for \$1,500 per month.
9. The Grand Jury concluded that, under the terms of the rental agreement, the renter could be permitted to rent the residential property at the rate of \$900 per month for more than 10 years, until it is needed for expansion of the landfill.
10. The Grand Jury concluded that the County has lost \$32,000 to \$47,000 in potential rental revenue from the residential property since December, 2009. If the current lease agreement continues unchanged for the full 5 years, the County will lose an additional \$33,000 to \$49,000. If the residential property continues to be rented at the current rate until it is needed for expansion of the landfill, the total loss of potential revenue to the County could exceed \$200,000. This is a significant gift of public funds.
11. The Grand Jury concluded that permitting non-employees to use County equipment exposes the County to potential liability.
12. The Grand Jury concluded that the BoS has exercised poor stewardship in its utilization and management of the acquired properties adjacent to the landfill.

Recommendations:

1. The Grand Jury recommends that the County clear its acquired properties of all deteriorating structures and safety hazards to reduce exposure to potential liability.
2. The Grand Jury recommends that the County offer its idle properties to rent for suitable purposes and possibly generate additional revenue for the County.
3. The Grand Jury recommends that the County not allow the use of County equipment for personal purposes.
4. The Grand Jury recommends that the BoS immediately solicit bids through the County's normal bidding procedures for rental of the residential property, seeking a rental amount which reflects the FMV adjusted appropriately for minimal landfill nuisances.
5. The Grand Jury recommends that the next Grand Jury continue to monitor the utilization and management of the acquired properties adjacent to the landfill, particularly the rented residential property.

Respondents: written response required pursuant to PC 933(c)

Madera County Board of Supervisors
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Informational: response optional

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