

Orange Countywide Oversight Board

Agenda Item No. 4

Date: July 25, 2023

From: Christopher Nguyen, Consultant

Subject: Resolution of the Countywide Oversight Board to Amend and Supplement Resolution No. 22-026, Pertaining to the Sale of the La Habra Marketplace Parking Property (“**Property**”) Pursuant to the Long-Range Property Management Plan (“**LRPMP**”) of the Successor Agency to the La Habra Redevelopment Agency (“**Successor Agency**”) and Taking Related Actions

Recommended Action: Adopt Resolution No. 23-021 to supplement and amend Resolution No. 22-026 regarding the Successor Agency’s disposition of the Property

Background

On June 2, 2022, the Countywide Oversight Board adopted Resolution No. 22-026 directing the Successor Agency to take actions to implement its LRPMP, for the sale of the Property. The Property consists of a parking lot parcel, located at a commercial shopping center known as the La Habra Marketplace.

As stated in Resolution No. 22-026, the disposition of the Property is subject to the requirements of the Surplus Land Act (“**SLA**”), set forth in California Government Code Section 54220 *et seq.* In October 2022, the Successor Agency asked the California Department of Housing and Community Development (“**HCD**”) to provide guidance on whether the Property may qualify as “exempt surplus land” under the SLA in light of a restrictive covenant in the deed of the Property (“**Parking Restrictive Covenant**”). If the Property qualifies as “exempt surplus land,” then the Successor Agency would not have to undertake a process which, in effect, would have given an opportunity to affordable housing sponsors to purchase the Property first, before offering the Property to other potential buyers.

In November 2022, the HCD informed the Successor Agency that, in HCD’s view, the Property did not qualify as “exempt surplus land” by virtue of the Parking Restrictive Covenant. The Successor Agency later requested HCD to reconsider. On April 6, 2023, HCD reversed its earlier finding and determined that the Property does qualify as “exempt surplus land” because of the Parking Restrictive Covenant. On June 5, 2023, the Successor Agency adopted a resolution declaring the Property “exempt surplus land,” pursuant to the HCD’s SLA guidelines.

Discussion

The Countywide Oversight Board fulfills its duty by directing the Successor Agency to conduct a process in good faith to solicit proposals from all interested parties regarding the sale of the Property. The Countywide Oversight Board has a fiduciary duty to the taxing entities.

At this juncture, certain deadlines originally contemplated by Resolution No. 22-026 are no longer feasible. The attached Resolution supplements and amends Resolution No. 22-026, by setting forth, in more detail, directions to the Successor Agency to expeditiously proceed with the steps necessary for the disposition of Property, and to keep the Countywide Oversight Board updated of the progress. The attached Resolution authorizes Oversight Board Counsel to initiate court proceedings, if the Successor Agency fails to comply.

Impact on Taxing Entities

Upon the successful sale of the Property, the proceeds from such sale will be distributed as property tax to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

Attachment: Proposed Resolution No. 23-021

RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD

RESOLUTION NO. 23-021

A RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD TO AMEND AND SUPPLEMENT RESOLUTION NO. 22-026, PERTAINING TO THE SALE OF THE LA HABRA MARKETPLACE PARKING PROPERTY PURSUANT TO THE LONG-RANGE PROPERTY MANAGEMENT PLAN OF THE SUCCESSOR AGENCY TO THE LA HABRA REDEVELOPMENT AGENCY AND TAKING RELATED ACTIONS

WHEREAS, by the laws of the State of California (“**State**”), the La Habra Redevelopment Agency (“**Former Agency**”) and all other redevelopment agencies within the State were dissolved as of February 1, 2012, and successor agencies were established as successor entities to wind down the former redevelopment agencies’ affairs; 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 (“**Successor Agency**”); and

WHEREAS, the Successor Agency is the successor entity to the Former Agency; and

WHEREAS, pursuant to HSC Section 34179, each successor agency is under the jurisdiction of an oversight board; and

WHEREAS, pursuant to HSC Section 34179(p), on matters within the purview of an oversight board, decisions made by the oversight board supersede those made by the successor agency or the staff of the successor agency; and

