



THREE ARCH BAY

5 BAY DRIVE, LAGUNA BEACH, CALIFORNIA 92651-6780
(949) 499-4567 FAX: (949) 499-2352

July 2, 2012

Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Re: "Let There Be Light"

Dear Orange County Grand Jury:

Please see attached response from the Three Arch Bay Community Services District as requested.

Please do not hesitate to contact me should you need anything further.

Sincerely,
FOR THE BOARD OF DIRECTORS

Nicki Roknifard
General Manager



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RESPONSE BY THREE ARCH BAY COMMUNITY SERVICE DISTRICT TO GRAND JURY REPORT FOR ORANGE COUNTY GRAND JURY

INTRODUCTION

On April 20, 2012, the foreman of the Orange County Grand Jury sent to the Three Arch Bay Community Service District (hereinafter "District") a copy of a report entitled "'Let There Be Light' - Dragging Special Districts from the Shadows" (hereinafter "Report"). The District has thoroughly reviewed the Report and acknowledges the effort and time involved in obtaining information and in preparing the Report. In the Report transmittal, the District was notified that the Report was being prepared pursuant to Penal Code section 933.05 and was being submitted to the District for its review and comment to the Presiding Judge of the Superior Court. Based on this invitation, the District submits this reply. In doing so, the District is hopeful that this response will be helpful in leading to a better understanding of the public services provided by the District and its policies and practices.

RESPONSE TO FINDINGS

F.1: *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.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.1 in the aggregate. Moreover, the District cannot respond to this request to the extent that it is unclear what criteria, if any, was used in reaching this finding. The District, however, respectfully disagrees with finding F.1, insofar as the District is concerned. The District is not an outmoded and/or redundant agency. Rather, it provides essential services

to residents within its boundaries, including but not limited to security, surveillance and storm drainage. LAFCO regularly conducts municipal service reviews (“MSRs”) of the District. MSRs are required to address various matters, including growth and population projections, present and planned capacity of facilities and services, financial ability of the agencies to provide services, accountability for community service needs including governmental structure and operational efficiencies, and any other matter related to the District’s effective or efficient service delivery. Ultimately, the power to reorganize the District’s services should rest with the electorate who established the District and depend on its services.

F.2: *Special districts have made very little progress in complying with the recommendations made by various governmental agencies. To ensure recommendations are followed, more coordination and cooperation is needed from the city and county agencies.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.2 in the aggregate. Moreover, the District cannot respond to this request to the extent that it is vague and ambiguous as to what specific “recommendations” and “governmental agencies” are referenced. The District, as a general practice, considers and, in many cases, implements recommendations made by governmental agencies.

F.3: *Most non-enterprise special districts in Orange County have outlived their purpose and usefulness. Services that they once [sic] only available through the special district are now being provided by the surrounding cities and the expanding county.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.3 in the aggregate. Moreover, the District cannot respond to this request to the extent that it is unclear what criteria, if any, was used in reaching this finding. The District, however, respectfully disagrees with finding F.3, insofar as the District is concerned. The District provides services to residents within its boundaries that are not being provided by the surrounding cities and county, including but not limited to security, surveillance, storm drainage, waste, recreational, landscaping, lighting, right-of-way, flood protection and community facility services.

F.4: *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.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.4 in the aggregate. The District, however, respectfully disagrees with finding F.4, insofar as the District is concerned. It is unclear how surrounding cities, in the current economy, would fund the services currently provided by the District. Moreover, surrounding cities have never expressed any interest in providing the services provided by the District. Finally, transferring of these public services to homeowners associations may increase legal complexity and costs for residents as these private entities are asked to take on previously provided public services. Homeowner associations are not a form of local government and therefore are not subject to the same transparency and accountability standards that the District is required to follow by law. Furthermore, homeowner associations have no experience of expertise in delivering the type of core services that the District provides, nor do they have the necessary powers to perform those services.

F.7: *The unrestricted reserves of the special districts are available to the governing boards to spend as they please. Local citizens are not openly informed of this wealth when agencies ask for fee increases, special assessments, or bond measures. Most of the special districts do not appear to have specific criteria for amassing these reserves nor do they have published long-range plans for their constructive use.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.7 in the aggregate. The District, however, respectfully disagrees with finding F.7, insofar as the District is concerned. The District designates money toward saving in order to respond to emergencies, keep rates affordable, maintain existing infrastructure and plan for future public works projects. The District's board of directors provides for regular audits of

the district's accounts and records pursuant to Government Code section 26909. These audit reports are available to the public.

F.8: *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 a year without taxes, fees, interest, or other sources of revenue. The boards of directors have the sole discretion to spend these unrestricted reserves.*

Response: The District has spent the allocated reserves referenced above in the immediate fiscal year (2011) and prior to the publication of the Grand Jury Report. The District has amassed reserves in anticipating of master storm drain project for Vista Del Sol - from the upper end of the community to the lower portion and across Pacific Coast Highway. The completion of this project, along with the related financial data, is reflected in the most recent District audit (FYE 2011). Finally, the Three Arch Bay District has commissioned an independent reserve study to analyze reserve funds and future projects.

