



Sukhee Kang, Mayor

www.cityofirvine.org

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575 (949) 724-6233

August 2, 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 Irvine to Orange County Grand Jury 2011-2012 Report, dated June 22, 2012, 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 Irvine (“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

Irvine Redevelopment Agency & Orange County Great Park Project Area

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 Irvine one redevelopment project area governed by the Irvine Redevelopment Agency (“Irvine RDA”). That project area—the Orange County Great Park Redevelopment Project Area (“Great Park Project Area”)—was established in 2005 by adoption of the Redevelopment Plan for the Great Park Project Area (“Great Park Redevelopment Plan”). The Great Park Redevelopment Plan was adopted by the Irvine City Council in compliance with the requirements and procedures of the California Community Redevelopment Law (“CRL,” codified as Health & Safety Code §33000 *et seq.*), including the provisions of the CRL that addressed the creation of redevelopment project areas for closed federal military bases.

The Orange County Great Park (“Great Park”) has been well-publicized as the first great metropolitan park of the 21st Century. The Great Park is located on a significant portion

of the former Marine Corps Air Station, El Toro ("MCAS El Toro"). Upon completion, the Great Park will cover approximately 1300 acres (in comparison, New York City's Central Park is approximately 843 acres). The Great Park plan embraces environmental sustainability, preserves Orange County's agricultural heritage, and honors the military history of the former air base, setting a new standard for sustainable park design and urban planning. The rest of the former MCAS El Toro is owned by a private developer, Heritage Fields El Toro, LLC ("Heritage Fields"), which intends to develop its property as a master planned residential community with commercial and other amenities in a manner complementary to the Great Park.

From Military Base Closure to Great Park

The following summary of the history leading to the establishment of the Irvine RDA and the Great Park Project Area is critically important to provide a context for the City's comments on the errors and inaccuracies in the Grand Jury Report as well as to validate the City's responses to the Grand Jury's Findings and Recommendations. The Grand Jury Report does not, except in a fleeting reference (Grand Jury Report, page 9), recognize that the Irvine RDA's Great Park Project Area—the sole redevelopment project area in Irvine—was a closed military base (MCAS El Toro). Moreover, the Grand Jury Report does not make a clear distinction between redevelopment project areas established under the regular provisions of the CRL and those project areas, such as the Great Park Project Area, that were established under special provisions set forth in the CRL for redevelopment of closed military bases. (See, Health & Safety Code §§33492 *et seq.*) The Grand Jury's failure to recognize the unique nature of the Irvine RDA and the Great Park Project Area resulted in a Grand Jury Report with generalizations about redevelopment that are not applicable to the Irvine RDA and the Great Park Project Area or to redevelopment of closed military bases. The history of the closure of MCAS El Toro, its disposition by the Department of the Navy, its annexation to the City, and its placement into a redevelopment project area under the special provisions set forth in the CRL for that purpose, is background information missing from the Grand Jury Report but which is the key starting point for understanding the City's comments on the Grand Jury Report and its responses to the Grand Jury's Findings and Recommendations.

Under the Defense Base Closure and Realignment Act of 1990 ("DBCRA"), as amended (Pub. L. 101-510, div. B, title XXIX, part A (§2901 *et seq.*), Nov. 5, 1990, 104 Stat. 1808, 10 U.S.C. § 2687 note), as implemented by the base closure process of 1993, MCAS El Toro closed on July 2, 1999. The DBCRA established procedures to minimize the economic hardship on local communities adversely affected by base closures and to facilitate the economic recovery of such communities. To maximize the local benefit from the reutilization and redevelopment of military installations, including MCAS El Toro, the Secretary of the Navy was required under the DBCRA to consider local economic needs and priorities in the base disposal process.

In 1993, the California Legislature added Sections 33492 *et seq.* to the CRL and therein expressed its intent to "enable redevelopment agencies to place in a project area

portions of a military base that were previously developed, but that cannot be utilized in their present condition because of, in whole or in part, substandard infrastructure and buildings that do not meet state building standards.” The Legislature found and declared in the CRL, at Health and Safety Code Section 33492.1 that “extraordinary measures must be taken to mitigate the effects of the federal government’s effort to reduce the number of military bases throughout the country,” thus recognizing that the use of redevelopment under the CRL is critical for a community’s effort to effect reuse of closed military bases for civilian use.

In 1994, Congress adopted the National Defense Authorization Act for Fiscal 1994 (“NDAAF/94”) (Pub. L. No. 103-160, 107 Stat 1547), under which the federal government was directed to (i) facilitate the economic recovery of communities that experience adverse economic circumstances as a result of base closure or realignment, and (ii) work with such communities to identify and implement means of redeveloping and revitalizing closed military installations in a beneficial manner to accelerate the environmental cleanup and reuse of closed military installations. Also in 1994, Congress adopted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (“BCCRHA”) (Pub. L. 103-421, 108 Stat 4346), which put into law the intent of the President’s efforts to support local communities affected by base closures and created a locally controlled reuse process for redevelopment of closing bases.

