City of Port Hueneme

August 15, 2003

2002-2003 Ventura County Grand Jury
C/O Honorable Bruce A. Clark
Presiding Judge of the Superior Court
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, CA 93009

SUBJECT: JUNE 5, 2003 GRAND JURY REQUEST

Thank you for the June 5, 2003 Grand Jury letter requesting information regarding redevelopment agencies and the requirements for low and moderate income housing. The following responses are offered that concur, concur in part, or disagree with the Grand Jury's findings. In addition, we have reviewed the Grand Jury's applicable recommendations and provided our opinion as to whether the recommendation is, should be, or should not be implemented.

Given the breadth of the Grand Jury's findings and recommendations, the City of Port Hueneme partnered with the City of Camarillo to help prepare the following responses. Any similarity between Port Hueneme's reply and Camarillo's reply likely results from this joint effort.

2002-2003 Grand Jury Findings:

F-1. *In 1976, the State Assembly created the Low and Moderate Income Housing Fund Bill (AB3670). This legislation required that all new redevelopment projects set aside 20% of their tax increment revenues for use on low and moderate-income housing.*

Concur. No response needed.

F-2. *In 1994, the State Assembly created a "use it or lose it," bill (AB1290) related to the 20% set aside funds. Agencies worried that the State could then take back unused funds. It stated that if agencies did not expend or encumber excess surplus (defined below) in the low and moderate income housing fund within one year from the date it became surplus, the agency must either, (a) disburse the excess voluntarily to a housing authority or other public agency exercising housing development powers or (b) expend or encumber its excess*

within two additional years. It also provided that after three years if it has not spent or encumbered, the agency would be subject to sanctions. The definition of "surplus" is any unexpended or unencumbered amount in an agency's low and moderate-income fund that exceeds one million dollars or the aggregate of the amounts deposited during the agency's last four fiscal years.

Concur. Section 33334.12(g)(1) of the California Community Redevelopment Law, Health and Safety Code Section 33000, et. seq. ("CRL"), states that the first fiscal year to be included in this computation is the 1989-90 fiscal year, and the first date on which an excess surplus may exist is July 1, 1994. Section 33334.12(g)(3)(D) also states that the State Department of Housing and Community Development ("HCD") shall develop and periodically revise the methodology to be used in calculating the excess surplus. It is important to note that pursuant to CRL Section 33080.7, the amount of excess surplus an agency has accumulated and a plan to eliminate this surplus must be reported in the agency's State Controller's Report.

F-3. *Health and Safety Code section 33334.2 subdivision (a), allows a CRA to make findings, based upon sufficient factual information, that need exists in the community to improve, increase or preserve the supply of low and moderate income housing or that some percentage less than 20 percent of the tax increment revenues are sufficient to meet those needs. If such findings are properly made, the CRA is not required to use all or part of the 20 percent set aside funds."*

Concur. No response needed.

F-4. *The present law indicates tax increments are only available to CRAs that are in debt. Once the debt is paid, the property tax increment is not available to CRAs for the project. This encourages the CRAs to remain in debt so they may collect the funds. It should be noted that most of the funds received by staying in debt goes to pay the interest on the debt.*

Disagree. The legislative policy statements contained in Article 3 of the CRL (Sections 33030 through 33039) recognize the difficult task of removing blight and that substantial public resources may be required to address this problem. However, the intent of the CRL is NOT to encourage redevelopment agencies to remain in debt. The requirement that agencies must have debt to collect tax increment exists to ensure that agencies only collect tax increment (which is essentially tax money redirected from other taxing entities) to fund established projects and programs to implement the redevelopment plan. This is a way to restrict agencies from collecting tax increment that does not have a specific purpose and that does not go towards furthering the goals and objectives of a redevelopment plan. In

addition, this requirement encourages agencies to maximize blight removal efforts by acquiring as much capital as possible early in the process, via bond issues or other indebtedness, in order to fund large scale, substantive projects to address SIGNIFICANT BLIGHTING CONDITIONS in a project area that need immediate attention. Instead of waiting years for blight to get worse, or to fund small-scale "band aid" remedies with the relatively small amounts of tax increment collected during the first few years of a project, agencies opt to address conditions in a timely manner. It should be noted that the State of California, school districts, and nearly every public entity that receives taxes also issues bonded debt.

