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VIA U.S. MAIL

Glenda Sanders
Presiding Judge of the Superior Court
700 Civic Center Dr. West
Santa Ana, CA 92701

Re: *Orange County Council of Government's Response to 2014-2015 Orange County Grand Jury Report*

To the Honorable Presiding Judge Sanders:

I serve as General Counsel to the Orange County Council of Governments and, in that capacity, am responding on OCCOG's behalf to the 2014-2015 Grand Jury Report.

I understand the serious nature of this process and see value in undertaking a move towards greater transparency and accountability for the joint power authorities ("JPAs") identified in the report as those which "do not comply with the spirit of the law." The Report does not appear to allege that OCCOG is one such "vertical" JPA, but in case that has been considered, I would like to emphasize that OCCOG can only be described as a horizontal JPA.

The Report defines a horizontal JPA, as opposed to a vertical, as being:

...composed of similar entities that share a common problem or opportunity. That is, each of the members was looking to delegate a function of their authority to a JPA in order to either improve the service that is provided or to reduce the cost through economies of scale. Each member in the JPA is motivated to have the JPA perform better than the individual member could do it alone. A JPA member is motivated to be looking out for their entity's best interest. As a result, if the JPA is not providing the desired results or improvements, then the member can withdraw from the JPA and go it alone. As a result, there are organizational checks and balances that tend to allow for self-correction and accountability.

The Report further states that horizontal JPAs "appear to comply with the spirit of the law," and many "provide a real service to the community."

These statements define OCCOG precisely. OCCOG is not controlled by a single entity broken into separate forms, but rather casts a very wide net over similar but distinct entities all

across Orange County, including but not limited to a transportation agency, independent service districts, air quality management district, and all 12 districts in the Southern California Association of Governments, representing all Orange County cities. The OCCOG's purpose is to:

“Provide a vehicle for the Members to engage *cooperatively* and *voluntarily* on additional regional and cooperative planning efforts with federal, state and regional agencies, including such planning efforts with federal, state and regional agencies, including such planning issues as air quality, water quality, and other issues as determined by the Board and OCCOG's member agencies, and to provide an Orange County voice on recommendations and solutions on such additional planning issues to federal, state and regional agencies.” (OCCOG By-Laws, Art. 2.1(C).)

Member participation is one of voluntary cooperation, and no member can be compelled to conduct any activity or implement any plan or strategy which that member does not wish to undertake. In other words, there is no single controlling authority. The OCCOG thus provides a substantial service to the community by bringing each respective member's wealth of knowledge together in a collegial forum for the exchange of ideas and information on local and regional planning. The OCCOG continues to be very active in its advisory and planning efforts, as made clear by its 2014-2015 agenda, which can be found at: <http://occog.com/projects-documents/>.

With the foregoing in mind, OCCOG responds to the Grand Jury's findings and recommendations, per Penal Code section 933.05, subdivisions (a), (b), and (c), as indicated below.

Findings 4 and 5

OCCOG cannot agree or disagree with these Findings because they are not applicable to OCCOG. As discussed above, it is abundantly clear that OCCOG is a horizontal and not a vertical JPA. Accordingly, OCCOG possesses insufficient information to definitively respond to these findings.

Finding 6

Similarly, OCCOG cannot definitively respond as to all 32 JPAs identified in this Finding. Speaking for itself only, OCCOG disagrees that it is not complying with Section 6500 of the Government Code. OCCOG completed the required filing to the County under Gov. Code section 6505 for the 2014 annual financial statements and, if desired by the Grand Jury, can submit confirmation of same. As discussed in detail below, OCCOG also disagrees that it has not complied with SB 282. OCCOG has submitted all required financial statements to the State

Controller as required by the Government Code and can provide confirmation of its FY 2013-2014 submission if the Grand Jury so desires.

Recommendation 3

OCCOG has implemented this recommendation. An outside audit is performed annually, the results of which are posted on the OCCOG website pursuant to OCCOG's own posting policy. This annual audit can be found at: <http://occog.com/projects-documents/>. These annual financial statements have been submitted to the County Controller as required by Gov. Code section 6505. As for submission to the State Controller, OCCOG has complied with SB 282, Chapter 288, which is codified as Government Code section 12463.1. That section requires submission of financial statements to the State Controller:

“Whenever, in the opinion of the advisory committee and the Controller, the public welfare demands that the reports of the financial transactions of a district other than a school district be published, the Controller shall notify the district that reports of its financial transactions are *required to be furnished to him or her pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5.*” (Gov. Code § 12463.1(b).)

OCCOG in fact already submits annual financial statements per Gov. Code section 53890, *et seq.* Therefore, OCCOG is already in compliance with Section 12463.1 by its submissions under Section 53890, *et seq.*, and has therefore implemented this recommendation. OCCOG will submit confirmation of its FY 2013-2014 report filing per Section 53890, *et seq.*, if the Grand Jury so desires. Accordingly, OCCOG has reported its financial activities as required by law and complies with its County and State reporting requirements.

Recommendation 4

As stated above, OCCOG already submits and will continue to submit annual financial statements per Gov. Code sec. 53890, *et seq.*, and has therefore implemented this recommendation. OCCOG can submit confirmation of its FY 2013-2014 submission if the Grand Jury so desires.

In conclusion, while we respect what the Grand Jury has undertaken, this investigation and report is inapplicable to OCCOG. As thoroughly set forth above, OCCOG is a horizontal JPA, which provides a substantial benefit to the Orange County region in making regional and local planning a collaborative, community endeavor. It understands the duty imposed upon it for transparency and accountability and has complied with its County and State financial reporting requirements.

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Please feel free to contact me should you have any questions or wish to discuss this matter further.

Regards,

ALESHIRE & WYNDER, LLP



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OCCOG General Counsel

FG:MWR

cc: Gwenn Norton-Perry, Executive Director
Orange County Grand Jury, 700 Civic Center Dr. West, Santa Ana, CA 92701