



CALIFORNIA STATE
PUBLIC WORKS BOARD

EDMUND G. BROWN JR. • GOVERNOR

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STATE PUBLIC WORKS BOARD
May 13, 2016

MINUTES

PRESENT:

Ms. Eraina Ortega, Chief Deputy Director, Department of Finance
Mr. Jeff McGuire, Chief Deputy Director, Department of General Services
Mr. Blake Fowler, Director, Public Finance Division, State Treasurer
Mr. Tom Yowell, Chief Deputy Director, State Controller
Mr. Kome Ajise, Chief Deputy Director, Department of Transportation

CALL TO ORDER AND ROLL CALL:

Ms. Eraina Ortega, Chairperson of the Board called the meeting to order at 2:00 p.m.
Ms. Karessa Belben, Executive Assistant for the Board, called the roll. A quorum was established.

BOND ITEM:

Ms. Lukenbill indicated to the Board that, if approved, the item would adopt a resolution to authorize interim financing and other related actions for the Department of Corrections and Rehabilitation, Juvenile Facility Project, Monterey County.

A motion was made by Mr. Yowell and seconded by Mr. Fowler 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. Fowler, and Mr. Yowell all voting aye, Mr. Ajise not present).

MINUTES:

The next order of business was approval and adoption of the April 14, 2016 minutes. Ms. Lukenbill reported that staff had reviewed and recommended approval and adoption of the minutes.

A motion was made by Ms. Ortega and seconded by Mr. McGuire to approve and adopt the minutes. The minutes were approved by a 2-0 vote (Ms. Ortega, and Mr. McGuire both voting aye, Mr. Ajise not present).

CONSENT ITEMS:

Ms. Lukenbill informed the Board the Consent Calendar consisted of one item, recognizing a scope change for the Department of Developmental Services, Porterville, upgrade fire alarm system.

Staff recommended approval of the item.

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

A motion was made by Ms. Ortega and seconded by Mr. McGuire to approve the Consent Item. The Consent Item was approved by a 2-0 vote (Ms. Ortega and Mr. McGuire both voting aye, Mr. Ajise not present).

ACTION:

Ms. Lukenbill then presented the Action Items to the Board.

Action Item 1: If approved, the requested action would approve the addition of a new clause to the Optional Right of Way Clauses in Exhibit B of the Resolution adopted by the Board at its November 6, 2015 meeting.

Staff recommended approval of the addition of a new clause to the Optional Right of Way Clauses in Exhibit B of the Resolution adopted by the Board at its November 6, 2015 meeting.

A motion was made by Ms. Ortega and seconded by Mr. McGuire to approve Action Item 1. The Action Item was approved by a 2-0 vote (Ms. Ortega and Mr. McGuire voting aye, Mr. Ajise not present).

Action Item 2: If approved, the requested action would rescind Resolution of Necessity 2014-0052 authorizing the use of eminent domain to acquire the Pacific Orchards property in Madera County.

Staff recommended approving rescinding Resolution of Necessity 2014-0052.

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

A motion was made by Ms. Ortega and seconded by Mr. McGuire to adopt the staff recommendations. Action Item 2 was approved by a 2-0 vote (Ms. Ortega and Mr. McGuire both voting aye, Mr. Ajise not present).

Action Item 3:

Ms. Lukenbill informed the Board that there would be an appearance by phone. Ms. Belben dialed in to a conference line to connect with Mr. Block and Mr. Gray on behalf of Modern Custom Fabrications before beginning Item 3.

If approved, the action would adopt Resolutions of Necessity authorizing the use of eminent domain to acquire 14 properties in Madera, Fresno, Kings, Tulare, and Kern Counties totaling approximately 106 acres. Mr. Ephraim Egan, acting as Counsel to the Board on eminent domain issues, presented the Resolutions of Necessity.

Ms. Ortega suggested taking two separate actions, one for the items uncontested and the second for those with speakers (Property 3 and Property 13).

A motion was made by Ms. Ortega and seconded by Mr. McGuire to authorize the use of eminent domain to acquire properties 1-2, 4-12, and 14. Action Item 3 was approved by a 2-0 vote (Ms. Ortega and Mr. McGuire both voting aye, Mr. Ajise not present).

Ms. Ortega called for Ms. Kristin Renfro on behalf of the Browning-Ferris property. Ms. Renfro stated that she did not see any specific reference to the property's current use in the Staff Analysis of the Action Item. Ms. Renfro also stated that she believed the selection of the property was predetermined. She requested that the Board recognize that the private injury that would occur would outweigh the public good of the project and that the current use is more necessary than the public use being considered. Ms. Renfro also stated that she did not believe just compensation had been offered because loss of goodwill had not been considered. She also made a comment for the

record that there were four board members present at the beginning of the meeting and two remaining to hear the item and approve the authorization of eminent domain.

Ms. Ortega commented that the State Controller and State Treasurer are only present to hear and vote on Bond Items, and that they do not participate in voting on Action or Consent items. She also stated that, while Mr. Ajise was running late, the Board still consisted of a quorum and met Bagley-Keene requirements. Ms. Renfro acknowledged Ms. Ortega's statement.

