



INTERNAL AUDIT DEPARTMENT
COUNTY OF ORANGE

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**LIMITED REVIEW OF LEASE REVENUE
FOR T.B.W. COMPANY
DBA DANA WEST MARINA**

For the Period
February 1, 2004 through January 31, 2005

AUDIT NUMBER: 2539

REPORT DATE: MARCH 6, 2006

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**LIMITED REVIEW OF LEASE REVENUE FOR
T.B.W. COMPANY dba DANA WEST MARINA**

For the Period
February 1, 2004 through January 31, 2005

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Transmittal Letter

Audit No. 2539

March 6, 2006

TO: George Carvalho, Director
Dana Point Harbor Department (DPHD)

FROM: Peter Hughes, Ph.D., CPA, Director
Internal Audit Department

SUBJECT: Limited Review of Lease Revenue for T.B.W. Company dba Dana West Marina,
Parcel HA78H-24-20, 22

We have completed our limited review of lease revenue for T.B.W. Company dba Dana West Marina (TBW) for the period February 1, 2004 through January 31, 2005. The final report is attached along with your responses to our recommendations.

Please note, beginning in January 2005, we implemented a more structured and rigorous Follow-Up audit process in response to recommendations and suggestions made by the Audit Oversight Committee (AOC) and the Board of Supervisors (BOS). As a matter of policy, our first Follow-Up Audit will now begin no later than six months upon the official release of the report. The AOC and BOS expect that audit recommendations will typically be implemented within six months and often sooner for significant and higher risk issues. Our second Follow-Up Audit will now begin at 12 months from the release of the original report, by which time all audit recommendations are expected to be addressed and implemented.

At the request of the AOC, we are to bring to their attention any audit recommendations we find still not implemented or mitigated after the second Follow-Up Audit. The AOC requests that such open issues appear on the agenda at their next scheduled meeting for discussion.

As the Director of Internal Audit, I now submit a monthly audit status report to the Board of Supervisors (BOS) where I detail any material and significant audit findings released in reports during the prior month and the implementation status of audit recommendations as disclosed by our Follow-Up Audits. Accordingly, the results of this audit will be included in a future status report to the BOS.

As always, the Internal Audit Department is available to partner with the Dana Point Harbor Department so they can successfully implement or mitigate difficult audit recommendations. Please feel free to call me should you wish to discuss any aspect of our audit report or recommendations.

A Follow-Up Audit Report Form will shortly follow the distribution of this report. The Dana Point Harbor Department should complete this template as our audit recommendations are implemented. When we perform our Follow-Up Audit approximately six months from the date of this report, we will need to obtain the completed document to facilitate our review.

Additionally, we will be forwarding to the Dana Point Harbor Department a Customer Survey of Audit Services for completion. Please complete the survey and return it to Renee Aragon, Executive Secretary, Internal Audit Department. We appreciate the courtesy and cooperation of your staff during our review.

Attachment

Other recipients of this report:

Members, Board of Supervisors

Members, Audit Oversight Committee

Thomas G. Mauk, County Executive Officer

Paul Lawrence, Manager, DPHD/Leasing & Revitalization

Mary Fitzgerald, Manager, RDMD/Accounting Services

Betsy Estrada, Chief, RDMD/Accounting Services/External Claims/HB&P Programs

Foreperson, Grand Jury

Darlene J. Bloom, Clerk of the Board of Supervisors



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INTERNAL AUDITOR'S REPORT

Audit No. 2539

March 6, 2006

TO: George Carvalho, Director
Dana Point Harbor Department (DPHD)

SUBJECT: Limited Review of Lease Revenue for T.B.W. Company dba Dana West Marina
Parcel HA78H-24-20, 22

We have performed a limited review of certain records and documents for the year ended January 31, 2005, pertinent to the lease agreement (Lease Agreement) between the County of Orange (County) and for T.B.W. Company dba Dana West Marina (TBW), dated October 21, 1975, as amended. The Lease Agreement is primarily for the operation of the Dana Point West Marina located at Dana Point Harbor.

The primary purpose of our review is to determine whether TBW's records adequately supported their monthly gross receipts reported to the County. We also reviewed compliance with certain other provisions of the Agreement, such as accounting methods and payment procedures.

Based on our limited review, we find that TBW has retained sufficient documentation to adequately support monthly gross receipts reported to the County. **No material weaknesses or significant issues were identified.** However, we did identify additional rent of **\$50,115** owed to the County. We also identified **29** control findings related to compliance with the Agreement or improvements to internal controls that are noted in the Detailed Observations, Recommendations and Management Responses section of this report. See Attachment A for a description of report item classifications.

We appreciate the courtesy and cooperation extended to us by the personnel at TBW, DPHD, and RDMD/Accounting Services. If you have any questions regarding our limited review of lease revenue, please call me, Eli Littner, Deputy Internal Auditor, at (714) 834-5899, or Autumn McKinney, Audit Manager, at (714) 834-6106.

Peter Hughes, Ph.D., CPA
Director, Internal Audit

Attachment A – Report Item Classifications

Attachment B – DPHD Management Response

Distribution Pursuant to Audit Oversight Committee Procedure No. 1:

Members, Board of Supervisors

Members, Audit Oversight Committee

Thomas G. Mauk, County Executive Officer

Paul Lawrence, Manager, DPHD/Leasing & Revitalization

Mary Fitzgerald, Manager, RDMD/Accounting Services

Betsy Estrada, Chief, RDMD/Accounting Services/External Claims/HB&P Programs

Foreperson, Grand Jury

Darlene J. Bloom, Clerk of the Board of Supervisors



EXECUTIVE SUMMARY

OBJECTIVES

The Internal Audit Department conducted a limited review of lease revenue for T.B.W. Company dba Dana West Marina (TBW) for the primary purpose of determining whether TBW's records adequately supported their monthly gross receipts reported to the County.

BACKGROUND

The County of Orange entered into a 30-year lease agreement (Lease Agreement) with T.B.W. Company dba Dana West Marina, dated October 21, 1975, for the operation of the Dana Point West Marina located at Dana Point Harbor. The West Marina includes 980 boat slips, 40 wet storage spaces, and 51 dry storage spaces. The West Marina also provides other boat-related services and has entered into sublease agreements with the following entities to provide optional services as specified in the Lease Agreement:

- Aventura Sailing Association, Inc.
- BEI Marine Electric
- Dana West Yacht Club
- Dream Catcher Yachts
- Dana Point Yoga Center
- Noel Marina Canvas & Upholstery
- Ship to Shore Insurance Agency

In 2004, TBW and its subleases generated over \$6 million in gross receipts and paid the County approximately \$1.2 million in rent payments. The Lease Agreement expires October 31, 2005. The County has entered into a management agreement with TBW for the continued operation of the West Marina commencing on November 1, 2005.

