



**CALIFORNIA STATE
PUBLIC WORKS BOARD**

EDMUND G. BROWN JR. • GOVERNOR

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STATE PUBLIC WORKS BOARD

February 10, 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. Tom Yowell, State Controller
Mr. Blake Fowler, State Treasurer

CALL TO ORDER AND ROLL CALL:

Ms. Eraina Ortega, Chairperson of the Board called the meeting to order at 10:00 a.m.
Ms. Patrice Coleman, Executive Assistant for the Board, called the roll. A quorum was established.

BOND ITEMS:

Ms. Lukenbill, Deputy Director of the Board, indicated to the Board, that if approved, the Bond Item would adopt a resolution authorizing the sale of lease revenue bonds, approve the form of and authorize the execution and delivery of a Project Delivery Agreement, and approve other related actions for the construction of a new dormitory building for the Department of Forestry and Fire Protection Academy in Amador County.

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

A motion was made by Mr. Yowell 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 (Ms. Ortega, Mr. McGuire, Mr. Dougherty, Mr. Fowler, and Mr. Yowell all voting aye).

Ms. Lukenbill indicated to the Board, that if approved, Bond item 2 would adopt a resolution authorizing actions to be taken to provide for interim financing, authorize the sale of lease revenue bonds, approve the form of and authorize the execution and delivery of a Project Agreement, and approve other related actions for the construction of a new Automotive Shop for the Department of Forestry and Fire Protection at the San Mateo/Santa Cruz Unit Headquarters in Santa Cruz County.

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

A motion was made by Mr. Fowler 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 (Ms. Ortega, Mr. McGuire, Mr. Dougherty, Mr. Fowler, and Mr. Yowell all voting aye).

MINUTES:

The next order of business was approval and adoption of the January 4 and January 13 Board minutes. Ms. Lukenbill reported that staff had prepared and reviewed the minutes from the January 13 and January 4 Board meetings and recommended approval.

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 (Ms. Ortega, Mr. Dougherty, and Mr. McGuire all voting aye).

CONSENT ITEMS:

The next order of business was the consent calendar. Ms. Lukenbill informed the Board the Consent Calendar consisted of one item.

- Consent Item 1: Consider approving site selection for a 7.2 acre site in Imperial County, for the construction of an area office replacement facility in El Centro for the California Highway Patrol.

Staff recommended approval of the Consent Calendar.

There were no questions or comments from the public or the Board.

A motion was made by Mr. McGuire and seconded by Mr. McGuire to approve the Consent Item. The Consent Item was approved by a 3-0 vote (Mr. McGuire, Mr. Dougherty, 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 the item related to the California Conservation Corps Tahoe Base Center in El Dorado County was pulled from the agenda.
- Action Item 2: If approved would authorize site selection of three parcels in Madera and Fresno Counties for the High Speed Train System project.

Staff recommended authorizing site selection of the three parcels in Madera and Fresno Counties.

There were no questions or comments from the Board or public.

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 3: If approved would authorize site selection of one parcel in Los Angeles County.

Staff recommended authorizing site selection of the parcel.

Mr. Dougherty asked if this site selection is occurring prior to the environmental adoption for a draft EIR. There are going to be other parcels involved with the project and they will come forward for site selection subsequent to this in the future. Sally stated, if they are acquired by the state, she believes there's partnership between the authority and entities in Los Angeles for this Link Union Station project. If the property is acquired by the state, then yes, there will be initial site selections.

There were no questions or comments from the public.

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 4: If approved would authorize acquisition of one parcel in Fresno County.

Staff recommended approving the acquisition of the parcel.

Mr. Dougherty asked if all parties were in agreement and if this was an amiable acquisition. Ms. Lukenbill confirmed that all agencies had signed off on the acquisition.

There were no questions or comments from the public.

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. McGuire, Mr. Dougherty, and Ms. Ortega all voting aye)

- Action 5: Ms. Lukenbill stated that this item for an agreement between the High Speed Rail Authority and the Fresno Metropolitan Flood Control District for an exchange of real property had been pulled from the agenda and would likely be brought before the Board in March.
- Action Item 6: If approved, the requested action would rescind one Resolution of Necessity authorizing the use of eminent domain to acquire property in Kings County. Specifically, the rescission involves:

Lohse Property: On March 13, 2015, the Board adopted Resolution of Necessity 2015-0016, authorizing the use of eminent domain to acquire a portion of the Lohse property.

Since that time, there have been design changes and the property is no longer necessary for the project.

Staff recommended approving the rescission of the Resolution of Necessity authorizing the use of eminent domain.

There were no questions or comments from the Board or public.

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. McGuire, Mr. Dougherty, and Ms. Ortega all voting aye)

- Action 7: If approved would adopt seven Resolutions of Necessity authorizing the use of eminent domain to acquire properties in Madera, Kern, and Kings Counties, totaling approximately 39 acres.

