



CITY OF HUNTINGTON BEACH

SUCCESSOR AGENCY

to the former Redevelopment Agency

Fred A. Wilson
Executive Director

September 20, 2012

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

RE: Response of the City of Huntington Beach to Orange County Grand Jury 2011-2012 Report, titled "The Dissolution of Redevelopment: Where Have We Been? What Lies Ahead?"

Dear Judge Borris:

This letter constitutes, in accordance with Section 933.05 of the California Penal Code, the response of the City of Huntington Beach ("City") to the Orange County Grand Jury 2011-2012 Report, dated June 22, 2012, titled "The Dissolution of Redevelopment: Where Have We Been? What Lies Ahead?" ("Grand Jury Report"). The enumerated items in this response correspond to the numbering of the Findings and Recommendations contained in the Grand Jury Report.

INTRODUCTORY STATEMENT

Huntington Beach Redevelopment Agency

As of February 1, 2012, all redevelopment agencies in the State of California were dissolved as a result of Assembly Bill 26 from the 2011-2012 First Extraordinary Session of the California Legislature as modified by the California Supreme Court in its opinion in *California Redevelopment Association v. Matosantos* (2012) 53 Cal. 4th 231 ("AB1x 26"). Until that date, there existed in the City of Huntington Beach two redevelopment project areas governed by the City of Huntington Beach Redevelopment Agency (Agency), which included the Huntington Beach Merged Redevelopment Project Area (merged in 1996 from five separate project areas) and the Southeast Coastal Project Area.

Grand Jury Report Focus and Report Preparation Process

Although the City appreciates the interest of the Grand Jury in examining the dissolution of redevelopment agencies and the resultant transition occurring throughout Orange County, the Grand Jury Report itself acknowledges that what began as an examination of redevelopment in Orange County changed in mid-stream: "The new focus is on the dissolution of redevelopment programs, management of the transition, and encouraging

local planning for whatever new program might take its place.” (Grand Jury Report, p. 2.) Although the new focus was acknowledged, much of the Grand Jury Report repeats old canards about redevelopment from a significantly out-dated and discredited 1996 report titled "Redevelopment: The Unknown Government." Readily available and accurate facts about redevelopment in California from the California Redevelopment Association and the League of California Cities, the two most authoritative resources, were not cited in the Grand Jury Report.

Moreover, the Grand Jury Report was undertaken and produced in a time of great flux and uncertainty with numerous ABx1 26 cleanup bills being proposed and lawsuits challenging ABx1 26 and its implementation having been filed. Then, *less than one week after* the Grand Jury Report was released, the Legislature enacted, and the Governor signed into law to be effective immediately, Assembly Bill 1484 ("AB 1484") which contains significant revisions to ABx1 26. As a result of the admitted shift in focus and the pending legislation and lawsuits and the Legislature's enactment of AB 1484, any potential for the Grand Jury Report to be relevant has been significantly reduced by events outside of the Grand Jury's control.

The process employed by the Grand Jury to study the issues also undermined the accuracy of the Grand Jury Report. We understand that the Grand Jury operates in a certain manner but even so, the Grand Jury made it difficult to correct errors and misleading statements. The City first learned the Grand Jury was preparing a report when it received from the Grand Jury the first of two surveys to which the City was asked to respond. After the City received a second survey from the Grand Jury, a representative from the Grand Jury then contacted the City and asked to meet with City staff. City staff promptly responded to the request and welcomed the opportunity to meet. Before the meeting occurred however, the Grand Jury representative canceled the meeting and the meeting never occurred despite the City's subsequent effort to reschedule it. Then without any further communication from the Grand Jury, the City was notified that a draft Grand Jury Report had been prepared. The notice invited up to two representatives from the City ("City Representatives") to view the draft report, along with representatives from other cities in Orange County, on May 14, 2012, at 8:30 a.m. at the Orange County Courthouse. The City Representatives, seated in a room along with representatives of the other cities in Orange County, were only permitted to read the draft report and only to write comments, by hand, on the draft report. The City Representatives were not allowed to take or make notes, were not allowed to copy any portion of the draft report, and were not allowed to copy or make notes about the City Representatives' own comments.

