



November 20, 2018

VIA E-MAIL AND FIRST CLASS MAIL

Honorable Mayor and Members of the City Council
Board of the Successor Agency
City of Commerce
2535 Commerce Way
Commerce, CA 90049
cityclerk@ci.commerce.ca.us

Re: Closed Session Item No. 2 Relating to Real Property Negotiations for Assessor
Parcels in Los Angeles and San Bernardino Counties. November 20, 2018
Agenda for City Council and Governing Body of Successor Agency—
Contemplate Acquisition of Tres Hermanos Ranch

Dear Honorable Mayor and Members of the City Council and Board of the Successor Agency:

I am the City Attorney for the City of Diamond Bar (“Diamond Bar”) and am submitting this letter to express Diamond Bar’s concerns regarding the City of Commerce’s newly disclosed efforts to purchase the property described in Closed Session Item No. 2. While not stated in the closed session description, the property under consideration is commonly referred to as the Tres Hermanos Ranch (“Tres Hermanos”) which is located in Diamond Bar and the City of Chino Hills (“Chino Hills”). It has long been prized by our two communities as one of the few remaining open spaces in this area of Los Angeles and San Bernardino counties.

It is unfortunate that Diamond Bar is submitting this letter just before the meeting tonight, but Diamond Bar learned only yesterday that this item is on the closed session agenda. We received no communications from Commerce concerning its interest in acquiring Tres Hermanos.

As the City Council may be aware Chino Hills and Diamond Bar have filed litigation in both Sacramento and Los Angeles Superior Court challenging the City of Industry’s (“Industry”) attempt to purchase Tres Hermanos at what appears to be the same price and proposed use now contemplated by Commerce. In connection with that litigation Diamond Bar and Chino Hills have filed lis pendens¹ against Tres Hermanos.

¹ This is a recorded written notice apprising potential buyers of litigation involving Tres Hermanos. The lis pendens are not included in the title report attached to the proposed purchase and sale agreement because the title reports is over a year old.

Chino Hills, Diamond Bar and Industry have been involved in significant negotiations to resolve the litigation with the hope that it will lead to a use of Tres Hermanos that benefits our respective communities, which have called out open space as a priority. A copy of the Sacramento and Los Angeles petitions (the "Petitions") filed by Diamond Bar are enclosed.

As laid out in detail in the Petitions, the acquisition of Tres Hermanos by Commerce would violate numerous State laws, including the Redevelopment Dissolution Act (the "RDA") and the California Environmental Quality Act ("CEQA"). Some of those many significant concerns include the following:

1. Seeking Approval of the Oversight Board is Premature.

We understand that Commerce made an effort to place an item on the November 26, 2018, Oversight Board agenda seeking the Oversight Board's approval of the sale of Tres Hermanos to Commerce, which has since been cancelled. This effort to have the Oversight Board approve the sale before Industry's Successor Agency has approved it, puts the proverbial cart before the horse. The Oversight Board's role is, as its name suggest and as set forth in Health and Safety Code Section 34181(f). to review and approve, or deny, the actions taken by Industry's Successor Agency pursuant to its approved Long Range Property Management Plan ("LRPMP"). Unless and until the Industry Successor Agency approves the sale of Tres Hermanos to Commerce, Oversight Board action would be premature. The Oversight Board does not own Tres Hermanos, so it cannot itself consummate the sale of Tres Hermanos.

2. The Proposed Purchase of Tres Hermanos Violates the LRPMP, the Redevelopment Dissolution Act, and the Oversight Board's Fiduciary Duties.

The proposed purchase would violate the Industry Successor Agency's LRPMP. Prior to the approving the sale of the Property, the LRPMP requires Industry's Successor Agency Board to distribute information regarding Tres Hermanos "... to brokers and interested parties to determine which prospective buyer to work with on finalizing a project to forward to the Successor Agency and Oversight Board for approval." The information required by the LRPMP to be provided to the Industry Successor Agency and Oversight Board includes, among other things, a development plan and schedule through construction ... identification of an end user, the job creation and if the user is a local company. None of this information has been provided to the Successor Agency, nor is any of this information provided in the report to the Oversight Board.

