

CAPISTRANO BAY DISTRICT



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Board of Directors

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July 24, 2012

Thomas J. Borris, Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Response of Capistrano Bay Community Services District
to Orange County Grand Jury Report "Let There Be Light"

Dear Judge Borris:

Pursuant to California Penal Code sections 933(c) and 933.05, the Board of Directors of the Capistrano Bay Community Services District ("CBCSD"), which is the governing board of CBCSD, has approved this response to the findings and recommendations in the Orange County Grand Jury's April 27, 2012 report entitled "*Let There Be Light, Dragging Special Districts from the Shadows*" (the "Report"). The Report requests that CBCSD respond to its findings F1, F2, F3, F4, F7, F8, F12 and F15, and Recommendations R1, R2, R6, R7, R8 and R9.

CBCSD responds as follows to the Findings and Recommendations of the Report:

Grand Jury Finding F1: "Most Orange County special districts, with or without the assistance of the Local Agency Formation Commission Organization ("LAFCO"), have been incapable or unwilling to consolidate, absorb, or eliminate these outmoded and/or redundant agencies. LAFCO typically addresses larger issues such as merging of cities and elimination of "islands" within the county. The special districts themselves have not worked seriously toward their consolidation or demise. In this regard, the enterprise special districts and the non-enterprise special districts require independent evaluation and handling."

Response to Grand Jury Finding F1: CBCSD disagrees with Finding F1. The Report does not provide specific information to support Finding F1, including the express assumption that special districts are "outmoded and/or redundant" and the implicit assumption that consolidation or elimination of special districts is necessary or desirable; and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting Finding F1. CBCSD notes that, in its May 9, 2012 response to the Report, LAFCO also disagrees with Finding F1.

Grand Jury Finding F2: “Special districts have made very little progress in complying with the recommendations made by various governmental agencies. To ensure recommendations are followed, more coordination and cooperation is needed from the city and county agencies.”

Response to Grand Jury Finding F2: CBCSD disagrees with Finding F2. The Report does not provide specific information to support Finding F2, and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting Finding F2.

Grand Jury Finding F3: Most non-enterprise special districts in Orange County have outlived their purpose and usefulness. Services that they [sic] once only available through the special district are now being provided by the surrounding cities and the expanding county.

Response to Finding F3: CBCSD disagrees with Finding F3. The Report does not provide specific information to support Finding F3, and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting Finding F3. CBCSD continues to provide necessary community services to its residents in a cost-efficient manner, and therefore disputes the contention in the Report that it has “outlived [its] purpose and usefulness.” Further, it is unclear what criteria, if any, the Report used in reaching this Finding. In contrast to Finding F3, the most recently conducted municipal service reviews by the Orange County LAFCO identified no such issues with non-enterprise special districts after an extensive review of overall service delivery in Orange County.

Grand Jury Finding F4: The eleven non-enterprise special districts of Orange County founded before 1965 have not reflected the growth of the cities and county. The services that were unavailable from cities or the county have long since been made available as both the cities and county grew. Some of these special districts could be removed from the county tax roles, and their services funded and absorbed by the county, surrounding cities or homeowners associations wherein they abide.

Response to Finding F4: CBCSD disagrees with Finding F4. The Report does not provide specific information to support Finding F4, and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting Finding F4. CBCSD believes that the municipal service reviews conducted by the Orange County LAFCO demonstrate that, in most cases, these non-enterprise districts have continued to provide quality services to a growing population. Finding F4 also assumes that the county, surrounding cities or homeowners associations have funding sources adequate to finance the services currently being provided by the non-enterprise special districts. In light of the extensive media coverage of the financial plight of the county and many cities, this assumption seems questionable.

Grand Jury Finding F7: “The unrestricted reserves of the special districts are available to the governing boards to spend as they please. Local citizens are not openly informed of this wealth when agencies ask for fee increases, special assessments, or bond measures. Most of the special districts do not appear to have specific criteria for amassing these reserves nor do they have published long-range plans for their constructive use.”

