



September 28, 2015

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

Re: Response of City of Seal Beach to the Grand Jury Report, entitled  
*“Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation,”*  
released on June 29, 2015

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Dear Judge Sanders:

The City of Seal Beach (the “City”) has reviewed the above-referenced Grand Jury Report and dutifully submits its responses to the Orange County Grand Jury’s findings and recommendations pursuant to Penal Code Sections Code 933(c). As noted in the Grand Jury Report, the City has formed community facilities districts (“CFDs,” with each being a “CFD”) under the Mello-Roos Community Facilities Act of 1982, as amended, set forth in the California Government Code commencing with Section 53311 (the “Mello-Roos Act”). Pursuant to the Mello-Roos Act, the City Council acts as the governing body of each CFD.

### **Grand Jury Findings**

**F-1:** *The Grand Jury found: “There is a lack of transparency to homeowners relative to how CFD funds are being used.”*

**Response:** The City wholly disagrees with this finding.

In connection with the formation of each CFD, a Notice of Special Tax Lien has been filed with the County’s Clerk-Recorder in the County Official Records, as required by the Mello-Roos Act. Each Notice of Special Tax Lien includes, among other things: (i) a description of the facilities and, if applicable, services to be funded by the CFD special tax (directly or indirectly by the repayment of bonds issued to fund such facilities or services), and (ii) the rate and method of apportionment (the “Rate and Method”), which sets forth the formula and limits for determining the CFD special tax levy each year.

The special tax lien is placed on all of the property within the CFD subject to the special tax. Whenever a prospective homeowner buys a property, the Notice of Special Tax Lien would be listed on the title report, and therefore, accessible by the buyer for review before the closing of

escrow on the property. Pursuant to the Mello-Roos Act, the City has only used funds of each CFD for purposes described in the related Notice of Special Tax Lien.

The revenues and expenditures of each CFD are shown and readily identifiable in the City's annual budget and the Comprehensive Annual Financial Report (the "CAFR") each fiscal year. The City has been posting its adopted annual budgets and its CAFRs on the City's website. Currently, the City's website contains links to the adopted budgets for each of fiscal years 2006-07 through 2015-16, and the CAFR for each of fiscal years 2008-09 through 2013-14.

The City believes that it has acted in a transparent manner with respect to the use of the CFD funds and the relevant information is accessible to current and prospective homeowners.

**F-2:** *The Grand Jury found: "There does not seem to be appropriate oversight and auditing of CFDs and special tax expenditures within the County of Orange."*

**Response:** The City wholly disagrees with this finding, as applied to the City and its CFDs.

As discussed above, the revenues and expenditures of each CFD are shown and readily identifiable in each adopted annual budget and the CAFR of the City. The annual budgets are adopted at open meetings of the City Council (where the public is given opportunity to comment) and are available for any interested person to view as part of the agenda packet before such meeting. Incorporated in the CAFRs are the City's audited financial statements of the City, as prepared by independent, third party certified public accountants. The adopted annual budgets and the CAFRs for the most recent years are posted on the City's website and also accessible in hard copy forms to any interested party upon inquiry to the City Clerk's office or the City's finance department. Pursuant to Government Code Section 26909, copies of the City's audited financial statements (which, as stated above, include the CFDs' financial information) are submitted to the County Auditor-Controller and the State Controller within 12 months of the end of each fiscal year.

Pursuant to the Local Agency Special Tax and Bond Accountability Act adopted in 2000 (which added Sections 50075.1 to 50075.5 and 53410 to 53412 to the Government Code) (the "Accountability Act"), the City's chief fiscal officer is required to file with the City Council a report for each CFD regarding the amount of special tax collected and expended and the status of the CFD projects annually. The information required by the provisions of the Accountability Act is included in the materials filed with the City Council each year in connection with the adoption of the City's annual budget. As such, the City believes that it is compliant with the reporting requirements of the Accountability Act.

Furthermore, pursuant to Government Code 53891, information regarding the funds of each CFD is submitted to the State Controller, on forms prescribed by the State Controller's office each year.

The City believes that sufficient oversight and auditing of the City's CFDs are currently in place.

**F-3:** *The Grand Jury found: “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.”*

**Response:** The City wholly disagrees with this finding, as applied to the City’s CFD bonds.

Pursuant to the Mello-Roos Act, CFD bonds can only be issued if qualified electors of the CFD had authorized the issuance of bonds in an election held within the CFD. The maximum principal amount of bonds that can be issued pursuant to such bond authorization must be identified in the election proceedings. As noted by the Grand Jury Report, no bonds issued under the Mello-Roos Act may have a term greater than 40 years. Furthermore, the Mello-Roos Act (specifically, Government Code Section 53363.2) prohibits the issuance of any refunding bonds with terms that extend beyond the final maturity date of the bonds being refunded.

In any case, with respect to the two CFD formed by the City for which there are outstanding bonds – namely, the City of Seal Beach Community Facilities District No. 2002-01 (Heron Pointe) and the City of Seal Beach Community Facilities District No. 2005-01 (Pacific Gateway Business Center), the Rate and Method for each of these CFDs expressly establishes a final date on which the special tax may be levied. There is no mechanism for the special tax levy to be extended beyond such specific date without approval through another election held within the CFD.

**Grand Jury Recommendations**

**R-1:** *The Grand Jury recommended: “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.”*

**Response:** The City believes that the implementation of this recommendation is unnecessary.

Creation of additional oversight and audit committees will result in additional administrative expenses. Expenses incurred for the administration of a CFD are included in the calculation of the amount of special tax levy each year. Thus, the additional expenses associated with the creation of these additional committees will ultimately borne by the taxpayers within the CFD. The City does not wish to increase the CFD taxpayers’ burden by imposing these additional administrative expenses, when sufficient oversight and auditing of the City’s CFDs are already in place.

**R-2:** *The Grand Jury recommended: “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.”*

**Response:** The City believes that the implementation of R-2 is unnecessary.

Government Code Section 53343.1 describes an audit report which the City must prepare only if requested by a person who resides or owns property in a CFD. To the City Staff’s knowledge,

the City has never received any such request. As discussed above, the City already prepares various reports relating to the CFDs' finances. The preparation of another report for a CFD will increase the CFD's administrative expenses to be ultimately borne by the payers of special tax within the CFD. The City does not wish to increase the CFD taxpayers' burden when none of the CFD taxpayers has made a relevant request under the law.

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The City hopes that this response is helpful and takes this opportunity to thank the Grand Jury for its services and efforts.

Respectfully submitted,



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City Manager

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