Mr. Ajise arrived at the Board meeting at 2:20 p.m. Mr. Egan addressed Ms. Renfro's arguments, stating that the Legislature has declared that the need for a statewide public rail project is for the public good and that the private injury versus public good recognizes the public good to the entire state and not just the community the property exists in. Mr. Egan addressed Ms. Renfro's statement of failure to offer just compensation, stating that business goodwill is not something that is included in the appraisal on the real property and is addressed at a later point in litigation.

Mr. Don Odell of the High Speed Rail Authority also addressed the Board, stating that the process of site selection is a long, detailed, and intricate process. He also stated that relocating a warehouse would not be a difficult process and that there may be no loss of goodwill. He also stated for the record that three Board Members were present.

Ms. Ortega asked for any further comments and Ms. Renfro asked to clarify information regarding the property's use. She stated that she is not talking about relocating a warehouse, but that the property maintains its fleet of vehicles and offices in the area of the take that is being proposed, and will require relocation of trucks, bins, or offices, while also impacting the parking area.

Ms. Ortega informed Ms. Renfro that the issue before the Board is the requirements of adopting the Resolution of Necessity and that the issues Ms. Renfro presented would likely be considered by the High Speed Rail Authority and are outside the scope of the Board. Ms. Ortega asked for further questions or comments.

A motion was made by Mr. McGuire and seconded by Mr. Ajise to authorize the use of eminent domain to acquire property 13. Action Item 3, Property 13 was approved by a 3-0 vote (Ms. Ortega, Mr. Ajise, and Mr. McGuire all voting aye).

Ms. Ortega moved to Property 3. Mr. Glenn Block and Mr. James Gray addressed the Board on behalf of Modern Custom Fabrications, Inc. Mr. Block gave the Board a brief history of the site being considered and the specific machinery that is involved in the buildings current use. Mr. Block stated that Modern Custom Fabrications has been trying to cooperate with High Speed Rail to ensure that their operation is relocated without losing employees or disrupting business. Mr. Block stated that Modern Custom Fabrications objected to the hearing taking place without their physical presence and asked that the Board consider moving the meeting to June.

Mr. Block stated that if the Board was unwilling to move the meeting he would continue with his specific objections. Ms. Ortega asked Mr. Block to please continue, as his participation by phone is equivalent to participation in person. Mr. Block stated that High Speed Rail should be asking Modern Custom Fabrications what High Speed Rail can do to make the situation less burdensome instead of creating problems to resolving the matter. He stated that the High Speed Rail has tried to coerce Modern Custom Fabrications and force them into negotiating on their terms.

Mr. Block stated that High Speed Rail violated Federal Regulations regarding the action to develop an agreement on the price of the property and that they have not made every reasonable effort to acquire the property expeditiously by negotiation. He asked that the Public Works Board insist that High Speed Rail comply. Mr. Block further added that public interest and necessity do

not require the project, it is not planned or located in a manner compatible with the greatest public good or least private injury, the property is not necessary for the project, the project does not comply with all CEQA regulations, and that there is not funding in place for the project. Mr. Block requested that the Resolution be denied.

Mr. Ajise asked a question regarding a comment in the letter about a review panel meeting being requested. Mr. Don Grebe stated that a panel review takes place when an appearance request arises and that they typically go through the issues with the owner and representatives regarding the requirements for the adoption of the Resolution of Necessity. Mr. Grebe stated that he understands the concerns set forth in Mr. Block's presentation and that High Speed Rail is prepared to respond to those items.

Mr. Odell addressed the Board stating the property was originally scheduled for July 2015, but that Mr. Block asked for a continuance to get a private appraisal done. The appraisal was not provided to the High Speed Rail until February 2016. Mr. Odell argued that there was no reciprocity in the negotiations and that the idea of using litigation as a coercive tool is disingenuous. He stated that there has been no meaningful action on behalf of the property owner to allow the property to be purchased.

Mr. Egan added that the first offer meeting took place in April of 2015 and that he believes High Speed Rail has attempted good faith negotiations.

Mr. McGuire asked what Mr. Block was anticipating by postponing the decision to June.

Mr. Block stated that in the 30 days, he expected Modern Custom Fabrications and High Speed Rail would meet and develop a framework for negotiations. Mr. Block also agreed with Mr. Odell's statement that litigation protects the property owner, but argued that Modern Custom Fabrications has rights that they can exercise and that portraying those as coercive is disingenuous.

Mr. Ajise stated that the issue before the Board was that of necessity of the property for the project. He also asked the High Speed Rail to ensure that open discussion and negotiations would continue. Mr. Odell confirmed and Ms. Ortega stated that the Board action should not be viewed as anything that interferes with continued discussion. She asked for any further questions or comments and there were none.

A motion was made by Mr. Ajise and seconded by Mr. McGuire to authorize the use of eminent domain to acquire property 3. Action Item 3, Property 3 was approved by a 3-0 vote (Ms. Ortega, Mr. Ajise, and Mr. McGuire all voting aye).

OTHER BUSINESS:

There was no other business to present.

REPORTABLES:

Staff presented the reportables for general board items and also for property acquisitions for the High Speed Rail Authority.

NEXT MEETING:

Ms. Ortega stated the next Board meeting is scheduled for Monday, June 13 at 10:00 a.m. in Room 113 at the State Capitol.

Ms. Ortega asked if there were any comments or questions from the Board or the public. Seeing none, the meeting was adjourned at 2:54 p.m.