CURTIS P. CANNON
Community Development Director

Community Development Department
305 West Third Street • Oxnard, CA 93030 • (805) 385-7407 • Fax (805) 385-7417

September 3, 2003

Honorable Bruce A. Clark
Presiding Judge of the Superior Court
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

Subject: Comments and Response of the City of Oxnard and its Community Development Commission on the 2002-2003 Ventura County Grand Jury Report - Redevelopment Agencies and the Requirements for Low and Moderate Income Housing

To the Honorable Bruce A. Clark:

In my capacity as Community Development Director of the City of Oxnard (the "City") and its Community Development Commission (the "Commission"), I have reviewed and considered the 2002-2003 Ventura County Grand Jury report entitled "Redevelopment Agencies and the Requirements for Low and Moderate Income Housing" (the "Report"). The City of Oxnard has elected to operate and govern its redevelopment agency under the auspices of the City's Community Development Commission in accordance with California Health & Safety Code Sections 34100 et seq.

My comments and response on behalf of the City and the Commission to the Report and its findings and recommendations are as follows:

As to Finding No. F-1

The City and Commission essentially concur with Finding No. F-1. The creation of the Low and Moderate Income Housing Fund (the "Fund") provisions and the 20 percent affordable housing set-aside requirement was actually effectuated by the enactment by the State Legislature of California Health & Safety Code Section 33334.2.

As to Finding No. F-2

The City and Commission essentially concur with Finding No. F-2. The "excess surplus" provision is no longer a "use it or lose it" provision, but instead relies only on penalties for untimely expenditure of "excess surplus" Fund monies. It was originally enacted as such in 1988 by the enactment by the State Legislature of California Health & Safety Code Section 33334.12, and was amended in 1989, 1990, 1992, 1993, 1994 and 1999. The definition of "excess surplus" is any unexpended and unencumbered Fund amount

that exceeds the greater of $1,000,000 or the aggregate deposits during the redevelopment agency's last four fiscal years (see Health & Safety Code Section 33334.12(g)(1).

As to Finding No. F-3

The City and Commission disagree partially with Finding No. F-3. First, it should be noted that the reference to "need" in the second line of the finding should be to "no need" (see Health & Safety Code Section 33334.2(a)(1)(A). Second, the redevelopment agency findings which permit avoidance with housing set-aside requirements have been significantly scaled back by legislative amendment, and can only be made if and to the extent consistent with the City's current housing element, and only, among other important restrictions, if that housing element has been determined by the Department of Housing and Community Development of the State of California (HCD) to be in substantial compliance with applicable provisions of law (Section 33334.2(a)(2)(C)).

As to Finding No. F-4

The City and Commission disagree partially with Finding No. F-4. The third sentence of that finding opines that CRA's are encouraged to be in debt since that is a requirement to collect tax increment funds. In fact, such requirement is both constitutional and statutory, and is found in Article XVI, Section 16 of the State Constitution and Health & Safety Code Sections 33670 et seq. These provisions were added by vote of the people of the State of California in 1954 not to encourage the creation of debt, but for the stated purpose of limiting tax increment revenues to those needed to pay debt. The fourth sentence of Finding No. F-4 cannot be accurately stated as a generalization, since the proportion of money needed to repay principal versus interest differs for every indebtedness, depending on the applicable terms and interest rates.

As to Finding No. F-5

The City and Commission disagree with Finding No. F-5. There is substantial governmental oversight and auditing power over redevelopment agencies, and this is particularly true in the area of low and moderate-income housing, the subject of this report. These oversight and audit provisions include the following:

1. The Controller of the State of California imposes guidelines for the redevelopment agency reports referred to in Finding F-9, based in part on input from the State Legislative Analyst and others (Health & Safety Code Section 33080.3).

2. HCD compiles and publishes annual reports on the activities of redevelopment agencies for each project area of each redevelopment agency (Health & Safety Code Section 33080.6).

3. The Controller of the State of California annually determines whether each redevelopment agency has committed a major violation of the California Community

Redevelopment Law (including its affordable housing requirements), and whether each such major violation has been corrected. In so determining, the Controller may call upon any public agency it chooses for assistance, and in fact frequently relies on independent audits of the redevelopment agency involved conducted by HCD (Health & Safety Code Section 33080.8). Major violations are defined to include various failures of a redevelopment agency to comply with applicable low and moderate-income housing requirements.

4. The Attorney General of the State of California is specifically authorized by statute to file actions to obtain a statutorily expedited court order to compel a redevelopment agency's compliance with the California Community Redevelopment Law (Health & Safety Code Section 33080.8).

5. Each redevelopment agency must annually file with HCD an independent financial audit report conducted by a State licensed CPA or PA in accordance with the Government Auditing Standards adopted by the Comptroller General of the United States, and in accordance with the guidelines for such audits issued by the State Controller.

6. HCD has a number of statutorily mandated oversight duties involving every redevelopment agency's expenditure of Fund monies, including:

   a. The finding oversight mentioned in response to Finding No. F-3 above.

   b. The audit duties referred to above in this response to Finding No. F-5.

   c. The development of methodology that must be used by redevelopment agencies to calculate "excess surplus" amounts referred to in Finding No. F-3.

   d. Determinations that pooled housing funds comply with applicable statutory requirements (Health & Safety Code Section 33334.25(d)(4).

7. Fund monies must be spent in proportion to each affordable income category need as established in the community's housing element of its General Plan, which must be reviewed and is subject to a variety of findings and determinations by HCD and other governmental agencies (Health & Safety Code Section 33334.3).