Many redevelopment agencies have chosen to issue bonds to fund needed public improvements and other types of redevelopment projects, secured by the future flow of tax increment. A bond issue is much like a mortgage in that it is a loan to allow for an immediate purchase. Bond issues, like mortgages, are popular because projects can be completed in a timely fashion rather than waiting years or decades for sufficient revenue to be collected. With regard to interest payments, it is incorrect that "most" tax increment used to pay debt goes to interest on the debt. "Most" would mean the majority, and most redevelopment bond issues within the past two years have been issued at interest rates ranging from 4.5 - 5.5%. In addition, "debt" for a redevelopment agency can also be a loan from a City, a bank, an agreement with a developer, etc., with competitive interest rates.

F-5. *There is no specific agency with oversight and audit power over CRAs except for the legislative bodies that create the CRAs. Except as mentioned below, they are largely exempt from government oversight by any agency other than a Grand Jury.*

Disagree. Article 6 of the CRL (Sections 33080 through 33080.8) mandates comprehensive reporting requirements for every redevelopment agency in the State. Pursuant to this Article, the State of California (Controller's Office, Department of Finance, HCD, and Attorney General's Office) has oversight and audit power over redevelopment agencies. In particular, the HCD has significant oversight and audit power over redevelopment agencies use of low and moderate-income housing funds. More specifically, the HCD is responsible for developing the methodology to calculate excess surplus (as discussed on page 2), is involved (along with the State Department of Finance) in determining whether remaining blight exists within a project area within the context of CRL Section 33333.11, and every redevelopment agency must submit an annual report to HCD (discussed in detail below). It is also important to note that the State Department of Finance is deemed to be an interested party in each

validation action filed that challenges a redevelopment plan adoption or amendment.

Redevelopment agencies must comply with a myriad of comprehensive reporting requirements to State and local agencies. Each year every redevelopment agency must prepare and submit the following reports to the State of California:

- **Annual independent financial audit report (the agency must present any major violations to the legislative body and inform the legislative body that the failure to correct the violation may result in the filing of an action by the Attorney General pursuant to Section 33080.8 of the CRL);**
- **State Controller's Report on annual transactions, including:**
  - **Outstanding debt,**
  - **Tax increment generated,**
  - **Pass through payments.**
- **HCD Report that includes:**
  - **The total number of residential units created in a project area,**
  - **The total number of low and moderate income housing units destroyed or created in a project area,**
  - **The status and use of the low and moderate income-housing fund (including the date and amount of all deposits and withdrawals of money from the low and moderate income housing fund).**

Pursuant to CRL Section 33080.6, the State of California compiles and publishes reports of the activities of redevelopment agencies every year.

Additionally, CRL Section 33080.8 requires the State Controller to compile a list of agencies with major violations pertaining to reporting requirements EACH YEAR, ON OR BEFORE APRIL 1ST. By June 1st of each year, the Controller determines if these agencies have corrected the violations. If the violation has not been corrected, the Controller sends a list of these agencies and the violations to the State Attorney General for action. Within 45 days of receiving this information, the Attorney General determines whether to file an action to compel the agency's compliance. Within 15 days of a filing of action, the court will conduct a hearing to determine if good cause exists to pursue action. If the court finds that a major violation exists, the court sets a hearing within 30 days and immediately issues an order that prohibits the agency from doing any of the following:

- **Encumbering any funds or making any expenditures except to pay existing indebtedness,**
- **Adopting a redevelopment plan,**

- **Amending a redevelopment plan, except to correct the violation that is the subject of court action,**
- **Issuing, selling, offering for sale or delivering any bonds or any other evidence of indebtedness,**
- **Incurring any indebtedness.**

The above restrictions will remain until the court determines that the agency has corrected the violation.

