



**CALIFORNIA STATE
PUBLIC WORKS BOARD**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ NINTH FLOOR ■ SACRAMENTO CA ■ 95814-3706 ■ (916) 445-9694

STATE PUBLIC WORKS BOARD

January 12, 2018

PROPOSED MINUTES

PRESENT:

Ms. Jacqueline Wong-Hernandez, Chief Deputy Director, Department of Finance
Mr. Jeff McGuire, Chief Deputy Director, Department of General Services

CALL TO ORDER AND ROLL CALL:

Ms. Jacqueline Wong-Hernandez, Chairperson of the Board, called the meeting to order at 10:02 a.m. Ms. Patrice Coleman, Executive Assistant for the Board, called the roll. A quorum was established.

MINUTES:

The next order of business was to consider approving the minutes from the December 8th Board meeting.

Ms. Lukenbill welcomed Madam Chair, Ms. Wong-Hernandez to the Board. Ms. Lukenbill reported that staff had prepared and reviewed the minutes from the December 8th Board meeting.

A motion was made by Mr. McGuire and seconded by Ms. Wong-Hernandez to approve the minutes. The minutes were approved by a 2-0 vote (Ms. Wong-Hernandez and Mr. McGuire all voting aye).

CONSENT ITEMS:

The first order of business was to consider seven Consent Items.

- Consent Item 1: Consider accepting real property through a transfer of title for the George McDonald Hall of Justice in the County of Alameda for the Judicial Council.
- Consent Item 2: Consider recognizing a scope change for the Relocation of Red Mountain Communications Site project in Del Norte County for the Governor's Office of Emergency Services.
- Consent Item 3: Consider approving preliminary plans for the Upper Truckee Marsh Restoration Project in El Dorado County, for the California Tahoe Conservancy.
- Consent Item 4: Consider approving acquisition and the execution of a Property Acquisition Agreement and other necessary documents for the Potrero Fire Station Replacement Facility Project in San Diego County, for the Department of Forestry and Fire Protection.
- Consent Item 5: Consider approving an augmentation for the Malibu Creek State Park New Stokes Creek Bridge Project in Los Angeles County, for the Department of Parks and Recreation.

- Consent Item 6: Consider recognizing a scope change for the Adult Local Criminal Justice Facilities Project in Merced County, for the Board of State and Community Corrections.
- Consent Item 7: Consider recognizing a scope change for the Redwoods Community College District, College of the Redwoods Utility Infrastructure Replacement Project in Humboldt County, for the California Community Colleges.

Ms. Lukenbill reported that Consent Items 2, 5, 6 and 7 required 20-day notices to the Legislative Fiscal Committees, and the review period for these actions has expired without adverse comment.

Ms. Lukenbill reported that for Consent Item 3, various quitclaim deeds will need to be secured and recorded prior to the start of construction.

Staff recommended approval of Consent Items 1 through 7.

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

A motion was made by Mr. McGuire and seconded by Ms. Wong-Hernandez to approve the Consent Calendar. The Consent Calendar was approved by a 2-0 vote (Ms. Wong Hernandez and Mr. McGuire, 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, the requested action would authorize site selection of two parcels in Kings and Tulare Counties for the High Speed Train System project.

Staff recommended the Board authorize site selection of two parcels in Kings and Tulare Counties.

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

A motion was made by Mr. McGuire and seconded by Ms. Wong-Hernandez to approve the Action Item. Action Item 1 was approved by a 2-0 vote (Ms. Wong-Hernandez and Mr. McGuire, all voting aye).

- Action Item 2: Ms. Lukenbill informed the Board that if approved, the action would adopt three Amended Resolutions of Necessity authorizing the use of eminent domain to acquire properties in Fresno and Kings Counties.

Staff recommended the adoption of three amended RONs for properties in Fresno and Kings Counties.

Ms. Wong-Hernandez acknowledged a speaker, Mr. Mark Wasser. First, Mr. Mark Wasser spoke on behalf of the PRG Farms Property. Mr. Wasser reminded the Board, that in order to acquire property, the project is proposed and planned in a manner that is most compatible with the greatest public good and least private injury. Mr. Wasser stated that in a design-build project, this finding cannot be made, and that the finding made in the first Resolution of Necessity was not correct. He claimed that High Speed Rail didn't know what property was needed the first time, and that they still don't know. Mr. Wasser also advised the Board that an offer of just compensation must be made, and that the offer that was made did not include goodwill damages and was therefore invalid. For these reasons, Mr. Wasser asked the Board to not adopt the Resolution of Necessity.