Response to Grand Jury Finding F7: CBCSD partially agrees with Finding F7. CBCSD concurs with the conclusion that special district boards of directors have discretion regarding their agencies' use of reserve funds. The Report does not provide specific information to support the other conclusions in Finding F7, and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting those other conclusions in Finding F7. CBCSD's Board of Directors believes that CBCSD's unrestricted reserves (which, according to the Report, represent less than one-half of its annual operating budget) are appropriately sized for the needs of CBCSD and the services it provides.

Grand Jury Finding F8: "The twenty-seven special districts in Orange County have amassed unrestricted reserves of over \$866,000,000. That is enough to fund all of these special districts for more than a year without taxes, fees, interest, or other sources of revenue. The boards of directors have the sole discretion to spend these unrestricted reserves."

Response to Grand Jury Finding F8: CBCSD partially agrees with Finding F8. CBCSD concurs with the conclusion that the boards of directors of special districts have discretion regarding the use of their agencies' unrestricted reserves. CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting the other conclusions in Finding F8; but, the Report's own data shows that CBCSD's unrestricted reserves are relatively small, and less than one-half of the CBCSD annual operating budget.

Grand Jury Finding F12: The community services that the original non-enterprise special districts provided can be provided by the surrounding cities and the county that have engulfed these districts. Continuing to collect taxes for these special duplicative services is a disservice to both the community they serve and the surrounding communities that provide the same or similar services.

Response to Finding F12: CBCSD disagrees with Finding F12. The Report does not provide specific information to support Finding F12, and CBCSD has not specifically investigated and is not otherwise aware of facts documenting or supporting Finding F12. CBCSD believes that the Orange County LAFCO, as the applicable reviewing governmental agency, and the residents and voters within each non-enterprise special district, are in the best position to determine whether the existing services should continue to be provided by that special district, and whether that district's use of its tax revenues to support those services is of benefit to that particular community. In this regard, the Orange County LAFCO's most recent municipal service reviews of non-enterprise special districts revealed no evidence of unnecessary or duplicative services, or a misuse or waste of tax revenues to support those services. Further, Finding F12 is premised on the questionable assumption that adjacent cities have the financial and staffing capacity to take over the provision of services within the special districts' boundaries.

Grand Jury Finding F15: "Only one of the special districts, The South Coast Water District, has had recent performance audits. The lack of performance audits for the remaining special districts leaves the potential for inefficiencies, poor practices, outmoded operations, etc. hidden from the governing boards and the communities they serve. The lack of published performance audits has contributed to the public's ignorance of these districts."

Response to Finding F15: CBCSD partially agrees with Finding F15. CBCSD has not specifically investigated and is not otherwise aware of any facts regarding the conduct of a “performance audit” by the South Coast Water District, or the scope of that “audit.” CBCSD concurs with the Report that the periodic evaluation of agency performance is one way to highlight to the governing board, and to allow the governing board to address, issues relating to efficiency, practices and operations. Such an evaluation is conducted by the Orange County LAFCO approximately every five years as part of its municipal services review of every special district. CBCSD believes that “performance audits” are just one of a number of ways to educate the governing board regarding agency efficiency, practices and operations, or to educate the public on special districts generally.

Grand Jury Recommendation R1: “All special districts (except the Vector Control District and the County Cemetery District) should be eliminated from the county tax rolls and should rely solely on fees for the services of surrounding governments.”

Response to Recommendation R1: This recommendation will not be implemented by CBCSD because it is not warranted or reasonable. CBCSD makes efficient use of the property tax revenue allocated to it to provide needed services in a cost-effective manner. Because property taxes are not “eliminated” but merely reallocated to other taxing agencies, implementation of Recommendation R1 would have no impact on the tax burden paid by property owners within CBCSD, but would require those property owner to pay increased fees to CBCSD to cover the services that formerly were funded by tax revenue.

Grand Jury Recommendation R2: Community service districts should be absorbed either in the cities surrounding them or into surrounding private homeowners associations. Each community service district should meet with LAFCO and the appropriate city or homeowner’s association to develop plans and schedules for the future of these special districts. This meeting should take place before September 30, 2012.

