



County of Orange
C a l i f o r n i a

James D. Ruth
County Executive Officer

February 10, 2004

Tom Staple, Foreman
FY 03/04 Grand Jury
Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Has Orange
County Given Away the Farm"

Dear Mr. Staple:

Per your request, and in accordance with Penal Code 993, enclosed please find the County of Orange response to the subject report as approved by the Board of Supervisors. If you have any questions, please contact Brian Wayt at the County Executive Office who will either assist you or direct you to the appropriate individual.

Respectfully,


James D. Ruth, County Executive Officer

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County of Orange
FY 2003-2004 Grand Jury Report
"Has Orange County Given Away the Farm"

BACKGROUND

Between 1977 and 1983, more than 1,600 affordable housing units were constructed in Orange County under inclusionary housing provisions. A combination of mortgage revenue bonds, density bonuses and other incentives or requirements were used to encourage the construction of these units, which were sold to first time homebuyers who qualified for this housing based on income limitations. The units were subject to controls on resale to assure continued affordability and the Orange County Housing Authority (OCHA) agreed to administer the resale program for affected properties (under construction or planned) through agreements enacted between 1980 and 1983 with five agencies that imposed resale restrictions:

- County of Orange: Six projects (646 units) funded with County revenue bonds
- State Department of Housing and Community Development: Five projects
- California Coastal Commission: Nine projects
- California Air Resources Board: Five projects
- California Affordable Housing Finance Agency: Two projects

As a result of multiple overlapping requirements, OCHA entered into agreements with one or more of the above State agencies to administer resale controls for a total of fourteen (14) projects involving more than one thousand (1,000) units. This was in addition to the County's program, which included another 646 bond units. Resale control periods varied from twenty years on County revenue bond units, thirty (30) years on State HCD units to fifty-nine (59) years on CHFA units.

OCHA hired staff and assisted in the initial purchase of units. OCHA also made its best efforts to enforce the resale restrictions, however the complexities of the program, market factors and administrative challenges resulted in very limited success. By March 1983, OCHA received forty-seven (47) "notices to sell" involving the State-controlled units. Of this total, eleven (11) units were sold and thirty-six (36) were released from price controls due to an inability to find qualified buyers within the sixty-day provisions required under the resale restrictions. Staff had a similar experience with resale of bond-financed units; only 22 units were sold while 132 units were released.

On March 30, 1983, the Orange County Board of Supervisors directed that OCHA should terminate administration of County and State resale control agreements. This was followed by Resolution #83-962 issued on June 21, 1983 authorizing OCHA and the County to develop procedures to release resale controls on the County bond-financed units.

On August 9, 1983 the Board of Supervisors took specific action to terminate OCHA's role in enforcing both County and State resale controls. OCHA was directed to enact its procedures to waive resale controls on all units that involved County bond financing. In addition, OCHA was directed to issue a six-month notice to the State Department of Housing and Community Development, California Coastal Commission, Air Resources Board, and California Housing Finance Agency to end its role in enforcing their resale controls. The Board also authorized OCHA to execute documents to assign its interests in resale control properties as directed by the appropriate State Agency.

Assignment 1: OCHA assigns resale authority to Community Housing Enterprises

After receiving OCHA's six month notification, the California Coastal Commission informed OCHA of its desire to maintain resale controls and requested a transfer of this responsibility to a nonprofit corporation; Community Housing Enterprises (CHE).

In June 1984, CHE entered into an agreement with the State Coastal Conservancy and California Coastal Commission (Contract 83-308) to administer the resale controls. On August 7, 1984 OCHA executed its reassignment of rights and responsibilities and this Assignment was recorded as an official record by the County Recorder's Office (Document #84-327142) and specified the following properties:

- Aliso Meadows: 10 Units
- Beacon Hill Terrace: 51 Units
- Niguel Beach Terrace: 284 Units
- Spinnaker Run: 101 Units

It should be noted that the above assignment was recorded as a single document that contained a listing of projects and addresses of the affected properties. Assignment Document #84-327142 was not attached to individual homeowner grant deeds. The original "Attachment to Grant Deed" continued to identify only OCHA as the enforcement agency for resale controls. OCHA sent notifications to Homeowner Associations in an effort to notify individual property owners of this reassignment through the Covenants, Conditions and Restrictions (CC&Rs).

Assignment 2: OCHA assigns additional units to Community Housing Enterprises

On December 10, 1985, OCHA executed another reassignment with CHE involving 50 additional units constructed in a later phase at the Spinnaker Run Project. That Assignment was recorded as Document #85-494571.

By 1987, CHE was experiencing limited success in enforcing the resale controls and needed additional resources as identified in a prior Grand Jury Report dated June 1987. That report examined the Agreement between CHE, the Coastal Conservancy and the California Coastal Commission.

