

The Orange County Great Park: Whose Park is it?

*“Power tends to corrupt,
and absolute power corrupts absolutely”*
Lord Acton (1887)

1. Summary

Since the closure of the El Toro Marine Corps Air Station (ETMCAS), Orange County has been embroiled in controversial dialog concerning the reuse of the property. After the passage of Measure W, the City of Irvine annexed the base and proceeded with the design and development of the Orange County Great Park. While professing to recognize its obligation to create a park for the benefit of all Orange County citizens as was intended by Measure W, the City of Irvine has assumed absolute control of this valuable asset, estimated to be worth \$3 billion.

The Irvine City Council resolution adopted on April 25 reduces the existing Orange County Great Park Corporation (GPC) to the level of advisor. This action officially states what was already the Council’s policy and operating procedure: complete control of the Great Park!

Thus, the Orange County Great Park has morphed into the “Irvine Great Park”.

This reemphasizes the obligation of the voters, as responsible citizens, to understand petitions before signing them, understand ballot measures before voting, and exercise vigilance as government officials implement these measures. Forthcoming November elections, including some members of the Irvine City Council and Board of Supervisors, provide the voting public with an opportunity to assess the issues and positions of candidates on the ballot and the attendant consequences.

The 2005-2006 Orange County Grand Jury reached the following conclusions:

- 1.1** The City of Irvine has created a structure and governance incompatible with the intent of Measure W.
- 1.2** Control of the Great Park is maintained by a three member bloc on the Irvine City Council.

Acronyms in this Report

BOS	Orange County Board of Supervisors
ETMCAS	El Toro Marine Corps Air Station
ETRPA	El Toro Reuse Planning Authority
GPC	Orange County Great Park Corporation

- 1.3** By relinquishing control of the Great Park, the Orange County Board of Supervisors (BOS) helped contribute to the loss of countywide participation.

2. Introduction and Purpose of the Study

The City of Irvine has control of this \$401 million project. What are the implications to the citizens of Orange County who were promised a Great Park for all of Orange County?

Is the current plan for the Great Park and the current structure of the entities involved consistent with the voter initiative and corresponding campaign material that was placed before the voters of Orange County when determining the future use of the former ETMCAS property?

This study will determine if the current management structure of the former ETMCAS property meets the intent of Measure W and whether decisions, contracts, and financial responsibilities are realistic and represent sound policy.

3. Method of Study

Research was conducted regarding the Great Park origin and a number of issues, which resulted in a broader investigation. Interviews were conducted with members of the BOS, current Orange County department heads, current and former Irvine City Council members, current and former employees of the City of Irvine, and concerned citizens of Orange County.

In the early stages of the study, the Grand Jury looked into the history of the reuse of the ETMCAS after the Department of the Navy formally closed the base. Complaint letters received by the Grand Jury detailed additional citizens' concerns regarding the election process surrounding the City of Irvine as well as the GPC. Some of these complainants were referred to other entities.

The Grand Jury also reviewed numerous documents, including those provided by the City of Irvine, the GPC, and others.

4. Background

From the announcement in 1993, the closure and ultimate reuse of the ETMCAS has been a controversial issue with the citizens of Orange County. Initially, the BOS supported the development of an international airport on the former base property. Through a series of propositions, the airport plan was alternately approved and then defeated.

In a series of transactions, the Local Agency Formation Commission approved the annexation of the land (4,700 acres) by the City of Irvine. With annexation of the property, the City of Irvine gained control of zoning and other powers over the property and formed the GPC to "...receive, develop, and operate property and improvements located in the City of Irvine ...for public park, recreation, exposition and open space purposes as the 'Orange County Great Park' project"

Since the county could no longer exercise control of the property, the BOS determined that it had no choice but to accept the annexation.

The following section provides a chronology of the activities surrounding ETMCAS. These activities culminated on April 25, 2006 when the Irvine City Council, on a three to two vote, formalized governance of the GPC as an advisory body only.

4.1 Chronology of Developments in the Creation of the Great Park

ETMCAS was commissioned in 1943. In June of 1993, the Federal Base Closure Panel recommended its closure by 1999.

In July 1993, the BOS established an advisory committee representing the cities, business and community interests to establish a plan to present to the Navy regarding future use of ETMCAS.

