



2005-2006 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

EXPLORING OPEN SPACE SPECIAL DISTRICTS IN SANTA CLARA COUNTY

Summary

The 2005-2006 Santa Clara County (County) Civil Grand Jury (Grand Jury) examined a number of special districts. This report details the inspection of the two open space districts serving the County. Santa Clara County Open Space Authority (OSA) serves the central and southern portions of the County. Midpeninsula Regional Open Space District (MROSD), the older of the two districts, serves northwestern Santa Clara County and parts of San Mateo County. These open space districts are independent from each other, receive separate funding and face different challenges.

Background

The two districts inspected by the Grand Jury are independent, non-enterprise special districts. These terms are defined as follows:

- An *independent* district is self-governed by an elected Board of Directors, as opposed to a *dependent* district which is governed by an existing legislative body (e.g., either a city council or a county board of supervisors).
- A *non-enterprise* district is tax supported, as opposed to an *enterprise* district which is fee supported.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY

Before 1993, MROSD was approached to take up the open space oversight of southern Santa Clara County, but the district declined. Consequently, OSA was established on February 1, 1993, when the California Legislature passed the Santa Clara County Open-Space Authority Act as § 35100 et seq. of the Public Resources Code. It provides oversight for open space in south County as well as other non-contiguous lands (see Appendix A). This act states in relevant part:

- a) "In Santa Clara County, open-space preservation and creation of a greenbelt are immediate high priorities needed to counter the continuing and serious conversion of these lands to urban uses, to preserve the quality of life in the county, and to encourage agricultural activities.
- b) "In order to deal in an expeditious manner with the current serious loss of these properties, the county needs to develop and implement a local funding program involving properties occupied for urban purposes which give rise to

the need for open-space preservation that goes significantly beyond current existing funding which is not adequate to resolve these losses.

- c) “It is in the public interest to create the Santa Clara County Open-Space Authority so that local open-space preservation and greenbelting decisions can be implemented in a timely manner to provide for the acquisition and maintenance of these properties.
- d) “All persons owning developed parcels enjoy the privilege of using, and benefit from, the availability of open space.”

Currently, OSA holds title to 9,533 acres of open space, and manages an additional 2,535 acres on which it has purchased easements. The open space region includes 1.2 million people within its boundaries, which represent two-thirds of the County’s population. OSA operates two open space preserves available to the public – the 3,100 acre Rancho Canada del Oro, and the smaller tract containing the one and one half-mile Boccardo Trail.

OSA is governed by a seven-member elected Board of Directors (OSA Board) and an appointed 16-member Citizen’s Advisory Committee (Committee). Table 1 shows the geographical area represented by each district (and see Appendix A). The OSA Board meets twice a month and the OSA Committee once a month. The Committee was created at the inception of OSA. As volunteers, they oversee the development of OSA, help to educate the public about the district’s goals and accomplishments, and provide recommendations to the OSA Board. The OSA Board appoints the Committee members for two-year terms. Some members represent geographical districts and other members represent the following areas: agriculture, business, civic organizations, development, district representative, education, environmental/open space, labor, parks, and trails.

District	Geographic Area
District One	South County
District Two	Milpitas
District Three	Santa Clara
District Four	Campbell
District Five	South San Jose
District Six	Central San Jose
District Seven	East San Jose

Table 1: OSA Districts and Geographic Areas.

The OSA office is located in San Jose and has 11 employees – five are full-time. The staff is supervised by a general manager. OSA actively recruits volunteers to serve as the eyes and ears of the district’s interests, patrol trails, work on conservation projects and educate the public.

Funding for OSA comes from various sources, primarily two benefit assessments. OSA held an advisory ballot election in June 1994 for the approval of the first assessment. This benefit assessment provided funding for the acquisition and preservation of open space.

The 1994 election granted the OSA Board permission to levy an annual benefit assessment of \$12 per benefit unit. A single family residence counts as one benefit unit, but a commercial structure may be counted as multiple units. This assessment yields approximately \$4.2 million annually. The areas to which the tax levy applies are the cities of Milpitas, Santa Clara, Campbell, San Jose, Morgan Hill, and the unincorporated areas on the east side of the valley and to the west about mid-slope up the Santa Cruz Mountains.

The advisory ballot election took place before the passage of Proposition 218 in 1996. This proposition radically changed the way local governments raise revenues, requiring taxpayer approval of all assessments and fees. Under this Proposition, local government agencies can use mail-in ballots to allow real property owners in a district to vote on special parcel taxes, property-related assessments, fees, and charges. Some county and municipal agencies in the County have begun to use this procedure to conduct special benefit votes.

