



**CALIFORNIA STATE
PUBLIC WORKS BOARD**

EDMUND G. BROWN JR. • GOVERNOR

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STATE PUBLIC WORKS BOARD

June 12, 2017

PROPOSED MINUTES

PRESENT:

Ms. Eraina Ortega, Chief Deputy Director, Department of Finance
Mr. Jeff McGuire, Chief Deputy Director, Department of General Services
Mr. Malcolm Dougherty, Director, Department of Transportation
Mr. Rick Chivaro, State Controller's Office
Ms. Julie Giordano, State Treasurer's Office
Mr. Jim Frazier, California Assemblymember

CALL TO ORDER AND ROLL CALL:

Ms. Eraina Ortega, Chairperson of the Board called the meeting to order at 10:04 a.m.
Ms. Patrice Coleman, Executive Assistant for the Board, called the roll. A quorum was established.

Ms. Ortega acknowledged that Assemblymember Jim Frazier was present at the meeting.

BOND ITEMS:

The first order of business was to consider one Bond Item.

Ms. Lukenbill, Deputy Director of the Board, indicated to the Board, that if approved, Bond Item 1 would adopt a resolution authorizing actions to be taken to provide for interim financing, authorize the sale of lease revenue bonds, and other related actions for design and construction of a Jail Project in Monterey County. Ms. Lukenbill reported that overall project costs were estimated at \$88,968,000, and the amount of the interim financing request was \$80,000,000.

Staff recommended adoption of the resolution.

Ms. Ortega asked if there were any questions or comments. There were none.

A motion was made by Mr. Chivaro and seconded by Mr. Dougherty to approve and adopt the resolution for the bond item. The motion was passed unanimously through a roll call vote 5-0 (Ms. Ortega, Mr. McGuire, Mr. Dougherty, Mr. Chivaro, and Ms. Giordano all voting aye).

MINUTES:

The next order of business was to approve the minutes from the May 12th Board meeting.

Ms. Lukenbill reported that staff had prepared and reviewed the minutes from the May 12th Board meeting and recommended approval of those meeting minutes.

Ms. Ortega asked if there were any questions or comments regarding the minutes. There were none.

A motion was made by Mr. McGuire and seconded by Mr. Dougherty to approve the

minutes. The minutes were approved by a 3-0 vote (Mr. McGuire, Mr. Dougherty and Ms. Ortega all voting aye).

CONSENT ITEMS:

The next order of business was the consent calendar. Ms. Lukenbill informed the Board that the Consent Calendar consisted of three items.

- Consent Item 1: Consider authorizing site selection of an approximately 9.5 acre parcel north of Sacramento known as the Sacramento Railyards. The parcel will eventually be developed as an addition to the Old Sacramento State Historic Park.
- Consent Item 2: Consider recognizing a scope change and revised project costs for the Department of Corrections and Rehabilitation Jail Project in Los Angeles County.
- Consent Item 3: Consider recognizing a scope change and approving a reversion for the California Community Colleges, Santa Barbara Community College District, Santa Barbara City College, Campus Center Seismic and Code Upgrade project.

Ms. Lukenbill reported that Consent Items 2 and 3 required a 20-day notice to the Legislature, and the review period for these actions had expired without comment from the Legislature.

Staff recommended approval of the Consent Calendar.

Ms. Ortega asked if there were any questions or comments. There were none.

A motion was made by Mr. Dougherty and seconded by Mr. McGuire to approve the consent calendar. The consent items were approved by a 3-0 vote (Mr. Dougherty, Mr. McGuire, and Ms. Ortega all voting aye).

ACTION ITEMS:

The next order of business was to hear the Action Items.

- Action Item 1: Ms. Lukenbill informed the Board that if approved, this item would update Exhibits to the High Speed Rail Right-of-way Contracts authorized by Resolution at the November 6, 2015 Public Works Board meeting.

Staff recommended the Board approve updates to Exhibit B of the High Speed Rail Right-of-way Contracts authorized by Resolution at the November 6, 2015 Public Works Board meeting.

Mr. Dougherty asked for clarification as to whether the updated optional clauses would be used as necessary and applicable to Right-of-way contracts in general, and would not be specific to any certain contracts. Ms. Lukenbill stated that was correct and that they can be inserted into any contract once approved.

Ms. Ortega asked if there were any questions or comments. There were none.