California further responded in 1994 to address the conversion of closed military bases to civilian use. On February 24, 1994, Governor Wilson issued Executive Order W-81-94, under which the Governor found (i) “base closures have deepened the effects of the current recession in California and have caused severe economic dislocations in communities that are located adjacent to closing bases,” and (ii) “[i]t is the policy of the State of California that the successful economic conversion of military bases shall be given priority consideration in the implementation of State programs, regulatory pursuits, and allocation of resources for State-funded capital outlay projects[, and] [s]tate agencies, departments, boards, and commissions . . . shall regard base conversion as a priority matter and shall assist and cooperate with local base reuse entities to the maximum extent possible within their statutory mandates.”

Following the federal and state policies, the Irvine City Council, on April 27, 1999, activated the Irvine RDA by adoption of Ordinance No. 99-09. On March 5, 2002, the voters of Orange County approved the Orange County Central Park and Nature Preserve Initiative (“Measure W”), which amended the Orange County General Plan by repealing the aviation reuse designation for MCAS El Toro and replacing it with a non-aviation designation to ensure that the property would become a multi-use center for education, park, recreation, cultural, and other public-oriented uses.

On April 23, 2002, the Department of the Navy (“DON”) released a Record of Decision under the authority of the DBCRA, in which the DON found that a mixed land use plan involving the construction of a Great Park on the former MCAS El Toro would “meet the goals of local economic redevelopment and job creation set out in the DBCRA.” Two days later, on April 25, 2002, the DON together with the United States General Services

Administration (“GSA”) initiated discussions with the City with the goal of coordinating the DON and GSA’s plans for proceeding through the disposal process for the former MCAS El Toro in a manner consistent with the City’s plans to annex that property and entitle it consistent with the spirit of Measure W.

On July 8, 2002, the DON indicated that its plan for the disposition of the former MCAS El Toro, combined with the City’s land use plan for the property, would best meet the interests of the Nation’s taxpayers while simultaneously keeping faith with Measure W. The inclusion of the former MCAS El Toro within a redevelopment project area as authorized by Health and Safety Code Section 33492 *et seq.*, and the utilization of property tax increment funds available under the CRL, were integral and essential to the City, Agency, DON, and GSA’s decision to proceed with the disposition of the MCAS El Toro property in the manner selected. In short, the City, Agency, DON, and GSA each relied on the CRL and the availability of the powers of redevelopment in California, including receipt of property tax increment, in discharging their duties under the DBCRA, the NDAAF/94, and the BCCRHA to ensure orderly and successful redevelopment of MCAS El Toro and its conversion to civilian use.

In 2003, the City certified an Environmental Impact Report (State Clearinghouse No. 2002101020) (“Great Park EIR”) for the development of the Orange County Great Park and the surrounding community within the boundaries of the former MCAS El Toro.¹ Also in 2003, the City completed the General Plan amendments, Zone Changes, and other entitlements necessary to implement the plan for development of former MCAS El Toro that were consistent with Measure W, and with the goals and objectives of the DON and the GSA. Later in 2003, the Orange County Local Agency Formation Commission approved the annexation of Planning Area 51, comprising most of the acreage of the former MCAS El Toro, into the corporate boundaries of the City.

In March 2005, the City adopted the Great Park Redevelopment Plan for the Great Park Project Area. In 2007, as part of the implementation of the Great Park Redevelopment Plan and in compliance with the CRL, the City and Irvine RDA entered into a Purchase and Sale and Financing Agreement that, among its terms, provided for a loan by the City to the Irvine RDA in the principal amount of \$134 million to be repaid by the Irvine RDA from property tax increment allocated to the Irvine RDA from the Great Park Project Area.

Over this same time frame and continuing to this date, Heritage Fields has undertaken planning of development of its private property within the boundaries of the former MCAS El Toro (which, again, is part of the Great Park Project Area). One of the key actions took place in December 2010 when the City, the Irvine RDA, and Heritage Fields entered into an Amended and Restated Development Agreement (“ARDA”). In the ARDA the Irvine RDA agreed with the City, to fund the development of the Great Park in accordance with the Great Park Master Plan as that plan may be amended from

¹ The Great Park EIR has been amended from time to time since its original certification.

time to time. The only source of funds for the Irvine RDA to meet this obligation was property tax increment from the Great Park Project Area pursuant to the terms of the Great Park Redevelopment Plan and the provisions of the CRL, including the special provisions adopted by the Legislature and set forth in the CRL applicable to the redevelopment of closed military bases.