SCOPE

Our review was limited to certain records and documents that support TBW's gross receipts reported to the County for the period from February 1, 2004 to January 31, 2005. We also reviewed compliance with certain other provisions of the Lease Agreement, such as accounting methods and payment procedures. Our review included inquiry, auditor observation, and limited testing for assessing the adequacy of documentation and ensuring completeness of reported gross receipts.

We performed separate reviews of the following subleases and the results of those reviews will be presented in separate reports to be issued after this report:

- Aventura Sailing Association Inc. (Audit No. 2564)
- Dana West Yacht Club (Audit No. 2561)
- Dream Catcher Yachts (Audit No. 2542)
- Noel Marina Canvas & Upholstery (Audit No. 2562)
- Ship to Shore Insurance Agency (Audit No. 2560)

We did not perform a review of BEI Marine Electric as its sublease terminated after our review period and revenue generated was minimal. We also did not perform a review of Dana Point Yoga Center as only fixed building rent was reported to the County for this sublease (see related Finding No. 24 below in the Detailed Observations section of this report).



CONCLUSION

Based on our limited review, we find that TBW has retained sufficient documentation to adequately support monthly gross receipts reported to the County. **No material weaknesses or significant issues were identified.** However, we did identify additional rent of **\$50,115** owed to the County. We also identified **29** control findings related to compliance with the Lease Agreement or improvements to internal controls that are noted in the Detailed Observations, Recommendations and Management Responses section of this report. See Attachment A for a description of report item classifications.



DETAILED OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

Summary of Rent Owed

TBW owes the County **\$50,115** in additional rent as follows:

Finding No. 1 - Incorrect Rent Percentage - Used Boat Commissions: \$19,085
Finding No. 3 - Incorrect Rent Percentage - Hull Care vs. Retail Services: \$3,971
Finding No. 5 - Fair Value of Employee Slip Rentals: \$13,560
Finding No. 8 - Delinquent/Unpaid Slip Rents: \$9,955
Finding No. 10 - Underreported Sublessee Building Rents: \$2,424
Finding No. 12 - Sublessee Fixed Building Rents Reduced for Utilities: \$198
Finding No. 14 - Laundry Services Reported at Net Amount: \$234
Finding No. 18 - Unreported Advertising Revenue: \$688

Several of the above findings also contain recommendations for TBW to calculate and pay similar amounts due for periods before and/or after our calculations.

We are also expecting additional rent to be owed as a result of our audits of TBW's subleases. The results of the sublease audits will be reported in separate audit reports as listed above in the Scope section of the Executive Summary.

Incorrect Rent Percentages Used

In addition to a fixed monthly building rent, TBW's sublessees are required to report their gross receipts to TBW and pay percentage rent to the County. Clause 10 of the Lease Agreement identifies the rent categories and related rent percentages.

Finding Nos. 1, 2, 3, and 4: TBW used an incorrect percentage to calculate the percentage rent for three subleases. These incorrect percentages were not identified as a finding in our prior audit performed in 2000:

- Dream Catcher Yachts: This sublessee sells new and used boats. For used boats, the sublessee acts as a broker and earns a commission/brokerage. For new boat sales, the sublessee earns the difference between the sales price paid by the customer and the costs (such as amounts paid to the boat manufacturer, sales tax, etc.). Clause 4.3.1 of the Sublease, dated 1/03/03, states that Dream Catcher will pay TBW rent of "5% of Gross Income." However, the Lease Agreement between the County and TBW requires rent to the County of 10% of the used boat commissions and 1.5% of the new boat sales prices. TBW paid rent of 5% of the commissions for both new and used boat sales. For the used boat sales, we calculated additional rent owed of **\$19,085** (5% difference x \$381,709) for the period 9/01/02 (sublease inception) through 8/31/05. For the new boat sales, we are reporting the additional rent owed (currently estimated at **\$60,000**) for the same period in a separate audit report of Dream Catcher Yachts (Audit No. 2542) to be issued after this audit report.
- BEI Marine Electric and Noel Marine Canvas & Upholstery: These sublessees provide canvas and upholstery or electrical services. Clause 4.3 of the Sublease, dated 2/6/03, states BEI Marine Electric will pay TBW rent of "5% of Gross Receipts." Clause 1.12 of the Sublease, dated 7/13/04, states Noel Marine Canvas & Upholstery will pay TBW "5% of the gross receipts from operations on and from the premises." TBW reported these sublessee's gross receipts as "Hull Care Services" and paid 5% rent on the gross receipts. DPHD informed us that hull care services are typically performed below water on a boat's hull, and canvas or



electrical services are not hull care services. Instead, TBW should have reported the gross receipts as Retail Sales and Services, which is a 10% rent category. As a result, additional rent of **\$926** (5% x \$18,526) for BEI Marine Electric and **\$3,045** (5% x \$60,892) for Noel Marine Canvas & Upholstery is owed for the period 1/1/04 – 12/31/04.

Recommendation No. 1: We recommend that DPHD require TBW to pay additional rent owed of **\$19,085** for used boat commissions during the period 9/01/02 - 8/31/05.

DPHD Response: DPHD concurs; estimated completion date is July 28, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Recommendation No. 2: We also recommend that DPHD require TBW to calculate and pay rent owed for used boat commissions during the period 8/31/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is July 28, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Recommendation No. 3: We recommend that DPHD require TBW to pay rent owed of **\$3,971** for BEI Marine Electric's and Noel Marine Canvas & Upholstery's gross receipts incorrectly reported as hull care services during the period 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is April 21, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Recommendation No. 4: We also recommend that DPHD require TBW to calculate and pay rent owed for BEI Marine Electric's and Noel Marine Canvas & Upholstery's gross receipts incorrectly reported as hull care services during the period since inception of the subleases (2/01/03 and 2/01/98, respectively) through 12/31/03 and during the period 1/01/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is May 12, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Fair Rental Value of Employee Slips Rentals

Clause 12 of the General Conditions of the Lease Agreement states that gross receipts shall include "The fair rental value of facilities used by the lessee or his employees for purposes other than business purposes for which the Demised Premises are leased."

Finding Nos. 5 and 6: Six TBW employees are provided slips at less than the fair rental value. One of the employees is living aboard his vessel and does not pay monthly liveaboard fees. Additional rent of \$14,990 (25% x \$59,961) for the fair rental value is owed to the County for the period 11/01/96 – 1/31/05. This amount owed can be reduced by \$1,430 paid by TBW during the period 4/1/03 – 1/31/05 for the increased \$65/month "dockmaster facility" fee as discussed in Finding No. 7 below. The net amount owed is **\$13,560** (\$14,990 – \$1,430). A detailed schedule of the calculation was provided to DPHD and TBW.

Recommendation No. 5: We recommend that DPHD require TBW to report the fair rental value of employee slip rentals and liveaboard fees as gross receipts to the County and pay rent owed of **\$13,560** for the period 11/1/96 - 1/31/05.



DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Recommendation No. 6: We also recommend that DPHD require TBW to calculate and pay amounts owed for the fair rental value of employee slip rentals for the period 2/01/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Finding No. 7: Beginning with the April 2003 monthly gross receipts report submitted to the County, TBW increased the dockmaster facility fee reported from \$25/month to \$90/month. We were informed by TBW that this was not due to an increase in the dockmaster facility fee but instead was the amount paid by an employee for a slip rental (\$65/month).

Recommendation No. 7: We recommend that DPHD require TBW to add a separate line item on future monthly gross receipts reports for reporting the fair rental value of employee slip rents.

DPHD Response: DPHD determined that this requirement is not necessary. Effective 11-1-05, there are no special rates for TBW employee slips. All employees with slips will pay the same rate as any other customer.

Auditor Comment: We accept this response. No further work required.

Delinquent/Unpaid Slip and Building Rents

Clause 12 of the General Conditions of the Lease Agreement states that gross receipts shall include the "...charges made by Lessee for the sale or rendition on or from the Demised Premises of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not". Clause 12 further states "...bad debt losses shall not be deducted from gross receipts".

Finding Nos. 8 and 9: The Lease Agreement requires rents to be reported as gross receipts when billed. TBW reported slip rents as gross receipts when payments were received rather than when billed. Therefore, any slip and building rents that were delinquent and not paid were not reported to the County. We identified \$4,049 in delinquent slip rents from current slip tenants as of December 31, 2004, and \$27,169 in delinquent rents from former slip tenants (going back to the year 2000), \$2,904 in delinquent rent from a former building tenant (Southcoast Shipyard), and \$5,718 delinquent building rent from a former unapproved building tenant (Richard Clinton). Based on this, additional rent of **\$9,955** (25% of \$4,049 + 25% of \$27,169 + 15% of \$2,904 + 30% of \$5,718) is owed to the County as of 12/31/04. The accounting methodology will not be an ongoing issue and is addressed by the new management agreement effective on 11/1/05.

Recommendation No. 8: We recommend that DPHD require TBW to pay **\$9,955** in rent owed for delinquent and unpaid slip rents as of 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is May 26, 2006.

Recommendation No. 9: We also recommend that DPHD require TBW to calculate and pay additional rent owed from delinquent slip rents during the period 1/1/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is May 26, 2006.



Underreported Sublessee Building Rents

TBW charges most of its sublessees a fixed monthly building rent plus a percentage of gross receipts (the exception is Dana Point Yoga Center discussed below in Finding No. 24). According to Clause 5.B of the Lease Agreement, TBW is required to pay the County 15% of the sublessee fixed building rents.

Finding Nos. 10 and 11: TBW only reported 85% of the fixed building rent received from its sublessees as gross receipts and therefore, paid the County 15% of the 85% amount. TBW informed us that it does this to recoup the 15% paid to the County from its sublessees. This reduction is not allowed by the Lease Agreement. As a result, for the month of December 2004, sublessee building rent of \$1,348 was underreported to the County and rent of \$202 (15% of \$1,348) is owed. The month of December 2004 is representative of our audit period and therefore, we calculate rent of **\$2,424** (\$202 x 12 months) is owed for the audit period of 2/01/04 – 1/31/05.

Recommendation No. 10: We recommend that DPHD require TBW to pay rent owed of **\$2,424** as a result of underreported sublessee fixed building rents for the audit period of 2/01/04 – 1/31/05.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Recommendation No. 11: We also recommend that DPHD require TBW to calculate and pay amounts owed for the periods before and after the audit period (1/01/00 – 1/31/04 and 2/01/05 – 10/31/05) as a result of the underreported sublessee fixed building rents.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Finding No. 12 and 13: TBW reduces three of its sublessee's fixed building rent reported to the County for estimated utility usage (Dream Catcher Yachts, Noel Marine Canvas & Upholstery, and BEI Marine Electric). This reduction is not authorized by the Lease Agreement. As a result, for the month of December 2004, additional rent of \$16.50 (15% of \$110) owed to the County. The month of December 2004 is representative of our audit period and therefore, we calculate rent of **\$198** (\$16.50 x 12 months) is owed for the audit period of 2/01/04 – 1/31/05.

Recommendation No. 12: We recommend that DPHD require TBW to pay additional rent owed of **\$198** resulting from sublessee fixed building rents reduced for estimated utility charges during the audit period of 2/01/04 – 1/31/05.

DPHD Response: DPHD concurs; estimated completion date is March 31, 2006.

Recommendation No. 13: We also recommend that DPHD require TBW to calculate and pay amounts owed for the periods before and after the audit period (1/1/00 – 1/31/04 and 2/1/05 – 10/31/05) resulting from sublessee fixed building rents reduced for estimated utilities.

DPHD Response: DPHD concurs; estimated completion date is March 31, 2006.

Sub-Operators – Laundry, Vending, and Telephone

TBW has agreements with sub-operators to provide various services at the marina (e.g. telephone, laundry and vending machines). Clause 12.D of the Lease Agreement states that gross receipts shall include "all sums deposited in any coin operated vending machine (except telephones), regardless of



the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others and regardless of what percentage thereof Tenant is entitled to receive.”

Finding No. 14 and 15: TBW reports the net amount or fee it received from its laundry sub-operator as gross receipts, rather than the laundry sub-operator’s gross receipts. As a result, additional rent of \$234 (5% x \$4,675) for underreported laundry services is owed for the period 1/01/04 – 12/31/04.

Recommendation No. 14: We recommend that DPHD require TBW to pay additional rent owed of \$234 for underreported laundry services during the period 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Recommendation No. 15: We also recommend that DPHD require TBW to calculate and pay additional rent owed from underreported laundry services for the periods 1/01/00 – 12/31/03 and 1/01/05 – 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Finding No. 16: TBW informed us that a slip tenant has placed vending machines on the premises and that TBW does not participate in a percentage of gross receipts. Regardless of ownership, TBW is required to report the gross receipts from vending machines. TBW indicated that it does not know the amount of gross receipts generated by the vending machines but it is most likely immaterial.

Recommendation No. 16: We recommend that DPHD determine and communicate to TBW the appropriate protocol for vending machines under the new management agreement effective 11/01/05.

DPHD Response: DPHD concurs; the vendor has already been notified of the reporting requirements and reporting of gross sales has commenced.

Finding No. 17: TBW informed us that it did not receive any commissions from pay telephones owned by a sub-operator during our audit period and was unable to provide documentation to support that no telephone commissions were received. A periodic statement from the sub-operator should be requested and retained by TBW.

Recommendation No. 17: We recommend that DPHD require TBW to obtain and retain periodic commission statements from the telephone sub-operator to support future pay phone activity.

