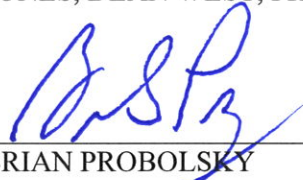


The foregoing was passed and adopted by the following vote of the Orange Countywide Oversight Board on THURSDAY, JUNE 2, 2022.

YES: CHARLES BARFIELD, STEVE FRANKS, ANIL KUKREJA,
BRIAN PROBOLSKY
NOES:
EXCUSED: STEVE JONES, DEAN WEST, PHILLIP E. YARBROUGH
ABSTAINED:



BRIAN PROBOLSKY
CHAIRMAN

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, KATHY TAVOULARIS, Clerk of the Orange Countywide Oversight Board, Orange County, California, hereby certify that a copy of this document has been delivered to the Chairman of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange Countywide Oversight Board.

IN WITNESS WHEREOF, I have hereto set my hand.



KATHY TAVOULARIS
Clerk
Orange Countywide Oversight Board

Resolution No: 22-026

Agenda Date: Thursday, June 2, 2022

Item No: 5

RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD

RESOLUTION NO. 22-026

A RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD DIRECTING THE SUCCESSOR AGENCY TO THE LA HABRA REDEVELOPMENT AGENCY TO TAKE ACTIONS FOR THE SALE OF A PARKING LOT PARCEL LOCATED AT NORTHSIDE OF WEST IMPERIAL HIGHWAY AND EAST OF SOUTH BEACH BOULEVARD IN THE CITY OF LA HABRA AND TAKING RELATED ACTIONS

WHEREAS, pursuant to AB X1 26 (enacted in June 2011 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal. 4th 231 (2011), the La Habra Redevelopment Agency (the “**Former Agency**”) and all other redevelopment agencies within the State of California (the “**State**”) were dissolved as of February 1, 2012; and

WHEREAS, pursuant to Health and Safety Code (“**HSC**”) Section 34173(d), the City Council of the City of La Habra (the “**City**”) adopted Resolution No. 5508 on January 12, 2012, and elected for the City to become the Successor Agency to the La Habra Redevelopment Agency (the “**Successor Agency**”); and

WHEREAS, the Successor Agency is the successor entity to the Former Agency and is tasked with winding down the Former Agency’s affairs; and

WHEREAS, pursuant to HSC Section 34179, each successor agency is under the jurisdiction of an oversight board, consisting of seven members selected in accordance with HSC Section 34179; and

WHEREAS, pursuant to HSC Section 34179(i), oversight boards have fiduciary duties to the taxing entities that benefit from the distribution of property tax and other revenues of the successor agencies; and

WHEREAS, pursuant to HSC Section 34179(a), prior to July 1, 2018, there was an individual oversight board for each successor agency; and

WHEREAS, pursuant to HSC Section 34179(j), commencing July 1, 2018, individual oversight boards for successor agencies were dissolved and, with limited exceptions, a single county-wide oversight board was created within each county and each countywide oversight board subsumed and continued the responsibilities of the individual oversight boards within the relevant county; and

WHEREAS, commencing July 1, 2018, the Orange Countywide Oversight Board (the “**Countywide Oversight Board**”) has jurisdiction over the Successor Agency; and

WHEREAS, pursuant to HSC Section 34191.5(b), the Successor Agency was required to prepare a long-range property management plan to address the disposition and use of the real properties of the Former Agency, and submit such plan to the then-oversight board and the State Department of Finance (the “**DOF**”) for approval; and

WHEREAS, on July 30, 2015, the then-oversight board adopted a resolution approving a Second Revised Long-Range Property Management Plan (the “**LRPMP**”) prepared by the Successor Agency; and

WHEREAS, the DOF approved the LRPMP on September 11, 2015; and

WHEREAS, pursuant to HSC Section 34191.3, upon the DOF’s approval of the LRPMP, the LRPMP shall govern and supersede other provisions relating to the disposition and use of the real property assets of the Former Agency; and

WHEREAS, among the properties listed on the LRPMP is a 2.84 acre parcel (APN 018-381-64) (the “**Property**”); and

