

Emerald Bay Service District

OFFICERS
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KERI UEBERROTH
VICE PRESIDENT
WILLIAM R. HART
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July 18, 2012

VIA U.S. MAIL

Presiding Judge of the Superior Court
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: *Resolution of the Board of Directors of the Emerald Bay Service District
Regarding Response to April 27, 2012 Grand Jury Report*

Honorable Presiding Judge of the Superior Court:

This office is general counsel to the Emerald Bay Service District ("District"). Enclosed please find the *Resolution of the Board of Directors of the Emerald Bay Service District Regarding Response to April 27, 2012 Grand Jury Report*.

If you should have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,



Dewellyn de la Cruz

DC:kmh

cc: John Collins, EBSD President
Allison E. Burns, General Counsel

RESOLUTION NO. 12-06-20-1

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
EMERALD BAY SERVICE DISTRICT REGARDING RESPONSE
TO APRIL 27, 2012 GRAND JURY REPORT**

WHEREAS, on April 27, 2012 the Orange County Grand Jury ("Grand Jury") issued a report entitled "*Let there Be Light*" *Dragging Special Districts from the Shadows* (the "Report"), which report included the following findings/conclusions applicable to the Emerald Bay Service District ("EBSB"):

F1. Most Orange County special districts, with or without the assistance of the Local Agency Formation Commission (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.

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.

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.

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 rolls, and their services funded and absorbed by the county, surrounding cities or homeowners associations wherein they abide.

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.

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

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.

WHEREAS, the Report included the following Recommendations applicable to EBSD:

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 or the services of surrounding governments.

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 with the appropriate city or homeowner's association to develop plans and schedules for the future of these special districts. This meeting should be [sic] take place before September 30, 2012.

R6. Special districts should adopt "board of director's practices" for all their reserves, restricted and unrestricted. All reserves should be classified in their 2013-2014 budgets according to GASB Standard No. 54. LAFCO should work with the special districts to prepare standard criteria for accumulating reserves according to the new classifications by December 15, 2012. These standards should be used in preparing the 2013-2014 budgets.

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.

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.

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 year is budgeted for consolidation, absorption and/or elimination of these districts.

WHEREAS, Penal Code section 933.05 requires EBSD to respond to each Finding and Recommendation set forth in the Report and applicable to EBSD; and

WHEREAS, the Board of Directors of the EBSD desires to respond to each Finding and Recommendation by the Grand Jury;

NOW, THEREFORE, the Board of Directors of the EBSD does hereby resolve, determine and order as follows:

Section 1. EBSD disagrees with Grand Jury Finding F1:

F1. Most Orange County special districts, with or without the assistance of the Local Agency Formation Commission (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.

EBSD is neither outmoded nor redundant. Indeed, since 2002, the Orange County Local Agency Formation Commission ("LAFCO"), an independent special agency, has conducted municipal service reviews ("MSRs") of EBSD's services on a five-year cycle. The MSRs have addressed the seven specific topics set forth in Government Code section 56430:

- (1) Growth and population projections for the affected area.
- (2) The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence.
- (3) Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
- (4) Financial ability of agencies to provide services.
- (5) Status of, and opportunities for, shared facilities.
- (6) Accountability for community service needs, including governmental structure and operational efficiencies.
- (7) Any other matter related to effective or efficient service delivery, as required by commission policy.

LAFCO has found no issues with regard to EBSD's provision of services in any of the MSRs.

Section 2. EBSD disagrees with Grand Jury Finding F2:

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.

EBSD disagrees with the over-generalized conclusion that all special districts should be disbanded as such recommendation pertains to EBSD and, therefore, has declined to take steps to eliminate its provision of services to its constituents at a locally-controlled and accountable level. Further, LAFCO's MSR process has included extensive stakeholder processes to improve coordination and cooperation among public agencies.

Section 3. EBSD disagrees with Grand Jury Finding F3:

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.

EBSD agrees with the response by LAFCO to the Report:

“[EBSD] disagrees with the generalized conclusion that most non-enterprise special districts in Orange County have outlived their purpose and usefulness. It is unclear what criteria were used to reach this conclusion. The governmental structure of Orange County should reflect its diversity as well as the needs and desires of its residents. [EBSD] believes that each special district should be evaluated on its own with clearly defined and mutually agreed upon criteria to evaluate its efficiency and effectiveness. One size does not always fit all.”

Indeed, the Report's recommendation ignores the core belief held by the vast majority of EBSD residents that their interests are best served by remaining an independent, locally served district and by not becoming a part of the City of Laguna Beach. Notably, EBSD only contracts for employee services as needed to serve its constituents and provides no compensation whatsoever to the members of its Board of Directors.

Section 4. EBSD disagrees with Grand Jury Finding F4:

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 rolls, and their services funded and absorbed by the county, surrounding cities or homeowners associations wherein they abide.