IN ADDITION TO THESE REPORTS, each redevelopment agency must also submit a Statement of Indebtedness to the County auditor-controller's office each year. This report presents the following information for each project area:

- **Total amount of outstanding indebtedness,**
- **Amount of tax increment generated,**
- **Amount of pass through payments made to taxing entities,**
- **Financial transactions report required by Section 53891 of the Government Code of the State of California,**
- **Amount of existing indebtedness and the total amount of payments required to be paid on existing indebtedness for the fiscal year.**

F-6. *If a CRA defaults on its debt, a city has no legal responsibility to bail out their defaulting CRA. However, city credit and credibility are damaged, because as most CRA board members are also members of the city council.*

Concur with the first sentence. Disagree with the second sentence. While it is true that the debt of a redevelopment agency is not the debt of a city, the same could be said about a housing authority of a city, or a public finance authority. State law mandates that the debt of separate agencies, even if the board of the agency is also the city council, be treated separately from the debt of the city. Redevelopment agencies are a subdivision of the State, not of a city. Redevelopment agency bonds are secured by tax increment that the city has no authority to claim or administer. Additionally, not all city councils serve as the boards of redevelopment agencies in the State of California.

It is very important to emphasize that a city's credit rating IS NOT adversely impacted by a default of a redevelopment agency on a bond issue; they are two separate entities that are viewed differently by rating agencies. Finally, and importantly, according to the California Redevelopment Association (an association of all redevelopment agencies in the state), there have been no defaults on any bond issues for any redevelopment agency in the State of California.

F-7. *The California State Controller's office issues an "annual report of financial transactions" of CRAs. Each city is responsible to submit a report on the status of "low and moderate income housing."*

Concur. No response needed.

F-8. *The above report must also contain a form entitled "Statement of Indebtedness". This report must also be filed with the County Auditor on or before October 1 of each year.*

Concur. No response needed.

F-9. *The Health and Safety Code, section 33080 (a) requires every CRA to file with the State Controller within six months of the end of the agency's fiscal year all the documents required by 33080.1. In addition, a copy of this report, upon written request, must be furnished to any person or taxing authority.*

Concur. No response needed.

F-10. *Although a County Board of Supervisors has no legislative oversight of CRAs, many have adopted "policies" within the Board of Supervisors policy manuals to have some oversight. Attachment B is a recent example of Los Angeles County Board of Supervisors action.*

Disagree. The board of supervisors of a county only has direct authority and oversight responsibility over a redevelopment agency created by that county. Because redevelopment agencies are a subdivision of the State, counties do not have authority or oversight over the activities of other agencies. Counties are, however, affected taxing entities within redevelopment areas, and as such, are provided with notification and information regarding redevelopment plan adoptions and amendments. The Los Angeles County policy attached to the Grand Jury's report addresses that county's desire to review incoming information regarding new plan adoptions or amendments, as an affected taxing entity. This policy is an internal guide for Los Angeles County to use in determining which new redevelopment plans it will challenge or investigate – it does not seek to impose obligations on other redevelopment agencies.

To our knowledge, the County of Los Angeles is the only County in the State to have adopted any policies. As stated above, it is important to note that the above-mentioned policy ONLY applies to new redevelopment plan adoptions or amendments, and makes no mention of ongoing monitoring or oversight. The intent of this policy was to examine the legal basis for such adoption or amendment given any fiscal impacts incurred by the County as a result of a redevelopment plan.

F-11. *Before the approval of a redevelopment plan, the agency shall conduct a public hearing on the plan. CRAs are required to publish a notice of the hearing, not less than once a week for four successive weeks prior to the hearing. The notice shall be published in a newspaper of general circulation and published in the affected community. It is required that the notices be non-technical and in a clear and coherent manner using words with everyday common meanings.*

Concur. No response needed.

F-12. *Copies of the published notices shall also be mailed first class to the last known owner of each parcel of land in the area designated in the redevelopment plan. In addition, notice shall also be provided to all residents and businesses within the project area at least 30 days prior to the hearing.*

Concur. No response needed.