The LRPMP also requires, as one of its basic criteria, that the buyer of a real property asset must agree "to pay a reasonable price based on a current appraisal." That is consistent with the RDA, which directs that in disposing of its properties a successor agency transfer them "in a manner aimed at maximizing value." The proposed purchase agreement violates these requirements. The appraisal upon which Commerce relies in offering to purchase Tres Hermanos is artificially low, in that it does not value Tres Hermanos based upon its with its current zoning

and general plan designation. Moreover, it does not appraise Tres Hermanos based on its use as a massive solar facility which, if its proponents are to be believed, will generate millions of dollars of annual revenue each year. Per Health and Safety Code Section 43179(i), the Oversight Board has a fiduciary duty to the taxing entities, i.e., those public agencies that receive a share of the property tax revenue for Tres Hermanos, including Chino Hills and Diamond Bar, to maximize its value. Selling Tres Hermanos at below market price would do just the opposite, minimize its value and thus, the property tax revenue received by the taxing entities.

3. The Attempted Assignment of the Solar Facility Lease is Invalid.

Based on our review of the proposed purchase agreement, including the Assignment and Assumption of Leases attached as Exhibit D thereto, it appears that Commerce believes that Industry's Successor Agency can assign to Commerce the master ground lease previously entered into by Industry, as landlord, and San Gabriel Valley Water and Power, LLC ("San Gabriel WP"), as tenant (as amended, the "Master Lease"). If so, Commerce is laboring under a misconception. The Successor Agency cannot assign a lease to which it is not a party. Moreover, the Master Lease includes other real property owned by Industry. The Successor Agency has no legal standing to assign the Master Lease to Commerce.

4. The Proposed Purchase Violates CEQA.

The proposed purchase of Tres Hermanos to facilitate the development of a major solar facility on the property violates CEQA. CEQA requires that Commerce conduct an environmental analysis of a project prior to committing itself to a definite course of action in regard to that project. CEQA requires that this analysis occur *before* Commerce purchases Tres Hermanos or leases it to San Gabriel WP or anyone else, to develop the solar facility. Commerce's contemplated action suffers from the same infirmities as the actions taking by Industry—despite expenditures of tens of millions of dollars, approving the purchase of Tres Hermanos, and committing to leasing the property for a massive solar facility, no CEQA review has to date been conducted. As was stated by our Supreme Court in *Save Tara v. City of West Hollywood*:

“A public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project.”

5. State Law Only Permits Commerce to Buy Tres Hermanos for a Municipal Purpose.

Pursuant to Government Code Section 37351, Commerce may only buy property outside its jurisdiction for a valid municipal purpose. If the contemplated purpose of acquiring Tres Hermanos is to lease it to a private entity to construct a massive solar facility to generate general

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fund revenues, that is not a valid municipal purpose for purposes of Government Code section 37351.

6. Commerce Must Submit Its Proposed Use for a General Plan Conformance Finding by Both Diamond Bar and Chino Hills Prior to Acquiring Tres Hermanos.

Government Code Section 65402(b) provides in relevant part that “. . . a city shall not acquire real property [for street, square, park or other public purposes] . . ., nor construct or authorize a public building or structure, in another city . . . if such other city . . . has adopted a general plan or part thereof and such general plan or part thereof is applicable thereto, until the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with said adopted general plan or part thereof. Commerce is required to submit information to each city’s Planning Commission and obtain a report from each, prior to acquiring Tres Hermanos. However, it has not done so.

Diamond Bar requests that the closed session agenda item be continued and that City representatives be directed to meet with Diamond Bar and Chino Hills representatives before any further actions are taken by Commerce to acquire Tres Hermanos in the hope that litigation between our three cities can be avoided.

Sincerely,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DAVID A. DEBERRY
CITY ATTORNEY
CITY OF DIAMOND BAR

Enclosures