Proposition 218 restricts local governments' abilities to impose assessments and property-related fees. It also requires elections to approve many local government revenue raising methods. Proposition 218 shifts most of the power over taxation from locally elected governing boards to residents and property owners.

In 2001, property owners approved a second assessment raising approximately \$8 million a year for OSA. This added \$20 per year for each benefit unit, making a total assessment of \$32 per year.

Additional revenue for OSA comes from rent, interest, and state/federal grants. OSA received its last grant in 2003 in the amount of \$250,000 to purchase the Aoki property near Mt. Hamilton Road. The district continues to pursue grant funding, but the competition is very high. The district has not successfully competed for any additional awards. A summary of fiscal year 2004/2005 financial data is included in Appendix C.

OSA spends some of its money purchasing easements rather than land. Easements are usually acquired on agricultural land for which OSA would like open space access. This allows OSA to preserve open space in a less expensive manner than the purchase of land.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

The MROSD was created by Measure R in 1972. Its objectives are as follows:

- purchase, protect, and restore lands
- form a regional open space greenbelt

- preserve unspoiled wilderness, wildlife habitat, and watersheds
- protect fragile ecosystems
- provide opportunities for low-intensity recreation and environmental education

MROSD started its operation in the northwestern section of Santa Clara County. In 1976, it expanded to portions of southern San Mateo County and in 1992, further expanded by annexing a small portion of Santa Cruz County. The purpose of the 1992 annexation was to permit the purchase and administration of a parcel, located in both San Mateo and Santa Cruz Counties.

As of January 2006, MROSD has preserved 50,852 acres of land. A total of 33,147 acres have been formally dedicated by the District Board as open space land in accordance with § 5540 et seq. of the Public Resources Code. Of the 15,288 acres of undedicated land, 2,417 acres include property rights that cannot be dedicated, such as leases and management agreements. The balance of the undedicated acreage is undergoing a master planning process which is to be completed prior to formal dedication.

Of the 27 preserves MROSD now owns, five are closed to the public pending development of plans for future use, and two are accessible by permit. A portion of one of the five closed preserves is accessible by permit. The District estimates approximately 1.5 million open space visits annually.

The MROSD gross assessment area covers 550 square miles. The District has an elected, seven-member Board of Directors. Each Director serves a four-year term and represents a geographic ward (See Table 2 and Appendix B).

Ward	Geographic Area
Ward 1	Cupertino, Los Gatos, Monte Sereno, Saratoga
Ward 2	Cupertino, Los Altos, Los Altos Hills, Stanford, Sunnyvale
Ward 3	Sunnyvale
Ward 4	Los Altos, Mountain View
Ward 5	East Palo Alto, Menlo Park, Palo Alto, Stanford
Ward 6	Atherton, La Honda, Loma Mar, Menlo Park, Pescadero, Portola Valley, Redwood City, San Gregorio, Woodside
Ward 7	El Granada, Half Moon Bay, Montara, Moss Beach, Princeton, Redwood City, San Carlos, Woodside

Table 2: MROSD Board of Directors' Wards and Geographic Areas

The MROSD Board hires a general manager, a general counsel and a controller. All other staffing decisions are made by the general manager and his/her staff. The general manager oversees a staff of 79 permanent and 12 seasonal employees.

MROSD has two field offices, one located at Rancho San Antonio Open Space Preserve, and another at Skyline Ridge Open Space Preserve.

The MROSD has a very active volunteer program with approximately 500 volunteers and docents contributing about 14,000 hours a year. They participate in activities including educating visitors, constructing and maintaining trails, and removing invasive, non-native vegetation.

The revenues that support the MROSD come from a tax of 1.7 cents per \$100 on assessed property value in the defined areas of Santa Clara and San Mateo counties. Fiscal year 2005/2006 property tax revenue is expected to be \$21.9 million. Additional funds derive from grants, donations, rents and miscellaneous fees. The MROSD fiscal year ends in March. Summary financial information for fiscal year 2004/2005 is included in Appendix D. An outside firm audits the MROSD, and has found its finances to be in compliance with applicable requirements.

Discussion

The Grand Jury reviewed issues and activities that pertain to the Santa Clara County Open Space Authority and Midpeninsula Regional Open Space District. Issues of interest, such as pending lawsuits and future concerns, were identified from referenced documents and interviews.