This finding completely ignores the funding crisis faced by all cities in Orange County and, indeed, the State of California. In the case most relevant to EBSD, the Report fails to acknowledge that the City of Laguna Beach has experienced serious budgetary impacts from the ongoing financial downturn in California including, but not limited to, multi-year decreases in excess of 15% of transient occupancy taxes, sales tax decreases of 20% and more, multi-year budget deficits, community development receipts reduced by 20%, elimination of 11.4 full time employees in the last 3 years and interest earnings decreases of 42%

or more. The Grand Jury Finding further fails to provide any insight whatsoever into how the City of Laguna Beach would fund services to EBSD's constituents in these dire economic times.

Section 5. EBSD disagrees with Grand Jury Finding F7:

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.

This finding fails to reflect the facts applicable to EBSD. Indeed, EBSD has never imposed a special assessment or issued a bond. Similarly, the only fee increases it has authorized have been directly in response to and precisely proportional to increased fees charged to EBSD for the applicable services. Further, EBSD provides its fund balances in each and every agenda package for regular board meetings and makes these documents available to the public at its office. Further, the EBSD Board of Directors has adopted three-year budgets describing the uses to which its funds are expected to be put.

Section 6. EBSD cannot opine as to the accuracy of Finding F8:

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

EBSD is aware only of the financing of its own operations. Like all public agencies in the State of California, its governing board is restricted in the expenditures of its funds by the requirements and strictures set forth in the laws of the State of California, including, but not limited to, the Government Code and the California Constitution.

Section 7. EBSD disagrees with Grand Jury Finding F15:

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.

This finding ignores the MSRs performed by LAFCO every five (5) years of EBSD and all other public agencies in Orange County. LAFCO has found no issues with regard to EBSD's provision of services.

Section 8. EBSD disagrees with Grand Jury Recommendation R1:

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 or the services of surrounding governments.

This recommendation would severely endanger the lives and safety of EBSD's constituents because the cash-strapped County of Orange and/or city of Laguna Beach will be unable to provide the same level of important services as has been provided by EBSD. Indeed, if implemented, this recommendation would serve only to increase overhead, decrease efficiency, eliminate or reduce the services provided and increase the financial burden on EBSD residents.

Section 9. EBSD disagrees with Grand Jury Recommendation R2:

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 with the appropriate city or homeowner's association to develop plans and schedules for the future of these special districts. This meeting should be [sic] take place before September 30, 2012.

While EBSD meets regularly with LAFCO, a meeting for the purpose described in the Report, with which purpose EBSD and its constituents vehemently disagree, will not be scheduled.

Section 10. EBSD agrees with Grand Jury Recommendation R6:

R6. Special districts should adopt "board of director's practices" for all their reserves, restricted and unrestricted. All reserves should be classified in their 2013-2014 budgets according to GASB Standard No. 54. LAFCO should work with the special districts to prepare standard criteria for accumulating reserves according to the new classifications by December 15, 2012. These standards should be used in preparing the 2013-2014 budgets.

EBSD will work with its financial consultants to timely implement this recommendation.

Section 11. EBSD disagrees with Grand Jury Recommendation R7:

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.

EBSD has no existing debt.

Section 12. EBSD disagrees with Grand Jury recommendation R8

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.

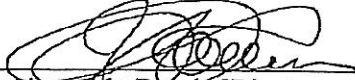
This finding ignores the MSRs performed by LAFCO every five (5) years of EBSD and all other public agencies in Orange County. LAFCO has found no issues with regard to EBSD's provision of services.

Section 13. EBSD disagrees with Grand Jury Recommendation R9:

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 year is budgeted for consolidation, absorption and/or elimination of these districts.


This recommendation is contrary to existing law, which provisions fund LAFCO's budget through assessments upon all local governmental agencies. Gov. Code § 56381.

ADOPTED, SIGNED AND APPROVED this 20 day of JUNE, 2012.



President of the Board of Directors
of Emerald Bay Service District

ATTEST:



Secretary of the Board of Directors
of Emerald Bay Service District

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, John A. McDermott, Secretary of the Board of Directors of the Emerald Bay Service District, do hereby certify that the foregoing resolution was duly adopted by the Board of Directors of said District at a regular meeting held on the 20th day of June, 2012, and that it was so adopted by the following vote:

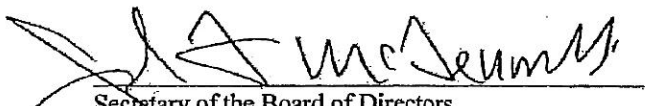
AYES:	DIRECTORS:	4
NOES:	DIRECTORS:	0
ABSENT:	DIRECTORS:	1
ABSTAIN:	DIRECTORS:	0


Secretary of the Board of Directors
of Emerald Bay Service District

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, John A. McDermott, Secretary of the Board of Directors of the Emerald Bay Service District, do hereby certify that the above and foregoing is a full, true and correct copy of RESOLUTION NO. 12-06-20-D of said Board, and that the same has not been amended or repealed.

Dated: 6/20/12, 2012


Secretary of the Board of Directors
of Emerald Bay Service District