DPHD Response: The pay telephones in Dana Point Harbor are present primarily to provide emergency phone service to the public. In other areas of the harbor, the County must pay for the phones to be on the premises because they do not generate enough revenue for the phone company to bear the cost of the phones. Since the phones located in the west basin are currently at no cost to the County, DPHD would not recommend that the vendor supply a gross sales statement. Such a request may result in a current gross sales evaluation by the phone company which could then result in additional cost to the County to keep the phones on the premises.

Auditor Comment: We accept this response. No further work required.



Unreported Advertising Revenue

Clause 10 of the General Conditions of the Lease Agreement requires TBW to report gross receipts from all operations and business conducted on or from the premises.

Finding Nos. 18 and 19: TBW did not report miscellaneous advertising revenue it received to the County. Our review of the Lease Agreement noted that percentage rent requirements were not specifically established for these miscellaneous gross receipts. DPHD informed us that 25% is the proper rent percentage. Therefore, rent of **\$688** (25% x \$2,750) is owed for miscellaneous advertising revenue received by TBW during 1/01/04 -12/31/04.

Recommendation No. 18: We recommend that DPHD require TBW to pay additional rent owed of **\$688** for advertising revenue received during 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Recommendation No. 19: We also recommend that DPHD require TBW to pay additional rent owed for advertising revenue received during 1/01/05 – 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Electricity Usage Calculation

Clause 12 of the Lease Agreement allows TBW to exclude from gross receipts payments made by slip tenants for their electricity usage. The Lease Agreement requires TBW to charge the slip tenants the current rate imposed by the utility company.

Finding No. 20: In our sample month of December 2004, TBW used the September 2004 utility rates when calculating electricity charges. As a result, TBW overcharged the slip tenants by \$655 for electricity usage.

Recommendation No. 20: We recommend that DPHD require TBW to use the most current electricity rates when calculating slip tenants' electricity usage charges.

DPHD Response: DPHD concurs; implementation date is March 3, 2006.

Security Deposits

TBW policy requires slip tenants to pay a security deposit equal to one months' slip rent. TBW also collects security deposits for keys issued. Requiring a security deposit from tenants is a good business practice to reduce the risk of loss from delinquent accounts. As of December 31, 2004, TBW had approximately \$500,706 in security deposits recorded in its accounting records.

Security deposits refunded are netted against security deposits collected, and the net change is reported as gross receipts to the County. Slip deposits are reported in a 25% rent category and key deposits are reported in a 5% rent category. Our review of security deposits reported for the audit period of 2/01/04 – 1/31/05 noted the following:

Finding Nos. 21 and 22: TBW needs to develop a more accurate listing of security deposits collected, refunded, and held as of 10/31/05:



- TBW offered former slip tenants the option to leave their security deposit with TBW in return for higher priority on the marina's waiting list. These deposits were not allowed by the Lease Agreement as the waiting list is to be maintained on fair terms without preference to prior tenants. DPHD staff have been aware of this waiting list issue and informed us they have been working with TBW to enforce corrective waiting list policies effective 11/1/05 under the new management agreement. A separate manual ledger was used by TBW for these former tenants and the deposits were not recorded on TBW's automated Rent Roll system. We found the manual ledger to be incomplete as several refunds were issued to prior tenants that were not on the manual ledger. As of 12/31/04, 88 former tenants were included on the manual ledger. TBW informed us that it was working to refund the remaining deposits by 10/31/05.
- For the four months of September 2004 through December 2004, security deposit refunds were more than security deposits collected, resulting in a negative security deposit amount for the period of \$15,948. TBW reported zero to the County for slip and key deposit activity for these four months.
- In January 2005, TBW combined slip and key deposit activity and reported \$124 in combined net security deposit activity in the 25% rent category. Our review of TBW's automated Rent Roll system identified net deposit activity for slips and keys of \$2,204. As a result, TBW underreported \$2,080 in slip and key deposits.
- For the eight months of February 2004 through September 2004, TBW estimated the allocation between slip and key deposit refunds that were reported to the County. TBW informed us that at that time, its automated Rent Roll system did not provide an allocation between slip and key deposits refunded. Therefore, TBW estimated the allocation between the two. TBW informed us that later a report was identified in its automated Rent Roll system that provides an accurate allocation of slip and key deposits refunded. TBW stated it is in the process of recalculating calendar year 2003 and 2004 net security deposit activity for slips and keys utilizing the new Rent Roll system report.

Recommendation No. 21: We recommend that DPHD require TBW to prepare an accurate accounting of slip and key security deposits collected, refunded, and held as of 10/31/05 in conjunction with the transfer of security deposits to the County under the new management agreement.

DPHD Response: DPHD concurs; implementation has occurred.

Recommendation No. 22: We recommend that DPHD require TBW to finalize the new waiting list written policies, effective 11/1/05, that DPHD and TBW staff have been working on.

DPHD Response: DPHD concurs; this was being discussed with the Lessee for at least one year prior to the expiration of the 30 year ground lease, and was implemented prior to the TBW lease expiration.

Finding No. 23: TBW did not obtain security deposits totaling \$2,414 for six slips. A sublessee occupies three of the slips and tenants that have a second smaller vessel in the marina occupy the remaining three slips. In addition, TBW did not obtain security deposits totaling \$1,634 from five employees occupying slips. As a result, the Marina did not collect \$4,048 in security deposits.

Recommendation No. 23: We recommend that DPHD require TBW to collect security deposits for all slip tenants, including the \$4,048 identified.



DPHD Response: DPHD concurs; implementation date is March 10, 2006.

Updating Fair Market Rental Values

Finding No. 24: We identified the following conditions relating to updating fair market rental values at the West Marina:

- Two TBW employees were living at the West Marina in building E. We observed a memo written by the County, dated December 3, 1976, that discusses compensation of \$300/year or \$25/month for the “dockmaster’s facilities.” TBW informed us that they believe the \$25 monthly dockmaster facilities compensation to be the fee for employee use of building E. However, DPHD could not find documentation in its files to directly address building E’s use as a residence, the fee associated with building E, and any reference of building E being the “dockmaster’s facilities.” The \$25.00 monthly rent has not been adjusted since 1976. DPHD informed us that the current fair rental value of building E would conservatively be \$3,000 per month. DPHD informed us that effective 11/01/05, building E will no longer be allowed as a residence.
- Dana Point Yoga Center is a sublease of TBW and operates a small yoga studio. Dana Point Yoga Center is owned by a managing partner of TBW. TBW does not report gross receipts for this activity or pay percentage rent to the County for this activity as required by the Lease Agreement. TBW only reports a fixed building rent as gross receipts to the County. Also, the fixed monthly rent of \$395 for this sublease has not changed since the sublease inception on 2/15/98. DPHD informed us that this sublease will be terminated 11/1/05.
- Clause 5.B of the General Conditions to the Lease Agreement states fixed monthly rents should be reported to the County based on rent paid to TBW or fair market rents, whichever is higher. The fixed monthly rent for three subleases (Dana West Yacht Club, Ship to Shore Insurance Agency, and Aventura Sailing Association) have not been increased since 2001. Updated market rents will be addressed by the new Lease Agreements to be developed for the sublessees.