The City Representatives spent two hours marking up the draft report to correct the numerous errors, omissions, and inaccurate statements. But because the City Representatives were not allowed to take notes about their own comments or have a copy of the draft report with their handwritten comments, it is impossible to compare the final Grand Jury Report to determine which of their comments, if any, resulted in any corrections to the errors and inaccurate statements contained in the draft report. Given the errors and inaccurate statements contained in the *final* Grand Jury Report, it appears the comments provided by the City Representatives on the draft report generally were ignored.

The Grand Jury Report acknowledges that "staff from the County Auditor-Controller's Office and the County Assessor was interviewed for their perspectives on various aspects of redevelopment." (Grand Jury Report, page 3.) It also mentions that interviews were conducted with staff from the Orange County Community Resources Department and with redevelopment staff from the cities of Brea, Buena Park, Garden Grove, and Westminster. (Grand Jury Report, page 3.) *Although the Grand Jury Report sets forth facts, findings, and recommendations about the Huntington Beach RDA, no interview with City of Huntington Beach staff was ever conducted.* None of the cities interviewed have closed military bases. In the absence of input from Huntington Beach, it appears the Grand Jury based its findings and recommendations with respect to Huntington Beach on interviews conducted with *County* staff and with the staff of these *other cities*. As a result, the facts, findings, and recommendations in the Grand Jury Report that apply to Huntington Beach have significant omissions and inaccuracies.

Examples of Errors and Inaccurate Statements in Grand Jury Report

The Grand Jury Report contains numerous errors and inaccurate statements. The City will not list them all, but instead will highlight just a few.

Example #1 of Inaccurate Grand Jury Report Statement: "Simply stated, redevelopment is a method of financing city or county improvements by borrowing money (normally through tax allocation bonds) to finance a project in an area that has been declared 'blighted,' usually by a consultant hired by the city." (Grand Jury Report, page 3.)

Correction: The Grand Jury's definition is materially incorrect. Financing city or county improvements was only one aspect of redevelopment, and financing projects by borrowing through tax allocation bonds was but one type of indebtedness that redevelopment agencies were authorized to incur. It is critical to note that redevelopment agencies were also lawfully permitted to incur indebtedness through loans obtained from cities and other sources. The Huntington Beach RDA, for example, lawfully obtained three loans from the City pursuant to the express authority contained in the CRL prior to the February 1, 2012, effective date of redevelopment dissolution with that indebtedness to be repaid from property tax increment. Finally, the determination of blight of a redevelopment project area was not a declaration made by a consultant hired by the city. Although redevelopment agencies (not cities) hired consultants to prepare an analysis of whether a proposed redevelopment project area contained conditions consistent with the statutory definition of blight, the determination of whether the proposed project area was "blighted" was a legislative determination made by the legislative body (the city council in the case of a city redevelopment agency, and the county board of supervisors in the case of a county redevelopment agency). That determination was required by the CRL and set forth in an ordinance of the legislative body. Clearly, the Grand Jury did not intend the Grand Jury Report to be inaccurate, but as the above illustrates, the lack of precision throughout the Grand Jury Report creates misleading perceptions that redevelopment agencies that were following the law were doing something wrong.

Example #2 of Inaccurate Grand Jury Report Statement: 'While the law seems clear as to what constitutes blight, it has not always been followed or enforced in application. (1J) The overall result of these influences [concerning the effort to periodically change or expand the definition of blight and projects permitted under the redevelopment law, including changes enacted by the Legislature] is that, although a well-defined definition of blight exists, little effort is made to control compliance. Redevelopment agencies have been able to justify projects that have little or no relationship to addressing blight.' (Grand Jury Report, page 6.)