F-13. *Citizen involvement is minimal in most CRA planning operations. Project Area Committees (PACs) are required at the formation of a CRA residential project. Once the project is approved, there normally is no continuing citizen involvement with the plan. Agencies are not required to notify or recall the PACs, if the plan is revised.*

Disagree. First, it is not correct to state that PACs are only required for "residential projects." Section 33385 of the CRL states that PAC must be formed in either of the following situations:

1. **A substantial number of low-income persons or moderate-income persons, or both, reside within a project area, and the redevelopment plan will contain authority for the agency to acquire, by eminent domain, property on which any persons reside; or**

2. **The redevelopment plan contains one or more public projects that will displace a substantial number of low-income persons or moderate-income persons, or both.**

Most law firms in the State who specialize in redevelopment will indicate that twelve (12) or more low-income or moderate-income units within a redevelopment area constitutes a "substantial number" and would recommend that a PAC be formed. It is important to note that in the event of a PAC formation, at least two PAC formation meetings are held to provide information on the CRL, the project area, and the PAC. Mailed notice is provided to all residents, businesses, and community organizations within a project area at least 30 days prior to the first meeting, and published notice pursuant to the Government Code is also provided.

Also, CRL Section 33385(f) requires that if a project area does not contain a substantial number of low- and moderate-income individuals, the agency shall either form a PAC or consult with, and obtain the advice of, residents and community organizations as provided for PACs and shall provide these persons and organizations with the redevelopment plan prior to its adoption. This consultation typically occurs via public information meeting. Notice for these meetings is usually provided with the notice of joint public hearing, with a separate meeting notice published in a newspaper of general circulation.

Therefore, even in the event a PAC is not required, all redevelopment agencies are legally obligated to consult with project area residents and community organizations.

Secondly, the statement that once "the project is approved, there normally is no continuing citizen involvement with the plan" is also incorrect. CRL Section 33366 states that the agency may consult with a PAC for a three-year period after the adoption of redevelopment plan. This would occur if BOTH the agency and the PAC wished to continue consultations. Many agencies opted to leave PACs in place to continue to provide policy guidance to the redevelopment agencies. As this rarely occurs due to the busy schedules of most people, it is important to note at least three known examples of this. The Orange County Development Agency ("OCDA"), the redevelopment agency for the County of Orange, has a PAC that still meets regularly (six times a year) on the Santa Ana Heights Redevelopment Project, which was adopted in 1986. The PAC has remained almost 20 years after the adoption of the plan. The PAC for the San Fernando Boulevard South Corridor has also remained in place for nearly 20 years after the redevelopment plan was adopted. In addition, the City of Long Beach also has at least one PAC that continues to meet years after the redevelopment plans were adopted.

Finally, the statement that agencies "are not required to notify or recall the PACs, if the plan is revised" is incorrect. In the event of a redevelopment plan amendment, Section 33385.5 of the CRL requires the following:

- **The agency shall forward copies of the proposed amendment to the redevelopment plan to the PAC if one exists, at least 30 days prior to the hearing on the plan.**

- **When the amendment would enlarge the project area, the agency shall call upon the PAC to expand its membership to include additional members to adequately represent all affected areas (the CRL prohibits the legislative body from holding a public hearing to adopt the plan unless the PAC membership has been enlarged).**

- **The PAC may prepare a report and recommendations for the legislative body. If the PAC opposed the amendment, the legislative body may only adopt the amendment by a two-thirds vote of its entire membership eligible to vote on the amendment.**

If a redevelopment plan amendment is proposed and a PAC does not exist, CRL Section 33385.3 requires that a PAC be formed if the proposed amendment would do either of the following:

1. **Grant the redevelopment agency authority to acquire, by eminent domain, property on which persons reside in a project area in which a substantial number of low- and moderate-income persons reside; or**
2. **Add territory in which a substantial number of low- and moderate-income persons reside and grant the authority to the agency to acquire, by eminent domain, property on which persons reside in the added territory.**

F-14. *Many of the cities within the County hold their Community Redevelopment meetings on the same night as the City Council meetings and on the night's published City Council agenda. Some of the cities have a separate agenda for the CRA meeting also listed.*

Concur. Holding these meetings on the same night is done for the convenience of the public, so that citizens only have to make one night available. However, because a city and a redevelopment agency are separate legal entities, it is common practice for a city and the redevelopment agency to have separate agendas. In Port Hueneme for example, separate agendas are prepared for the City Council, Redevelopment Agency, Housing Authority, and Surplus Property Authority of the City. Each of these meetings are conducted separately but are held on the same night to best serve the public interest.