A motion was made by Mr. Dougherty and seconded by Mr. McGuire to approve the Action Item. The Action Item was approved by a 3-0 vote (Mr. Dougherty, Mr. McGuire and Ms. Ortega all voting aye)

- Action Item 2: This item was pulled from the agenda
- Action Item 3: Ms. Lukenbill indicated that if approved, the action would adopt 11 Resolutions of Necessity authorizing the use of eminent domain to acquire properties in Madera, Fresno, and Kern Counties, totaling approximately 136 acres.

Harjinder Chima, acting as Counsel to the Board on eminent domain issues, presented the Resolutions of Necessity. Ms. Chima reported that the proposed Resolutions of Necessity before the Board had been reviewed, to ensure that they complied with the conditions set forth in Code of Civil Procedure Section 1245.230. Specifically, each Resolution provided:

1. The public interest and necessity require the Project;
2. That the proposed Project is planned and located in a manner that will provide the greatest public good with the least private injury;
3. The acquisition property described in Exhibit A to each of the Resolutions is necessary for the project; and
4. The offers of just compensation required by Government Code section 7267.2 have been made to all owners of record as required by the statute.

Ms. Ortega asked if there were any questions before calling upon the first speaker. Mr. Dougherty asked whether or not there would be any appearances from property owners. Ms. Ortega confirmed that Jeffrey Torres was present to discuss the Torres property. Ms. Ortega invited Mr. Torres to sit before the board to speak.

Mr. Torres introduced himself and his wife as Jeffrey and Guadalupe Torres. Mr. Torres stated they were there to ask the Board not to consider the adoption of the Resolution of Necessity for authorizing the use of eminent domain to acquire their property. Mr. Torres stated that they recently signed a right-of-way contract with High Speed Rail on May 23 and did so in good faith. He stated that High Speed Rail should not move forward with eminent domain on their ranch on 9909 Ponderosa Road, assessor parcel number 014-39-010. Mr. Torres acknowledged that it took High Speed Rail three months to produce a satisfactory contract for the Torres' to sign.

Mr. Dougherty stated that he wanted to hear from High Speed Rail regarding the outstanding terms of the contract. He asked if the conditions of the contract were in agreement then why hadn't a contract been signed and what additional details remained unresolved.

Tanya Southern addressed the Board on behalf of High Speed Rail. Ms. Southern stated that until High Speed Rail has an executed contract, they need to move forward with the RON. She stated they are non-standard contract terms that must still be approved, and since they asked for more contract terms, High Speed Rail does not have an executed agreement.

Mr. Torres interjected asking for clarification about what Ms. Southern had explained regarding the claim that the Torres's asked for more terms on the contract.

Mr. Dougherty asked whether the contract had been signed by one party only.

Ms. Chima interjected to explain the process. She stated that once the owners sign the right-of-way contract, there's a review process before it makes it to the Board for signature. The

initial review is that if there's any non-standard terms or clause modifications, the initial review goes to Caltrans Legal for review. Once the Caltrans attorney completes the review, then it goes to Department of General Services (DGS) for an additional review to ensure that the appraisal is proper and the amount of compensation agreed to is supportable by the appraisal. Then it goes to Department of Finance (DOF) for review before the contract is presented to the Board. Ms. Chima acknowledged that it is a long process when there are non-standard clauses involved. She stated that it is her understanding that the contract is currently undergoing review with Caltrans Legal, which will be followed by DGS and DOF reviews.

Mr. Dougherty asked if the terms of the contract were negotiated in the field and now the non-standard terms that were agreed to in the field are verified.

Mr. Torres stated that their contract was written by Caltrans Legal. Their understanding from their right-of-way agents was that the contract would go through the proper channels for approval before it was sent to the Torres'. Mr. Torres stated he doesn't see why it would take a long period of time to offer what was offered in the contract.

Ms. Chima interjected to offer clarification. She stated that the right-of-way agents clear it through High Speed Rail. The contract was probably cleared through upper management at High Speed Rail, but had not yet gone to the other agencies for review.

Mr. Dougherty asked if there were discrepancies in the terms, if they're still being debated, or are they in agreement with the terms. Ms. Chima responded that there's an exchange clause that requires additional review. In addition to compensation, they're also providing an exchange parcel of land. They have to ensure that all of the language is acceptable. Then DGS will make sure the exchange is supportable by the appraisal.