Harj Chima, acting as Counsel to the Board on eminent domain issues, presented the Resolutions of Necessity and confirmed that the Resolutions of Necessity comply with the conditions required by the Code of Civil Procedure.

Ms. Ortega asked if there were speakers for any properties other than SunnyGem. Seeing none, the Board separated the vote for the uncontested properties.

A motion was made by Mr. Dougherty and seconded by Mr. McGuire to approve the acquisition of properties 2-7 in Action Item 7. The acquisition of the properties was approved by a 3-0 vote (Mr. McGuire, Mr. Dougherty, and Ms. Ortega all voting aye).

Ms. Ortega invited Mr. Samson, representing SunnyGem to address the Board. Mr. Samson began by thanking the staff members of High Speed Rail Authority and stating that their helpfulness and professionalism should be recognized.

Mr. Samson asked if his February 2nd letter had been read by the members of the Board, and whether it would be part of the record. Ms. Ortega confirmed. Mr. Samson stated to the Board that he was not there to discuss compensation, but his goal is to save an ongoing business and 200 jobs in Wasco.

Mr. Samson addressed legal standards for the Board's actions. He reported that if the matter should go to litigation, a reviewing court would ask if there was substantial evidence to support the Board's decision. Mr. Samson indicated that SunnyGem presented evidence supported by witnesses with knowledge of the issues against the acquisition.

Mr. Samson stated that he believed that the project was not compatible with the greatest public good and least private injury. He went on to explain why he felt this way, including that the current truck access will be impaired and that severe private injury will be incurred by his clients. He also stated that he believes the statement the Board was presented with from HSR counsel is lacking the expertise and professional qualifications required. Mr. Samson stated that he and his client do believe there is a public benefit of the HSR system, but feel that HSR is not making an effort to accommodate their proposed alternatives. , including that of a PAU agreement, and construction of a new processing plant on property owned by SunnyGem.

Mr. Samson also stated that there was no good faith offer because it was based on a partial take using flawed appraisal methodology, not a full take.

Mr. Samson went on to explain that he and his client believed that there was a failure to comply with NEPA and CEQA and that there was an issue of predetermination of the take of this property. He noted that his firm is filing a lawsuit against HSR alleging CEQA violations.

Mr. Samson concluded by stating that SunnyGem is an active business that provides a large number of jobs and that the RON should not be approved.

Before Ms. Ortega invited HSR to present, Mr. Dougherty asked Mr. Samson to confirm that the issue was the ability to relocate the business and the disagreement of SunnyGem and HSR on what the operational functionality of the property post acquisition would be.

Mr. Dougherty asked if there were any other discussions about a different alignment that would mitigate the impact to the property.

Mr. Samson responded that there were discussions about moving the property on the eastside of the BNSF right-of-way but that was never pursued.

Ms. Ortega asked Mr. Odell to begin with his presentation. Mr. Samson stated that if substantive evidence offered in counsel's presentation that was not previously provided to SunnyGem, he set to object.

Ms. Ortega clarified that there wasn't anything in the video presentation that hadn't been discussed. Ms. Ortega concluded that it was an illustration of an argument or discussion that's already been written and communicated in Mr. Samson's letter. Mr. Samson responded by stating that he reserves the right to object to any information not previously made available.

Mr. Louie, PWB counsel, asked on what grounds Mr. Samson objected. Mr. Samson replied that the presentation was not presented to SunnyGem prior to the Board meeting and they did not have the opportunity to respond to it and therefore he considers it a denial of due process.

Mr. Samson replied, that any information not provided to SunnyGem prior to the hearing, should not be considered by the Board. Mr. Samson reiterated his objection to the presentation.

Ms. Ortega assured Mr. Samson that his objections would be noted and asked Mr. Odell to present the video.

Mr. Odell stated that he objected to everything in Mr. Samson's letter as being unsubstantiated hearsay and unsupported by law including Mr. Gambino's declaration from his 2/2/17 letter. Mr. Odell reported that the HSR authority prepared a video presentation in response to Mr. Samson's allegations that there is no sufficient turning radius for SunnyGem trucks. Mr. Benjamin Camarena, the project manager, was invited to facilitate the video presentation. Mr. Odell asked that the witness (Mr. Camarena) be sworn in.

At 10:45, before he presented, Ms. Ortega called for a short recess for the Board to confer with counsel.

At 11:00 am, the Board reconvened. Ms. Ortega reminded the attendees that the Public Works Board meetings occur under the Bagley-Keene statute of open meeting requirements. She stated that the PWB meeting would continue in the normal standard.

Mr. Camarena began the video presentation, which showed the SunnyGem property, and a simulation showing the movement of trucks on the property.