WHEREAS, the Property serves as a parking lot for a commercial shopping center, known as the La Habra Marketplace, located at the northside of West Imperial Highway and east of South Beach Boulevard in the City; and

WHEREAS, on the LRPMP, the Successor Agency reported that the estimated current value of the Property was \$2.5 million and the Property was intended for sale; and

WHEREAS, pursuant to HSC Section 34191.5(c)(2)(B), if the LRPMP directs a property to be sold, the proceeds from such sale shall be distributed as property tax to the taxing entities; and

WHEREAS, despite having an approved LRPMP since 2015, and repeated inquiries by the Countywide Oversight Board, the Successor Agency has not yet sold the Property; and

WHEREAS, at the Countywide Oversight Board’s meeting on February 23, 2022, the Successor Agency informed the Oversight Board that the Successor Agency would seek approval for an amendment to the LRPMP, in order to redesignate the Property from “sale” to “governmental use” and, this way, the Property may be transferred to the City without any compensation to the taxing entities and the City may continue using the Property as a parking lot for the shopping center; and

WHEREAS, the Successor Agency adopted its Resolution No. 2022-02 on April 4, 2022 (the “**Successor Agency Resolution**”) to formally request the Countywide Oversight Board to approve such amendment to the LRPMP; and

WHEREAS, the Successor Agency pointed to a restrictive covenant in the deed under which the Former Agency acquired the Property (the “**Parking Restrictive Covenant**”); and

WHEREAS, the Parking Restrictive Covenant requires the Property to be used solely for a surface level public parking lot; and

WHEREAS, in the Successor Agency’s staff report, the Successor Agency contended that, because of this Parking Restrictive Covenant, “staff has determined that the sale of this property is not feasible”; and

WHEREAS, in the Successor Agency Resolution, the Successor Agency stated that “[HSC] Section 34191.3 allows successor agency to amend its LRPMP once, solely to allow for retention of real properties that constitute ‘parking facilities and lots dedicated solely to public parking’ for governmental use”; and

WHEREAS, the Countywide Oversight Board reviewed HSC Section 34191.3 and the facts presented, and decided to reject the Successor Agency’s request for the approval of the proposed LRPMP amendment, for the reasons below; and

WHEREAS, the text of HSC Section 34191.3(b), read in its entirety, is as follows (with emphasis added):

“(b) If the [DOF] has approved a successor agency’s long-range property management plan prior to January 1, 2016, the successor agency may amend its long-range property management plan once, solely to allow for retention of real properties that constitute “parking facilities and lots dedicated solely to public parking” for governmental use pursuant to Section 34181. An amendment to a successor agency’s long-range property management plan under this subdivision shall be submitted to its oversight board for review and approval pursuant to Section 34179, **and any such amendment shall be submitted to the [DOF] prior to July 1, 2016**”; and

WHEREAS, per the text of HSC Section 34191.3(b), the deadline for the submission of any amendment to the LRPMP (the “**7/1/2016 Amendment Deadline**”) has long expired; and

WHEREAS, the DOF confirmed, in a March 3, 2022 e-mail (responding to an inquiry by the counsel to the Countywide Oversight Board) that there is no provision in the HSC that would allow the Successor Agency to amend the LRPMP at this time; and

WHEREAS, the Former Agency acquired the Property pursuant to a deed executed by La Habra Associates, the owner of the shopping center, as grantor, in 1990 (the “**1990 Deed**”), and

WHEREAS, the Parking Restrictive Covenant was in effect when the LRPMP was prepared and, at that time, the Successor Agency indicated on the LRPMP that the Property was intended to be sold and estimated that the then-current value of the Property was \$2.5 million; and

WHEREAS, in the staff report to the Countywide Oversight Board, the Successor Agency asserted that when the LRPMP was first approved, the Successor Agency believed that the DOF would not accept the classification of parking lots as “governmental use,” and, later, HSC Section 34191.3(b) (part of Senate Bill 107 approved in 2015 (“SB 107”)) appeared to provide a basis to amend the LRPMP to reclassify the Property; and