Correction: The foregoing statement illustrates a fundamental misunderstanding of the redevelopment law. The Legislature, not redevelopment agencies, determined the definition of blight and the procedures for adopting a redevelopment plan that delineates a redevelopment project area (the blighted area). The Legislature, from 1951 to 2007, periodically made significant changes to the definition of blight. A redevelopment agency proposing a new redevelopment plan was required to present evidence the project area met the statutory (not dictionary) definition of blight set forth by the Legislature at the time (Health & Safety Code §33352) and the legislative body was then required to determine the project area was blighted (Health & Safety Code §33367, subd. (d)(1)). The adoption of the redevelopment plan by ordinance was subject to a public hearing. (Health & Safety Code §§33348, 33355, 33360.) Once the ordinance adopted the redevelopment plan, the findings of blight were deemed final and conclusive unless challenged by way of a reverse validation action. (§§33368; 33501 *et. seq.*) These procedural and substantive requirements were established by the Legislature, not by redevelopment agencies. The Legislature also set forth the types of projects in which redevelopment agencies were permitted to engage and the types of expenditures redevelopment agencies were permitted to make. These activities and expenditures were required to be reported on an annual basis to the State Controller and included an audited financial statement prepared by an independent auditor. In light of the above, the Grand Jury's statement that there has been "little effort made to control compliance" is not credible when it was the Legislature itself that established the statutory definition of blight and all of the requirements related to adoption of redevelopment plans, findings of blight, and all of the other controls placed on redevelopment agencies.

Example #3 of Inaccurate Grand Jury Statement: "Figure 2 (below) shows that three cities, Anaheim, Huntington Beach, and Westminster each have redevelopment debt in excess of \$1 billion each. . . . It is expected that all of these will take many years to pay the debt and will, therefore, continue to draw tax increment revenue until all debt is paid. The Huntington Beach did not have debt in excess of \$1 billion, and through cash flow analysis, could pay off all debt during the term of the Redevelopment Agency.

Correction: Because the Grand Jury Report ties redevelopment financing to *bonded indebtedness* (see discussion above regarding the Grand Jury's definition of redevelopment), to the extent the Grand Jury is implying that the indebtedness of the Huntington Beach RDA, in excess of \$1 billion, is unlawful or even questionable, the Grand Jury statement must be rejected. The Huntington Beach RDA, in complete compliance with the California Redevelopment Law and the Huntington Beach Merged Project Area Redevelopment Plan, incurred indebtedness through two primary

mechanisms: loans from the City, and contractual indebtedness set forth in Cooperation Agreements. It should be noted that through annual audits, State Controller's Reports and Statement of Indebtedness there have been no legal questions regarding the debt. The Grand Jury Report later acknowledges that indebtedness may be contractual (see Grand Jury Report, page 19, ~5). ["Successor agencies (usually the city council) will continue to administer existing projects until completed and all indebtedness (bond and contractual) is paid."].) The Grand Jury Report, therefore, is internally inconsistent. Furthermore, the fact that the loans may take many years to be repaid and the contractual obligations to be fulfilled, is entirely consistent with the CRL as it existed when the indebtedness was incurred, and with the provisions of the Redevelopment Plan, both of which anticipate property tax increment being paid over a 22 year period.

Example #4 of Inaccurate Grand Jury Statement: "One of the grand jury survey questions was to determine if the responding agency had a formal mechanism or process for citizen involvement in redevelopment planning. Of the twenty-four agencies only Costa Mesa and Santa Ana indicated they had such a process. Most of the remaining agencies described the usual city council approach of posting agencies of meetings on the internet and allowing public comments (usually three minutes) pertinent to the agenda item." (Grand Jury Report, pages. 15-16.)

Correction: The implication from the above statement in the Grand Jury Report is that except for Costa Mesa and Santa Ana, all of the former redevelopment agencies, including the Huntington Beach RDA, somehow shirked their duty to provide a process for citizen involvement in redevelopment planning. The Grand Jury Report is quite misleading on this point because it fails to mention that the formal process set forth in the CRL related to the formation of a "project area committee" is only triggered when (1) "A substantial number of low-income persons or moderate-income persons, or both, reside within the project area, *and* the redevelopment plan as adopted will contain authority for the agency to acquire, by eminent domain, property on which any persons reside;" or (2) "The redevelopment plan as adopted contains one or more public projects that will displace a substantial number of low-income persons or moderate-income persons, or both." (Health & Safety Code §33385; emphasis added.) A similar provision applies when an amendment to a redevelopment plan essentially will have the same effect. (Health & Safety Code §33385.3.) The Huntington Beach Agency does have the Southeast Coastal Area Committee that meets bi-monthly to provide a method for communications, that the Grand Jury decided to not consider a formal mechanism for citizen involvement.

