



File #: 2015-039, Version: 1

**Report to Mayor and City Council**

Tuesday, January 20, 2015

New Business Discussion

**SUBJECT:**

**PRELIMINARY CONSIDERATION OF FORMATION OF JOINT POWERS AUTHORITY FOR PURPOSES OF OVERSEEING AND FACILITATING THE REMEDIATION OF CONTAMINATED PROPERTIES AND MAINTENANCE AND POTENTIAL DEVELOPMENT OF SAME IN THE CITY OF CARSON**

**I. SUMMARY**

I. In light of abolishment of the Carson Redevelopment Agency by state law, the purpose of this item is to open preliminary Council discussions about the potential formation of a Joint Powers Authority ("JPA") for the purpose of overseeing, and facilitating the remediation of contaminated properties in the City of Carson and maintenance and potential development of same (the proposed "Remediation JPA").

a. **Formation of a Carson Remediation Authority Would Serve the Purpose of Overseeing, Facilitating, Possibly Funding the Remediation of Publicly-Owned or Possibly Even Privately-Owned Properties in Carson and Later Maintenance or Possible Development of Same. Doing This Via a JPA Might Protect The City and/or Related Public Agencies From Environmental Liabilities.**

b. **The City, or its Affiliated Bodies, Own Several Properties That Could be the Subject of a Remediation JPA's Jurisdiction.**

- A chart in Section V(b) of this Staff Report sets forth a sampling of example properties that may benefit from the formation of a Remediation JPA.

c. **Potential Member Entities to Consider for Formation of a Carson Remediation JPA Include, Without Limitation, the Housing Authority, One or More CFDs, An IDA (An Unformed Entity), and The Finance Authority. The "Common Powers" Doctrine Should Guide The Council's Consideration of Potential JPA Members.**

- At this early stage, a firm decision is not expected as to member entities. Only general guidance is sought from the Council in terms of membership priorities and policies. A chart in Section V(c) of this Staff Report



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summarizes the pros/cons of several potential member entities.

**d. Other Formational Issues for the Council's Consideration Include, Without Limitation: (1) Which Member Should Serve as the "Lead" JPA Member? And, (2) How Should JPA Board and Staff be Composed and the JPA Administered?**

- At this early stage, a firm decision is not expected as to member entities. Only general guidance is sought from the Council in terms of membership priorities and policies.
- Lead Member: There will be a need to identify one of the JPA members by name whose procedures and policies will serve as the basis for restricting and determining how the JPA will exercise its powers.
- JPA Board, Staff, Administration: It is necessary to consider composition, selection and voting rights of the JPA governing board and officials. The board, officers and JPA staff may overlap with, or even mirror, the existing organization or administration of the member agencies. The JPA also can hire outside professionals to serve in official capacities, such as CPAs to serve as treasurers, environmental professionals to serve in some official capacity, or other specialized business consultants.

**II. RECOMMENDATION**

DIRECT staff to bring back formation documents for the Carson reclamation authority.

**III. ALTERNATIVES**

DECLINE TO DIRECT STAFF to proceed with the formation of a Remediation JPA.

**IV. BACKGROUND**

In light of dissolution of the Carson Redevelopment Agency, the City faces a unique challenge in dealing with the remaining contaminated properties within the City's boundaries. From the 1940s through the 1960s, many environmentally harmful land uses operated within the City. More than 500 acres were occupied by 17 landfills, each with varying levels of toxicity, and a total of 88 auto salvage yards operated without any regulations in place. Other industrial activities such as metal production, paper product production, chemical processing, electronics manufacturing, automobile dismantling and petroleum refining have also had negative effects on the City's environment. As a result of past land uses, the Carson Redevelopment Agency was a critical arm of the City in successfully remediating environmental conditions of the City and in assisting in successful redevelopment of the City.

The City still contains a number of environmental blighting conditions on many properties that pose barriers to meaningful redevelopment. However, with the elimination of the Redevelopment Agency, property owners are less inclined to remediate these properties



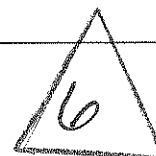
and the City will have to be careful involving itself in such projects not to expose the City's general funds to any potential liabilities. However, the City may be able to regain some of the benefits of the former Redevelopment Agency by forming a Remediation JPA.

