

September 25, 2015

The Honorable Glenda Sanders
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Tustin Unified School District's Response to 2014-15 Orange County Grand Jury Report, "Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation"

To the Honorable Glenda Sanders:

In accordance with California Penal Code Section 933.05, the Orange County Grand Jury has requested that the Tustin Unified School District ("TUSD") respond to certain Findings and Recommendations set out in the 2014-15 Orange County Grand Jury Report entitled, "Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation" ("Report"). The Findings and Recommendations applicable to TUSD, and TUSD's responses, are set forth below.

Finding F.1: There is a lack of transparency to homeowners relative to how CFD funds are being used.

TUSD Response to Finding F.1: TUSD notes that the statement contained in Finding F.1 as to a "lack of transparency" is difficult to respond to, inasmuch as it appears to represent the subjective view of the Orange County Grand Jury as to what level of records, documentation and/or information would be considered to be "adequate" in terms of "transparency" in this area. Subject to the foregoing, TUSD disagrees in part with Finding F.1. TUSD points out that it is fully compliant with the applicable statutes governing provision and availability of information concerning community facilities district ("CFD") fund expenditures. TUSD also notes that information concerning CFD "funds" (a term that is not defined in the Finding) is publicly available, both through TUSD, other public agencies and online, in a number of forms and from a number of sources. In support of its Response position, TUSD notes the following:

1. TUSD complies with the requirement for the provision of annual reports relative to CFD funds and revenues as set forth in California Government Code Section 53343.1. These annual reports are filed with the California Debt and Investment Advisory Commission ("CDIAC") as required by the statute, and are also available as public records from TUSD upon request.

2. Allocation of bond proceeds, debt service requirements for issued special tax bonds or other securities of CFDs of TUSD, fund balances and TUSD's Comprehensive Annual Financial Reports (sometimes referred to as "CAFR's") are made available as part of offering documents when special tax bonds are sold to the municipal market on the (MSRB) Electronic Municipal Market Access (EMMA) website. This is done both at the time that publicly offered securities are issued to the market (by way of release and publication of a Preliminary Official Statement and final Official Statement) and by way of compliance with the Securities and Exchange Commission (SEC) rules governing continuing disclosure requirements for issued securities through periodic continuing disclosure reports. TUSD's continuing disclosure reports for publicly offered securities can be located on the MSRB EMMA website, which can be accessed on the internet at www.emma.msrb.org. TUSD's continuing disclosure reports on the EMMA website are current. The Orange County Grand Jury may not be aware of the existence of the EMMA website, or information contained on the EMMA website relative to CFD securities issuances, at the time that the Report was issued.
3. The facilities and capital projects that an individual CFD is authorized to fund are referenced in multiple places in the formation documents for each CFD. This includes descriptions set out in issuance resolutions, public notices, the required Community Facilities District Report (see Governing Code Section 53321.5) and in related documents that act to authorize a CFD to levy and collect special taxes and incur bonded indebtedness. All of these documents are public records and are available to members of the public upon request.
4. The TUSD Board of Education and facilities and finance staff for TUSD maintain a continuous level of oversight and review relative to the management, investment, utilization and expenditure of all CFD special tax bond proceeds, investment earnings, special tax revenues and project expenditures. All of these records are retained by TUSD, and are available for public inspection upon request, pursuant to the provisions of the California Public Records Act (please see Government Code Sections 6250, *et seq.*).

TUSD notes that it has and would reply to any requests from any taxpayers located within the boundaries of any of its CFDs for information relative to specific retention, utilization, expenditure, investment or management of CFD bond proceeds, investment earnings, special tax revenue allocations or construction fund utilization.

Finding F.2: There does not seem to be appropriate oversight and auditing of CFDs and special tax expenditures within the County of Orange.

