



December 7, 2018

VIA E-MAIL AND FIRST-CLASS MAIL

Honorable Chair and Members of the Oversight Board
First District Consolidated Oversight Board
500 West Temple Street, Suite 383
Los Angeles, CA 90012
lacobsuamittal@bos.lacounty.gov

Re: Approval of Purchase and Sale Agreement to Sell Tres Hermanos Ranch to a
Joint Venture that Includes the City of Commerce/12-10-18 Agenda.

Dear Honorable Chair and Members of the Oversight Board:

I am the City Attorney for the City of Diamond Bar (“Diamond Bar”) and am submitting this letter to express Diamond Bar’s concerns that the Oversight Board is being asked to take actions to perpetuate an absolute embarrassing pattern of unlawful conduct and backroom deals that have made an absolute farce out of California’s transparency laws and repeat the same mistakes made by the prior Oversight Board. The Tres Hermanos Ranch (“Tres Hermanos”) lies within the cities of Diamond Bar and Chino Hills and has long been prized by our communities as one of the few remaining open space/never developed areas in this part of Los Angeles and San Bernardino counties. Under its current zoning, only a small percentage of Tres Hermanos can be significantly developed. Relatively small portions of Tres Hermanos have been zoned for residential densities so Diamond Bar can meet affordable housing requirements in its General Plan Housing Element.

Once again, the proposed sale of the Tres Hermanos Ranch (“Tres Hermanos”) is being pushed through under a cloak of secrecy and back room deals in an obvious effort to exclude the public and Diamond Bar from any meaningful participation. The staff report intentionally hides the name of Commerce’s joint venture partner and avoids disclosing to what use Commerce has for the property. Is it a solar facility, another casino, a public works storage yard? Certainly, Commerce has no intention of spending \$41.6 million to maintain 2,450 acres of open space property 31 miles from its borders. When is this unlawfulness going to stop? What have private entrepreneurs done to gain influence over elected and appointed public officials whose duty is owed to the public? Diamond Bar has received no communications from the Oversight Board’s staff or the City of Commerce regarding this proposed sale.

What is abundantly clear from Commerce’s shenanigans, is that Commerce and its unidentified joint venture partner, and private operatives, desire to limit public participation in the sale of Tres Hermanos to whatever extent possible, the laws of the State of California be damned.

We ask that the Oversight Board, here and now, put a stop to this unlawful and dilatory behavior and require Commerce and any other persons interested in Tres Hermanos to tell the public and the Oversight Board what its plans are for Tres Hermanos and what deals have been cut with private developers behind closed doors. Is the Oversight Board really going to rely on a staff report from the City of Commerce that provides no information whatsoever of the deals Commerce has made outside of the public eye?

As the Oversight Board will be made aware of in its closed session, 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 ostensibly, the proposed use now contemplated by Commerce, e.g., a massive solar facility. In connection with that litigation Diamond Bar and Chino Hills have filed lis pendens¹ against Tres Hermanos. A copy of the Los Angeles petition (the "Petition") filed by Diamond Bar is enclosed. As laid out in detail in the Petition, 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").

Chino Hills, Diamond Bar and Industry have been involved in significant negotiations to resolve the litigation and are optimistic that by January 2019, it will lead to a use of Tres Hermanos that benefits and fulfills the desire of our respective communities, which have called out open space as a priority. It makes absolutely no sense for the Oversight Board to countenance an even more substantially flawed sale to Commerce, and put the litigation back to square one. Any attempt by Commerce and its unidentified joint venture partner, the failure to name which is a clear violation of the Brown Act, will be met with the same response from Chino Hills and Diamond Bar.

1. The Oversight Board Has No Authority to Sell Tres Hermanos Itself.

While the Oversight Board does have the authority to direct the Successor Agency to dispose of its assets, the draft Resolution contains no such direction and assumes that the Oversight Board can enter into an agreement to sell Tres Hermanos itself. There is nothing within the RDA which authorizes the Oversight Board to dispose of Successor Agency property itself or direct the Successor Agency to sell its property to any entity. Plain and simple, the Oversight Board has no legal authority to sell property it does not own. This effort to have the Oversight Board approve a sale to Commerce 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, an Oversight Board action approving such a sale is premature. And notwithstanding the

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.

misrepresentation in the City of Commerce provided resolution before the Oversight Board, Industry has informed us that it and the Successor Agency have executed a purchase and sale agreement. Escrow has not closed because of the litigation and the lis pendens and Commerce is aware of this.