These examples of errors and inaccurate statements in the Grand Jury Report illustrate the difficulty faced by the Grand Jury in tackling a complex and nuanced law and its varied application by the many redevelopment agencies that existed in Orange County before redevelopment agencies were dissolved by ABx1 26.

RESPONSE TO FINDINGS

The Grand Jury Report sets forth 10 findings but, as set forth in a table on page thirty of the Report, labeled "Findings-Response Matrix," Huntington Beach is only required to respond to Findings F1, F2, and F3.

F.1 "As of the date of dissolution of redevelopment (February 1, 2012), all city operated redevelopment agencies, except Mission Viejo and Seal Beach, were exceeding the administrative costs limit of 5% of the tax increment distributed related to the ROPS as authorized by ABX1 26."

Response: The Huntington Beach City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

The Finding encapsulates the deficiencies in the Grand Jury Report in that it mixes up two different laws that apply at two different times to two different entities. It implies wrongly-there was a 5% administrative cost cap applicable to redevelopment agencies *prior* to their dissolution. In fact, the 12% administrative figure accountable for the Huntington Beach Redevelopment Agency included both administrative and project administration costs. Prior to the enactment of AB1x 26, there was no administrative cost cap in the CRL that applied to redevelopment agency operations. The Finding, fails to recognize that State Law did not provide a cap of administrative cost caps imposed on redevelopment agencies *before* they were dissolved with the *post-dissolution* administrative cost cap that AB1x 26 imposed on Successor Agencies (not redevelopment agencies). The law, as applied to Successor Agencies, is that the maximum administrative costs allowance a Successor Agency will receive for Fiscal Year 2011-2012 (the fiscal year that ended June 30, 2012) is capped at 5% of the amount listed on the Recognized Obligation Payment Schedule as enforceable obligations, but not less than \$250,000 (unless the Oversight Board reduces that minimum amount). The maximum amount a Successor Agency will receive for Fiscal Year 2012-2013 and succeeding fiscal years is 3% of the amount listed on the Recognized Obligation Payment Schedule as enforceable obligations, but not less than \$250,000 (unless the Oversight Board reduces that minimum amount). By mixing the two laws, two time frames, and two entities to which the different laws applied, the Grand Jury created an erroneous finding.

F.2 "Of the agencies surveyed, only Costa Mesa and Santa Ana reported having a citizen involvement committee along the line of a Project Area Committee as authorized by Section 33385 of the Health and Safety Code."

Response: The Huntington Beach City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

The implication in this Finding is that Huntington Beach was somehow deficient or violated the CRL because the Huntington Beach RDA failed to have a "citizen involvement committee along the line of a Project Area Committee." The City does have the Southeast Coastal Project Area, a formal committee, although it was not required by Law and this Grand Jury Report did not mention, it although twice information was provided to the Grand Jury. As noted earlier in this Response, Project Area Committees are triggered only under the criteria of Health and Safety Code Sections 33385 and

33385.3 and none of those criteria existed at the time the Huntington Beach Project Areas' were formed.

F.3 "Historically, external oversight over redevelopment has been missing or ineffective in monitoring redevelopment agency compliance and performance. The newly formed oversight boards offer a potential to improve on that record by providing critical valuation of existing projects and management of the successor agency debt."