SANTA CLARA COUNTY OPEN SPACE AUTHORITY

The Grand Jury noted two aspects of OSA financial operations – its program for urban open space and lawsuits that threaten its programs.

OSA established the 20% Funding Program under which 20% of assessed funds are allocated to municipalities for urban open space projects. Each city applies for its share of funds and works with the OSA Board and Committee to agree upon acceptable use and the amount of city funds to be contributed. The funds are usually spent on acquisition, restoration, and development projects involving lands, wetlands, and trails. For example, the City of Campbell used the funding for Edith Morely Park located on the old Winchester Drive-In Theatre site. At the end of fiscal year 2004/2005, OSA had accumulated about \$2.4 million in the 20% Funding Program.

After the first benefit assessment tax was passed in June of 1994, a taxpayer lawsuit was filed against OSA to prevent collection of the tax. Taxes were collected and held pending resolution of the lawsuit. In 1998 the suit was decided, allowing OSA to begin acquisition of open space property using funds from the 1994 benefit assessment.

Following voter approval of a special benefit assessment in 2001, a second lawsuit was filed to overturn the approved assessment. The County Superior Court and the Sixth District Appellate Court decided in favor of OSA. The Appellate Court concluded that OSA conducted the 2001 benefit assessment in accord with Proposition 218 requirements. Two taxpayer associations appealed the ruling to the California Supreme Court, which agreed in October 2005 to hear the case.

OSA is currently collecting the 2001 special benefit assessment. The funds, totaling approximately \$8.3 million as of June 2005, are held, pending outcome of the appeal. In the event the State Supreme Court overturns the judgment, OSA must refund the assessment to those affected by the second benefit assessment. The administrative cost to issue refunds cannot come from the disputed assessment funds. The cost must be paid from an alternative source, such as the 1994 special benefit assessment. A delay may also result in an increase in the cost of land.

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

MROSD finances most of its property acquisitions by borrowing and thus has a sizable debt. The debt shown in the March 31, 2005 annual report was greater than \$130 million. In discussing the use of debt with MROSD, a director contrasted their method of operation with Monterey Peninsula Regional Park District (MPRPD), which was also created in 1972. In Monterey County, the park district used very little debt to finance the purchase of open space, delaying purchase until funds were available. As a result, the park district bought less property with its available funds. More importantly, it now cannot buy specific properties because the cost of property has increased and some desirable hillside/scenic parcels have been purchased for private use. MROSD noted it has made a "paper profit" because the land is more valuable now than when purchased.

MROSD is over 30 years old and has been acquiring land since its inception. The district currently controls and manages over 50,000 acres. An increasing amount of MROSD funds are used for maintenance and upkeep of these holdings in addition to debt service.

Ecological concerns and resource management are significant issues for MROSD. Some invasive plant species are appearing in district preserves and sudden oak death to tan oak trees is becoming more prevalent. One board member believes that the district should be proactive and work with other agencies to limit and hopefully reduce the growth of invasive species in managed lands.

MROSD is conducting a study of the Sierra Azul Preserve, including the Bear Creek Redwoods. The study focuses on the location of trails and the types of activities for the area. An expected outcome of the 3-4 year study is a requirement for a third ranger station.

Board members often run unopposed and are not listed on the ballot. This issue exists for many special districts with elected boards. The voting public seems to have limited insight, interest, and awareness of board membership. This results in board members remaining in office for many terms. When an incumbent board member runs unopposed, the BOS may be petitioned to appoint that position. An election costs the district about \$75,000 per director ward.

The Grand Jury noted that MROSD offers two information sources to communicate with the public. The MROSD web site is a well-organized, user-friendly and useful resource. In addition to describing each of the open space preserves, the

web site provides ideas for activities in each preserve and up-to-date information. MROSD also publishes a quarterly newsletter, trail maps, location-specific materials, and a resource book.

Conclusions

OSA is the more recently established open space district in the County. Its 20% Funding Program is a novel aspect of its operation. OSA perseveres despite legal challenges faced throughout its existence.

As the older open space district in the County, MROSD manages a large section of County open space. MROSD is in a transitional phase as it shifts its emphasis from acquisitions to maintenance and addresses long-term issues.

Both the Santa Clara County Open Space Authority and Midpeninsula Regional Open Space District continue to work with the community and to make their properties accessible and enjoyable for public use.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 23rd day of March 2006.