WHEREAS, pursuant to HSC Section 34179(j), beginning July 1, 2018, the Orange Countywide Oversight Board (“**Oversight Board**”) is the oversight board of, and has assumed jurisdiction over, the Successor Agency; and

WHEREAS, the Oversight Board adopted Resolution No. 22-026 on June 2, 2022 (“**OB Resolution No. 22-026**”) (and capitalized terms used but not defined herein have the meanings ascribed to them in OB Resolution No. 22-026); and

WHEREAS, the Successor Agency owns a parcel (APN 018-381-64) (the “**Property**”), which is a portion of the parking lot for the La Habra Marketplace, a shopping center; and

WHEREAS, pursuant to the Successor Agency’s LRPMP, the Successor Agency should proceed with the sale of the Property, but more than seven years have elapsed since the DOF’s June 2015 approval of the LRPMP without any such disposition; and

WHEREAS, the Oversight Board adopted OB Resolution No. 22-026 and directed the Successor Agency to take actions to implement the LRPMP with respect to the sale of the Property; and

WHEREAS, pursuant to amendments adopted in 2019 to the Surplus Land Act (“**SLA**”), a property listed for sale on a successor agency’s long-range property management plan (*e.g.*, the Property) is “surplus land” for the purpose of the SLA and the sale of it must comply with certain SLA requirements, unless the property falls within the definition of “exempt surplus land” and a declaration is made to such effect; and

WHEREAS, per OB Resolution No. 22-026, the Successor Agency should make a determination regarding the declaration of the Property pursuant to the SLA and if the Successor Agency determined to not declare the Property “exempt surplus land,” then by no later than October 18, 2022, the Successor Agency should have commenced the process required by the SLA for the sale of the Property in accordance with the procedures set forth in the SLA and the HCD’s Surplus Land Act Guidelines (“**HCD Guidelines**”); and

WHEREAS, on or about October 11, 2022, Successor Agency staff, by email, requested guidance from the HCD on whether, because of the Parking Restrictive Covenant, the Property might qualify as “exempt surplus land” under Government Code Section 54221(f)(1)(G) (“**Legal Restrictions Exemption**”) (which provides that “exempt surplus land” includes land subject to valid legal restrictions that are not imposed by the local agency and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site); and

WHEREAS, at the Oversight Board’s October 19, 2022 meeting, Successor Agency staff reported that the Successor Agency had not made a determination regarding the declaration of the Property as exempt surplus land, because the Successor Agency was awaiting the HCD’s response, and the Successor Agency was planning to proceed based on HCD’s guidance; and

WHEREAS, on November 8, 2022, the HCD informed the Successor Agency that, in HCD’s view, the Property did not qualify for SLA’s Legal Restrictions Exemption; and

WHEREAS, on or about January 9, 2023, the Successor Agency informed Oversight Board staff that it had made a request to the HCD for reconsideration; and

WHEREAS, in a letter dated April 6, 2023, HCD reversed its earlier finding and determined that the Property qualifies as “exempt surplus land” under the Legal Restrictions Exemption; and

WHEREAS, the Oversight Board expresses no view regarding HCD’s finding; and

WHEREAS, the Oversight Board fulfills its duty by directing the Successor Agency to proceed with the implementation of the LRPMP with respect to the disposition of the Property as expeditiously as possible; and

WHEREAS, on June 5, 2023, the City Council of the City, acting as the Successor Agency, adopted its Resolution No. 2023-02, declaring the Property “exempt surplus land” for the purposes of SLA (“**Resolution of Declaration**”); and

WHEREAS, under Section 400(e) of the HCD Guidelines, a copy of the Resolution of Declaration must be provided to the HCD at least 30 days before disposition and Successor Agency staff has represented to the Oversight Board that a copy of the Resolution of Declaration was sent to the HCD on June 20, 2023; and

WHEREAS, embodied in Section 2 of OB Resolution No. 22-026 are certain deadlines, which are now outdated; and

WHEREAS, the Oversight Board is adopting this Resolution to supplement and amend OB Resolution No. 22-026 – to provide additional directions regarding milestones and modify the deadlines set forth in Section 2 of OB Resolution No. 22-026 – in furtherance of the purpose of OB Resolution No. 22-026 (*i.e.*, to direct the expeditious disposition of the Property pursuant to the LRPMP);

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 shall proceed diligently and expeditiously to implement the LRPMP with respect to the disposition of the Property. To that end, the Successor Agency shall comply with the requirements (including monthly updates and action items) set forth in Exhibit A. Exhibit A is made a part of this Resolution and incorporated herein. The directions for specific actions and deadlines set forth in Section 2 of OB Resolution No. 22-026 are hereby amended and superseded by Exhibit A.

