



August 24, 2017

**E-MAIL AND HAND-DELIVERED**

Honorable Board of Directors  
Oversight Board  
Successor Agency to Industry-Urban  
Development Agency  
15651 East Stafford Street  
City of Industry, CA

Re: Consideration of Purchase of Tres Hermanos Property By City of Industry

Dear Honorable Members of the Oversight Board:

The City of Diamond ("Diamond Bar") requests that the Oversight Board not, at this time, approve the sale to the City of Industry ("Industry") of approximately 2,450 acres of property within Tres Hermanos Ranch (the "Property"), approximately 720 acres of which lies within Diamond Bar. A number of misrepresentations have been made first, to the Successor Agency, and now to the Oversight Board, to push this sale through. We believe approval of the sale would violate State law and the Oversight Board's State-mandated fiduciary duties. Industry has ignored the concerns of its neighboring cities Diamond Bar and Chino Hills, both of which are taxing entities on the Property and to whom the Oversight Board, owes a fiduciary duty. A summary of Diamond Bar's reasons for its request is as follows:

- The contention that the Successor Agency must offer the Property to Industry, let alone sell it to Industry for a price \$8 million lower than another offer, is a self-serving myth created by Industry staff. It is inconsistent with State law that requires the Property's value to be maximized and that the Oversight Board act as fiduciary to the taxing entities. Industry is not a taxing entity with respect to the Property, but Diamond Bar is, as is the City of Chino Hills, the County of Los Angeles, school districts and other public agencies. By approving this sale, it is our opinion that the Oversight Board would be putting Industry's interest ahead of the taxing entities in violation of its fiduciary duties.
- Industry's proposed use of the Property is entirely inconsistent with Diamond Bar's General Plan and Zoning.
- State law requires Industry to submit a general plan conformance finding to both Chino Hills and Diamond Bar planning commissions *prior* to purchase. Industry refuses to state whether it intends to do so.

- The purchase violates the California Environmental Quality Act (CEQA). CEQA requires Industry to study the environmental impacts of its solar project before it commits to a definite course of action.
1. The Proposed Sale to Industry Violates the LRPMP and the Oversight Board's Duty under the Redevelopment Dissolution Law to Maximize Value and Act as a Fiduciary to Taxing Entities.

Successor agencies, as directed by the Oversight Board, are to dispose of property expeditiously and in a manner aimed at maximizing value. The Varner & Brandt Memorandum to the Oversight Board (hereafter, "VB Memo") and the Resolution which the Oversight Board is being asked to adopt, both state that State law requires that the Property be sold "expeditiously and in a manner aimed at maximizing value." Given that the Successor Agency received an offer for the Property \$8 million higher than Industry's offer, the Oversight Board cannot make the finding that the sale is in accordance with State law.

First the Successor Agency, and now the Oversight Board, have been fed a myth—that it is a "mandate" that the Property be first offered and apparently sold to Industry, even in the face of a higher offer. This misrepresentation completely contradicts the undisputed mandate that the Successor Agency and Oversight Board maximize the Property's value. It also is irreconcilable with the Oversight Board's State law mandated duty to act as a fiduciary to the Property's taxing entities, of which Industry is not a member.

The contention that the Successor Agency and Oversight Board are *required* to consider a sale to Industry first apparently comes from this line in the LRPMP. A "staff recommendation for the disposition of the Property requires the Successor Agency to first offer the Property to the City and then to the public" and an attachment to the LRPMP which provides that the Property is one of those "to be offered to ... the City first." The VB Memo, also states that this requirement is in Health and Safety Code § 34191.3.

A recommendation by definition is not a mandate, especially one that comes from Industry's own staff. In any event, considering Industry's offer first does not mandate that it be sold to Industry at a lower amount than another offer. Section 34191.3 does *not* provide that the Successor Agency, let alone the Oversight Board, consider offers from Industry first. Rather, Section 34191.3 makes a reference to provisions in Sections 34177 and 34181, which provide that the Oversight Board "*may* instead direct the successor agency to transfer ownership of those assets that were constructed and used for governmental purposes, such as roads, school buildings, parks, police and fire stations, libraries ... to the appropriate public jurisdiction *pursuant to any existing agreements* relating to the construction or use of such an asset."<sup>1</sup> Thus, under Section 34191.3, considering offers from public agencies first is at the Oversight Board's

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<sup>1</sup> Health and Safety Code § 34181

discretion and this discretion only applies to offers from public agencies for property already dedicated to a public use at the time the Redevelopment Dissolution Law was adopted.