Thomas C. Rindfleisch
Foreperson

References

Documents

1. Santa Clara County Open Space Authority web site at <http://www.openspaceauthority.org> [last accessed March 7, 2006].
2. Santa Clara County Open Space Authority Audit Report, year ending June 30, 2005.
3. Midpeninsula Regional Open Space District web site at <http://www.openspace.org> [last accessed March 6, 2006].
4. Midpeninsula Open Space District Annual Financial Report, March 31, 2005.
5. Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority (2005) 130 Cal.App.4th 1295. July 6, 2005. No. H026759. Retrieved at <http://login.findlaw.com/scripts/callaw> [last accessed March 7, 2006].

Interviews

1. September 9, 2005, Santa Clara County Open Space Authority with the General Manager and Office Manager.
2. October 7, 2005, Midpeninsula Open Space District with the General Manager, General Counsel, Assistant General Manager and Area Supervisor.
3. November 7, 2005, Midpeninsula Open Space District, with the Ward 4 Director.
4. November 9, 2005, Midpeninsula Open Space District with the Ward 1 Director.
5. January 25, 2006, Santa Clara County Open Space District with the District 3 Director.
6. January 26, 2006, Public Works Director for the City of Campbell.

Appendix A OSA District Map



Authority Boundary

Open Space Authority

Other Public and/or Private Protected Lands

Easement
Fee

District Boundaries

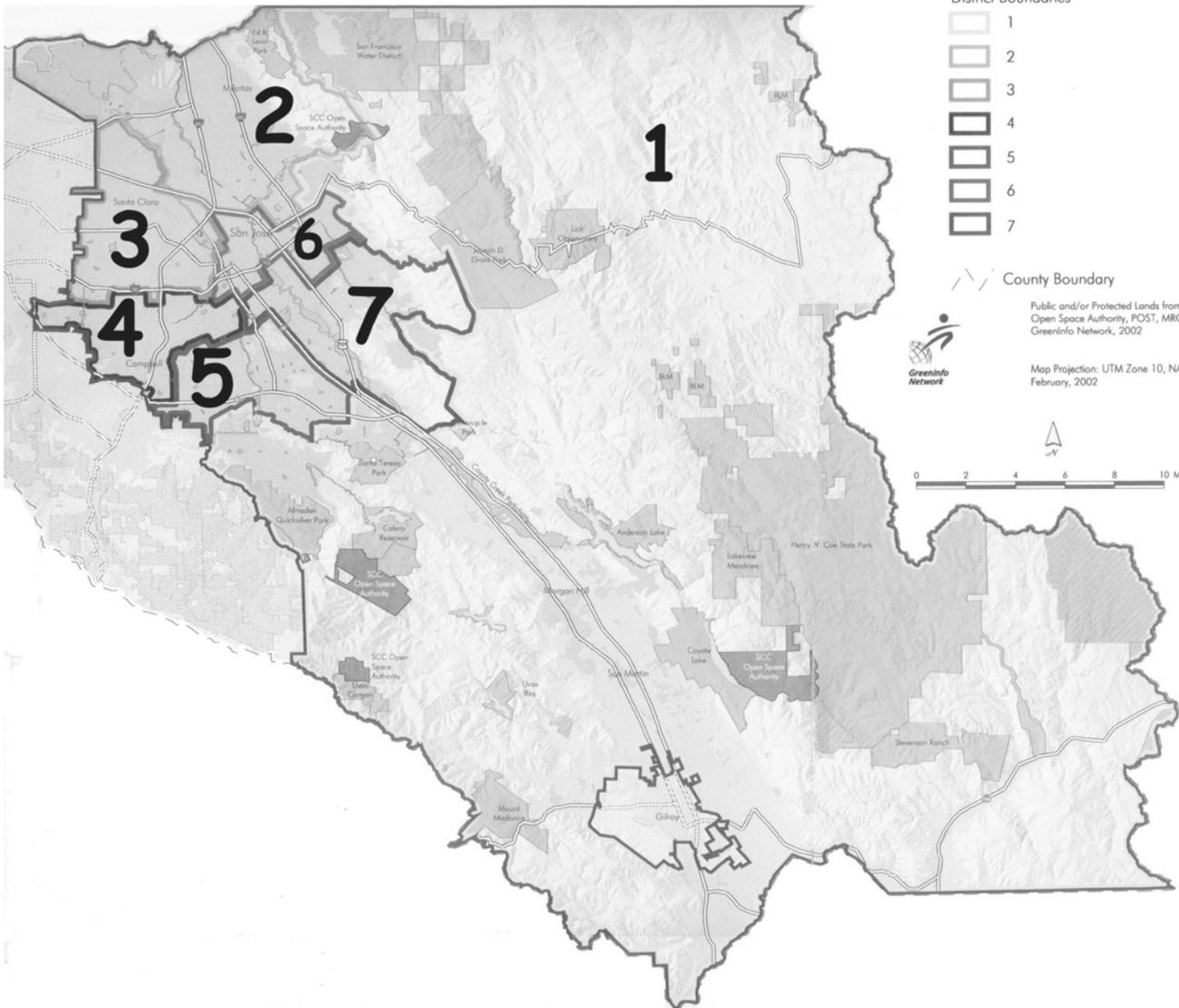
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County Boundary