F-15. *The Grand Jury requested information from County Counsel as to what remedies are available if a CRA fails to comply with the provisions of its redevelopment plan or its implementation. The law provides for judicial review of CRA actions, without specifying who may bring such action. There are specific procedures that have been established for review of redevelopment plans. A CRA may be subject to a taxpayer's suit. The Attorney General has the power to bring actions to enforce state law. While no specific agency is given oversight responsibilities with respect to CRAs, various means are available by which judicial review of the agency's actions may be obtained. There appear to be no penalty provisions contained in the law. The only enforcement mechanism available in the law is for bondholders, affected individuals or organizations,*

taxpayers or the Attorney General to file suit asking a court to enforce the requirements of the law.

Disagree. It is true that any affected property owner, resident, or business within a redevelopment project area may file suit against the adoption or amendment of a redevelopment plan. In addition, any resident of a city, even those that live outside of a redevelopment project area, may put a redevelopment plan or amendment on the ballot for referendum. However, the adoption or amendment of a redevelopment plan is just one part of redevelopment in California, as your findings indicate.

The implementation of redevelopment plans in California is tracked by each redevelopment agency via five-year implementation plans required pursuant to CRL Section 33490. Every redevelopment agency must prepare an implementation plan for each redevelopment project to cover every five-year cycle in the life of a redevelopment plan. The required contents of the five-year plan include:

- **Agency goals and objectives,**
- **Specific programs, including potential projects and estimated expenditures to be made during the five years, and**
- **An explanation of how the goals and objectives, programs and expenditures will eliminate blight within the project area and implement low and moderate income housing requirements.**

- **Agency housing responsibilities including:**
  - **The amount available in the low and moderate income housing fund and estimated amounts to be deposited in this fund during each of the five years,**
  - **A housing program with estimates of the number of new, rehabilitated or price restricted units to be assisted and estimates of the expenditure of monies from the low and moderate income,**
  - **A housing needs assessment, and**
  - **The amounts of low and moderate-income housing fund monies utilized to assist low and moderate income households.**

As stated above, an implementation plan must be adopted, after a noticed public hearing, once every five years. In addition, CRL Section 33490(c) states that every agency must conduct a mid-term public hearing at least once within the five year term of the plan to hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and corresponding implementation plan for each redevelopment project to evaluate the progress of the redevelopment project. Agencies must also

adopt a housing compliance plan every ten years that describes how an agency is complying with CRL requirements pertaining to low and moderate-income housing.

It is our understanding that the HCD does track implementation plan and housing compliance plan adoptions and will notify redevelopment agencies of non-compliance.

It is important to emphasize that the State Controller, the State HCD, and the Attorney General's Office all oversee the ANNUAL activities of all redevelopment agencies and the Attorney General has the authority to take action against violations of agencies. The reporting requirements outline earlier show the exhaustive and comprehensive requirements contained in State Law to insure ongoing compliance with the CRL. The State Controller's Office, on an annual basis, examines the compliance of each redevelopment agency and reports violations to the Attorney General. These violations cover ALL aspects of redevelopment, not just financial reporting requirements. As stated in CRL Section 33080.8(i), a major violation means that an agency did not:

- **File an independent financial audit report that substantially conforms with legal requirements,**
- **File a complete fiscal statement,**
- **Establish time limits for redevelopment plans adopted prior to 1994, such as the effectiveness of a redevelopment plan, incur debt, and pay indebtedness or receive property taxes,**
- **Establish a low and moderate-income housing fund,**
- **Accrue interest earned by the low and moderate-income housing fund,**
- **Initiate development of housing on real property acquired using moneys from the low and moderate-income housing fund or sell the property, or**
- **Adopt a current implementation plan.**

There is an established legal process stated in the CRL that the Attorney General and the court must follow to address such violations.

