



August 28, 2017

E-MAIL AND OVERNIGHT MAIL

California Department of Finance
915 L. Street, 6th Floor
Sacramento, CA 95814
Attn: Chikako Takagi-Galamba, Manager

Re: **Urgent – Oversight Board Approval of Sale of Property to City of Industry
For \$58.4 Million Less than the Property's \$100 Million Appraised Value**

Dear Ms. Takagi Galamba:

I am the City Attorney for Diamond Bar and have been directed to write to the Department of Finance (DOF) to voice Diamond Bar's strong opposition to the actions taken by the Oversight Board in approving the sale of 2,450 acres of land located within the cities of Diamond Bar and Chino Hills (the "Property") to the City of Industry for \$41.6 million dollars. Diamond Bar respectfully requests that the DOF review this matter in detail and prevent the sale of the Property as the actions of the Oversight Board violated its fiduciary duty and are inconsistent with state law and the Successor Agency's Long Range Property Management Plan (LRPMP).

The specific action before the Oversight Board at its August 24, 2017, meeting, was for the Oversight Board to consider and approve the sale of the Property to Industry for \$100 million. In a bizarre turn of events, upon a motion by Industry's City Manager, the Oversight Board by a 4-3 vote, approved the sale of the Property to Industry for \$41.6 million. This is \$58.4 million below the amount Industry had *already agreed to pay*, \$58.4 million below the Property's most current appraised amount, anywhere from \$44 million to \$64 million lower than the LRPMP's estimated value and \$66.4 million lower than another offer received by the Successor Agency (see ft. 3). We anticipate that the DOF will be receiving a copy of a resolution adopted by the Oversight Board to the Successor Agency for the Industry-Urban Development Agency ("Oversight Board"), approving the sale of the subject property. Section 2 of the resolution that was before the Oversight Board directs that the Board's secretary "electronically deliver a copy of this Resolution" to the DOF.

As reported in the staff report to the Oversight Board, Industry and the Successor Agency previously approved a purchase and sale agreement for the Property's appraised value at \$100 million. Diamond Bar is informed that Industry has approved a lease with a private entity to develop a solar generating facility on the Property under which the private entity would pay

Industry millions of dollars¹. Industry has recently confirmed these plans and stated that its proposed plans for the Property include public use² and open space. The Property lies completely outside of Industry's city limits and as noted above, is within the city limits of Diamond Bar and Chino Hills. With respect to the Property, Industry is not a taxing entity. The Property is currently undeveloped. The Chino Hills and Diamond Bar general plans and zoning permit residential uses. Diamond Bar recently re-zoned 30 acres of the Property to accommodate higher density affordable housing.

At the special meeting held on August 24th, Paul Phillips, Industry's City Manager and a member of the Oversight Board, made a motion to place a public use/open space deed restriction on the Property and to sell the Property to his City for the \$41.6 million.

Diamond Bar requests that the DOF take immediate action to review the Oversight Board's action pursuant to its authority under the Health and Safety Code, including, but not limited to § 34179(h), because the Oversight Board's action violated the law in a number of ways, including as follows:

1. The Oversight Board's Action Violates State Law and the LRPMP Mandating that the Property's Value Be Maximized and Based On a Current Appraisal.

Health and Safety Code § 34177(e), the LRPMP, the staff report to the Oversight Board and the Resolution before the Oversight Board, all require that the Property be disposed of expeditiously and in a manner to "maximize value." The LRPMP lists the Property (#68) as one of the properties that will be sold by direct contact with interested parties, including "tenants and/or the City." According to the LRPMP, the "basic criteria" of a proposed purchase agreement is that it must be sold "at a reasonable price based on a current appraisal and submission of a Development Plan and Schedule acceptable to the City." Other criteria include that "an estimate of the assessed value of the project, the identification of the end user, job creation and whether the use is a local company." The LRPMP repeatedly states that the fair market value of the Property ranges from \$85-\$122 million.