Mr. Dougherty paused Mr. Camarena to ask if the simulation represents current operations.

Mr. Camarena replied that was their understanding and continued with the presentation. He explained the simulation of the trucks going in and out of the property and around the columns.

Ms. Sharon Parsons, HSR, asked what size trucks are driven on the property. Mr. Camarena replied that the trucks are standard vehicles used by CalTrans to which Ms. Irene Anderson stated it was her understanding that those are the largest trucks allowed on the highways.

Ms. Ortega asked if the Board members had any additional questions about the simulation.

Mr. Dougherty asked for clarification that the loading dock area is now w going to be designed as a viaduct so the actual physical impacts to the project footprint are going to be the columns depicted in the simulation. Mr, Camarena responded, that was correct.

Mr. Dougherty also asked the property representative if their contention is that the proposed alternative is a fatal flaw. Mr. Samson replied, that it would be fatal to the operation of the plant. Mr. Dougherty, asked if that is because of the movement of the trucks. Mr. Samson clarified, that the design is a fatal flaw. Not only because of the movement of the trucks, but because of concerns about construction and train operation impacts on health and safety and food safety requirements.

Mr. Odell commented on the train causing health and safety issues. He reminded the Board that the BNSF rail line is directly next to the facility. There is a train lot across the rail and it's surrounded by agriculture. Mr. Odell commented on Mr. Samson's previous comment about his analogy to a viaduct serving as a the "Berlin Wall", Instead Mr. Odell states that the viaduct opens corridors between the east and west and the rail line as designed per the city of Wasco zoning map. Mr. Odell provided copies of the map to the Board. The rail line runs along the east edge of the city of Wasco and does not divide the city as previously suggested. . Environmental research was completed and the re-design was confirmed and approved by the FRA. Therefore the environmental issues raised in counsel's letter are factually incorrect. The viaduct system have been fully environmentally cleared.

Mr. McGuire asked about the trade-offs of moving and redesigning the facility versus the alternative of moving the property a half mile away. Mr. Odell identified time delays as one of the major issue

Mr. Odell commented on an allegation from Mr. Samson, that if a viaduct is built across the current location it would put SunnyGem out of business. If the facility was relocated, or if the tracks were moved around the facility, it would be delayed, possibly for years, until the facility was fully operational. Mr. Odell stated that Mr. Samson never said the property wasn't necessary for the project, but that it is going to have a severe financial impact on his client's facilities. Mr. Odell stated the purpose of the meeting is not to discuss the damages, but rather to determine whether or not there's substantial evidence that this property is necessary for the project. Mr. Odell reminded everyone that the project was environmentally cleared. There was extensive public discussion about the alignment of the rail. To Mr. Odell's knowledge there was no concern raised by SunnyGem during the preliminary studies. The alignment was fixed because it has the greatest public good and the least private injury. Mr. Odell stated that Mr.

Samson like to paint his client as being severely damaged; however that the determination should be made by a jury after all the evidence has been presented.

Mr. Dougherty asked Mr. Camarena why alignment was elevated at this location Mr. Camarena explained that it is elevated only to make the loading dock work.

Mr. Dougherty stated that there two compelling arguments being made. The first is the fatal impact of operations of the plant. He said he's not convinced knowing that there's just the pillings to "hold up the thing" Mr. Dougherty continued. Secondly, as part of your argument, you stated there are significant or fatal health and safety impacts. Mr. Dougherty said he's not convinced about that either, considering this will be an all electrical rail line. Mr. Dougherty gave Mr. Odell and Mr. Samson an opportunity to address their statements before a decision is made.

Mr. Samson addressed Mr. Dougherty's questions first. He began with the health and safety issue first. The plant operates under a number of health and food safety requirements from the FDA and other administrations that regulate food safety. The plant is essentially a sealed environment and most of the pathogens come from dust particles. The concern is about the impact of construction, and the concern that contaminants, including petroleum products, could cause SunnyGem to lose its certification. Mr. Samson claims that if the contractor doesn't protect the product, then all the risk is on SunnyGem. If it has to shut down for recertification, it would be a months-long process. Mr. Samson stated they're also concerned about the "air rush of the 200 mph" train's windstream both pushing and pulling dust particles and contaminants. Mr. Samson concluded that other examples can be provided in court if needed.

In response to Mr. Samson, Mr. Dougherty stated that petroleum products are not even involved in this mode of transportation and that they already have freight lines right next door. He also asked what the proximity of the proposed relocation to the HSR project. Mr. Samson stated they are concerned about construction, bulldozers, oil products, leaking equipment. Mr. Dougherty responded stating HSR has the cleanest construction equipment money can buy. If there's going to be a construction impact, then it's a compensable business impact and needs to be dealt with in a different forum.