Throughout the time period described above and currently, the City, and the Irvine RDA until it was dissolved on February 1, 2012, have worked tirelessly to bring the Great Park to fruition. Interested parties from the entire County have been involved in the planning of the Great Park through an open, public, and inclusive process.

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 then 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")² 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, however, 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 were 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.)³ ***Although the Grand Jury Report sets forth facts, findings, and recommendations about the Irvine RDA, no interview with City of Irvine staff was ever conducted.*** None of the cities interviewed have closed military bases. In the absence of input from Irvine, it appears the Grand Jury based its findings and recommendations with respect to Irvine on interviews conducted with *County* staff and with the staffs of these *other cities*. As a result, the facts, findings, and recommendations in the Grand Jury Report that apply to Irvine 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.

² The City Representatives were Sharon Landers, Assistant City Manager, and attorney Dan Slater of Rutan & Tucker, LLP, which serves as the City Attorney's Office.

³ The Grand Jury mistakenly refers to Westminster as "Westminister." (Grand Jury Report, page 3.)

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 Irvine 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. [¶] 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, Irvine, 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. ¶¶ Irvine is a unique RDA in that none of the debt is because of a bond issue. Their indebtedness is owed to a private party, Heritage Fields, the developer of property within the Orange County Great Park redevelopment area. Special provisions exist where the property under development is a former military base subject to provisions beyond the Community Redevelopment Law." (Grand Jury Report, page 9.)

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 Irvine RDA, in excess of \$1 billion, is unlawful or even questionable, the Grand Jury statement must be rejected. The Irvine RDA, in complete compliance with the CRL and the Great Park Redevelopment Plan, incurred indebtedness through two primary mechanisms: loans from the City and contractual indebtedness set forth in the Amended and Restated Development Agreement ("ARDA"), the agreement entered into by and among the City, the Irvine RDA, and Heritage Fields. The development of the Great Park is estimated to cost approximately \$1.4 billion pursuant to the Great Park Master Plan (which may be amended from time to time). The indebtedness incurred by the Irvine RDA in connection with the Great Park development is therefore consistent with the development estimates. The Grand Jury Report later acknowledges that indebtedness may be contractual (see Grand Jury Report, page 19, ¶15 ["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 Great Park Redevelopment Plan, both of which anticipate property tax increment being paid over a 45 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 surveyed, 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 Irvine 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.) As applied to Irvine, what is unfortunate about the Grand Jury Report’s omission is that no project area committee was triggered under the law because the Great Park Project Area—a closed military base—had no residents. Nonetheless, as explained in more detail below, the Irvine RDA and the City Council have gone to great lengths to create an open public process with respect to the formation of the Great Park Project Area and adoption of the Great Park Redevelopment Plan, as well the initial and ongoing planning for the development of the Great Park.

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 30 of the Report, labeled “Findings—Response Matrix,” Irvine 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 Irvine City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

Finding F.1 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. Prior to the enactment of AB1x 26, there was no administrative cost cap in the CRL that applied to redevelopment agency operations.⁴ Finding F.1 conflates the lack 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 Irvine City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

The implication in Finding F.2 is that Irvine was somehow deficient or violated the CRL because the Irvine RDA failed to have a “citizen involvement committee along the line of a Project Area Committee.” The fact that no Project Area Committee was formed in connection with the adoption of the Great Park Redevelopment Plan is irrelevant to whether there was, and is, community involvement. 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 Great

⁴ Irvine RDA’s administrative costs as a percentage of tax increment revenues was 24.18%, hardly excessive given that the Irvine RDA was still in the early years of operations.

Park Redevelopment Plan was adopted. To conclude that the lack of a Project Area Committee, when one was not required under the CRL, means a lack of citizen involvement is simply wrong.

To the contrary, prior to its dissolution Irvine RDA had one of the most extensive community involvement and community outreach efforts undertaken for any major project in the United States, let alone Orange County, with that program undertaken for the City and Irvine RDA by the Orange County Great Park Corporation and Foundation for the Great Park.

Formed in 2003, the Orange County Great Park Corporation is the non-profit organization charged with designing, constructing and maintaining the Great Park. The design of the Great Park resulted from extensive community involvement. A wide variety of community members participated in workshops, focus groups, surveys and planning sessions held by the Orange County Great Park Corporation to build consensus with park stakeholders in the final plan for the features of the Great Park. The Foundation for the Great Park (formerly known as the Great Park Conservancy) is dedicated to generating public and private support to develop and operate the Great Park. With a regional focus, the Foundation for the Great Park regularly hosts a community outreach series to promote public involvement with the Great Park for residents throughout Orange County.

