

## Orange Countywide Oversight Board

Agenda Item No. 5

Date: June 2, 2022

From: Staff to the Orange Countywide Oversight Board

Subject: Resolution of the Countywide Oversight Board directing the Successor Agency to the La Habra Redevelopment Agency (the “**Successor 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

Recommended Action: Approve resolution to direct the Successor Agency to take actions for the sale of the parking lot parcel.

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Pursuant to Health and Safety Code (“**HSC**”) Section 34191.5(b), the Successor Agency prepared a long-range property management plan (“**LRPMP**”) to address the disposition of the former La Habra Redevelopment Agency’s real properties. The California State Department of Finance (the “**DOF**”) approved the LRPMP on September 11, 2015. HSC Section 34191.3(a) provides that once the LRPMP was approved by the DOF, the LRPMP shall govern with respect to the properties listed on the LRPMP.

Listed on the LRPMP is a 2.84 acre parcel (APN 018-381-64) (the “**Property**”). 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 of La Habra (the “**City**”). On the LRPMP, the Successor Agency reported that the estimated value of the Property was \$2.5 million, and the Property was intended for sale.

Despite having an approved LRPMP since 2015, and repeated inquiries by the Countywide Oversight Board, the Successor Agency has not yet sold the Property. On April 4, 2022, the Successor Agency adopted its Resolution No. 2022-02, requesting the Countywide Oversight Board to approve an amendment to the LRPMP. The Successor Agency proposed to re-designate 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.

After consideration (including a review of the relevant law), the Countywide Oversight Board decided to reject the Successor Agency’s request and directed the Countywide Oversight Board staff to prepare the attached Resolution. With the adoption of this Resolution, the Oversight Board will direct the Successor Agency to take meaningful actions toward the sale of the Property – by conducting a process, in good faith, to solicit proposals from interested parties regarding the sale of the Property (and such solicitation must include public notices and/or advertisements).

### 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 HSC Section 34191.5(c)(2)(B).

Attachment:  
Resolution

## 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.