Mr. Dougherty said that exchange clauses are not uncommon and they have been dealt with before. He said it's also not that uncommon that such clauses require other components of review. Mr. Dougherty asked what the timeline was for entering into the contract.

Ms. Chima responded that she believes the contract was given to Caltrans for review the week of June 5. Ms. Chima stated that she believed it would be transferred to DGS for review by approximately June 14, but said she couldn't estimate the amount of time it would take for review.

Mr. Dougherty asked what the significance of the timing and when the next meeting is to see whether or not a contract can be amiably resolved.

Ms. Lukenbill stated the next meeting would be on Monday, July 17.

Ms. Southern stated High Speed Rail is not sure about DGS timing for review and if the contract will be complete by the next meeting. They're willing to work with the property owners, but they didn't want to miss the opportunity to proceed with a RON at this meeting.

Mr. Torres stated that by July this should be wrapped up. They signed the contract on May 23. He was told that it would roughly be a 90-day period of escrow. And that's going to be roughly 80 days (from May 23). Mr. Torres stated escrow should be complete by then. He stated he doesn't see why they can't hold off until the July meeting.

Ms. Southern stated that High Speed Rail was not looking to file suit immediately, but they would like to have the RON in place.

Assembly member Jim Frazier stated for his understanding, getting the approval from the appropriate agencies happens first and then entering into a 90-day escrow.

Mr. Torres stated that they were not told by High Speed Rail that the contract had to be approved prior to a 90-day escrow.

Mr. Dougherty stated the presumably the 90 days would start when both parties had signed the contract. Mr. Torres responded that the 90 days is supposed to start when the owners sign it.

Ms. Ortega stated that the issue of escrow being opened or closed is not the Board's purview at that point. She said she suggests that they work it out with High Speed Rail. She stated there were representatives at the meeting that he (Mr. Torres) could follow-up with.

Ms. Ortega stated that she wanted to know the urgency of adopting a RON today when they have a willing property owner. She stated that she's fully aware of the process that needs to occur in order for the State to sign off on the contract. Ms. Ortega said that she's not suggesting that the time frame is inappropriate. Ms. Ortega stated that it's up to us to take the time to make sure the contract is accurate, but still wants to understand the urgency of adopting a RON today.

Ms. Southern stated that the urgency is that High Speed Rail is behind in delivering properties to the design builders and they are trying to resolve claims related to that. Considering they won't be done by the next Board meeting, they wanted to ensure that they have the RON in place, but not move forward with it because they believe they can finish the process. Due to outstanding approvals, they wanted to ensure there were no prejudice in any way.

Mr. Torres stated he is aware that High Speed Rail has been behind on the contract, but doesn't believe his property is causing any delays. He stated that they signed the contract in good faith, and that they are not going to be able to tear down his house anytime soon because they have a lease with High Speed Rail. He stated that they should be allowed to have the issue brought back up in July.

Mr. Dougherty asked Mr. Torres what the period is of the lease. Mr. Torres stated that the lease is supposed to end in December. Mr. Dougherty stated that he would put a high priority on resolving the matter amiably and sign the contract before eminent domain takes place. He stated that it doesn't sound like they're going to hold up construction if the residents were going to occupy the property until the end of the calendar year. He continued, whether or not, they will defer it to the next meeting or the following meeting. Mr. Dougherty would defer to staff when they want to put it back on the agenda.

The Board agreed with Mr. Dougherty's statements.

Ms. Ortega invited Adrian Tapia and Erica Herrera to address the Board. Ms. Herrera stated that she was speaking for both parties. Ms. Herrera stated that High Speed Rail has been negotiating with Mr. Tapia. Ms. Herrera identified herself as a friend and real estate agent. Mr. Tapia is not in agreement with the amount High Speed Rail offered him and would like to know who could be addressed regarding compensation.

Ms. Ortega stated they're happy to have them address the Board, but she cautioned that the Board does not determine the amount of compensation, and that the Board deals with the process of adopting a Resolution of Necessity to allow the proceeding to determine the compensation.

Mr. Dougherty stated that there's an avenue for compensation to be addressed but not with this Board. Mr. Dougherty stated that he wants to make sure they articulate what the property owner's rights are and how to proceed. The Board only takes up the need of the necessity and the greater public good for the Resolution. Mr. Dougherty stated that representatives from High Speed Rail should provide the information on how to address the compensation issue.