Internal Audit will make no specific recommendation at this time as the above issues will be addressed as a result of the transition from the Lease Agreement to a new Management Agreement effective 11/1/05, and establishment of the County’s Dana Point Harbor Department (DPHD) effective 7/1/05.

Financial Statements

Clause 14 of the Lease Agreement requires TBW to submit, within 90 days after the end of each accounting year, a balance sheet and income statement prepared or audited by a CPA. The CPA must attest that the balance sheet and income statement are an accurate representation of TBW’s records as reported to the United States of America for income tax purposes. In addition, TBW is required to submit a statement certified as to accuracy by a CPA wherein the total gross receipts for the accounting year are classified according to the categories of business established for percentage rental and for any other business conducted on or from the Demised Premises.

Finding No. 25: For the calendar year ending December 31, 2003, TBW submitted financial statements 201 days after the accounting year. The attestation provided by the CPA did not state that the balance sheet and income statement are an accurate representation, as required. In addition, the CPA did not certify sublessee percentage rental. As the Lease Agreement expires on 10/31/05, we are not making any specific recommendation.



Pro-Rated Slip Rent Calculations

Finding No. 26: For the sample month of December 2004, TBW staff incorrectly manually calculated pro-rated slip rent for several tenants resulting in a minor loss of \$34 in slip rent. TBW's automated Rent Roll system has the capability to calculate pro-rated slip rent and report losses from incorrect manual calculations.

Recommendation No. 26: We recommend that DPHD require TBW to utilize its Rent Roll system for the calculation of pro-rated rent.

DPHD Response: DPHD concurs; implementation date is March 24, 2006.

Segregation of Duties and Documented Supervisory Review

Duties of billing, cash receipting, recording, and making adjustments to customer accounts should be adequately segregated to help prevent opportunities for misappropriation of monies. When duties cannot be adequately segregated, detailed supervisory reviews should be performed and documented. These controls will be important when the new management agreement begins on 11/1/05.

Finding No. 27 and 28: We noted two employees, who lived together on the premises, have the authority to perform all of the duties noted above. We were informed that TBW "spot-checks" certain records; however, this review is not documented. To ensure that gross receipts are reported completely and accurately, TBW should perform and document a detailed review of records supporting gross receipts, particularly adjustments that would reduce gross receipts.

Recommendation No. 27: We recommend that DPHD require TBW to segregate, to the extent possible, the duties of billing, cash receipting, recording rent payments, and making customer adjustments.

DPHD Response: DPHD concurs; and has worked with TBW to create a comprehensive policy and procedures manual (including a financial policies & procedures manual), which was implemented on 11-1-05 with the commencement of the new management agreement.

Recommendation No. 28: We recommend that DPHD require TBW to perform and document detailed supervisory reviews of records supporting gross receipts reported to the County, particularly adjustments that reduce or adjust gross receipts.

DPHD Response: DPHD concurs; implementation date is June 9, 2006.

Reciprocal Slip Usage

TBW currently reserves a Guest Slip for transient (temporary) guests and as a convenience to tenants of a separate marina also managed by TBW.

Finding No. 29: Tenants of other TBW managed marinas are not charged a fee for reciprocal usage. DPHD has indicated that this reciprocal arrangement will no longer be authorized once the new management agreement begins on 11/1/05. As the Lease Agreement expires on 10/31/05, we are not making any specific recommendation.



ATTACHMENT A: Report Item Classifications

For purposes of reporting our audit observations and recommendations, we have classified audit report items into three distinct categories:

- **Material Weaknesses:**

Audit findings or a combination of Significant Issues that can result in financial liability and exposure to a department/agency and to the County as a whole. Management is expected to immediately address “Material Weaknesses” brought to their attention.

- **Significant Issues:**

Audit findings or a combination of Control Findings that represent a significant deficiency in the design or operation of processes or internal controls. Significant Issues do not present a material exposure throughout the County. They generally will require prompt corrective actions.

- **Control Findings:**

Audit findings that require management’s corrective action to implement or enhance processes and internal controls. Control Findings are expected to be addressed within our follow-up process of six months, but no later than twelve months.



ATTACHMENT B: DPHD Management Responses



COUNTY OF ORANGE **DANA POINT HARBOR DEPARTMENT**

George A. Carvalho, Director
24650 Dana Point Harbor Drive
Dana Point, CA 92629

Telephone: (949) 923-3798
Fax: (949) 496-1225

DATE: March 1, 2006
TO: Peter Hughes, Ph.D., CPA, Director Internal Audit Department
FROM: George A. Carvalho, Director Dana Point Harbor Department
SUBJECT: DRAFT: Limited Review of Lease Revenue for T.B.W. Company dba Dana West Marina (Audit Number 2539)
CC:

Attached are responses to the findings and recommendations of your audit: "Limited Review of Lease Revenue for T.B.W. Company dba Dana West Marina" (Audit Number 2539). We concur with your recommendations with the exception of numbers 7 & 17.

I would like to express my appreciation for your department's work regarding the audit of the TBW Company and its former sub-tenants.

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Dana Point Harbor Department Response

Incorrect Rent Percentages Used

In addition to a fixed monthly building rent, TBW's sublessees are required to report their gross receipts to TBW and pay percentage rent to the County. Clause 10 of the Lease Agreement identifies the rent categories and related rent percentages.

Finding Nos. 1, 2, 3, and 4: TBW used an incorrect percentage to calculate the percentage rent for three subleases. These incorrect percentages were not identified as a finding in our prior audit performed in 2000:

- **Dream Catcher Yachts:** This sublessee sells new and used boats. For used boats, the sublessee acts as a broker and earns a commission/brokerage. For new boat sales, the sublessee earns the difference between the sales price paid by the customer and the costs (such as amounts paid to the boat manufacturer, sales tax, etc.). Clause 4.3.1 of the Sublease, dated 1/03/03, states that Dream Catcher will pay TBW rent of "5% of Gross Income." However, the Lease Agreement between the County and TBW requires rent to the County of 10% of the used boat commissions and 1.5% of the new boat sales prices. TBW paid rent of 5% of the commissions for both new and used boat sales. For the used boat sales, we calculated additional rent owed of **\$19,085** (5% difference x \$381,709) for the period 9/01/02 (sublease inception) through 8/31/05. For the new boat sales, we are reporting the additional rent owed (currently estimated at **\$60,000**) for the same period in a separate audit report of Dream Catcher Yachts (Audit No. 2542) to be issued after this audit report.
- **BEI Marine Electric and Noel Marine Canvas & Upholstery:** These sublessees provide canvas and upholstery or electrical services. Clause 4.3 of the Sublease, dated 2/6/03, states BEI Marine Electric will pay TBW rent of "5% of Gross Receipts." Clause 1.12 of the Sublease, dated 7/13/04, states Noel Marine Canvas & Upholstery will pay TBW "5% of the gross receipts from operations on and from the premises." TBW reported these sublessee's gross receipts as "Hull Care Services" and paid 5% rent on the gross receipts. DPHD informed us that hull care services are typically performed below water on a boat's hull, and canvas or electrical services are not hull care services. Instead, TBW should have reported the gross receipts as Retail Sales and Services, which is a 10% rent category. As a result, additional rent of **\$926** (5% x \$18,526) for BEI Marine Electric and **\$3,045** (5% x \$60,892) for Noel Marine Canvas & Upholstery is owed for the period 1/1/04 – 12/31/04.