In January 1994, the El Toro Reuse Planning Authority (ETRPA) was formed with representatives from the County of Orange, the City of Irvine, and the City of Lake Forest. ETRPA described themselves as "...a 'joint-powers authority' whose primary purpose was to develop and promote a non-aviation reuse plan for the former ETMCAS site."

In November 1994, the first of several voter initiatives, Measure A was approved by 51% of voters, calling for development of a commercial airport after the closure of ETMCAS.

In December 1994, Orange County declared bankruptcy.

In early 1995, as South County citizen groups began plans to overturn the Measure A initiative, the county withdrew from ETRPA and ETRPA opened membership to other cities in order to try to unite the South County in their efforts to block the airport.

Measure S, the second voter initiative regarding ETMCAS use, was meant to overturn Measure A, but was defeated by a margin of 90,000 votes in March 1996.

In December 1996, county planners approved a draft Environmental Impact Report (EIR) providing for an international airport serving 38 million passengers per year. In January of 1997, the findings of the EIR were challenged in court by ETRPA, which claimed it underestimated the impact on the surrounding communities. In October of 1997, the courts ruled in favor of ETRPA.

In March 1998, ETRPA approved the Millennium Plan calling for the ETMCAS to be developed into four districts: 1) Education, Research & Technology, 2) Arts & Culture (including a 360 acre park), 3) Habitat Preserve, and 4) Sports and Entertainment. In November 1998, an Irvine City Measure D was approved by Irvine residents in support of the Millennium Plan.

In June 1999, the county ran demonstrations for two days, flying commercial jets in and out of ETMCAS to prove the feasibility and safety of commercial air traffic at the site.

On July 2, 1999 ETMCAS formally closed, but the battle over its future use continued.

In December 1999, the county released an EIR showing that a large park would create more traffic in the surrounding areas than an airport.

Measure F, the third county initiative, specified that a two-thirds voter majority be required in order to build airports, jails or toxic waste dumps near neighborhoods. This measure was voter-approved in March 2000, but in December 2000 was found by the courts to be “unconstitutionally vague” and illegal.

The fourth voter initiative, Measure W, “The Orange County Central Park and Nature Preserve Initiative”, calling for a “multi-purpose central park” to replace Measure A’s airport, was unveiled by the City of Irvine in May 2001 and was approved by Orange County voters on March 5, 2002. Measure W contained this statement: “The Orange County Central Park and Nature Preserve Initiative will unify our communities and improve the quality of life for *every* County resident...” (Emphasis added.)

The next day (March 6), the Navy announced that it would sell the land rather than give it to the county. The Navy, in a press release dated April 23, 2002, stated “This marks the beginning of a tremendous opportunity for *the people of Orange County* and best meets the mandate of the base closure law to return this property to productive local use.” (Emphasis added.)

Measure W was challenged in court but ultimately upheld in September 2002, with the ruling that the people of Orange County had the right to determine use of the former ETMCAS, not the BOS.

In the meantime, the City of Irvine had already held meetings directly with the Navy regarding a reuse plan and they jointly, along with the General Services Administration, announced the Great Park plan in May 2002.

In March 2003, Orange County agreed to a property tax transfer agreement with the City of Irvine paving the way for annexation, which was approved in November 2003 by the Local Agency Formation Commission.

On July 7, 2003, the Articles of Incorporation for the GPC were filed with the Secretary of State, with the primary purpose “...to receive, develop, and operate property and improvements...for the benefit of the residents of the City of Irvine, and others.” The board was to be comprised of “...no less than seven (7) or more than thirty (30) directors, two (2) of whom shall be officers or employees of the City of Irvine...”

On December 5, 2003, the GPC board met for the first time and adopted bylaws, which changed the makeup of the board of directors. The amended Articles of Incorporation reflecting the changes were filed on February 17, 2004. The amended articles state there will be “nine (9) directors, five (5) of whom shall be the persons serving as the duly elected or appointed members of the City Council of the City of Irvine...” The amendment also redefined “City Directors” from “officers or employees of the City of Irvine designated by the City Council of the City of Irvine” to “members of the City Council of the City of Irvine”.

The City of Irvine completed annexation of the former ETMCAS on January 14, 2004.

The Navy completed its auction of ETMCAS on February 16, 2005, Lennar Corporation having submitted the winning bid of \$649.5 million. An award letter was sent to Lennar in March and they completed making the 10% required down-payment later that month, paying the balance in July of 2005.