Government Code § 34179 provides that the Oversight Board is to exercise its "fiduciary responsibilities to ... taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188." Because the Property is outside of Industry's jurisdiction, it is not a taxing entity with respect to the Property. Industry's City Attorney's statement in a letter to the Oversight Board Chairman dated August 22, 2017<sup>2</sup>, which is the agenda packet, that an Industry staff "recommendation" to consider Industry offers first, is a "mandate", is inherently inconsistent with State law requiring the Oversight Board to act as a fiduciary to the taxing entities. Making determinations on a Property's maximum value and fulfilling fiduciary duties are hardly "ministerial" tasks of the Oversight Board, as represented by Industry's City Attorney in his letter. The Industry City Attorney is essentially telling the Board that it has no choice but to prioritize the interests of Industry, to which no fiduciary duty is owed, over and above the interests of the taxing entities, to which a fiduciary duty is owed. This misrepresentation should give the Oversight Board grave concern.

Because the Successor Agency has received an offer \$8 million higher<sup>3</sup> than Industry's, permitting the Property to be sold to Industry is irreconcilable with State law requiring the Property's value to be maximized and the Oversight Board's fiduciary duties to the Property's taxing entities. Selling the Property to Industry is further disadvantageous to the taxing entities, because property held by a municipality is generally not subject to property taxes. The sale would take the Property off the tax rolls for the foreseeable future and generate no revenue to the taxing entities. In contrast, as discussed in footnote 3 below, the development plan proposed by the higher offer, would generate property tax revenues. It is also noted that the proposed development was completely misrepresented to the Successor Agency at the meeting at which it approved Industry's purchase.

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<sup>2</sup> It appears from the City Attorney's letter that the County of Los Angeles has voiced the same objection.

<sup>3</sup> The Successor Agency received an offer of \$108 million from GH America and South Coast Communities to purchase the Property. The VB Memo correctly notes that the proposal included approximately 1,881 residential units, mixed use, commercial and *open space preservation*. The Successor Agency, however, was informed in a staff report dated January 13, 2017, prepared by Industry's City Attorney, that the "developer would like to build between 7,500 and 10,000 homes on the Property, *effectively and completely altering its open space character forever*." Since this was the meeting at which the Successor Agency approved the sale to Industry, the Successor Agency was apparently operating under two different and extremely relevant misrepresentations, one being the proposed development and the second being that it had to consider Industry's offer first.

2. The Solar Project Is Inconsistent With Diamond Bar's General Plan and Zoning and State Law for the Provision of Affordable Housing.

Although few details have been shared with Diamond Bar by Industry, the proposed use of the Property for a solar facility is an unpermitted use and completely inconsistent with the City's desires for the Property as expressed by the City Council through the General Plan and Zoning. The VB Memo highlights that a portion of the Property in Diamond Bar is designated high density residential. While this is accurate, this comprises only 30 of the 720 acres within Diamond Bar. The remaining Property within Diamond Bar is zoned either agriculture or very low density, 1 residence per 5 acres.

According to the VB Memo the LRPMP states that the Successor Agency evaluate for sale properties "upon acceptable development plans", including information "regarding construction schedules, assessed value of the proposed project, identification of the end user and potential job creation, and the identification of proposed tenants."

It is unclear what is considered to be an "acceptable development plan", but Industry has indicated that its proposed use of the Property is to lease the property to a private company, San Gabriel Valley Water and Power LLC, to install hundreds, perhaps thousands, of solar panels to generate 444 MW of electricity (the "Project"). Initially, based upon preliminary investigation, nearly every square inch of the Property would have to be covered with solar panels in order to generate that much electricity and Diamond Bar believes the claims of generation capacity have been greatly exaggerated and/or the impact on open space severely understated. More importantly, this use is completely inconsistent with Diamond Bar's General Plan and Zoning for the Property.<sup>4</sup> It is also inconsistent with the City's efforts to make available sights for affordable housing in accordance with State law. The one 30-acre parcel referenced in the VB Memo as zoned for high density residential was recently re-zoned by Diamond Bar to meet State law mandates requiring Diamond Bar to zone properties so that they are available for affordable housing. Industry's development plan is not "acceptable" under Diamond Bar's General Plan and Zoning, nor is it consistent with laws relating to the provision of affordable housing.