Recommendation No. 1: We recommend that DPHD require TBW to pay additional rent owed of **\$19,085** for used boat commissions during the period 9/01/02 - 8/31/05.

DPHD Response: DPHD concurs; estimated completion date is July 28, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

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Dana Point Harbor Department Response

Recommendation No. 2: We also recommend that DPHD require TBW to calculate and pay rent owed for used boat commissions during the period 8/31/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is July 28, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Recommendation No. 3: We recommend that DPHD require TBW to pay rent owed of \$3,971 for BEI Marine Electric's and Noel Marine Canvas & Upholstery's gross receipts incorrectly reported as hull care services during the period 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is April 21, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Recommendation No. 4: We also recommend that DPHD require TBW to calculate and pay rent owed for BEI Marine Electric's and Noel Marine Canvas & Upholstery's gross receipts incorrectly reported as hull care services during the period since inception of the subleases (2/01/03 and 2/01/98, respectively) through 12/31/03 and during the period 1/01/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is May 12, 2006 (this completion is dependent upon negotiations between TBW and a former sub-tenant).

Fair Rental Value of Employee Slips Rentals

Clause 12 of the General Conditions of the Lease Agreement states that gross receipts shall include "The fair rental value of facilities used by the lessee or his employees for purposes other than business purposes for which the Demised Premises are leased."

Finding Nos. 5 and 6: Six TBW employees are provided slips at less than the fair rental value. One of the employees is living aboard his vessel and does not pay monthly Liveaboard fees. Additional rent of \$14,990 (25% x \$59,961) for the fair rental value is owed to the County for the period 11/01/96 – 1/31/05. This amount owed can be reduced by \$1,430 paid by TBW during the period 4/1/03 – 1/31/05 for the increased \$65/month "Dockmaster facility" fee as discussed in Finding No. 7 below. The net amount owed is \$13,560 (\$14,990 – \$1,430). A detailed schedule of the calculation was provided to DPHD and TBW.

Recommendation No. 5: We recommend that DPHD require TBW to report the fair rental value of employee slip rentals and Liveaboard fees as gross receipts to the County and pay rent owed of \$13,560 for the period 11/1/96 - 1/31/05.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

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Dana Point Harbor Department Response

Recommendation No. 6: We also recommend that DPHD require TBW to calculate and pay amounts owed for the fair rental value of employee slip rentals for the period 2/01/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Finding No. 7: Beginning with the April 2003 monthly gross receipts report submitted to the County, TBW increased the Dockmaster facility fee reported from \$25/month to \$90/month. We were informed by TBW that this was not due to an increase in the Dockmaster facility fee but instead was the amount paid by an employee for a slip rental (\$65/month).

Recommendation No. 7: We recommend that DPHD require TBW to add a separate line item on future monthly gross receipts reports for reporting the fair rental value of employee slip rents.

DPHD Response: DPHD determined that this requirement is not necessary. Effective 11-1-05, there are no special rates for TBW employee slips. All employees with slips will pay the same rate as any other customer.

Delinquent/Unpaid Slip and Building Rents

Clause 12 of the General Conditions of the Lease Agreement states that gross receipts shall include the "...charges made by Lessee for the sale or rendition on or from the Demised Premises of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not". Clause 12 further states "...bad debt losses shall not be deducted from gross receipts".

Finding Nos. 8 and 9: The Lease Agreement requires rents to be reported as gross receipts when billed. TBW reported slip rents as gross receipts when payments were received rather than when billed. Therefore, any slip and building rents that were delinquent and not paid were not reported to the County. We identified \$4,049 in delinquent slip rents from current slip tenants as of December 31, 2004, and \$27,169 in delinquent rents from former slip tenants (going back to the year 2000), \$2,904 in delinquent rent from a former building tenant (Southcoast Shipyard), and \$5,718 delinquent building rent from a former unapproved building tenant (Richard Clinton). Based on this, additional rent of **\$9,955** (25% of \$4,049 + 25% of \$27,169 + 15% of \$2,904 + 30% of \$5,718) is owed to the County as of 12/31/04. The accounting methodology will not be an ongoing issue and is addressed by the new management agreement effective on 11/1/05.

Recommendation No. 8: We recommend that DPHD require TBW to pay **\$9,955** in rent owed for delinquent and unpaid slip rents as of 12/31/04.

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Dana Point Harbor Department Response

DPHD Response: DPHD concurs; estimated completion date is May 26, 2006.

Recommendation No. 9: We also recommend that DPHD require TBW to calculate and pay additional rent owed from delinquent slip rents during the period 1/1/05 - 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is May 26, 2006.

Underreported Sublessee Building Rents

TBW charges most of its sublessees a fixed monthly building rent plus a percentage of gross receipts (the exception is Dana Point Yoga Center discussed below in Finding No. 24). According to Clause 5.B of the Lease Agreement, TBW is required to pay the County 15% of the sublessee fixed building rents.

Finding Nos. 10 and 11: TBW only reported 85% of the fixed building rent received from its sublessees as gross receipts and therefore, paid the County 15% of the 85% amount. TBW informed us that it does this to recoup the 15% paid to the County from its sublessees. This reduction is not allowed by the Lease Agreement. As a result, for the month of December 2004, sublessee building rent of \$1,348 was underreported to the County and rent of \$202 (15% of \$1,348) is owed. The month of December 2004 is representative of our audit period and therefore, we calculate rent of **\$2,424** (\$202 x 12 months) is owed for the audit period of 2/01/04 – 1/31/05.

Recommendation No. 10: We recommend that DPHD require TBW to pay rent owed of **\$2,424** as a result of underreported sublessee fixed building rents for the audit period of 2/01/04 – 1/31/05.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Recommendation No. 11: We also recommend that DPHD require TBW to calculate and pay amounts owed for the periods before and after the audit period (1/01/00 – 1/31/04 and 2/01/05 – 10/31/05) as a result of the underreported sublessee fixed building rents.

DPHD Response: DPHD concurs; estimated completion date is April 12, 2006.

