



STATE PUBLIC WORKS BOARD
January 11, 2019

APPROVED MINUTES

PRESENT:

Ms. Jacqueline Wong-Hernandez, Chief Deputy Director, Department of Finance
Mr. Daniel Kim, Director, Department of General Services
Mr. Ryan Chamberlain, Deputy Director, Department of Transportation

CALL TO ORDER AND ROLL CALL:

Ms. Jacqueline Wong-Hernandez, Chairperson of the Board, called the meeting to order at 10:01 a.m., Ms. Kathryn Lee, serving as Secretary to the Board, called the roll. A quorum was established.

Approval of Minutes:

The first order of business was to approve the minutes from the December 14th Board meeting.

Ms. Lukenbill reported that the staff had prepared and reviewed the minutes from the December 14th Board meeting, and recommended approval of the minutes.

A motion was made by Mr. Kim and seconded by Mr. Chamberlain to adopt the staff recommendation and approve the minutes from the December 14th Board meeting. The motion passed unanimously through a 3-0 roll-call vote (Ms. Wong-Hernandez, Mr. Kim, and Mr. Chamberlain all voting aye).

CONSENT ITEMS:

The next order of business was to consider the Consent Calendar, which consisted of two items. Ms. Lukenbill presented the following:

- **Consent Item 1:** Consider the following actions related to Health Care Facility Improvement Program projects for the Department of Corrections and Rehabilitation: 1) approve allocation of \$18 million lease revenue bond authority to 4 projects, 2) approve an augmentation for one project (Central California Women's Facility project), and 3) recognize revised project costs for 4 projects.
- **Consent Item 2:** Consider authorizing site selection of approximately 5.5 acres of city-owned land in Paso Robles, San Luis Obispo County, for the 16th District Agricultural Association

Ms. Lukenbill noted that Consent Item 1 required a 20-day notice to the Joint Legislative Budget Committees and the fiscal committees in each house, and the review period for the actions had expired without adverse comment.

Staff recommended approval of the Consent Calendar consisting of Consent Items 1 and 2.

Ms. Wong-Hernandez asked if there were any questions or comments from the Board, or from the public.

Mr. Kim asked staff to investigate the possibility of pursuing a land swap with the City of Paso Robles for the property referenced in Consent Item 2, in exchange for the state-owned Estrella Correctional Facility property, which is currently for sale. Staff agreed to look into this further.

A motion was made by Mr. Chamberlain and seconded by Mr. Kim to adopt the staff recommendation and approve the Consent Calendar. The motion was passed unanimously through a 3-0 roll-call vote (Ms. Wong-Hernandez, Mr. Kim, and Mr. Chamberlain all voting aye).

ACTION ITEMS:

The next order of business was to consider two Action items.

- Action Item 1: If approved, the requested action would rescind six Resolutions of Necessity authorizing the use of eminent domain to acquire properties for the High Speed Train System project.

Ms. Lukenbill noted that on July 16, 2018 the Board adopted Resolutions of Necessity authorizing the use of eminent domain to acquire the Chatha, Brazil, Machado, De Jong and Sandridge Partners properties. Due to design modifications, the cases had not been filed. For each property, the modifications would require new appraisals and first written offers.

On May 20, 2015, the Board adopted a Resolution of Necessity authorizing the use of eminent domain to acquire the Leal property. Due to design modifications, the existing case would be dismissed without prejudice. The modifications would require a new appraisal and first written offer for this property.

Staff recommended approval of the Board rescinding six Resolutions of Necessity.

Ms. Wong-Hernandez commented that the Board may have questions on this item, and asked that staff from the High Speed Rail Authority (Authority) approach the Board.

Ms. Kendall Bonebrake, counsel for the Authority, and Ms. Kristiyan Assouri, Chief of Real Property and Third Party, approached the Board.

Ms. Assouri acknowledged the concerns of the Board. She stated that 637 Resolutions of Necessity (RONs) had been adopted by the Board to date, and 10 of those have been rescinded. Of the 10, Ms. Assouri noted that most were Temporary Construction Easements, and that the rescissions resulted in a property take that is smaller and less impactful to the property owner than what was presented in the original RON.

Ms. Wong-Hernandez clarified that the Board's concern is not the need to rescind a RON, but rather the fact that the Authority asked the Board to adopt most of the RONs only six months ago, underscoring the argument made by property owners that the Authority doesn't know which parcels are really needed for the project.

Mr. Chamberlain added that when the Authority brings a RON to the Board for adoption, the Board assumes that design refinements for a particular parcel have already been considered

and that the parcel that is the subject of the RON request is actually what is needed for the project. Mr. Chamberlain stated that while he understands the complexity involved in a design-build project, he asked that the Authority consider whether the need for rescissions was a recent trend, as he observed that most of the rescissions have occurred within the past 10-12 months. Mr. Chamberlain reiterated that the Board's expectation was that when RONs are presented to the Board for adoption that they had already been negotiated, discussions had already occurred with the design team, and that the parcel was what was needed. He noted that these requests put the Board in an uncomfortable situation when they are asked to rescind RONs that were only recently adopted.