WHEREAS, the Successor Agency Resolution (requesting the County Oversight Board to approve the LRPMP amendment) omitted any reference to the 7/1/2016 Amendment Deadline for the submission of such an amendment; and

WHEREAS, even if the 7/1/2016 Amendment Deadline did not exist, the Countywide Oversight Board would still have the discretion to reject the proposed amendment to the LRPMP; and

WHEREAS, in any event, according to information available on the State legislature's website, SB 107 was enacted and approved by the Governor on September 22, 2015, and the DOF approved the Successor Agency's LRPMP on September 11, 2015; and

WHEREAS, months passed between the enactment of SB 107 and the 7/1/2016 Amendment Deadline, during which the Successor Agency could have submitted an amendment to the DOF pursuant to HSC Section 34191.3(b), but the Successor Agency did not do so; and

WHEREAS, close to seven years has elapsed since the DOF's approval of the LRPMP; and

WHEREAS, after the Countywide Oversight Board made multiple inquiries with the Successor Agency about the Successor Agency's obligation to complete implementation of the LRPMP, the Successor Agency now: (i) asserts that a sale is not feasible because of the Parking Restrictive Covenant, and (ii) proposes an amendment to the LRPMP, so the Property can be transferred to the City at no compensation to the taxing entities; and

WHEREAS, the Successor Agency has not taken meaningful actions which would prove that a sale of the Property is not feasible – such as a formal solicitation of potential buyers or any substantive advertising of the potential sale of the Property; and

WHEREAS, the Successor Agency has only submitted a letter, dated May 26, 2021 (the "**Broker Opinion Letter**"), prepared by CBRE – Valuation and Advisory Services, which apparently concluded that the Property has no intrinsic value; and

WHEREAS, the Broker Opinion Letter was addressed to and appeared to have been prepared at the request of, Stephen Koen, Vice President of Property Management at DJM Capital; and

WHEREAS, the posted agenda and minutes of the Successor Agency's February 22, 2022 meeting designate "City Negotiator: Jim Sadro, City Manager and Stephen Koen, VP of Property Management with DJM Capital, Inc. as Agent for La Habra Associates" and also designate "Negotiating Parties: La Habra Redevelopment Agency, Owner;" and

WHEREAS, DJM Capital's website shows that La Habra Marketplace is part of DJM Capital's portfolio; and

WHEREAS, pursuant to HSC Section 34179(p), on matters within the purview of the Countywide Oversight Board, decisions by the Countywide Oversight Board supersede those made by the Successor Agency or the staff of the Successor Agency; and

WHEREAS, HSC Section 34181 states, in relevant part (with emphasis added):

“The oversight board **shall direct** the successor agency to do all of the following:

(a) (1) Dispose of all assets and properties of the former redevelopment agency...Disposal shall be done expeditiously and in a manner aimed at maximizing value;”

WHEREAS, while HSC Section 34191.3(a) suspended certain requirements of HSC Section 34181(a) until the LRPMP had been approved by the DOF and HSC Section 34191.3(a) further provides that, once the LRPMP was approved by the DOF, the LRPMP shall govern, the Countywide Oversight Board’s directions for the Successor Agency to take actions regarding the sale of the Property as provided in this Resolution are consistent with all of the following, without conflict: (i) the LRPMP, (ii) the Countywide Oversight Board’s mandate under HSC Section 34181(a), and (iii) the Countywide Oversight Board’s fiduciary duties to the taxing entities; and

WHEREAS, a notice to the public of the proposed adoption of this Resolution was posted at least 10 days before the meeting during which the Countywide adopted this Resolution; and

WHEREAS, the Successor Agency stated to the Countywide Oversight Board that the State’s Surplus Land Act, set forth in Government Code Section 54220 *et seq.* (the “**Surplus Land Act**”) may be applicable to the transfer of the Property; and

WHEREAS, the State’s Department of Housing and Community Development (“**HCD**”) is charged with implementing the Surplus Land Act; and

WHEREAS, HCD has confirmed to the counsel to the Countywide Oversight Board that, pursuant to Government Code Section 54221, the transfer of the Property – regardless of whether it is to the City (as proposed by the Successor Agency) or via sale to a third party – would be subject to the Surplus Land Act, unless the Successor Agency makes a declaration that the Property is “exempt surplus land” pursuant to Government Code Section 54221(f);

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTYWIDE OVERSIGHT BOARD:

SECTION 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference.