Finding Nos. 12 and 13: TBW reduces three of its sublessee's fixed building rent reported to the County for estimated utility usage (Dream Catcher Yachts, Noel Marine Canvas & Upholstery, and BEI Marine Electric). This reduction is not authorized by the Lease Agreement. As a result, for the month of December 2004, additional rent of \$16.50 (15% of \$110) owed to the County. The month of December 2004 is representative of our audit period and therefore, we calculate rent of **\$198** (\$16.50 x 12 months) is owed for the audit period of 2/01/04 – 1/31/05.

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Dana Point Harbor Department Response

Recommendation No. 12: We recommend that DPHD require TBW to pay additional rent owed of **\$198** resulting from sublessee fixed building rents reduced for estimated utility charges during the audit period of 2/01/04 – 1/31/05

DPHD Response: DPHD concurs; estimated completion date is March 31, 2006.

Recommendation No. 13: We also recommend that DPHD require TBW to calculate and pay amounts owed for the periods before and after the audit period (1/1/00 – 1/31/04 and 2/1/05 – 10/31/05) resulting from sublessee fixed building rents reduced for estimated utilities.

DPHD Response: DPHD concurs; estimated completion date is March 31, 2006.

Sub-Operators – Laundry, Vending, and Telephone

TBW has agreements with sub-operators to provide various services at the marina (e.g. telephone, laundry and vending machines). Clause 12.D of the Lease Agreement states that gross receipts shall include “all sums deposited in any coin operated vending machine (except telephones), regardless of the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others and regardless of what percentage thereof Tenant is entitled to receive.”

Finding No. 14 and 15: TBW reports the net amount or fee it received from its laundry sub-operator as gross receipts, rather than the laundry sub-operator’s gross receipts. As a result, additional rent of \$234 (5% x \$4,675) for underreported laundry services is owed for the period 1/01/04 – 12/31/04.

Recommendation No. 14: We recommend that DPHD require TBW to pay additional rent owed of **\$234** for underreported laundry services during the period 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Recommendation No. 15: We also recommend that DPHD require TBW to calculate and pay additional rent owed from underreported laundry services for the periods 1/01/00 – 12/31/03 and 1/01/05 – 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Finding No. 16: TBW informed us that a slip tenant has placed vending machines on the premises and that TBW does not participate in a percentage of gross receipts. Regardless of ownership, TBW is required to report the gross receipts from vending machines. TBW indicated that it does not know the amount of gross receipts generated by the vending machines but it is most likely immaterial.

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Dana Point Harbor Department Response

Recommendation No. 16: We recommend that DPHD determine and communicate to TBW the appropriate protocol for vending machines under the new management agreement effective 11/01/05.

DPHD Response: DPHD concurs; the vendor has already been notified of the reporting requirements and reporting of gross sales has commenced.

Finding No. 17: TBW informed us that it did not receive any commissions from pay telephones owned by a sub-operator during our audit period and was unable to provide documentation to support that no telephone commissions were received. A periodic statement from the sub-operator should be requested and retained by TBW.

Recommendation No. 17: We recommend that DPHD require TBW to obtain and retain periodic commission statements from the telephone sub-operator to support future pay phone activity.

DPHD Response: The pay telephones in Dana Point Harbor are present primarily to provide emergency phone service to the public. In other areas of the harbor, the County must pay for the phones to be on the premises because they do not generate enough revenue for the phone company to bear the cost of the phones. Since the phones located in the west basin are currently at no cost to the County, DPHD would not recommend that the vendor supply a gross sales statement. Such a request may result in a current gross sales evaluation by the phone company which could then result in additional cost to the County to keep the phones on the premises.

Unreported Advertising Revenue

Clause 10 of the General Conditions of the Lease Agreement requires TBW to report gross receipts from all operations and business conducted on or from the premises.

Finding Nos. 18 and 19: TBW did not report miscellaneous advertising revenue it received to the County. Our review of the Lease Agreement noted that percentage rent requirements were not specifically established for these miscellaneous gross receipts. DPHD informed us that 25% is the proper rent percentage. Therefore, rent of **\$688** (25% x \$2,750) is owed for miscellaneous advertising revenue received by TBW during 1/01/04 -12/31/04.

Recommendation No. 18: We recommend that DPHD require TBW to pay additional rent owed of **\$688** for advertising revenue received during 1/01/04 – 12/31/04.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

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Dana Point Harbor Department Response

Recommendation No. 19: We also recommend that DPHD require TBW to pay additional rent owed for advertising revenue received during 1/01/05 – 10/31/05.

DPHD Response: DPHD concurs; estimated completion date is March 10, 2006.

Electricity Usage Calculation

Clause 12 of the Lease Agreement allows TBW to exclude from gross receipts payments made by slip tenants for their electricity usage. The Lease Agreement requires TBW to charge the slip tenants the current rate imposed by the utility company.

Finding No. 20: In our sample month of December 2004, TBW used the September 2004 utility rates when calculating electricity charges. As a result, TBW overcharged the slip tenants by \$655 for electricity usage.

Recommendation No. 20: We recommend that DPHD require TBW to use the most current electricity rates when calculating slip tenants' electricity usage charges.

DPHD Response: DPHD concurs; implementation date is March 3, 2006.

Security Deposits

TBW policy requires slip tenants to pay a security deposit equal to one months' slip rent. TBW also collects security deposits for keys issued. Requiring a security deposit from tenants is a good business practice to reduce the risk of loss from delinquent accounts. As of December 31, 2004, TBW had approximately \$500,706 in security deposits recorded in its accounting records.

Security deposits refunded are netted against security deposits collected, and the net change is reported as gross receipts to the County. Slip deposits are reported in a 25% rent category and key deposits are reported in a 5% rent category. Our review of security deposits reported for the audit period of 2/01/04 – 1/31/05 noted the following:

Finding Nos. 21 and 22: TBW needs to develop a more accurate listing of security deposits collected, refunded, and held as of 10/31/05:

- TBW offered former slip tenants the option to leave their security deposit with TBW in return for higher priority on the marina's waiting list. These deposits were not allowed by the Lease Agreement as the waiting list is to be maintained on fair terms without preference to prior tenants. DPHD staff have been aware of this waiting list issue and informed us they have been working with TBW to enforce corrective waiting list policies effective 11/1/05 under the new management agreement. A separate manual ledger was used by TBW for these former tenants and the deposits were not recorded on TBW's automated Rent Roll system. We found the manual ledger to be incomplete as several refunds were issued to prior tenants that were not on the manual ledger. As of 12/31/04, 88 former tenants were included on the manual ledger. TBW informed us that it was working to refund the remaining deposits by 10/31/05.