SECTION 3. The Chair of the Oversight Board, acting solely or through the Manager of the Oversight Board (“**OB Manager**”) or the OB Counsel, may request additional reports from Successor Agency staff regarding the status the implementation of the provisions of this Resolution and proceedings relating to the disposition of the Property. Upon receipt of such request, the Successor Agency staff shall promptly furnish the additional reports in writing.

SECTION 4. If the Successor Agency does not comply with any provision of this Resolution, the OB Counsel is hereby authorized 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 Oversight Board and members of Oversight Board staff and consultants, collectively and individually, are hereby authorized and directed to assist with such court proceedings.

SECTION 5. The Chair and other members of the Oversight Board, the staff members of Oversight Board, and counsel and consultants to the Oversight Board, collectively and individually, are hereby authorized and directed to do such things as they deem necessary and

advisable to effectuate this Resolution and OB Resolution No. 22-026 (as amended hereby) and any such action previously taken is hereby ratified and confirmed.

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 Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. This Resolution shall become effective immediately upon adoption.

SECTION 8. The Clerk of the Oversight Board shall certify to the adoption of this Resolution.

EXHIBIT A

(Resolution No. 23-021)

Monthly Updates

The Successor Agency staff (the City Manager of the City of La Habra (the “City”), the Director of Community and Economic Development of the City or another person designated by the City Manager) shall provide monthly updates (the “**Monthly Updates**”), reporting on the progress of the implementation of the action items set forth below. The Monthly Updates shall be sent, by email, to the OB Manager (*i.e.*, Kathy Tavoularis or her successor) no later than the 15th of each month. The OB Manager shall promptly transmit copies of the Monthly Updates to the Chair of the Oversight Board and OB Counsel. The Monthly Updates shall be in addition to the submittals and presentations required by the Actions Timeline below.

Actions Timeline

The Successor Agency shall take the following actions for the disposition of the Property.

The Successor Agency is responsible for complying with all applicable legal requirements for the disposition of the Property, whether or not it is stated below. The Successor Agency shall take all necessary and appropriate steps to disclose to potential buyers that the purchase of the Property will be subject to the Parking Restrictive Covenant.

Item # (for reference)	Action/Event	Deadline
1	<p>The Successor Agency shall conduct a process, in good faith, to solicit proposals from all interested parties regarding the sale of the Property.</p> <p>For the Oversight Board’s evaluation of whether the solicitation was conducted in good faith, the following will be considered:</p> <ul style="list-style-type: none">• Use of a reputable and properly licensed commercial property broker to help with the solicitation• Listing of the sale on at least one of three platforms customarily used for commercial property (such as Loopnet, CoStar, or MLS)• Continuous listing for a commercially	<p>As soon as practicable, but in any event in time to provide a report to the Oversight Board as indicated in Item #2 below.</p>

	reasonable length of time (at least 2 weeks to one month)	
2	The Successor Agency shall provide the Oversight Board a report on the result of the solicitation, including the terms proposed by each interested buyer and the proposed winner. The final determination of the winning proposal shall be subject to the Oversight Board's approval.	The report shall be presented at an Oversight Board meeting in mid-October (or if the meeting is not held for any reason, the immediately next meeting).
3	Based on the result of the solicitation, the Successor Agency shall conduct a good faith negotiation to finalize the sale agreement. The sale agreement shall be presented to the Oversight Board before the sale agreement becomes effective.	The proposed sale agreement shall be presented at: (i) the first Oversight Board meeting held 30 days after the Oversight Board's approval of the identity of the winning bidder; or (ii) at a later meeting, if approved in writing by the Chair of the Oversight Board.