Response to Recommendation R2: This recommendation will not be implemented by CBCSD because it is not warranted and it is not reasonable. CBCSD has received no information, and has no reason to believe, that the adjacent cities or the homeowners associations within its boundaries are capable of providing the extent and level of services currently provided by CBCSD at the same or a higher level, or at the same or lower cost. In addition, the Orange County LAFCO, which is the governmental agency specifically charged with reviewing the services provided by local governmental agencies in Orange County, has reviewed CBCSD in the context of its municipal service reviews, and did not conclude that CBCSD should be absorbed either into an adjacent city or a surrounding private homeowner’s association.

Grand Jury Recommendation R6: “Special districts should adopt ‘board of director’s practices’ for all their reserves, restricted and non-restricted. All reserves should be classified in their 2013-2014 budgets according to GASB Standard No. 54. LAFCO should work with the special district to prepare standard criteria for accumulating reserves according to the new classifications by December 15, 2012.”

Response to Recommendation R6: This recommendation requires further analysis to determine the applicability of GASB Standard No. 54 to CBCSD's budget, and the propriety of adopting "board of director's practices" and GASB 54 for restricted and non-restricted CBCSD reserves. Possible implementation of all or a portion of Recommendation R6 will be studied by CBCSD and considered by the CBCSD Board of Directors by October 27, 2012.

Grand Jury Recommendation R7: "Excessive unrestricted reserves should be used to reduce existing debts. Future revenues should be reduced to avoid the accumulation of unallocated revenue that does not meet the adopted new standards."

Response to Recommendation R7: This recommendation will not be implemented by CBCSD because it is not feasible or reasonable. CBCSD does not have "excessive unrestricted reserves." CBCSD's relatively modest unrestricted reserves are maintained for emergency and contingency purposes, and it would be imprudent and irresponsible for CBCSD not to maintain this level of reserves.

Grand Jury Recommendation R8: "Each special district should have an independent performance audit at least every three years. The executive summary of the performance audit should be distributed to all the taxpayers of each special district. Each of the special districts that has not had a performance audit within the last five years should contract with an independent outside consultant to conduct such an audit during 2012. These audits should be repeated at least every three years."

Response to Recommendation R8: This recommendation requires further analysis to determine the scope and extent of a "performance audit," and its cost and relative benefits to the CBCSD governing board, its management and customers. As indicated in its response to Finding F15 of the Report, Orange County LAFCO conducts an evaluation of each special district's performance as part of its municipal services reviews of special districts every five years. CBCSD will study this issue and bring it to the CBCSD Board of Directors for consideration by October 27, 2012.

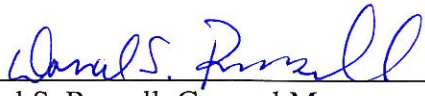
Grand Jury Recommendation R9: "Each special district should contribute 1% of its unrestricted reserve fund to LAFCO to help finance preparing and directing the consolidation, absorption, or elimination, and the setting of standards for reserves for the special districts. These funds should be included in LAFCO's future programs and budgets until the consolidation, absorption or elimination of each special district is achieved. With these additional funds, LAFCO should begin meeting with each special district before the 2014 fiscal years budgeted for consolidation, absorption and/or elimination of these districts."

Response to Recommendation R9: This recommendation will not be implemented by CBCSD because it is not feasible or reasonable. Absent the statutory authority or requirement to do so, a "contribution" by CBCSD of 1% of its unrestricted reserves would likely be an unconstitutional gift to Orange County LAFCO, exposing the members of CBCSD's board of directors to personal liability for that amount. In addition, there is no indication that Orange County LAFCO lacks the resources it needs to conduct the studies and analysis that Orange County LAFCO determines appropriate with regard to the provision of water, sewer and other municipal services in Orange County.

Please feel free to contact me should you have any questions regarding the responses of the Capistrano Bay Community Services District to this Grand Jury report.

Very truly yours,

Capistrano Bay Community Services District

By: 
Donal S. Russell, General Manager