TUSD Response to Finding F.2: TUSD is unable to definitively agree or disagree (either in whole or in part) with this finding, inasmuch as the Finding contains several vague terms. TUSD notes that the Finding is qualified by stating “there does not seem to be appropriate oversight and auditing” [emphasis added] with respect to CFDs and special tax expenditures. The term “seem to be” and the term “appropriate” introduce a level of subjectivity and qualification to this Finding that makes it difficult to respond to. The Report contains no definition of the term “appropriate” and to which person or party such level of “oversight and auditing” would be applied to determine the requisite level or standard. Notwithstanding the foregoing, TUSD disagrees with the foregoing Finding in part for the following reasons:

1. TUSD incorporates by reference the disclosure, information and document availability statements relative to TUSD CFDs as set forth in TUSD’s Response to Finding F.1, above.
2. TUSD audit review reports currently are prepared by an outside auditor, independent of TUSD’s financial and operations staff. Currently, TUSD utilizes the services of Nigro & Nigro, PC, as its principal outside auditing firm.
3. TUSD notes that its general fund and CFD funds and accounts are subject to requirements for independent audit on an annual basis, as set forth within California law. TUSD audits and audit reports are annually presented to the TUSD Board of Education, and are available for public review upon request. TUSD’s CAFR’s are included in TUSD’s annual continuing disclosure reports that are available for review to any interested member of the public on the internet through the MRSB’s EMMA website.
4. TUSD meets all current legal requirements relative to oversight and auditing of its CFD’s, bond proceeds, CFD investment revenues and CFD special tax revenues.

Finding F.3: While the assumption is that the CFD debt would be repaid in a finite period of time, there is a mechanism available to controlling entities to extend debt obligations and thereby extend the CFD special tax in perpetuity.

TUSD Response to Finding F.3: TUSD disagrees with this Finding.

The Report contains a number of incorrect statements concerning the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (“Mello-Roos Act”), and contains a number of erroneous factual statements with regard to the formation, maintenance and debt issuance and repayment of issued securities by CFDs. In this regard, TUSD has consulted with

its Bond Counsel (who represents TUSD with regard to the Mello-Roos Act, TUSD CFDs and TUSD CFD securities issuance) who have advised TUSD of the following matters:

1. The Mello-Roos Act provides for a statutory requirement in the formation of CFDs which require an "end date" (sometime known as a "sunset clause") with regard to special tax authorizations affecting residential property within CFDs (see Government Code Section 53321).
2. The term (final maturity) of special tax bonds issued by a Community Facilities District cannot exceed forty (40) years. See Government Code Section 53351(e). TUSD notes that in practice, typically Mello-Roos special tax bonds are issued for a term of years between twenty-five (25) and thirty (30) at the time of initial issuance. However, neither TUSD nor its Bond Counsel has undertaken an independent study of average maturities for special tax bonds issued by CFDs within either the State of California or the County of Orange.
3. In the event that a CFD undertakes to issue refunding bonds to refund existing special tax bonds of the CFD, specific statutory provisions govern the utilization of savings generated as a result of such refunding efforts (see Governing Code Section 53362.5).
4. In certain cases, a CFD may be obligated to, in fact, reduce special taxes imposed on taxpayers within the CFD once CFD special tax refunding bonds are issued (see Government Code Section 53367.2).
5. Notwithstanding statements contained in the Report to the contrary, special tax refunding bonds issued by a CFD for refunding purposes cannot exceed or extend the final maturity date of the CFD special tax bonds being refunded (see Government Code Section 53363.2(e)).
6. While it is possible, under the provisions of the Mello-Roos Act, to establish a CFD that would authorize the levy and collection of a special tax on non-residential property, which would have an essentially unlimited term, as a practical matter CFDs formed in the last twenty (20) years will contain a "sunset clause" for the special taxes levied and collected by such CFDs with a finite term for payment of principal and interest (debt service) on outstanding bonds or refunding bonds of CFDs. TUSD and its CFDs have complied with all of the foregoing statutory requirements in the formation of TUSD's CFDs, the issuance of TUSD special tax bonds and the issuance of TUSD special tax refunding bonds.
7. TUSD notes that some public agencies within Orange County that have formed CFDs have arranged for those CFDs to issue debt, repay that debt and have, in

fact, allowed the special taxes of those CFDs to terminate once the final debt was repaid. Those CFDs stand for the proposition that CFDs can be utilized for facilities financing and funding arrangements with a specific stated lifetime and term and for the proposition that upon satisfaction of securities repayment obligations, CFD special taxes can, and, in fact, have, been extinguished when the purposes for which they are levied have been completed. This situation runs directly contrary to a principal presumption contained in Finding F.3, and is not mentioned or referenced in the Report.