There is no merit to Finding F.2 with respect to the Irvine RDA and the City Council thoroughly rejects any implication that the planning and adoption of the Great Park Redevelopment Plan lacked community involvement, or that the ongoing planning efforts to implement the Great Park project lacks community involvement when the evidence demonstrates that precisely the opposite is true.

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 Irvine City Council disagrees wholly with this Finding. (Penal Code §933.05(a)(2).)

The premise of Finding F.3 is wrong insofar as the Grand Jury is blaming local redevelopment agencies and cities for a lack of oversight or ineffective monitoring. In Irvine, the exact opposite is the case. The City Council performed extensive oversight and monitoring of redevelopment agency activities and the Irvine RDA was exemplary in its transparency and in the public reporting of its finances and activities. The Irvine RDA and City Council timely submitted all financial and other reports to the State Controller as required by the CRL and timely adopted all Five Year Implementation Plans and mid-

term reviews of Five Year Implementation Plans as required by the CRL. The activities of the Irvine RDA were the subject of numerous public hearings and meetings before the Irvine RDA Board, City Council, the Orange County Great Park Corporation, the Irvine Community Land Trust, and other entities. In Irvine, at least, the level of oversight and monitoring of performance of the Irvine RDA was extensive. The record shows there was extensive oversight of the Irvine RDA. It was inaccurate for the Grand Jury to include Irvine in its sweeping statement about lack of oversight when the oversight and monitoring of Irvine 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 Irvine. 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.⁵

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,” Irvine 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 Irvine already complied with the totality of the Recommendation *before* the Grand Jury Report was released.

As described in Irvine’s response to Finding F.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 limits (unless the County

⁵ The Grand Jury, in Finding F.3, refers to the “management of the *successor agency debt*.” 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. Irvine's successor agency administrative budgets 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, Irvine 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 not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)

The premise of the Grand Jury's Recommendation R.2 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 the Court to 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. Irvine'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. The Grand Jury's Recommendation R.2 is without merit.

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 F8).”

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

At the outset it should be noted that Irvine was not asked to respond to Finding F.8 referred to in Recommendation R.4, yet is required to respond to Recommendation R.4.

Recommendation R.4, like Recommendation R.3, as applied to Irvine, presumes Irvine'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 Irvine'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. Irvine's successor agency and oversight board have fulfilled their respective duties prescribed by law in exemplary fashion.

What underpins the Grand Jury's Recommendation R.4 is its Finding F.8 which states: "Prior to the dissolution of redevelopment, some agencies encumbered debt to their cities, thereby creating questionable enforceable obligations." The implication in Finding F.8 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 Irvine to the Irvine RDA were fully compliant with the law when made and are legal and enforceable obligations of the Irvine 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 Irvine RDA were for legitimate redevelopment purposes.

Irvine rejects Recommendation R.4 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 will not be implemented because it is not warranted and is not reasonable. (Penal Code §933.05(b)(4).)

As was the case with the prior Recommendation, Irvine was not asked to respond to Finding F.9 referred to in Recommendation R.5, but is required to respond to Recommendation R.5. In fact, R.5 has absolutely no application to Irvine and we have no idea why the Grand Jury has asked Irvine to respond to R.5.

Finding F.9, to which Recommendation R.5 relates, states: "Some former RDAs (such as Brea and Buena Park) have incentive programs to commercial entities as enforceable obligations." As fully explained in this response letter, the Irvine RDA had one focus: the Great Park. The Irvine RDA had no programs that provided incentive

payments to commercial entities and no enforceable obligations listed on its ROPS that fell into that category. As such, Recommendation R.5 as applied to Irvine is not warranted and is not reasonable. Including Irvine in Recommendation R.5 evidences a lack of understanding of the programs and activities of Irvine's former redevelopment agency.

CONCLUDING STATEMENT

The City Council of the City of Irvine 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 Irvine RDA. Unfortunately, without the benefit of information from knowledgeable sources on the history, focus, and operations of the Irvine RDA, many statements in the Grand Jury Report are inaccurate when applied to Irvine. These deficiencies significantly reduce, if not eliminate, any value the Grand Jury Report might have had with respect to Irvine.

The Grand Jury Report—a public document—may mislead the public into thinking that redevelopment agencies in Orange County, including the Irvine 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 Irvine RDA, the exact opposite was, and is, true. The Irvine RDA maintained total compliance with the law throughout its existence. Now, Irvine'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 Irvine RDA.

We trust this response from Irvine 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 Irvine's response as set forth above.

Sincerely,



Sukhee Kang
Mayor

cc: Orange County Grand Jury