Assignment 3: California Housing Enterprises assigns resale authority to Civic Center Barrio Housing Corporation

According to the 2003 Grand Jury Report, CHE withdrew from its role in enforcing resale controls in August 1987. However, it was not until May 3, 1991, that CHE recorded an Assignment of its rights and responsibilities involving the enforcement of resale controls to the Civic Center Barrio Housing Corporation (CCBHC). Document #91-214346 is an "Assignment and Acceptance of Interest and Request for Notice" involving the following properties:

- Aliso Meadows: 7 Units
- Beacon Hill Terrace: 37 Units
- Niguel Beach Terrace: 260 Units
- Spinnaker Run: 99 Units
- Cypress West: 8 Units
- Pacific Terrace: 34 Units
- Seawatch: 37 Units

As in the previous two reassignments, the above Assignment and Acceptance was recorded as an independent document with a listing of properties and was not attached to the individual grant deeds of the affected properties/homeowners.

Over the past twenty years, OCHA was the only agency identified with resale control attachments on the original grant deeds for the affected properties. Owners continued to contact OCHA regarding selling their properties and with very few exceptions were appropriately referred to CHE and later CCBHC. This continued after OCHA no longer had administrative or specialized staffing resources dedicated to perform this function.

In reviewing the three reassignments, none of the agencies involved took additional action beyond the Assignment to record this Document in a manner that it could be immediately referenced by the individual property owner grant deeds. Such recording would have prevented any potential error on the part of any of the resale control enforcement agencies. Such an effort would have been labor intensive and required extensive cross-referencing of property addresses and owners in the County Assessor's records with document numbers or owner names identified in the County Recorder's Offices, according to those departments.

The County and OCHA are very concerned about any inappropriate releases that were mistakenly approved. OCHA is committed to taking appropriate action to ensure that this will not occur again. Staff has researched and updated documents to clearly designate affected properties and will cross-reference addresses and projects. OCHA is also exploring the feasibility of recording the above assignment with the grant deeds for each remaining property. Although OCHA is not a party to the most recent Assignment, staff will offer assistance to the Coastal Commission and CCBHC if this is possible.

FINDINGS AND RESPONSES TO THE 2003-2004 ORANGE COUNTY GRAND JURY.

Under California Penal Code Sec. 933 and Sec. 933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following eight findings. Below each of the eight findings are the responses of the Board of Supervisors on behalf of the Orange County Housing Authority and the Housing and Community Services Department (HCS).

Finding 1. Orange County Housing Authority relinquished control of California Coastal Commission affordable housing units to Community Housing Enterprises in a series of Assignments between June 18, 1984 and December 10, 1985.

Response: Agree with the finding.

Finding 2. Orange County Housing Authority releases of California Coastal Commission affordable housing units issued after 1985 were contrary to County Policy and Procedures and were invalid.

Response: Disagree partially with the finding. OCHA's actions were consistent with the Board directives of 1983 to release County bond-financed and certain other properties from resale controls. Any releases for Coastal Commission units were mistakenly given and would be contrary to the reassignment of the authority to release units that was transferred to CHE or CCBHC.

Finding 3. Orange County Housing Authority issued post -1985 invalid "release - Notice of Intent to Abandon Option" forms for Niguel Beach Terrace Units 10, 140, 187, and 188; Spinnaker Run Unit 123; and Beacon Hill Terrace Unit 53.

Response: Disagree partially with the finding. It should be noted that these releases occurred in good faith as a result of staff errors or inaccurate documentation. For example, several releases were issued under the direction of a February 1994 internal Document, which erroneously included Niguel Beach Terrace among properties that OCHA was authorized to release. Another involved a consultation with CCBHC in which OCHA staff was given approval by telephone to release the unit. Beacon Hill #53 was not included on the listing of properties assigned to CCBHC in 1991. Since CCBHC did not appear to have jurisdiction for this property and CHE ceased to exist, OCHA seemed to be the only agency available to the seller in order to petition for a release.

Finding 4. Additional Orange County Housing Authority invalid releases of California Coastal Commission affordable housing units may have been issued but not discovered during this investigation.

Response: Disagree partially with the finding. Current research of OCHA records indicates that only the six Coastal Commission-related properties identified in the Grand Jury Report were released by OCHA. Due to the number of units and variety of properties in question, further and more extensive research of individual real estate transaction records is needed to absolutely confirm that no additional invalid releases were issued.

Finding 5. Invalid releases by Orange County Housing Authority cloud property titles, which may cause serious legal and financial problems for affected parties.

Response: Disagree partially with the finding. Currently, any property, which has received a release, is no longer subject to the resale restrictions on record title. As such, there is no "cloud" on record title for these properties. However, it may be possible to file a *lis pendens* in the Official Records of Orange County thereby "clouding" title against these properties. Before a *lis pendens* may be filed a legal action would first need to be prepared and filed with the appropriate court by the California Coastal Commission, the public body with the authority to do so with respect to these properties. As discussed below in OCHA's response to Recommendation No. 1, OCHA has no legal interest in these properties and is therefore without authority to make any decision on filing and prosecuting a legal action or actions.

Finding 6. Invalid releases by Orange County Housing Authority may expose the County of Orange to damage claims from affected parties.