Ms. Wong-Hernandez concurred with Mr. Chamberlain's comments, and further noted that the next action on the agenda is a request for the Board to adopt additional RONs.

Ms. Assouri stated that it was appropriate to rescind a RON when the property needed for the project is less than what was originally required.

Ms. Wong-Hernandez clarified that the Board's concern is whether they have the surety that the next group of RONs the Board adopts will be what is needed for the project, or will there be a request to rescind those also at some later date.

Mr. Kim agreed with the comments of the other Board members, and then asked two additional questions – 1) does the Authority communicate with the property owner's through this process and 2) is there another way of securing the TCE's other than through eminent domain.

Ms. Assouri confirmed that communications do occur on a regular basis with the property owners. She also stated that it is necessary to go through the eminent domain process TCE's because property owners don't like the project and therefore are not always cooperative. She said that they will continue to work with property owners to reach an amicable solution.

Mr. Chamberlain once again emphasized his expectation that the Authority should only come to the Board when there is a high degree of confidence that the parcel that is the subject of the RON is what is needed for the project. He stated that the Authority's mindset should not be to request a RON in order to move things forward, with the belief that it could be changed at a later date.

Ms. Bonebrake addressed a question posed by the Board from a previous meeting regarding the costs associated with dismissing an eminent domain lawsuit. She stated that property #6, the Leal property, would incur costs related to the dismissal of the lawsuit, but that they would be compensated for those costs.

Ms. Doris Geitner, CP2-3 Right-of-Way Oversight Manager, addressed the Board to describe the changes that lead to each rescission.

Mr. Kim requested clarification as to whether the Board may see new RONs at a later date for these rescinded properties.

Ms. Geitner and Ms. Assouri both confirmed that there may be future RONs if deemed necessary.

Mr. Kim asked why the Authority doesn't simply wait to rescind until it is known whether a future RON would be needed.

Ms. Assouri explained that in doing that, there is a risk of inverse condemnation if the condemnation action is not filed.

Ms. Geitner continued her presentation, and she and Ms. Assouri addressed several additional questions by the Board related to the specific properties.

Ms. Wong-Hernandez concluded by directing the Authority to ensure that properties are fully vetted before bringing new RONs to the Board for their consideration.

A motion was made by Mr. Chamberlain and seconded by Mr. Kim to adopt the staff recommendation. The motion was passed unanimously through a 3-0 roll-call vote (Ms. Wong-Hernandez, Mr. Kim, and Mr. Chamberlain all voting aye).

- Action Item 2: If approved, the action would adopt five Resolutions of Necessity authorizing the use of eminent domain to acquire properties in Fresno and Kings Counties.

Ms. Lukenbill introduced the item, and Ephraim Egan, counsel to the Board on eminent domain issues, presented the Resolutions of Necessity.

Mr. Egan presented the four unopposed Resolutions of Necessity for the Schuh, Flood, te Velde, and Hopson properties. Mr. Egan stated that it was counsel's opinion that prima facie evidence for the factors were present such that the Board may adopt the Resolutions of Necessity.

Staff recommended adoption of the four Resolutions of Necessity authorizing the use of eminent domain.

Ms. Wong-Hernandez asked if there were any questions or comments from the Board. There were none.

Ms. Wong-Hernandez stated that while the conversation thus far has been about the RON rescissions, she noted that the discussion really is about this action, the initial RON adoption. Ms. Wong-Hernandez further emphasized how seriously the Board considers this action, and for the Authority to be mindful of what they are presenting to the Board.

A motion was made by Mr. Kim and seconded by Mr. Chamberlain to adopt the staff recommendation. The motion was passed unanimously through a 3-0 roll-call vote (Ms. Wong-Hernandez, Mr. Kim, and Mr. Chamberlain all voting aye).

Next, Mr. Egan presented the opposed Resolution of Necessity for property #2, the Marquez Investment Group property. He explained that High Speed Rail Authority's response had been reviewed and it was counsel's opinion that there was prima facie evidence that the factors set forth in Code of Civil Procedure Section 1245.230 were present for the Marquez property.

Ms. Bonebrake addressed the Board on behalf of the Authority regarding the Marquez property, and she confirmed that the property is needed for the project. She also assured the Board that the Authority would review the comments made by the Board today and would continue to work

on processes that ensure that the properties presented to the Board through RON adoption have been fully analyzed and are needed for the project.

A motion was made by Mr. Chamberlain and seconded by Mr. Kim to adopt the staff recommendation. The motion was passed unanimously through a 3-0 roll-call vote (Ms. Wong-Hernandez, Mr. Kim, and Mr. Chamberlain all voting aye).

OTHER BUSINESS:

NONE

REPORTABLES:

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

NEXT MEETING:

Ms. Wong-Hernandez state that the next Board meeting is scheduled for Friday, February 8, 2019 at 10 am in Room 113 at the State Capitol.

Ms. Wong-Hernandez asked if there were any additional questions or comments from the Board, or from the public. There were none.

The meeting was adjourned at 10:48 a.m.