Rather than follow State law, the LRPMP, the staff report and its own resolution, the Oversight Board did just the opposite. It placed a deed restriction on the Property ostensibly to minimize the Property's value and then sold it for less than half of what was previously offered. The \$41.6 million purchase price approved by the Oversight Board was ostensibly based on a prior appraisal of the Property that assumed the Property could only be used as *open space*, which appraisal the Oversight Board had previously rejected as being invalid. The deed restriction on the other hand, allows *any public use*, including the proposed solar project, which

¹ Diamond Bar is informed that this approval occurred in a closed session of Industry's City Council and is still in the process of reviewing its terms.

² Industry has stated that the solar facility is a public use.

creates a fair market value dramatically greater than solely open space and according to Industry, would generate millions of dollars a year for Industry. The open space appraisal was unfounded and without basis from the very beginning because the Chino Hills and Diamond Bar zoning permits residential uses of the Property.

There is no relationship as between the \$41.6 million appraisal and the uses allowed under the Oversight Board's deed restriction or by current zoning. There is no "current appraisal" for the Property which accounts for a public use and as is required by the LRPMP, that supports the \$41.6 million purchase price. As noted, the purchase price is less than half of the LRPMP's estimated fair market value of between \$85-122 million.

The deed restriction itself is completely illusory as it permits, at least in Industry's view, the very use which Industry had previously proposed for the Property and for which it already agreed to pay \$100 million. The deed restriction is further illusory because Industry may, as a matter of law, only purchase property outside its jurisdiction as is "is necessary or proper for municipal purposes." Government Code § 37351.

For these reasons, the \$41.6 million purchase price does not maximize value and is a wholly unreasonable price. In addition, neither Industry nor the Successor Agency provided the Oversight Board with a development plan, a schedule or any of the other information required by the LRPMP to determine if the proposed sale to Industry is appropriate. Even though these issues were brought to the Oversight Board's attention by Chino Hills and Diamond Bar it is clear they fell on deaf ears, at least as to those of four members. The Oversight Board's action took a minimum of \$58.4 million out of the taxing entities' hands, including an estimated \$2 million from Diamond Bar, and put it into Industry's³. This is an impermissible gift of the taxing entity's funds to Industry in violation of the California Constitution. This action abrogated the Oversight Board's fiduciary duty to the taxing entities under Health and Safety Code § 34179.

2. The Oversight Board Has No Authority to Direct that the Property be Sold for \$46.1 million.

There is no authority for the Oversight Board to approve a transaction that was not first approved by the Successor Agency. The Successor Agency did not approve a sale for \$41.6 million. As noted, on January 13, 2017, the Successor Agency approved a resolution to sell the Property for \$100 million pursuant to a Purchase and Sale Agreement to be entered into between the Successor Agency and Industry. The Agenda for the August 24th Oversight Board meeting included an item for "Consideration of Resolution No. OB 2017-05," which stated that the Successor Agency intended to sell the Property to Industry "for a purchase price of

³ Actually, the Oversight Board is attempting to shift approximately \$66.4 million from the taxing entities to Industry. That is because GH America Investments Group, Inc. recently offered to pay \$108 million for the Property to develop a residential project. The difference between that \$108 million offer and the \$41.6 million purchase price approved by the Oversight Board is \$66.4 million.

\$100,000,000, which represents an amount equal to the fair market value of the Property." The sale of the Property for \$41.6 million was not considered or approved by the Successor Agency and was consequently not before the Oversight Board, and could not be considered by the Board at its August 24 meeting. The Oversight Board did not have the authority to unilaterally reduce the sale price by more than 50 percent.

Pursuant to Health and Safety Code § 34181(f) the Oversight Board was required to approve a resolution disposing of the Property at "a public meeting after at least 10 days' notice to the public of the specific proposed actions." While a public notice was posted on the website, it was deficient. The Oversight Board posted its "Public Notice" in an obscure folder on its website entitled "Other Documents." See <http://www.cityofindustry.org/city-hall/boards-commissions/oversight-board-of-the-successor-agency-to-the-industry-urban-development-agency>. The notice stated that a meeting would be held "to consider the Purchase Agreement for the sale and disposition of certain real property known as the Tres Hermanos property." However, the Purchase Agreement states that the purchase price is \$100 million, not \$41.6 million. All the agenda materials, including the resolution to be considered by the Oversight Board, all referenced a purchase price of \$100 million and made no reference to any deed restriction. Therefore, the notice did not and could not have, provided notice of the "specific action" that was actually taken by the Oversight Board.