F.12: *The community services that the original non-enterprise special districts provided can be provided by the surrounding cities and the county that have engulfed these districts. Continuing to collect taxes for these special duplicative services is a disservice to both the community they serve and the surrounding communities that provide the same or similar services.*

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.12 in the aggregate. The District, however, respectfully disagrees with finding F.12, insofar as the District is concerned. It is unclear how surrounding cities and the county, in the current economy, would fund the services currently provided by the District. Moreover, surrounding cities have never expressed any interest in providing the services provided by the District.

F.15: *Only one of the special districts, the South Coast Water District, has had recent performance audits. The lack of performance audits for the remaining special districts leaves the potential for inefficiencies, poor practices, outmoded operations, etc. hidden from the*

governing boards and the communities they serve. The lack of published performance audits has contributed to the public's ignorance of these districts.

Response: The District lacks independent knowledge of other special districts sufficient to respond to finding F.15 in the aggregate. The District, however, respectfully disagrees with finding F.15, insofar as the District is concerned. The District's board of directors provides for regular audits of the District's accounts and records pursuant to Government Code section 26909. These audit reports are available to the public. Furthermore, LAFCO regularity conducts MSRs of the District. MSRs are required to address matters such as growth and population projections, present and planned capacity of facilities and services, financial ability of the District to provide services, accountability for community service needs including governmental structure and operational efficiencies, and any other matter related to the District's effective or efficient service delivery.

RESPONSE TO RECOMMENDATIONS

R.1: *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.*

Response: Recommendation R.1 will not be implemented by the District, because it is not warranted insofar as the District is concerned. The District relies on taxes to provide essential public services to the residents within its boundaries.

R.2: *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.*

Response: Recommendation R.2 will not be implemented by the District, because it is not warranted insofar as the District is concerned. The District continues to provide important services to residents within its boundaries that are not provided by the surrounding cities and the county. The District meets regularly with LAFCO to address, among other things, growth and

population projections, present and planned capacity of facilities and services, financial ability of the District to provide services, accountability for community service needs, including governmental structure and operational efficiencies, and any other matter related to the District's effective or efficient delivery of services. Additionally, the District's board of directors will continue to provide for regular independent audits of the district's accounts and make audit reports available to the public.

R.6: *Special districts should adopt "board of director's practices" for all their reserves, restricted and unrestricted. All reserves should be classified in their 2012-2014 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.*

Response: Resolutions adopted by the District's board of directors comprise policies and procedures for the District's operations. Those standards are used in preparing the District's budgets. Additional reserve policies and procedures will be considered by the District.

R.7: *Excessive unrestricted reserves should be used to reduce existing debts. Future revenues should be reduced to avoid the accumulation of unallocated revenue that does not meet the adopted new standards.*

Response: The District cannot respond to this recommendation to the extent that it is vague and ambiguous as to the phrase "excessive unrestricted reserves". The District designated money toward saving in order to respond to emergencies, keep rates affordable, maintain existing infrastructure and plan for future projects. As previously noted, the District has spent allocated reserves in fiscal year end 2011 for a storm drain rehabilitation project. The financials reflecting this work were pending at the time the Grand Jury Report was published. The District's board of directors will continue to execute their fiduciary responsibility to their constituents as it relates to the use of reserves.

R.8: *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 [sic] not had a*

performance audit within the last five years should contract with an independent outside consultant to conduct such an audit during 2012. These audits should be repeated at least every three years.

Response: The District's board of directors currently provides for regular audits of the district's accounts and records pursuant to Government Code section 26909. These audit reports are available to the public. Furthermore, LAFCO regularly conducts MSRs of the District. MSRs are required to address matters such as growth and population projections, present and planned capacity of facilities and services, financial ability of the District to provide services, accountability for community service needs including governmental structure and operational efficiencies, and any other matter related to the District's effective or efficient service delivery.

R.9: *Each special district should contribute 1% of its unrestricted reserve funds to LAFCO to help finance preparing and directing the consolidation, absorption or elimination and the setting of standards for reserves for 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.*

Response: As required by law, LAFCO's budget is already funded in equal parts by the special districts, by the cities and by the County. The District does not have the authority to contribute additional revenues to LAFCO. The District's board of directors will continue to execute their fiduciary responsibility to their constituents.

CONCLUSION

Extensive legislation and regulation currently exists with respect to the governance of Community Service Districts. Moreover, the District's board of directors has itself established extensive policies and regulations in connection with the further implementation of those laws and regulations. The District's governing Board is committed to continuing its ongoing process of regular review of local policies and procedures to ensure that they adequately fulfill the Board's stewardship and responsibilities to the electorate.