With regard to penalties, as stated earlier in this response, if the court finds that an agency is found to have a major violation, the agency will prohibited from:

- **Encumbering any funds or making any expenditures except to pay existing indebtedness,**
- **Adopting a redevelopment plan,**

- **Amending a redevelopment plan except to correct the violation that is the subject of court action,**
- **Issuing, selling, offering for sale or delivering any bonds or any other evidence of indebtedness, and**
- **Incurring any indebtedness.**

The above restrictions will remain until the court determines that the agency has corrected the violation. In addition, agencies are penalized in the event of excess surplus of low and moderate-income housing funds. Pursuant to Section 33334.12, if any agency has an excess surplus in the low and moderate-income housing fund, the agency must voluntarily disburse the surplus to the county housing authority or other appropriate agency, or expend or encumber its excess surplus within two years. If an agency fails to comply with this after three years after the surplus was identified, the agency will be subject to the same sanctions itemized above. These sanctions will remain in place until the agency has expended or encumbered the excess surplus, plus an additional amount equal to 50 percent of the amount of the excess surplus that remains at the end of the three-year period. The additional expenditure will not be from the agency's low and moderate-income housing fund, but will be used in a manner that meets all the requirements for expenditures from that fund.

2002-2003 Grand Jury Recommendations:

R-1. *The Board of Supervisors should monitor and publicize annually the accumulation and expenditures of the funds. (C-1, C-2)*

In response to all of the recommendations presented, the level of pubic interest should be assessed prior to implementing any of these policies to insure that the expenditure of extra public resources is necessary.

At this time, the City of Port Hueneme does not believe that this is necessary pursuant to the discussion in the "Findings" section of this Response. It is our opinion that this should not be implemented.

R-2. *The Board of Supervisors should designate a County office to provide for the issuance of a report with enough detail as to the types and sizes of housing units created and indicating the total amount of tax dollars diverted to CRAs so that the public can assess the benefits of the expenditures. (C-1)*

This information is already available to the public as it is published annually by the State. Rather than issuing a report containing duplicate information to that of the State's, a designated County office can direct all interested parties to the source of this information. It is our opinion that this should not be implemented.

R-3. *Authorize an appropriate County agency to maintain a public file where annual reports and statement of indebtedness from all cities within the County would be located for public review. (C-1)*

Any interested party may obtain a copy of these reports at the subject city, as they are public documents. It is unlikely that the average resident of Ventura County would request copies of these reports for more than one city, and would be more interested in the reports pertaining to the city in which they live or work. It is our opinion that this should not be implemented.

R-4. *Cities should review their present policy and consider holding the CRA meetings as a separate function not related to the regular council meetings. (C-3)*

Because of the high percentage of ties between the City and Redevelopment Agency (financial, planning, and policy issues), conducting City Council meetings and Redevelopment Agency Board Member meetings on the same night best serves the public interest.

R-5. *The cities within the County furnish the same reports, as they are required to submit to the State Controller's office to the designated County office. (C-1)*

Because the State publishes nearly all of the desired reports, the City of Port Hueneme does not believe that this policy should be implemented. Again, public interest in this information and the cost of providing such information should be assessed before implementing any of these policies.

In closing, we trust the above responses to the 2002-2003 Ventura County Grand Jury will further educate the public as to where it can currently obtain comprehensive information regarding redevelopment agencies (in addition to the local agency office). In addition, we hope the above responses spotlight the numerous agencies providing existing government oversight of redevelopment agencies including the State Controller's Office, Department of Finance, Department of Housing and Community Development, Attorney General's Office, local agency auditors, agency staff, and agency board members.

Should the Grand Jury have any further questions regarding the above responses, I can be reached at (805) 986-6553.

Sincerely,

Greg C. Brown
Director of Community Development

c: City Council
City Manager