Response: The Huntington Beach City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

The premise of this Finding is wrong insofar as the Grand Jury is blaming local redevelopment agencies and cities for a lack of oversight or ineffective monitoring. In Huntington Beach, the exact opposite is the case. The City Council performed extensive oversight and monitoring of redevelopment agency activities and the Huntington Beach RDA was exemplary in its transparency and in the public reporting of its finances and activities. The Huntington Beach RDA and City Council timely submitted all financial and other reports to the State Controller as required by the CRL. The activities of the Huntington Beach RDA were the subject of numerous public hearings and meetings before the Huntington Beach RDA Board and City Council. In Huntington Beach, at least, the record shows that the level of oversight and monitoring of performance of the Huntington Beach RDA was extensive. It was inaccurate for the Grand Jury to include Huntington Beach in its sweeping statement about lack of oversight when the oversight and monitoring of Huntington Beach RDA activities were exemplary.

The City Council also must disagree with the Grand Jury that the Oversight Board "offers a potential to improve on that record " The record the Grand Jury refers to is a lack of oversight. As noted above, the premise of "lack of oversight" is wholly incorrect insofar as it applies to Huntington Beach. The Grand Jury also misstates the role of the Oversight Board, especially in light of AB 1484 adopted six days after the Grand Jury released the Report. The Legislature, in AB 1484, *reduced* the role and authority of the Oversight Board.

RESPONSE TO RECOMMENDATIONS

The Grand Jury Report sets forth six Recommendations but, as set forth in a table on page 31 of the Report, labeled "Recommendations Response Matrix," Huntington Beach is only required to respond to Recommendations R1, R2, R4, and R5.

R.1 "All successor agencies should review administrative costs to ensure compliance with the limit of five percent of the tax-increment or less as required by ABX1 26 and develop a plan to reduce these costs to three percent of the tax increment or less in 2012-2013. If these percentages fall below \$250,000, the agencies are allowed to claim the higher amount. (See F1)"

Response: The Recommendation has been implemented [Penal Code §933.05(b)(1)] because Huntington Beach already complied with the totality of the Recommendation *before* the Grand Jury Report was released.

As described in Huntington Beach's response to Finding #1, the Grand Jury misstates how the "administrative cost allowance" allocable to successor agencies actually works. Compliance with the 5% administrative cost cap for Fiscal Year 2011-2012, and the 3% administrative cost cap for Fiscal Years 2012-2013 and after, is automatic. A successor agency will not receive a distribution from the County Auditor-Controller for successor agency administrative expenses in excess of the allowable. The debt is not "successor agency debt," but the debt of the dissolved redevelopment agency. The Successor Agency has no debt. Auditor-Controller errs because the maximum administrative cost allowance appears on the Recognized Obligation Payment Schedule, as approved by the State of California Department of Finance, before any distributions are made. Huntington Beach's successor agency administrative budget for Fiscal Year 2011-2012 and for 2012-2013 were adopted, and approved by the Oversight Board, in full compliance with the requirements of ABx1 26 and such will be the case in future fiscal years. So there is no mistaken impression left, Huntington Beach complied with these legal requirements *before* the release of the Grand Jury Report.

R.2 "Successor agencies and oversight boards should review the Recognized Obligations Payment Schedule with a view toward limiting the range of projects and obligations thereby retiring the enforceable obligation debt as quickly as possible. (See F3)"

Response: The Recommendation will be implemented due to AB 1484 and State law, as part of the Successor Agency

The premise of the Grand Jury's Recommendation is that successor agencies and oversight boards should ignore their respective legal duties as set forth in ABx1 26 (as modified by AB 1484). Successor agencies and oversight boards have express legal duties under ABx1 26 and AB1484 and neither body can improperly limit projects and obligations, which are legally authorized to receive payment from the disbursements of property taxes from the County Auditor-Controller. We refer to the Health and Safety Code section 34177, which sets forth the duties and obligations of the successor agency, and to Health and Safety Code sections 34179-34181 (and Section 34181 in particular) which set forth the duties and obligations of the oversight board. Huntington Beach's successor agency and its oversight board have fulfilled their respective duties and obligations in exemplary fashion and in compliance with the requirements of ABx1 26/AB 1484.

R.4 "Successor agencies and oversight boards should critically review the Recognized Obligation Payment Schedule (ROPS) to evaluate the need for debt owed to the city. (See FS)."