SECTION 2. The Successor Agency is hereby directed to take the following actions to implement the LRPMP with respect to the Property (and comply with the parameters set forth in Section 3):

- (a) If the Successor Agency determines that the Property is “exempt surplus land” pursuant to Government Code Section 54221(f), then it shall take the necessary actions for the appropriate declaration and submittals to HCD, in accordance with the Surplus Land Act and HCD’s guidelines, and
 - (i) No later than October 18, 2022, the Successor Agency shall have completed a process, in good faith, to solicit proposals from interested parties regarding the sale of the Property (and such solicitation shall include public notices and/or advertisements); and

- (ii) The Successor Agency shall provide a report on the result of such solicitation at the immediately next Countywide Oversight Board meeting; and
 - (iii) Based on the result of the solicitation, the Successor Agency shall conduct good faith negotiation for the sale of the Property with the goal of completing the sale no later than March 1, 2023 or as soon thereafter as possible.
- (b) If the Successor Agency does not take any action to declare the Property as “exempt surplus property” under the Surplus Land Act, then by no later than October 18, 2022, the Successor Agency shall commence the process required by HCD regarding the sale of the Property pursuant to the Surplus Land Act; and
- (i) The Successor Agency shall provide a report to the Countywide Oversight Board no later than March 1, 2023 of the proceedings pursuant to the process under the Surplus Land Act; and
 - (ii) If the process required under the Surplus Land Act does not result in a sale of the Property, then by no later July 1, 2023, the Successor Agency shall have completed a separate process, in good faith, to solicit proposals from interested parties regarding the sale of the Property (and such solicitation shall include public notices and/or advertisements); and
 - (iii) The Successor Agency shall provide a report on the result of such solicitation at the immediately next Countywide Oversight Board meeting; and
 - (iv) Based on the result of the solicitation, the Successor Agency shall conduct good faith negotiation with the goal of completing the sale no later than October 1, 2023 or as soon thereafter as possible.

SECTION 3. The Successor Agency shall take all necessary and appropriate steps to disclose to the potential buyers that the purchase of the Property will be subject to the Parking Restrictive Covenant.

SECTION 4. In the event that the Successor Agency does not comply with the provisions of this Resolution, the Chair of the Countywide Oversight Board is hereby authorized to direct Countywide Oversight Board counsel to take such actions on the Board’s behalf with the appropriate State superior court for the issuance of a writ of mandate to compel the Successor Agency’s compliance. Members of the Countywide Oversight Board and members of Countywide Oversight Board staff and consultants, collectively and each individually, are hereby authorized and directed to assist with such court proceedings.

SECTION 5. This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act, set forth in Public Resources Code Section 21000 et seq. (“**CEQA**”). Pursuant to the State CEQA Guidelines set forth in 14 Cal Code Regs 15000 et seq. (the “**Guidelines**”), in light of anticipated “as-is” sale of the Property (particularly because of

the Parking Restrictive Covenant), the Countywide Oversight Board has determined that the approval of this Resolution does not commit the Oversight Board to any action that may have a significant effect on the environment, and therefore, the actions taken under this Resolution are not a project pursuant to CEQA and, further, are exempt therefrom because they are organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment (Guidelines Section 15378(b)(5)).

SECTION 6. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Countywide Oversight Board declares that the Countywide Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Upon the Countywide Oversight Board's adoption of this Resolution, staff of the Countywide Oversight Board is hereby directed to transmit this Resolution to the DOF for review.

SECTION 8. This Resolution shall become effective upon the earliest of the following (the "**Effective Date**"): (i) the DOF's approval or deemed approval, or (ii) the issuance by the DOF of a letter stating, in effect, that no DOF approval is necessary for this Resolution to become effective, because this Resolution pertains to actions to implement the disposition of the Property pursuant to the LRPMP.

SECTION 9. The Clerk of the Countywide Oversight Board shall certify to the adoption of this Resolution.