In response, Mr. Samson states that he's not talking about compensation or money. He's talking about what represents the greatest public good and the least private injury. It's not in the public good to lose jobs or waste money on building an expensive viaduct, when there's a viable alternative that could be built a half a mile to the North.

Mr. Dougherty requested Mr. Samson's feedback about the columns of the viaduct fatally impacting the operation on the plant. Mr. Samson responded that the "cartoon" bears no relationship to reality. He stated the way the east loading dock operates is not viable given the clearances of the columns and the turning radiuses of the trucks.

Ms. Ortega asked if the Board had any other questions for Mr. Samson. Seeing none, she asked Mr. Odell if he had any additional comments about the presentation. Mr. Odell drew attention to the "two-bay" loading dock, which allows ample room for the trucks coming and going from the loading dock area, in the video presentation. Mr. Odell concluded that the stacking argument does not have merit.

Mr. Odell stated that the cost of the relocation request and the cost of the redesign of the viaduct system to keep the facility in the city of Wasco, and avoiding the loss of 200 jobs. He

also stated that Mr. Samson claims that the facility can be moved to the North to keep the jobs in the Wasco area. Mr. Odell claimed that this goes back to the damage issue. If there's a viable impact on the facility that prevents it from continuing operations, the HSR would be liable for the damages, associated with the loss of business.

Mr. Dougherty stated that he's going to make a statement and ask a question and then he'd be done. He reported that he is more compelled by the "modeling" because he's in that business. The "modeling" that was presented looked standard and realistic based on his experience. Mr. Dougherty asked staff to re-read the four threshold questions that the Board's decision will be based on.

Ms. Chima reported the the public interest and necessity is required of the project. The proposed project is planned and located in a manner that provide the greatest public good and least private injury. Ms. Chima added an additional comment for the Board, stating that the Board should consider the project as a whole and not the impact of individual properties, as each property owner is uniquely affected.

Ms. Chima stated that the acquisition property described is necessary for the project. And last, the offers of just compensation required by Government Code section 7267.2 have been made to all owners of record.

Ms. Ortega asked if there was any other public comment on this item. Seeing none.

Ms. Ortega invited Mr. Samson to make a brief final statement.

Mr. Samson stated that he objects to the video presentation, as well as the accompanying comments. It has no foundation for the visual or "cartoon" that was shown, no professional expertise, constitutes hearsay, there's no stet representation of its accuracy, and there was no prior notice of such a "cartoon" being shown. Mr. Samson stated, the Board's conclusions today still have to be based on substantial evidence.

Mr. Samson continued, with respect to counsel's comments; stating that HSR may have approval from the Federal Railroad Administration but claims they don't have approval from CEQA or NEPA. Mr. Samson stated that they have offered to cap the construction costs of moving the plant, a half a mile away. It would still operate and jobs would be saved. We offered to complete it in 36 months without impacting HSR's schedule. Finally, they don't dispute the need for the property, but it doesn't represent the greatest public good and the least private injury. Moving the property to the North would mean public good and least private injury. Mr. Samson stated he's willing to answer any questions the Board may have,

Ms. Ortega responded to Mr. Samson's comment regarding the video and the way the meeting was conducted. Ms. Ortega reiterated that this is a public meeting and we do not have hearsay and evidentiary standards like a courtroom. We allow anyone to attend and speak on items on the agenda. If the items are not on the agenda, it's the Board's discretion and judgment to determine what consideration we give the testimony presented.

Mr. Dougherty had one last comment. He stated that the biggest dispute is on the criteria of greatest public good and least private injury, as well as the need for the property. Should the

Resolution of Necessity be approved, the next step, if parties can't agree, would be taking the issue to court. Mr. Dougherty reminded counsel that the Board is not the body to bring an agreement.

Mr. Samson interjected and said the Board could resolve this issue, by rejecting the resolution of necessity.

Ms. Ortega stated they've considered this issue in the past, about counsel's ability to reach an agreement. By adopting the resolution, it either allows both parties to come to a conclusion or allow the court to take jurisdiction over the issue. At this point, the adoption of the RON is the most of efficient way to allow this to conclude.

Mr. Dougherty stated that all parties disagree on the greatest public good and the least private injury. He continued that the information presented doesn't appear to be taken to a higher court and for that reason the staff recommendation is to approve item 7.

A motion was made by Mr. Dougherty and seconded by Mr. McGuire to approve the adoption of Resolutions of Necessity for #1 for SunnyGem authorizing the use of eminent domain the adoption of the properties was approved by a 3-0 vote (Mr. Dougherty, Mr. McGuire and Ms. Ortega all voting aye).

Ms. Ortega asked for any additional public comments or questions. Seeing none, she stated that the next meeting was scheduled for Friday, March 10 at 10 a.m. in Room 113 at the State Capitol.

The meeting concluded at 11:27 a.m.