Response: The Recommendation will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)

This Recommendation as applied to Huntington Beach, presumes Huntington Beach's successor agency and oversight board are failing to fulfill their respective legal duties under AB1x 26/AB 1484. There is no evidence to support such a premise. As noted in Huntington Beach's response to Recommendation R.3, the Grand Jury does not appear to be aware of the legal duties imposed on successor agencies and oversight boards under ABx1 26/AB 1484. Huntington Beach's successor agency and oversight board have fulfilled their respective duties prescribed by law in exemplary fashion.

What underpins the Grand Jury's Recommendations #4 and Finding #8 which states: "Prior to the dissolution of redevelopment, some agencies encumbered debt to their cities, thereby creating questionable enforceable obligations." The implication in the Finding is that indebtedness owed by a redevelopment agency to its city is "questionable" (the Grand Jury is implying the indebtedness may be illegal), when in fact such indebtedness was expressly legal, authorized, and encouraged by the CRL (see Health and Safety Code §§ 33320-33321, 33601, 33610) and the Government Code (see §53600 *et seq.*) prior to enactment of AB1x 26. The loans made by the City of Huntington Beach to the Huntington Beach RDA were fully compliant with the law when made and are legal and enforceable obligations of the Huntington Beach RDA under AB1x 26-not "questionable" as the Grand Jury asserts without any evidence whatsoever. The Grand Jury's position also runs counter to AB 1484, which specifically recognizes as enforceable obligations loans made to a redevelopment agency by the entity that created it if the Oversight Board finds the loans were for a legitimate redevelopment purpose. (Health & Safety Code §34191.4(b).) All of the loans made by the City to the Huntington Beach RDA were for legitimate redevelopment purposes.

Huntington Beach does not agree with this Recommendation because the Grand Jury misstates the nature of a redevelopment agency's indebtedness to its city, improperly implies such indebtedness may be illegal, and assumes the successor agency and oversight board will not fulfill their legal duties as established in AB1x 26/AB 1484.

R.5 "Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for incentive payments to commercial entities. (See F9)."

Response: The Recommendation is being implemented per AB1X 26 and AB1484

Pursuant to AB 1X 26 and AB 1484, the Successor Agency and Oversight Board is reviewing all Recognized Obligation Payment Schedules.

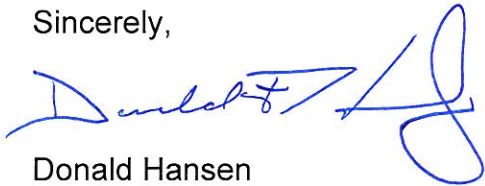
CONCLUDING STATEMENT

The City Council of the City of Huntington Beach welcomes constructive dialogue and acknowledges the work of the Orange County Grand Jury 2011-2012 and its efforts to produce a study of the dissolution of redevelopment agencies in Orange County, including the Huntington Beach RDA. Unfortunately, without the benefit of information from knowledgeable sources on the history, focus, and operations of the Huntington Beach RDA, many statements in the Grand Jury Report are inaccurate when applied to Huntington Beach. These deficiencies significantly reduce, if not eliminate, any value the Grand Jury Report might have had with respect to Huntington Beach.

The Grand Jury Report - a public document- may mislead the public into thinking that redevelopment agencies in Orange County, including the Huntington Beach RDA, were running amok and that now successor agencies and oversight boards are failing to fulfill their statutory duties. At least with respect to the Huntington Beach RDA, the exact opposite was, and is, true. The Huntington Beach RDA maintained total compliance with the law throughout its existence. Now, Huntington Beach's successor agency and oversight board are performing in an exemplary and transparent manner as they fulfill their respective legal duties to wind down the affairs of the former Huntington Beach RDA.

We trust this response from Huntington Beach will be filed with the Grand Jury Report so that anyone reading the Grand Jury Report in the future will be able to evaluate it in light of Huntington Beach's response as set forth above.

Sincerely,



Donald Hansen
Mayor

cc: Orange County Grand Jury