Recommendation R.1: Each local agency that established the CFD should create an oversight committee and an audit committee to provide for an independent, transparent view of the manner in which CFD funds are being expended. (F.1, F.2)

TUSD Response to Recommendation R.1: While TUSD respects the Grand Jury's recommendation; TUSD will not be implementing Recommendation R.1, inasmuch as we do not feel such a requirement is warranted. In making this determination, TUSD notes the following:

1. TUSD hereby restates its Responses to Findings F.1 through F.3, inclusive, relative to current disclosure, information and document availability to any person or party, as well as information currently available on the internet from various sources, including, but not limited to, TUSD's annual continuing disclosure reports available on the MSRB's EMMA website.
2. TUSD notes that it currently maintains a "AA" securities rating from Standard & Poor's (a national rating service) and a "Aa1" securities rating from Moody's Investors Services (a separate national rating service) for general obligation secured debt. While these ratings do not necessarily reflect the credit quality of an individual CFD's debt obligation, it does confirm that, based on an outside, objective evaluation of TUSD's finances and financial policies by nationally recognized rating services (whose principal function is to evaluate exactly those type of criteria), TUSD's financial criteria and standing hold to a very high level of performance and scrutiny. TUSD would respectfully submit that such high credit ratings would not be assigned to TUSD if its financial policies were not transparent, reliable and reflective of a very high degree of TUSD staff capabilities and integrity.
3. As part of the authorization and issuance of California school district general obligation bonds, the California Legislature has enacted various statutory provisions, which require an independent Citizens' Oversight Committee to evaluate, and provide to the public information regarding, the expenditure of project proceeds of general obligation bonds. The Legislature has not imposed any such requirement(s) relative to the Mello-Roos Act or upon CFDs. TUSD has complied with such requirements for its general obligation bonds and is cognizant

of the resultant costs and resources required to support such. TUSD respectfully notes that it does not want to incur an additional commitment of costs, resources, and staff time for an effort that is not mandated by California law.

4. TUSD notes that there has been no public demand or outcry for this type of oversight committee and/or audit committee relative to expenditure of CFD bond proceeds, investment revenues, special tax revenues or other CFD funds.
5. TUSD again notes that its funds and accounts are subject to outside, independent audit review on an annual basis, and that such audit reports are presented at public meetings to the Board of Education of TUSD, and are available to members of the public upon request. Audit reports are also frequently reviewed by rating agencies and other outside entities in evaluating TUSD's auditing procedures and financial status.
6. TUSD currently employs a professional, responsible and ethical financial staff, including management-level employees, whose responsibility is to oversee the collection, management, investment and expenditure of CFD funds and revenues. The expenditure of CFD funds and revenues is also subject to the purview, oversight and direction of the TUSD Board of Education.
7. The formation of "independent oversight committees" and/or "independent audit committees" would impose additional burdens on TUSD staff, resultant costs for the employment and support of such committees, which TUSD, under the current financial climate affecting funding for California public school districts, does not find it to be reasonable or necessary.
8. TUSD notes that, while other public agencies may experience operational difficulties or questions with regard to the administration of their CFDs and CFD funds, TUSD continues to operate its CFDs in an open and publicly accessible manner.
9. TUSD also notes that having to form, operate, support and provide professional assistance to such oversight committees would place an additional burden on CFD taxpayers for the utilization of CFD special tax revenues for such administrative costs, with the result that those funds would be diverted from capital projects that support TUSD's mission of providing the highest quality of public education to its students.

Recommendation R.2: Audit report information, as delineated in California Government Code, 1982 §53343.1, should be made available to the CFD taxpayers on a website after each fiscal year for each CFD number. (F.1, F.2)

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TUSD Response to Recommendation R.2: As noted earlier, upon request, TUSD audit report information is always available to any member of the public including CFD taxpayers. Consequently, the requirements aspects noted in Recommendation R.2, is not necessary. In support of this determination, TUSD references its Responses to Findings F.1 through F.3, inclusive, above, and its Response to Recommendation R.1, above. In addition, TUSD notes that the referenced annual reports are publicly available documents, available to any member of the public choosing to request them pursuant to the California Public Records Act, and that such reports are filed with CDIAC in conformance with California law.

While TUSD respects the findings in the Orange County Grand Jury Report, TUSD has and will continue to follow the requirements set forth within California law with respect to CFDs. In addition, TUSD is committed to following the advice of the Bond Counsel whom represents TUSD on the Mello-Roos Act.

Sincerely,

TUSTIN UNIFIED SCHOOL DISTRICT



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Chief Financial Officer

cc: Orange County Grand Jury
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Ltr: Grand Jury Response 9-25-15
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