<u>As to Findings No. F-6 to F-12, inclusive</u>

The City and Commission essentially concur with Findings No. F-6 to F-12, inclusive. As to Finding No. F-8, the statement of indebtedness referred to is required by Health & Safety Code Section 33675 rather than the section requiring the annual report (Section 33080.1).

As to Finding No. F-13

The City and Commission disagree with Finding No. F-13. Redevelopment in Oxnard includes a significant citizen participation component. The Commission hosts a South Oxnard Revitalization Committee that has publicly noticed monthly forums to discuss revitalization efforts (redevelopment and otherwise in south Oxnard). The Commission also maintains a departmental website that provides an overview of California Redevelopment Law and outlines the mission, goals, activities and map of each of the project areas in Oxnard. In addition, the Commission televises its meetings, and holds meetings concurrently with the City Council. This encourages, not discourages, participation, since citizens can have input on both City Council and Commission redevelopment decisions by attending a single meeting. The Commission has also developed a quarterly departmental newsletter, available at the front counter of its offices, to describe projects the department is involved in, and Commission staff attends, along with other departments, the on-going deployment of what the City calls "mobile satellite city hall" which is deployed to different neighborhoods throughout the year to describe City programs to the public, including community development and redevelopment programs. Commission representatives attend the Downtown Oxnard Merchant Association (DOMA) meetings and provide monthly updates of redevelopment projects. Additionally in Downtown Oxnard, Commission representatives serve on two boards, the Downtown Partnership, a recently formed property owner assessment district with monthly public meetings, and the Heritage Square Property Owners Association Board of Directors. Commission representatives chair the monthly Southwinds Team meetings (designed to develop solutions to neighborhood revitalization issues) which include City staff and residents serving as elected representatives of their neighborhood (also a project area).

As to Finding No. F-14

The City and Commission concur with Finding No. F-14.

As to Finding No. F-15

The City and Commission disagree with Finding No. F-15 that enforcement and penalty provisions are somehow lacking for redevelopment agencies. The enforcement mechanisms listed by the Grand Jury in Finding No. 15, together with the governmental oversight and audit mandates listed above in response to Finding No. F-5, far exceed enforcement provisions applicable to public agencies other than redevelopment agencies. The same is true regarding the stated absence of penalty provisions. For example, Health and Safety Code Section 33334.12 contains draconian penalties that apply to a redevelopment agency, which fails to timely expend or commit excess surplus Low and Moderate Income Housing Funds.

As to Conclusion No. C-1

The City and Commission disagree with Conclusion No. C-1. This conclusion is not supported by fact. There is a great deal of access to information regarding the City's redevelopment activities, and especially its low and moderate income housing functions. The audits and reports are public documents available to the governmental entities mentioned herein and to the general public. See also the citizen input and citizen information efforts listed in response to Finding No. F-13. As mentioned by the Grand Jury, all this data is available to everyone on the Internet. The conclusion that it is difficult at best to determine any particular City's information is unsupported and contradicted by the facts.

As to Conclusion No. C-2

The City and Commission disagree with Conclusion No. C-2. This conclusion is not supported by fact. See response to Finding No. F-5 above.

As to Conclusion No. C-3

The City and Commission disagree with Conclusion No. C-3. This conclusion is not supported by fact. See response to Finding No. F-13 above. In the City of Oxnard, the CDC items are often time specific hearings and are not, as a rule, the last items to be considered.

As to Recommendation No. R-1

The City and Commission disagree with Recommendation No. R-1. Board of Supervisors efforts in this respect would duplicate the efforts of other state public agencies that are already charged by law with this responsibility, as detailed above in these comments. It also appears to violate the ruling of the California State Supreme Court in the case of Marek v. Napa Community Redevelopment Agency, in which the Court found that the California Community Redevelopment Law "militates against the notion of a process budgetarily controlled by county auditors." (1988) 46 Cal.3d 1070, at 1083, 251 Cal.Rptr. 778, at 786.

As to Recommendation No. R-2

The City and Commission disagree with Recommendation No. R-2. Efforts in this respect would duplicate the efforts of other state public agencies that are already charged by law with this responsibility, as detailed above in these comments. This information is already publicly available.

As to Recommendation No. R-3

The City and Commission disagree with Recommendation No. R-3. This action is not necessary. As mentioned above, this information is already publicly available both in documentary and electronic form.

As to Recommendation No. R-4

To the extent Recommendation No. 4 is meant to provide that CRA and City actions be formally designated in agenda and minutes as the actions of a separate body, Recommendation No. 4 has always been the practice of the City and the Commission, and as such has already been implemented.

To the extent Recommendation No. 4 is meant to recommend that the Commission and City meetings be held on separate nights, or on separate days, the City and the Commission disagree with and do not plan to implement the recommendation because it would not be beneficial. Many redevelopment activities actually expressly provide for joint public hearings of these two bodies (e.g. see Health & Safety Code Section 33355 and Section 33458) because of the interrelatedness of their actions, and/or required findings or actions from both entities on the same matter (e.g. see Health & Safety Code Section 33433 and Section 33445). As pointed out above in this response, it encourages, rather than discourages, citizen participation if a citizen's input can be expressed on a matter at one meeting rather than two. Requiring a citizen to appear at two meetings rather than one to make the same point on the same subject matter to the same persons (the City Council sit as the Commission governing body in the City of Oxnard) does not encourage citizen participation.

As to Recommendation No. R-5

The City and the Commission do not believe implementation of Recommendation No. 5 is necessary or would be beneficial. As mentioned above, this information is already available to any public entity or private person both in documentary and electronic form.

Sincerely,

Curtis P. Cannon

Curtis P. Cannon
Director