The notice was deficient was other reasons. It was buried in an obscure location on the Oversight Board's web page that appears designed to conceal it. It did not mention the purchase price of the Property or even identify Industry as the buyer, but instead stated that "[a] copy of all relevant materials, including the Purchase Agreement, are on file with the Secretary to the Oversight Board." In other words, in order for a person to understand any of the specifics of the action, that person would have to go outside the notice and physically request, receive and review the Purchase Agreement. There is nothing in the Public Notice or any of the agenda materials made public a little more than 24 hours prior to the meeting that would indicate to the public that the Oversight Board was considering selling the Property for \$41.6 million. This does not constitute adequate public notice under any standard.

3. The Approval Violated the California Environmental Quality Act and Other Land Use Laws.

CEQA requires that prior to approval of a project that the environmental impacts of the project must be analyzed.⁴ Project approval occurs when the public agency commits itself 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.⁵

⁴ CEQA Guidelines § 15004, subd. (a); Public Resources Code § 21061.

⁵ CEQA Guidelines § 15352 subd. (b).

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Neither the Successor Agency nor the Oversight Board conducted any environmental review under CEQA, despite overwhelming evidence that the Successor Agency and the City have committed to a definite course of action. Industry has provided documents which reflect a contemplated 444 MW solar facility, a project of such significance that it would likely require the use of a substantial portion, if not all, of the Property.

We are informed that Industry and the Successor Agency approved the purchase of the Property in January of 2017. We are informed that Industry may have, in closed session under the threat of litigation, approved a lease with San Gabriel Valley Water and Power LLC for the above referenced solar project. Industry has acknowledge spending a minimum of \$9 million in consultants on the Project.

CEQA requires that the environmental impacts of a project be studied as early in the process as possible so that a public agency is not irrevocably committed to approving a project or a particular course of action and the CEQA analysis becomes a *fait accompli*. Given that Industry has identified a use of the Property, expended over \$9 million on consultants and is set to spend another \$41.6 million to buy the Property, the Successor Agency and/or the Oversight Board must direct that a CEQA analysis be performed prior to approving the sale of the Property.

In addition, pursuant to Government Code § 65402, Industry is required to submit its proposed use to both the Diamond Bar and Chino Hills planning commissions *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. As noted above, the proposed solar generating facility is not permitted under Diamond Bar's land use regulations. Chino Hills has stated it is not consistent with its land use regulations either.

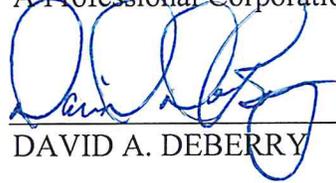
For the reasons set forth above, Diamond Bar requests that the DOF review and disapprove the disposition of the Property and audit this entire process, especially looking into the representations that are being made to the Oversight Board by Industry officials, including representations that the Oversight Board was mandated to offer the Property for sale to Industry and had a "ministerial duty" to approve its sale to Industry. We also request that the DOF look into whether it is an inherent conflict of interest for Industry's City Manager to participate in a decision which places his own city's interest directly at odds with those of the taxing entities, to which he owes a fiduciary duty in his capacity on the Oversight Board. At best, the Oversight Board was ignorant of its responsibilities and bullied into this decision. At worst, it was aware of those responsibilities and for whatever reasons, chose to ignore them.

Please let me know if I can answer any questions or require any additional information.

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Sincerely,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DAVID A. DEBERRY

cc: Daniel Fox, Diamond Bar City Manager
Diamond Bar City Council
Jack Rubens, Esquire
Mark Hensley, City Attorney Chino Hills