Ms. Herrera verified that they need to speak to High Speed Rail. Mr. Dougherty confirmed that there were High Speed Rail representatives present at the meeting with whom they could speak.

Ms. Herrera asked if Mr. Tapia had to worry about High Speed Rail taking his property.

Ms. Ortega asked Ms. Chima to explain the procedure to the property owner. Ms. Herrera stated

that Mr. Tapia doesn't want to seem uncooperative and that he's been in complete cooperation and in communication with High Speed Rail.

Ms. Chima explained that the Board is being asked to adopt a Resolution of Necessity, which authorizes High Speed Rail to file an eminent domain lawsuit against the property owner to take the property. She stated that it is a due process and the property will not be taken right away. In order to get possession of the property they have to file a motion for order of possession. Mr. Tapia would have an opportunity to respond to it and state why he may face any hardships if the property is taken possession of. He will have a chance to speak with a judge before the motion is granted.

Ms. Chima informed Mr. Tapia that he has the right to get his own appraisal and High Speed Rail will reimburse him up to \$5,000. If Mr. Tapia feels that the amount he was offered is not adequate, he may pursue his own appraisal. Ms. Chima continued by saying that Mr. Tapia would have to submit the appraisal to High Speed Rail.

Ms. Ortega stated that even if the Board approved the Resolution today, the property owner may still continue to work with High Speed Rail.

Ms. Herrera asked if there was a different agent that Mr. Tapia could be assigned to. She stated that the current agents are hostile and combative. Mr. Tapia and Ms. Herrera believe the agents have taken a personal stance on the issue. Mr. Tapia claims they make decisions on his requests on the spot and state that High Speed Rail "would never do this or never do that", and Ms. Herrera believes those comments are premature since the issue hasn't been presented to High Speed Rail yet. Mr. Tapia also prefers to speak with representatives who speak Spanish. Ms. Herrera acknowledged that they provide a translator, but Mr. Tapia still feels like they lose the meaning of the communication in translation. Ms. Herrera also explained that she reviewed the appraisal, and believes the type of properties used for the appraisal are not comparable to Mr. Tapia's property.

Ms. Chima stated that High Speed Rail could set up a meeting to discuss some changes in the assigned right-of-way agents. Also, Ms. Chima urged Mr. Tapia to do his own appraisal and reiterated that High Speed Rail will reimburse him. Ms. Herrera translated on behalf of Mr. Tapia. He stated that he has spoken to other appraisers and they don't want to complete the appraisal because High Speed Rail is involved.

Ms. Chima responded that Mr. Tapia does not have to get a full appraisal. He can get someone to prepare some comparables, High Speed Rail would consider it as long as it is prepared by an appraiser. Ms. Ortega stated that High Speed Rail should follow-up with Mr. Tapia at the conclusion of the meeting.

Ms. Ortega asked if there was any other speakers on Action Item 3. There were none.

Ms. Lukenbill clarified which items the Board was voting on. She stated Items 1-3, Items 5-10, and 12, Items 4 and 11 were pulled.

Ms. Ortega asked if there were any questions or public comments. There were none.

A motion was made by Mr. McGuire and seconded by Mr. Dougherty to approve the Action Item. The Action Item was approved by a 3-0 vote (Mr. Dougherty, Mr. McGuire, and Ms. Ortega all voting aye)

Ms. Lukenbill stated there was one other business item on the agenda. She reported to the Board to consider authorizing the State Public Works Board's Executive Director and Deputy Directors to take actions necessary to execute a one-year extension to the agreement between the Board and the Department of Transportation for legal services related to the acquisition of

property for the High Speed Rail project. This proposed agreement extends the contract term to June 30, 2018.

Staff recommended approval of the agreement extension.

A motion was made by Mr. Dougherty and seconded by Mr. McGuire to approve the Action Item. The Action Item was approved by a 3-0 vote (Mr. Dougherty, Mr. McGuire, and Ms. Ortega all voting aye)

Ms. Lukenbill then presented the reportable items, and told the Board that she would be happy to answer any questions. The Board had none.

NEXT MEETING:

Ms. Ortega stated the next Board meeting is scheduled for Monday, August 14, 2017 at 10:00 a.m. in Room 113 at the State Capitol. Ms. Ortega noted the next meeting will be on a Monday.

Ms. Ortega asked if there were any comments or questions from the Board or the public. There were none, the meeting was adjourned at 10:36 a.m.