Under the Joint Exercise of Powers Act, Gov. Code §§ 6500 *et seq.*, public agencies may make agreements with other public agencies to jointly exercise a power they have in common. Subject to the strict limitations noted below, JPAs can define their own powers, administrative control, and procedures through their formational document, the Joint Powers Agreement. (Gov. Code § 6503.) An agreement that creates a new JPA describes the size, structure, and membership of the JPA's governing board and documents the JPA's powers and functions. As a legally separate public agency, the JPA can sue or be sued, hire staff, obtain financing to build public facilities, and manage property. Joint powers agreements usually protect their member agencies from a JPA's debts or other liabilities.

The flexibility attendant to a JPA under its formational agreement is subject to the following important limitations:

- i. Only public agencies can exercise power under a JPA.* There could, technically, be non-public members or participants, but the right to vote and exercise power is strictly limited to the public agency members.
- ii. "Common Powers"-The powers of the JPA are only co-extensive with the powers of its members.* (Gov. Code § 6509.) One could think of this as the "weakest link" rule: the JPA cannot exercise a power if any one of its members cannot exercise that power. For example, if one member of a JPA is unable to exercise the power of eminent domain, then the entire JPA is precluded from exercising eminent domain.
- iii. The powers of the JPA must be defined by the formation contract.* (Gov. Code § 6503.) Assuming the powers in common to the JPA members allow, the array of powers that may be asserted by the JPA formational contract are themselves quite broad, including the following powers:
  - Enter contracts, hire employees, invest money, sue and be sued;
  - Exercise eminent domain;
  - Own or lease property;
  - Build and maintain infrastructure;
  - Buy water or other utility resources;
  - Borrow money, incur debt, issue bonds.

Formation of a JPA requires preparation of three primary documents: (i) the Joint Powers Agreement, (ii) Bylaws for the new JPA, and (iii) Authorizing resolutions to be adopted by each member agency to the JPA. The City Attorney's Office would prepare each of these instruments.



Among JPAs there are two popular funding methods: (1) creation of a revenue stream, and (2) bond issuance. With respect to the first method, it is common for JPAs to set-up some form of revenue stream (i.e., regular monetary contributions) to be paid by the member agencies to the JPA; this revenue stream is typically set-up in the JPA's formational contract and/or the JPA budget. As to bond issuance, JPAs do not need voter approval before issuing bonds, but each member agency must pass an ordinance to do so. The JPA can sell the bonds and use the proceeds to build improvements to buy equipment. JPAs that provide financing and sell bonds for multiple agencies pay for their operations by collecting fees from their member agencies for the JPA's bond services. Notably, no member of the governing body of the JPA shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance of bonds. (Gov. Code § 6547.8.)

Finally, it bears emphasis that JPAs are treated like "public entities" for nearly all legal purposes. This means that a JPA must abide by the complex conflicts-of-interest laws of the California Political Reform Act (Gov. Code §§ 87100 *et seq.*), the restrictions on self-interested contracts involving government officials (Gov. Codes §§ 1090 *et seq.*), the Brown Act's open meeting laws (Gov. Code §§ 54950 *et seq.*) and the Public Records Act (Gov. Code §§ 6250 *et seq.*).

#### IV. ANALYSIS

**a. Formation of a Carson Remediation Authority Would Serve the Purpose of Overseeing, Facilitating and Funding the Remediation of Publicly-Owned Or Possibly Privately-Owned Properties in Carson and Maintenance of Same. Doing This Via a JPA Might Protect The City and/or Related Public Agencies From Environmental Liabilities.**

As discussed further below, with the dissolution of the Carson Redevelopment Agency, the City or its affiliates owns a number of properties that are contaminated or environmentally compromised such that development potential is limited. Successful remediation of these properties is a top priority of the City in furtherance of public health, safety, welfare and the goal of maximizing these properties' development potential. The City has requested our legislative advocate Townsend Public Affairs work on brownfields legislation. Furthermore, as areas within Carson's boundaries were prior to its incorporation used as land-fills, a number of privately-owned properties within the City present good opportunities for development or redevelopment provided some assistance could be provided similar to that of the former Carson Redevelopment Agency with respect to remediation of these properties.