The GPC began hosting symposia on how the Great Park might be developed in May of 2004. In April 2005, proposals were solicited for the job of master designer. In June the first design jury narrowed the field of 24 design firms down to seven. The seven submitted plans by September 1, 2005 and about a week later the second design jury found the Ken Smith design to be the most impressive. On September 28, 2005 the seven designs were further narrowed to three. During the first ten days of November 2005, the GPC Board and staff traveled to Barcelona, Paris and New York to review the projects of these three design finalists. After another trip to review park projects in December, and after a brief contemplation about whether collaboration between the three was feasible, Ken Smith was selected as the Great Park master designer in March of 2006.

On April 25, 2006, the Irvine City Council, on a three to two vote, formalized governance of the GPC as merely an advisor to the City.

Work on infrastructure is expected to begin in 2006 and construction of the park to begin in 2007.

4.2 Orange County Great Park Corporation

The GPC was formed as a non-profit 501(c)(3) entity to "...receive, develop, and operate property and improvements located in the City of Irvine ...for public park, recreation, exposition and open space purposes as the Orange County Great Park project...."

Although no mission statement exists, the GPC business plan states:

"The purpose of the Orange County Great Park Corporation is to develop and operate, preserve and protect the Orange County Great Park for the benefit and enjoyment of all its visitors, those of today and those in the future."

The board structure had directors only (no other members) and no defined meetings. Initially the GPC called for a board of no less than seven members, two of whom shall be officers or employees of Irvine. Subsequent bylaws amended the board structure to include all five city council members and four members appointed by sitting members of the board. At this time, the City of Irvine maintains ownership of the property.

The City of Irvine was entrusted with \$401 million in funds allocated to the development and maintenance of the Great Park. Initial GPC public relations mailers portrayed this \$401 million as cash proceeds, when in fact only half (\$200 million) is to come from Lennar Homes as development fees, and the remainder (about \$201 million) is contemplated as coming from assessments paid through a Community Facilities District by future buyers.

4.3 Great Park Conservancy

Another non-profit private organization, originally known as Project 99, was formed to raise funding and public awareness in support of the Great Park project.

“The role of the Great Park Conservancy is to generate and maintain public and private support throughout Orange County and beyond for the development and operation of the Orange County Great Park. The Conservancy envisions the Great Park to be one of the world’s greatest metropolitan parks.”

Most of Conservancy public relations literature heavily emphasizes the relationship and benefits of the Great Park to *all* of Orange County. Other than a request for planning information, which was said “to not exist”, the Grand Jury did not investigate the Great Park Conservancy.

5. Observations and Discussion

5.1 Changes in Structure and Voter Intent

After a number of voter initiatives and counter-initiatives, Measure W was approved by the voters of Orange County in favor of a “Great Park” for the benefit and use of the “entire county”. It was proposed to be the “Central Park” of Orange County. All brochures, newsletters and other public relations literature referred consistently to the “Orange County Great Park”. A Great Park board member stated “We are going to be able to do some amazing things for *everyone* in Orange County”. (Emphasis added.)

The original Articles of Incorporation of the GPC were consistent with this intent and provided for the influence of the GPC to be diverse and shared among Orange County residents, with only two of the seven board members to be employees of the City of Irvine and the remaining five to represent Orange County citizens. Since the City of Irvine already had land use control, this appeared to provide for a counterbalance of a separate organization that would independently consider the needs and desires of the county as a whole.

Because of changes to GPC bylaws that gave control to the City of Irvine, on April 25, 2006, the Irvine City Council was able to reduce the GPC to only an advisory organization.

At a recent public meeting, an Irvine official stated that the Great Park “...would no longer be subject to the public park restriction of Measure W (since Measure W amended the County – not the City – General Plan), with the City then entitling the former base with significant park and open space uses in the ‘spirit of Measure W’....” The Grand Jury believes that these governance changes are inconsistent with the spirit and intent of Measure W.

5.2 Orange County Great Park Issues

The current structure is especially egregious to the citizens of Orange County because the exercise of control of the Great Park is maintained by a three member bloc on the Irvine City Council.

The Grand Jury has found actions to be incompatible with the development of the Orange County Great Park for the benefit of *all* the citizens of Orange County. The following issues include those related to the GPC that were rendered moot by the April 25 resolution.