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Dana Point Harbor Department Response

- For the four months of September 2004 through December 2004, security deposit refunds were more than security deposits collected, resulting in a negative security deposit amount for the period of \$15,948. TBW reported zero to the County for slip and key deposit activity for these four months.
- In January 2005, TBW combined slip and key deposit activity and reported \$124 in combined net security deposit activity in the 25% rent category. Our review of TBW's automated Rent Roll system identified net deposit activity for slips and keys of \$2,204. As a result, TBW underreported \$2,080 in slip and key deposits.
- For the eight months of February 2004 through September 2004, TBW estimated the allocation between slip and key deposit refunds that were reported to the County. TBW informed us that at that time, its automated Rent Roll system did not provide an allocation between slip and key deposits refunded. Therefore, TBW estimated the allocation between the two. TBW informed us that later a report was identified in its automated Rent Roll system that provides an accurate allocation of slip and key deposits refunded. TBW stated it is in the process of recalculating calendar year 2003 and 2004 net security deposit activity for slips and keys utilizing the new Rent Roll system report.

Recommendation No. 21: We recommend that DPHD require TBW to prepare an accurate accounting of slip and key security deposits collected, refunded, and held as of 10/31/05 in conjunction with the transfer of security deposits to the County under the new management agreement.

DPHD Response: DPHD concurs; implementation has occurred.

Recommendation No. 22: We recommend that DPHD require TBW to finalize the new waiting list written policies, effective 11/1/05, that DPHD and TBW staff have been working on.

DPHD Response: DPHD concurs; this was being discussed with the Lessee for at least one year prior to the expiration of the 30 year ground lease, and was implemented prior to the TBW lease expiration.

Finding No. 23: TBW did not obtain security deposits totaling \$2,414 for six slips. A sublessee occupies three of the slips and tenants that have a second smaller vessel in the marina occupy the remaining three slips. In addition, TBW did not obtain security deposits totaling \$1,634 from five employees occupying slips. As a result, the Marina did not collect \$4,048 in security deposits.

Recommendation No. 23: We recommend that DPHD require TBW to collect security deposits for all slip tenants, including the \$4,048 identified.

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Dana Point Harbor Department Response

DPHD Response: DPHD concurs; implementation date is March 10, 2006.

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Updating Fair Market Rental Values

Finding No. 24: We identified the following conditions relating to updating fair market rental values at the West Marina:

- Two TBW employees were living at the West Marina in building E. We observed a memo written by the County, dated December 3, 1976, that discusses compensation of \$300/year or \$25/month for the “dockmaster’s facilities.” TBW informed us that they believe the \$25 monthly dockmaster facilities compensation to be the fee for employee use of building E. However, DPHD could not find documentation in its files to directly address building E’s use as a residence, the fee associated with building E, and any reference of building E being the “dockmaster’s facilities.” The \$25.00 monthly rent has not been adjusted since 1976. DPHD informed us that the current fair rental value of building E would conservatively be \$3,000 per month. DPHD informed us that effective 10/31/05; building E will no longer be allowed as a residence.
- Dana Point Yoga Center is a sublease of TBW and operates a small yoga studio. Dana Point Yoga Center is owned by a managing partner of TBW. TBW does not report gross receipts for this activity or pay percentage rent to the County for this activity as required by the Lease Agreement. TBW only reports a fixed building rent as gross receipts to the County. Also, the fixed monthly rent of \$395 for this sublease has not changed since the sublease inception on 2/15/98. DPHD informed us that this sublease will be terminated 10/31/05.
- Clause 5.B of the General Conditions to the Lease Agreement states fixed monthly rents should be reported to the County based on rent paid to TBW or fair market rents, whichever is higher. The fixed monthly rent for three subleases (Dana West Yacht Club, Ship to Shore Insurance Agency, and Aventura Sailing Association) have not been increased since 2001. Updated market rents will be addressed by the new Lease Agreements to be developed for the sublessees.

Internal Audit will make no specific recommendation at this time as the above issues will be addressed as a result of the transition from the Lease Agreement to a new Management Agreement effective 11/1/05, and establishment of the County’s Dana Point Harbor Department (DPHD) effective 7/1/05.

Financial Statements

Clause 14 of the Lease Agreement requires TBW to submit, within 90 days after the end of each accounting year, a balance sheet and income statement prepared or audited by a CPA. The CPA must attest that the balance sheet and income statement are an accurate representation of TBW’s records as reported to the United States of America for income tax purposes. In addition, TBW is required to submit a statement certified as to accuracy

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Dana Point Harbor Department Response

by a CPA wherein the total gross receipts for the accounting year are classified according to the categories of business established for percentage rental and for any other business conducted on or from the Demised Premises.

Finding No. 25: For the calendar year ending December 31, 2003, TBW submitted financial statements 201 days after the accounting year. The attestation provided by the CPA did not state that the balance sheet and income statement are an accurate representation, as required. In addition, the CPA did not certify sublessee percentage rental. As the Lease Agreement expires on 10/31/05, we are not making any specific recommendation.

Pro-Rated Slip Rent Calculations

Finding No. 26: For the sample month of December 2004, TBW staff incorrectly manually calculated pro-rated slip rent for several tenants resulting in a minor loss of \$34 in slip rent. TBW's automated Rent Roll system has the capability to calculate pro-rated slip rent and report losses from incorrect manual calculations.

Recommendation No. 26: We recommend that DPHD require TBW to utilize its Rent Roll system for the calculation of pro-rated rent.

DPHD Response: DPHD concurs; implementation date is March 24, 2006.

Segregation of Duties and Documented Supervisory Review

Duties of billing, cash receipting, recording, and making adjustments to customer accounts should be adequately segregated to help prevent opportunities for misappropriation of monies. When duties cannot be adequately segregated, detailed supervisory reviews should be performed and documented. These controls will be important when the new management agreement begins on 11/1/05.

Finding No. 27 and 28: We noted two employees, who lived together on the premises, have the authority to perform all of the duties noted above. We were informed that TBW "spot-checks" certain records; however, this review is not documented. To ensure that gross receipts are reported completely and accurately, TBW should perform and document a detailed review of records supporting gross receipts, particularly adjustments that would reduce gross receipts.

Recommendation No. 27: We recommend that DPHD require TBW to segregate, to the extent possible, the duties of billing, cash receipting, recording rent payments, and making customer adjustments.

DPHD Response: DPHD concurs; and has worked with TBW to create a comprehensive policy and procedures manual (including a financial policies & procedures manual), which was implemented on 11-1-05 with the commencement of the new management agreement.

Audit No. 2539



Dana Point Harbor Department Response

Recommendation No. 28: We recommend that DPHD require TBW to perform and document detailed supervisory reviews of records supporting gross receipts reported to the County, particularly adjustments that reduce or adjust gross receipts.

DPHD Response: DPHD concurs; implementation date is June 9, 2006.

Reciprocal Slip Usage

TBW currently reserves a Guest Slip for transient (temporary) guests and as a convenience to tenants of a separate marina also managed by TBW.

Finding No. 29: Tenants of other TBW managed marinas are not charged a fee for reciprocal usage. DPHD has indicated that this reciprocal arrangement will no longer be authorized once the new management agreement begins on 11/1/05. As the Lease Agreement expires on 10/31/05, we are not making any specific recommendation.

Audit No. 2539