While it is possible for the City, Successor Agency and/or Housing Authority to directly undertake the remediation of properties owned by them, such remediation activities may pose substantial liabilities to the entity undertaking them. Also, by operation of law successor agencies are set to sun-set in a couple of years and to unwind all their functions. Furthermore, any remediation and/or development under the Housing Authority would then have to have a low-income housing component.



By forming a JPA, however, member agencies may be able to shield themselves from tort liability via language in the Joint Powers Agreement. This may thus be a means of protecting the City and its general fund from environmental liabilities while allowing the City to meaningfully provide a mechanism for clean-up maintenance and potential development of contaminated properties. Such protections could include:

- Broad language in the Joint Powers Agreement to cover insulation of member agencies from the debts, liabilities and obligations of the JPA, whether they are in tort, contract or otherwise; and
- Indemnification running from the JPA to the member agencies; and
- Possibly naming the member agencies as additional insureds for the liability policies of the JPA.

Further, the JPA laws specifically state that two or more public agencies that have the authority to identify, plan for, monitor, control, regulate, dispose of, or abate liquid, toxic, or hazardous wastes or hazardous materials may, by agreement, jointly exercise any of these common powers. (Gov. Code § 6502.7.)

**b. The City, or its Affiliated Bodies, Own Several Properties That Could be the Subject of a Remediation JPA's Jurisdiction.**

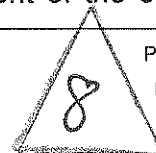
The City, Housing Authority, and Successor Agency all own, or may acquire, contaminated or environmentally-degraded properties in Carson that may be the subject of the proposed Remediation JPA's jurisdiction. Attached as Exhibit 1 is a chart presenting a sampling of properties that could benefit from the formation of a Remediation JPA.

**c. Other Formational Issues for the Council's Consideration Include, Without Limitation: (1) Which Member Should Serve as the "Lead" JPA Member? and (2) How Should JPA Board and Staff be Composed and the JPA Administered?**

"Lead" Member Issues:

A Joint Powers Agreement must designate the manner in which the JPA's powers will be exercised. This is accomplished by identifying one of the member agencies by name whose procedures and policies will serve as the basis for restricting and determining how the entity will exercise its powers. If a JPA has members with varying levels of power, the choice of a "lead" member cannot serve to enhance the powers jointly exercised beyond those that are shared by all members. A safe approach is to select as lead a member agency with the lowest common denominator of powers. (Gov. Code § 6509.)

Generally, once the common JPA power has been delegated to the lead agency, that agency can exercise the power granted to it by the Agreement to take any action in furtherance of the JPA's stated purpose *without the authorization or consent of the other member agencies.* [(City of Burbank v. Burbank-Glendale-Pasadena Airport Authority (1999) 72 Cal. App. 4th 366, 375 (lead agency of three-city JPA created to operate a common airport could expand airport without consent of the other member



cities); (*City of Oakland*, 15 Cal. 2d at 556 (holding that "sponsor" agency City of Berkeley could act on behalf of all members to remediate common sewer system); (*Beckwith v. Stanislaus County* (1959) 175 Cal. App. 2d 40 (JPA agreement delegated the power to maintain a common waterway to lead agency.)

In addition, the JPA Act allows the JPA to exercise other powers under the Act regardless of the Common Powers - this is in Article IV of the JPA act which allows the issuance of revenue bonds and certain other actions.

Board & JPA Staff Issues:

A Joint Powers Agreement shall specify the member agency that will administer and carry out the Agreement. This may be (1) one or more of the member agencies to the agreement, (2) a commission or board constituted pursuant to the agreement; (3) an unrelated person, firm or corporation designated in the agreement; or (4) a combination thereof. (Gov. Code §6506.) Option (2) is most common.