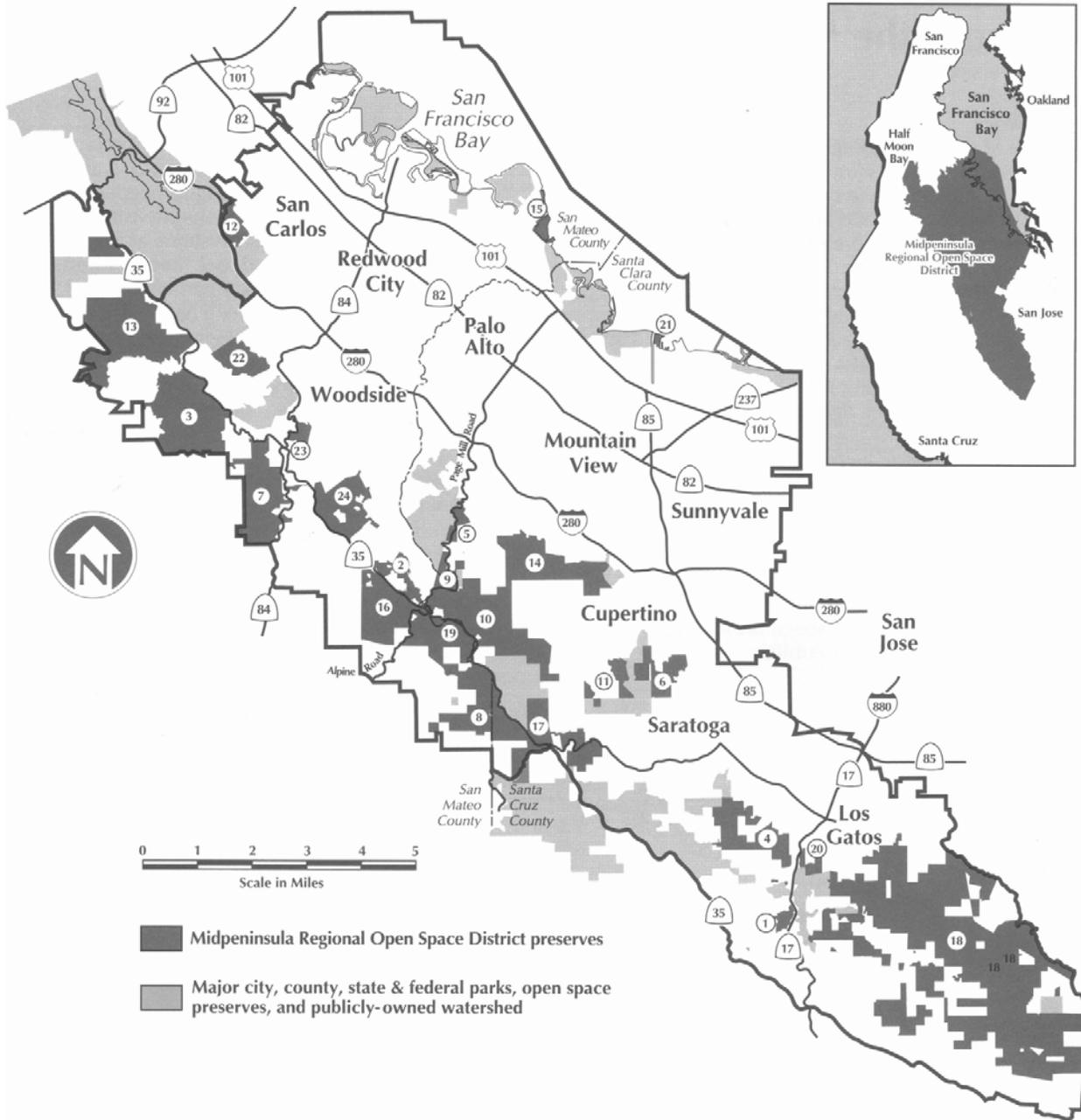


Public and/or Protected Lands from Open Space Authority, POST, MKOSD, GreenInfo Network, 2002