5.2.1 Potential Conflicts of Interest

The Grand Jury believes there is a potential conflict of interest because an Irvine City Official who is also an official of the GPC.

In a hypothetical case, a future decision pending before the City of Irvine involves the construction of an aquatic complex on the Great Park grounds. The City, having its own very successful aquatic complex, could be damaged by an additional one nearby. How could a member of the Irvine City Council make an appropriate decision? Yet, this is exactly the current structure and the dilemma remains.

5.2.2 Other Potential Implications

After the arguable error of the BOS passing the responsibility for the Great Park to the City of Irvine, the Grand Jury believes the BOS should want to exert its power to wrest some control, giving the county a proper voice in this important project.

Are there fiscal or other implications for the county if the GPC and City of Irvine do not deliver what was promised by the voter-passed initiative?

Contamination:

The Great Park site, because of its 56-year history as an aviation facility, has a significant contamination problem to resolve. Contaminants, such as jet fuel, a variety of solvents and other toxic chemicals are present on the site. Although the Navy has responsibility to decontaminate the area, they also have budget constraints. Eighty-eight percent of the 4,738 acres of the property is considered to be free of contaminants. The Navy expects to clean the remaining 575 acres by the year 2036. Should undiscovered contamination be found, delays in construction and infrastructure may arise.

The obligations of the Navy regarding decontamination relate to the condition of the property when sold and, as such, could be limited if construction or other activities result in a change in the scope and cost of decontamination. Who will be responsible should additional requirements arise?

Effect on traffic:

The Navy, in a Record of Decision, determined that "...mixed non-aviation use would generate 300,000 to 340,000 trips per day...this may cause substantial delays at 35 intersections and four freeway segments." The Record of Decision did not present plans for mitigation of increased vehicular load or its effect on the areas surrounding the Great Park.

5.2.3 Other GPC Issues

Fund Management:

The City of Irvine elected to form the GPC to manage the affairs of the project. In doing so, the formation of a separate public agency offered protection to the City (but not the county) from financial responsibility should the project go awry. At the same time, this structure provided the City control of all aspects of the Great Park and has now created the potential of an "Irvine Great Park", not an Orange County park.

The City of Irvine Fiscal Year 2005-2006 Budget reveals the following: "General Fund revenues total \$178,190,744, which includes \$66,666,666 in revenues from the Great Park Development Agreement".

The GPC in an advisory role reduces the level of oversight, increasing the possibility that funds slated for the Great Park could be diverted to other City of Irvine needs.

Even with careful financial controls and frequent audits, placing Great Park funds in the City of Irvine general fund is questionable fiscal policy.

Blurring the Lines between the City and the GPC

As part of the process to select a new board member for the GPC, the City of Irvine posted a job description on its website with interested parties directed to submit a letter of interest to the Irvine City Manager. One of the duties described in the job description was "Exercising fiduciary responsibility for the investment and expenditure of capital funds of approximately \$400,000,000", an apparent reference to the \$401 million in development fees and Community Facilities District assessments that the City of Irvine should eventually receive.

A City of Irvine official publicly stated "The Orange County Great Park is considered a component of the City of Irvine. As such, the Orange County GPC income and expenses are separated from income and expenses of the City and are tracked through a special designated fund." This statement was made prior to the City of Irvine resolution of April 25, 2006 and demonstrates that the City has always considered the GPC to be a subsidiary of the City of Irvine.

Contrast the above with the following public statement by an Irvine Council member in January, 2003: "The notion that somehow this was going to be a

tightly held City of Irvine matter, you can pretty well rule that out because we do want over the long haul to ensure that there is *countywide participation* in its governance.” (Emphasis added.)

The Grand Jury believes it practically impossible to ascertain where the City of Irvine stops and the GPC begins, which now has been affirmed by the April 25 City Council resolution.

Employees of GPC paid by City of Irvine

By merging the operations of the City of Irvine and the GPC, employees of the GPC are now employees of the City of Irvine and everything from job assignments to raises and other factors are at the behest of the City of Irvine. It raises the question, what exactly is the purpose or function of the GPC if the City of Irvine collects all park related revenue, hires employees whose duties are related to the park, and pays the other expenses related to the park?