The Agreement should also set forth the governance structure of the JPA by establishing a governing board, the number and composition of such board, and how selected. If the Agreement designates a specified period for terms of directors, the Agreement should also specify the power or discretion of the appointing agencies to remove directors; otherwise, removal mid-term may be a problem. The Agreement also must spell out voting rights and quorum rules.

A Joint Powers Agreement must designate a treasurer for the JPA, who may be the treasurer of one of the member entities, the county treasurer of a county in which one of the parties is located, or a certified public accountant. (Gov. Code § 6505.5.) Alternatively, the entity may appoint one of its officers or employees as treasurer or to a joint treasurer/auditor position. (Gov. Code § 6505.6.)

V. FISCAL IMPACT

None. The City is only providing preliminary consent and direction to move forward with possible formation of a Remediation JPA.

VI. EXHIBITS

1. Carson Brownfield Sites on Envirostor. (pg. 7-8)

Prepared by: Sunny K. Soltani, City Attorney



Carson Brownfield Sites on Envirostor

#	Address	Owner	Degree and Description of Contamination	Contaminant	Size (Acres)
1	APN# 7336-010-013, generally bounded by the San Diego Freeway, Avalon Blvd., Main Street and the Torrance lateral channel. Privately owned, but may be acquired by a public agency affiliated with City.	Starwood	Subject of actions by federal and state agencies back to 1996. DTSC has approved Remedial Action Plan.	VOCs, methane	157
2	19401 S. Broadway	KL Fenix Corporation (privately owned)	Based on the information available to DTSC, the Site is or may be contaminated with hazardous substances, including petroleum hydrocarbons, metals, and volatile organic compounds.	VOCs, hydrocarbons, metals	2.7
3	16914 S. Broadway	Privately Owned (multiple owners)	The Department wrapped up site characterization activities in 2003 and began excavation of 3,600 cubic yards of impacted soil of elevated levels of heavy metals, VOCs, SVOCs, PAHs and PCBs. The remedial goal of unrestricted land use with respect to soil, had been accomplished with the soil removal action.  Six groundwater monitoring wells were installed and continue to be monitored. Elevated levels of metals and VOCs exceeding MCLs persist.	ACID SOLUTION 2 PH WITH METALS lead, cadmium and others.	1.6
4	340 E. 192nd Street (Victoria Golf Course)	LA County (publicly owned)	Additional field work data collected off-site in 2011 for the remedial investigation was completed, and a revised draft remedial investigation report was submitted in 2011. However, due to ongoing data discussions regarding groundwater, only the soil and landfill gas portions of the RI/FS will move forward at this time. The groundwater will be addressed as one unit for the entire former BKK Carson Dump, including the Dominguez Golf Course portion. The site is on the National Priorities List.	VOCs, methane, perchlorate	275





5	24600 S. Main St.	Turco Products, Inc. (privately owned)	Concentration of 18 micrograms per liter for PCE at a 15 foot depth. Samples for other constituents show a concentration of 2.5 micrograms per liter or less, with most being less than 1. URS, the Shell consultant, will be conducting soil vapor sampling in the neighborhood south of Turco. DTSC will ask the Water Board to share this data.	Benzene, TCE	12
6	BTW Del Amo, Torrance, Main & Figueroa Street (7336-003-030)	Carson Valley, LLC. (privately owned)	Carson Valley, LLC is current owner. Former Gardena Landfill. DTSC site clean up program.	Contaminated soil and groundwater. Hazardous waste.	14.5
7	20400 Main St. - Boulevards at Southbay	Carson Marketplace, LLC. (privately owned)	This site is the location of the former Cal Compact Class II landfill that occupies approximately 157 acres. Operations at this facility were conducted from 1959 to 1968. The landfill was designated as a Class II facility, and at least 250,000 cubic yards of hazardous waste liquids and sludges were disposed.	Methane, Polychlorinated Biphenyls, TPH-Gas, VOCs, others.	157



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