



City of Brea

November 18, 2015

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

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

Dear Judge Sanders:

The City Council of the City of Brea (the “City”) has reviewed the above-referenced Grand Jury Report and authorized the delivery of this letter, as the City’s, the City Council’s and the Mayor’s comments to the 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 contains 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 also includes as an exhibit, 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.

City Council

Marty Simonoff
Mayor

Christine Marick
Mayor Pro Tem

Cecilia Hupp
Council Member

Glenn Parker
Council Member

Steven Vargas
Council Member

The financial transactions of the CFDs are summarized in the City's annual budget and the Comprehensive Annual Financial Report (the "CAFR") each fiscal year. The City's most recently adopted budget and the City's latest available CAFR are posted on the City's website.

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 financial transactions of each CFD are summarized 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 City's most recent adopted annual budget and CAFR 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, a copy of the City's audited financial statements for fiscal year 2013-14 (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 fiscal year 2013-14. The City plans to submit the City's audited financial statements for fiscal year 2014-15 to County Auditor-Controller and the State Controller within 12 months of the end of fiscal year 2014-15.

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 City's Staff prepares a report for each CFD regarding the amount of special tax collected and expended and the status of the CFD projects annually. Such reports are presented to and received by the City Council at open meetings.

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. For some of the City's CFDs, the authorized maximum amount have already been issued. For the remaining CFDs with outstanding bonds but where the bond authorization has not been exhausted, the City does not expect to issue additional bonds (except for refunding bonds) because the related CFD projects have been completed.

As noted by the Grand Jury Report, bonds issued under the Mello-Roos Act may not 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. Therefore, for each City CFD with outstanding bonds, the respective termination date of the special tax levy is governed by current final maturity dates for such CFD's outstanding bonds.

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 recommendation requires further analysis. The City Council has established a Finance Committee, as a subcommittee of the City Council. The Finance Committee reviews various City finance matters and makes recommendation to City Council on related agenda items. The City is reviewing the possibility of assigning the Finance Committee with additional oversight and audit responsibilities regarding CFD fund expenditures. It is intended that City Manager will provide the City Council with recommendations before the end of the calendar year.

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 recommendation requires further analysis. 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 the CFD. To the knowledge of the City's Staff, 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 is reviewing the additional expenses and resources necessary to prepare such a report. It is intended that City Manager will provide the City Council with recommendations before the end of the calendar year.

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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,



Marty Simonoff
Mayor of the City of Brea

Cc: Paul S. Borzcik, Foreman
2014-15 Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701