Representation Almost Exclusively South County

The makeup of the GPC board has since been changed to be comprised of all five of the City of Irvine Council members and four appointed members who could potentially represent residents of the other parts of Orange County. Currently eight of the nine board members represent South County.

This leaves the GPC board (now powerless) without a voice from the northern reaches of the county and again belies the continuous claim that the Orange County Great Park is for *all* of Orange County.

Selection of a new GPC board member

When a senior GPC board member resigned in May 2005, the GPC board had the opportunity to respond to the promise of a park for all of Orange County’s citizenry. Instead, they chose yet another South County representative. The opportunity to bring some representation from the BOS, one of whose members was a candidate, was passed over and the power structure remains unchanged.

5.3 No-Bid Contracts

Awarding of no-bid contracts by the City has raised the concerns of the Grand Jury. Of many no-bid contracts, the Grand Jury presents these examples.

Public Relations: On April 28, 2004, a public relations firm received a no-bid contract for public relation services from the City of Irvine, which included a \$600,000 retainer and \$802,500 in reimbursements for a total of \$1.4 million. This contract was renewed in April 2005. Currently the firm holds a contract for approximately \$600,000 from the City of Irvine and \$600,000 from the GPC.

Law Firm: On May 27, 2005, another no-bid contract for legal services was awarded by the GPC, replacing previous counsel at a significantly higher hourly rate.

Recycling: The most recent no-bid contract was approved April 25, 2006 on a three to two vote, to create a lease agreement to operate a green waste recycling facility on 60 acres of Great Park land.

6. Findings

In accordance with California Penal Code §933 and §933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2005-2006 Orange County Grand Jury has arrived at the following findings:

- 6.1 Great Park governance: The Irvine City Council has created a structure and governance incompatible with the intent of Measure W.
- 6.2 Control of the Great Park project: Control of the Great Park is maintained by a three member bloc on the Irvine City Council.
- 6.3 No-bid contracts: The citizens of Irvine are exposed to the potential business risks associated with use of no-bid contracts.
- 6.4 Board of Supervisors relinquished control of the Great Park: By relinquishing control of the Great Park, the Orange County Board of Supervisors (BOS) helped contribute to the loss of countywide participation.

Responses to Findings 6.1 through 6.3 are required from the Irvine City Council.

Response to Finding 6.4 is required from the Orange County Board of Supervisors.

7. Recommendations

In accordance with California Penal Code §933 and §933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2005-2006 Orange County Grand Jury makes the following recommendations:

- 7.1 Great Park governance: : The Irvine City Council should revisit and reconsider decisions that have split the City Council and that exclude county-wide participation in the control of the decision making process for development of the Great Park. As an example, the Irvine City Council should consider a resolution to amend the Great Park Corporation bylaws to require two Orange County

supervisors, two members of the Irvine City Council and three elected at-large members from Orange County. (See Findings 6.1 and 6.2.)

7.2 No-bid contracts: The Irvine City Council should review current practices involving no-bid contracts to ensure that appropriate business controls are in place to protect the citizens of the City of Irvine. (See Finding 6.3.)

7.3 Regain control of the Great Park: The Board of Supervisors, representing all Orange County citizens, should consider legal action to return control of the Great Park to the people of Orange County. (See Finding 6.4.)

Responses to Recommendations 7.1 and 7.2 are required from the Irvine City Council.

Response to Recommendation 7.3 is required from the Orange County Board of Supervisors.

8. Appendix

8.1 References:

Some of the references used by the Grand Jury include:

1. "2004/05 Business Plan", Orange County Great Park Corporation
2. "Environmental Impact Report, Volumes 1 and 2", Orange County Great Park, City of Irvine, February 2003
3. "City of Irvine Balance Sheet Governmental Funds", June 30, 2005
4. Orange County Great Park Board briefing overview of El Toro Cleanup by Michael Brown, et. al., February 22, 2005
5. "Property Tax Transfer and Pre-annexation Agreement" between City of Irvine, Irvine Redevelopment Agency and County of Orange, regarding annexation and reuse of former MCAS El Toro, March 4, 2003
6. Articles of Incorporation, Orange County Great Park Corporation, filed July 7, 2003
7. Bylaws, Orange County Great Park Corporation, March 15, 2004
8. "Notice of Record of Decision", Department of the Navy, March 23, 2002