While perhaps needing refinement, the development plan proposed under the \$108 million offer, is much more consistent with Diamond Bar's General Plan. Diamond Bar would be in a position to negotiate with this developer to ensure that General Plan's goals are fulfilled, large swaths of open space remain, and that the development is in harmony with the vision of the City and the City Council as expressed in its General Plan.

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<sup>4</sup> Chino Hills has informed Diamond Bar that the proposed use is also inconsistent with its General Plan and Zoning.

3. State Law Requires Industry to Submit the Use for a General Plan Conformance Finding to the Diamond Bar Planning Commission Prior to Purchase.

Pursuant to Government Code § 65402, Industry is required to submit its proposed use to the Diamond Bar Planning Commission prior to purchasing the Property for a general plan conformance finding. Both Chino Hills and Diamond Bar have sent letters to Industry reminding Industry of this requirement, but Industry has refused to state whether it would comply. This general plan conformance finding cannot be accomplished within the 30-day escrow period called for in the purchase and sale agreement. While Industry's City Attorney has stated Industry will comply with all applicable laws, when pressed as to whether Industry would submit the use as required by Government Code § 65402, he stated to the undersigned that was subject to the attorney-client privilege.

4. Industry's Purchase Violates CEQA.

Prior to approving a project Industry is required to analyze the project under CEQA.<sup>5</sup> Project approval is the decision by a public agency which commits the agency to a definite course of action in regard to a project which it intends to carry out. Approval under CEQA occurs upon the earliest commitment by the public agency to issue or grant the entitlement or other discretionary action.<sup>6</sup>

Diamond Bar is informed that Industry approved the purchase of the Property in January of 2017. Industry has acknowledged that it has already entered into a lease with San Gabriel Valley Water and Power LLC for the solar project on the Property. In addition, it has been reported that Industry has expended \$9 million in consultants on the Project. CEQA requires that the environmental impacts of a project be studied as earlier in the process as possible so that a public agency is not irrevocably committed to approving a project or a particular course of action. Given that Industry has represented that it has entered into a lease, expended \$9 million on consultants and is set to spend another \$100 million to buy the Property, under any analysis, Industry has thus effectively approved the Project prior to considering the environmental impacts thereof in violation of CEQA.

The proposed Resolution's finding that the sale of the Property to Industry is exempt under CEQA Guidelines § 15061(b)(3) based upon the conclusion that the sale of the Property does "not involve any land use entitlements that will allow for development on the property" is flawed. While this might be the case if Industry had not already pre-committed itself to leasing the Property for a solar facility and spent \$9 million on consultations, those are the facts evidencing pre-commitment in violation of CEQA.

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<sup>5</sup> CEQA Guidelines § 15004, subd. (a); Public Resources Code § 21061.

<sup>6</sup> CEQA Guidelines § 15352 subd. (b).

5. Industry's Purchase May Not Be Authorized

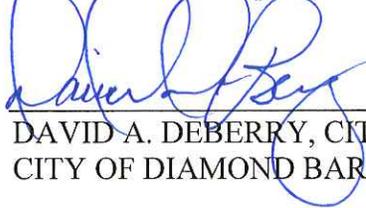
Government Code section 37351 authorizes a city to purchase real property outside its city limits "as is necessary or proper for municipal purposes." Because Industry has not shared much information with the City about its proposed use it is difficult to determine at this point if the use is "necessary or proper for municipal purposes." However, it is at least questionable that leasing property to a private entity for what appears to be primarily a revenue generating scheme, constitutes a municipal purpose.

6. Conclusion

For all the reasons stated above, the Oversight Board should reject the proposed purchase by Industry. We request that the Oversight Board direct the Successor Agency to consider the higher offer for the Property. We suggest that the Oversight Board inquire with the State Department of Finance or obtain separate legal counsel as to whether the representations made by Industry's City Attorney, i.e., that the Successor Agency or Oversight Board must consider Industry's offer first and that its decision-making is "ministerial", are accurate. At least on the surface, the higher offer is more in keeping with State law requirements that the Property's value be maximized and the Oversight Board act as fiduciary to the Property's taxing entities.

Sincerely,

WOODRUFF, SPRADLIN & SMART  
A Professional Corporation



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DAVID A. DEBERRY, CITY ATTORNEY  
CITY OF DIAMOND BAR

cc: Honorable Members of the City Council, City of Diamond Bar  
Mr. Dan Fox, City Manager, City of Diamond Bar  
Mr. Ryan McLean, Assistant City Manager, City of Diamond Bar  
Mr. Greg Gubman, Community Development Director