Map Projection: UTM Zone 10, NAD27
February, 2002



Appendix B MROSD Map



Appendix C

OSA Fiscal Year 2004/2005 Financial Summary

Assets:	2005	2004	Change	% Change
Current and other assets	\$36,230,409	\$27,986,228	\$8,244,181	29.5%
Capital assets	\$25,830,839	\$24,430,717	\$1,400,122	5.7%
Total assets	\$62,061,248	\$52,416,945	\$9,644,303	18.4%
Liabilities:	2005	2004	Change	% Change
Current and other liabilities	\$8,206,254	\$7,665,232	\$541,022	7.1%
Total liabilities	\$8,206,254	\$7,665,232	\$541,022	7.1%
Net assets:	2005	2004	Change	% Change
Invested in capital assets	\$25,830,839	\$24,430,717	\$1,400,122	5.7%
Unrestricted net assets	\$28,024,155	\$20,320,996	\$7,703,159	37.9%
Total net assets	\$53,854,994	\$44,751,713	\$9,103,281	20.3%
General Revenues:	2005	2004	Change	% Change
Assessments	\$12,327,555	\$12,066,919	\$260,636	2.2%
Interest and investment income	\$503,755	\$258,098	\$245,657	95.2%
Other revenues	\$13,332	\$11,420	\$1,912	16.7%
Total revenues	\$12,844,642	\$12,336,437	\$508,205	4.1%
Expenses:	2005	2004	Change	% Change
Recreation	\$1,357,794	\$1,191,590	\$166,204	13.9%
Total expenses	\$1,357,794	\$1,191,590	\$166,204	13.9%
20% Funding program	\$2,383,567	\$2,504,390	\$(120,823)	-4.8%
Change in net assets	\$9,103,281	\$8,640,457	\$462,824	5.4%
Net assets, beginning of year	\$44,751,713	\$35,903,653	\$8,848,060	24.6%
Prior period adjustment	\$-	\$207,603	\$(207,603)	-100.0%
Net assets, end of the year	\$53,854,994	\$44,751,713	\$9,103,281	20.3%

Appendix D

MROSD Fiscal Year 2004/2005 Financial Summary

Assets:	2005	2004	Change	% Change
Current and other assets	\$49,807,994	\$50,728,891	\$(920,897)	-1.8%
Capital assets	\$246,874,365	\$238,988,627	\$7,885,738	3.3%
Total assets	\$296,682,359	\$289,717,518	\$6,964,841	2.4%
Liabilities:	2005	2004	Change	% Change
Accounts payable and other liabilities	\$876,158	\$1,192,902	\$(316,744)	-26.6%
Long-term liabilities	\$130,447,292	\$130,257,307	\$189,985	0.1%
Total liabilities	\$131,323,450	\$131,450,209	\$(126,759)	-0.1%
Net assets:	2005	2004	Change	% Change
Invested in capital assets, net of related debt	\$117,936,279	\$110,692,983	\$7,243,296	6.5%
Restricted	\$2,662,316	\$2,517,934	\$144,382	5.7%
Unrestricted	\$44,760,314	\$45,056,392	\$(296,078)	-0.7%
Total net assets	\$165,358,909	\$158,267,309	\$7,091,600	4.5%
Revenues:	2005	2004	Change	% Change
Program revenue:				
Charges for services	\$786,106	\$756,368	\$29,738	3.9%
Grants and contributions	\$2,266,274	\$2,512,862	\$(246,588)	-9.8%
General revenue:				
General property tax	\$18,587,448	\$19,113,761	\$(526,313)	-2.8%
Investment income	\$935,265	\$609,575	\$325,690	53.4%
Other	\$342,461	\$276,993	\$65,468	23.6%
Total Revenues	\$22,917,554	\$23,269,559	\$(352,005)	-1.5%
Expenses:	2005	2004	Change	% Change
Total	\$15,825,954	\$14,810,841	\$1,015,113	6.9%
Change in net assets	\$7,091,600	\$8,458,718	\$(1,367,118)	-16.2%