Response: Disagree partially with the finding. It is always possible that a claim or claims may be filed against the County arising out of the six erroneous releases by either the affected homeowners or the California Coastal Commission. The merits of any such legal action and the defenses available to the County, including, but not limited to any governmental immunity defenses, would be evaluated and determined at the time any such action was filed and served on the County.

Finding 7. Invalid releases by Orange County Housing Authority, if used to facilitate inappropriate sales or leases, reduce the number of affordable housing units available to needs of low- and moderate-income home seekers.

Response: Agree with the finding. Invalid releases result in a reduction of the potential supply of affordable housing units.

Finding 8. Resale proceeds foregone as the result of Orange County Housing Authority releases of California Coastal Commission affordable housing units could have been used to defray administrative costs of the affordable housing program and could have helped fund additional projects to replace affordable housing units lost through market value sales.

Response: Disagree partially with the finding. In addition to OCHA's pre 1985 experience, Community Housing Enterprises also encountered limited success in implementing the resale control provisions. The Civic Center Barrio Housing Corp. and California Coastal Commission also expressed difficulty in administering the program and finding qualified buyers for the units being sold within the allowable timeframes. Consequently these agencies released a significant number of units, which were also lost through market value sales. There is no indication that resale proceeds were sufficient to pay administrative costs and also to help fund additional projects to replace the units being lost through market value sales. In fact, a 1987 Grand Jury investigated the three-party relationship (Contract No. 83-308) between the California Coastal Commission, the State Coastal Conservancy and Community Housing Enterprises in their efforts to enforce resale controls of these units. The Grand Jury Report issued on June 7, 1987 recommended that the California Coastal Commission and State Coastal Conservancy "establish a fund of \$200,000 in order to permit Community Housing Enterprises (CHE) the opportunity of purchasing units that are for sale. This would allow CHE to hold the units for a qualified buyer without undue delay to the seller". Two months after this report was issued, CHE terminated its role in enforcing resale controls.

RECOMMENDATIONS AND RESPONSES TO THE 2003-2004 ORANGE COUNTY GRAND JURY.

In accordance with California Penal Code Sec. 933 and Sec. 933.05 each Recommendation requires a response from the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based upon the findings, the 2003-2004 Orange County Grand Jury developed the following recommendations. Below each of the recommendations are the responses of the Board of Supervisors on behalf of the Orange County Housing Authority (OCHA), and the Housing and Community Services Department (HCS).

Recommendation 1. Orange County Housing Authority rescind the six invalid releases issued to owners of California Coastal Commission affordable housing units and make appropriate corrections to public property record. (Findings 1-3)

Response: **The Recommendation has not yet been implemented, but will be implemented in the future.** OCHA has consulted with County Counsel to assist in this process and will notify the respective property owners of the six properties of the mistake it made in providing the written release of the resale restrictions and that each release given was invalid for lack of authority. OCHA shall also advise the property owners that it shall notify the California Coastal Commission, the public body whose resale restrictions were affected by OCHA's erroneous releases, of the results of the County's investigation into the releases.

Recommendation 2. Orange County Housing Authority inform the California Coastal Commission, Civic Center Barrio Housing Corp. and affected parties that the releases for California Coastal Commission affordable housing projects signed by the Executive Director, Orange County Housing Authority and dated later than December 10, 1985 are invalid and void. (Findings 1-4)

Response: **The Recommendation has not yet been implemented, but will be implemented in the future.** OCHA shall communicate with the California Coastal Commission and CCBHC and provide the letter sent to respective property owners (per Recommendation 1). The communication and letter will indicate that these releases were done in "good faith" and in error.

Recommendation 3. Orange County Housing Authority conduct a thorough review of all releases issued since 1985 to identify any that violate applicable rules and regulations, notify affected parties and take steps to correct errors in public property record. (Findings 4-6)

Response: **The Recommendation has been implemented.** In December 2003, OCHA initiated a project to review records of all releases issued by its staff since 1985. Research of OCHA records and comparisons with properties listed in the three Assignments indicated that no other releases involving California Coastal Commission properties were mistakenly issued.

Recommendation 4. Orange County Housing Authority develop procedures to readily identify all future requests for release associated with California Coastal Commission affordable housing units and promptly forward such requests to the Civic Center Barrio Housing Corp. or its assigned for proceedings. (Findings 7 and 8)

Response: **The Recommendation has been implemented.** OCHA has compiled a comprehensive listing of resale restricted units using a computer data system and staff is now able to readily identify properties that have California Coastal Commission restrictions. This information was compiled using a spreadsheet that can readily identify the units in more than one manner (address versus project name etc.) thus avoiding delays and confusion. Staff can then readily identify and forward appropriate requests to CCBHC.

Recommendation 5. Orange County Housing Authority assist Civic Barrio Housing Corp. efforts to administer the California Coastal Commission affordable housing program by identifying and referring eligible low and moderate-income home seekers to ensure that an adequate supply of eligible buyers are available to fill the needs of their program. (Finding 8)

Response: **The Recommendation has been implemented.** OCHA is a Division within the HCS Department, which participates in several first time homebuyer initiatives and receives calls from interested parties. Such potential homebuyers will receive information about HCS programs and also be referred to CCBHC.