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

The proposed purchase and sale agreement would violate the LRPMP. Prior to the approving the sale of Tres Hermanos, 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." Not only are the staff report and resolution completely void of any such information, they intentionally hide the identity of the joint venture partner of Commerce. To date, the Successor Agency Board has not distributed information in accordance with the LRPMP.

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 what Diamond Bar has to assume is going to be the same massive solar facility proposed by Industry, which, if its proponents are to be believed, will generate millions of dollars of annual revenue each year. The fact that cities appear to be falling all over themselves to buy Tres Hermanos for the price of \$41.6 million and get into bed with San Gabriel Water and Power, LLC ("San Gabriel WP"), evidences that Tres Hermanos is worth far more. 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 for a massive solar facility at a price well below the market price for a use is not consistent with the Oversight Board's fiduciary duties or the LRPMP.

3. The Proposed Purchase Violates Government Code Section 37351 and CEQA.

Pursuant to Government Code Section 37351, Commerce may only buy property outside its jurisdiction for a valid municipal purpose. It cannot buy property outside its jurisdiction simply to land bank it. The fact that Commerce has a joint venture partner, makes it obvious that Commerce has some purpose in mind, although that purpose appears nowhere in the staff report, which violates both Government Code Section 37351 and the LRPMP. It seems apparent that

Commerce's purpose is to lease Tres Hermanos to San Gabriel WP so it can cover a large swath of Tres Hermanos with solar panels to rake in millions of dollars all to the detriment of the communities of Diamond Bar and Chino Hills which will lose their prized open space and whose residents will now look out over unsightly and glaring solar panels instead of green hillsides covered in native oaks.

Although ready to spend \$41.6 million to buy Tres Hermanos and obviously having already made some undisclosed deal with a joint venture partner, Commerce has not conducted any environmental analysis of the impacts of its proposed use of Tres Hermanos before committing itself to the proposed use. CEQA requires that Commerce conduct an environmental analysis of a project prior to committing itself to a definite course of action regarding that project. CEQA requires that this analysis occur *before* Commerce purchases Tres Hermanos or makes a deal with San Gabriel WP or anyone else, to develop the solar facility or some other public project. Commerce's contemplated action suffers from the same infirmities as the actions taking by Industry—despite committing to spend tens of millions of dollars and committing to leasing the property for a massive solar facility, no CEQA review has to date been conducted. The resolution presented to the Oversight Board contains no CEQA finding at all, even though the sale of Tres Hermanos is clearly a project subject to CEQA. 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.”

It should also be noted that Industry has paid San Gabriel WP tens of millions of dollars to in large part, prepare an environmental analysis, but to date San Gabriel WP has not produced an environmental document to Industry and in fact, has rebuffed Industry's efforts to get documents for which Industry has paid. Industry has in fact had to file a lawsuit to try and get documents and reports for which it has paid millions. It is apparent that absolutely no lessons are being learned and cities, with dollars dangling in their face, continue to get sucked into promoting deals which don't comport with California environmental or transparency laws.

4. 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

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information to each city's Planning Commission and obtain a report from each, prior to acquiring Tres Hermanos.

Diamond Bar requests that the Oversight Board table this item indefinitely and provide the opportunity for Industry, Chino Hills and Diamond Bar to settle the litigation. Should the Oversight Board approve the sale to Commerce, it will result in another round of litigation which will result in the sale being invalidated and force Diamond Bar to dig deeper into the forces that have caused elected and appointed officials to perpetuate a climate of secrecy and unlawful conduct that is frankly an embarrassment.

Sincerely,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation



DAVID A. DEBERRY
CITY ATTORNEY
CITY OF DIAMOND BAR

Enclosures