Mr. Wasser also addressed the Board on behalf of Tri West Investments. He explained that Tri West operates a slaughterhouse and has a wastewater pipe that conveys waste from the slaughterhouse to an alfalfa field. Mr. Wasser stated that the project will sever the wastewater pipe and will essentially take the entire slaughterhouse, which he contends is more property than is needed for the High Speed Rail project. Mr. Wasser further stated that there was no offer of goodwill or just compensation. For these reasons, Mr. Wasser asked the Board to not adopt the Resolution of Necessity.

Mr. Wasser also addressed the Board on behalf of EBC Farms LLC. He stated that High Speed Rail acquired 25-acres from EBC farms about two years ago, and the land has not been devoted to public use and contended that the property won't be available for public use in the foreseeable future. Mr. Wasser expressed that these three properties (PRG, Tri West and EBC Farms) are evidence that a design-build project is ineligible for a condemnation action. Mr. Wasser concluded that High Speed Rail does not know what property is needed for the project and that the Board should not adopt the Resolutions of Necessity.

Ms. Lukenbill acknowledged that High Speed Rail staff and PWB eminent domain counsel were available to respond to Mr. Wasser's comments.

Mr. McGuire asked for staff to respond specifically to the design build and goodwill issues raised by Mr. Wasser. Mr. McGuire also asked for clarification on how long can a property can remain unused before it must be used for its intended purpose.

Mr. Ephram Egan, counsel for the Board on eminent domain issues, responded to Mr. Wasser's statements. He stated the issue of whether goodwill exists is handled within the court. Mr. Egan stated that goodwill is not generally included in the offer of just compensation. Therefore, goodwill is not a necessary condition to present a valid offer under the statute. Secondly, regarding Tri West, Mr. Egan noted that the original Resolution of Necessity, which was adopted in November, had an incorrect citation to a civil code of procedure section. The Amended Resolution simply incorporates the correction. Mr. Egan also addressed Mr. Wasser's claims regarding design-build, stating that design build is a manner of how the project is built. Once a project has reached a certain design threshold, Mr. Egan noted that you can seek properties for the project based on that design. If there are changes to the design, then there may be changes to the Resolutions of Necessity if it is determined that additional property is needed to complete the project.

Mr. Egan stated that counsel for High Speed Rail could highlight additional factors as to why these particular properties are needed for the project.

Ms. Kendall Darr, counsel for High Speed Rail, addressed the Board. Ms. Darr stated that she agreed with statements made regarding goodwill and the design build nature of the project. She stated that Resolutions of Necessity are amended over time due to design changes. While they try to keep these changes to a minimum, they are intended to make the project more efficient and economical. Ms. Darr stated if the Board had any specific questions, she would be happy to answer them.

Mr. McGuire again raised the previous question, regarding how long land can remain idle before the High Speed Rail Authority has to exercise its public use of the land. Ms. Darr confirmed that it must be used within seven years. She further stated that High Speed Rail anticipates the EBC property would be utilized quickly.

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

A motion was made by Mr. McGuire and seconded by Ms. Wong-Hernandez to approve the Action Item. Action Item 2 was approved by a 2-0 vote (Ms. Wong-Hernandez and Mr. McGuire, all voting aye).

- Action Item 3: Ms. Lukenbill informed the Board that if approved, the action would adopt seven Resolutions of Necessity authorizing the use of eminent domain to acquire properties in Fresno and Kings Counties.

Ms. Lukenbill reported that Property #3, the Dias Property, had been pulled from the agenda and would not be part of the Board's vote.

Ms. Shadbanou Azad, acting counsel to the Board on eminent domain issues, presented the Resolutions of Necessity. Ms. Azad reported that the proposed Resolutions of Necessity before the Board had been reviewed, to ensure that they comply with the conditions set forth in Code of Civil Procedure Section 1245.230. Specifically, Ms. Azad verified that each Resolution provides:

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. Wong-Hernandez invited Mr. Wasser to address the Board regarding the Dieplersloot property. He stated that the most pressing issue is the design-build issue as the authority does not know what property is actually needed for the project. Mr. Wasser also stated that no goodwill offer was made. He advised the Board that they would be making a mistake if the Resolution of Necessity is adopted, and urged the Board to not adopt a Resolution of Necessity for the reasons previously stated.

Ms. Wong-Hernandez asked Mr. Wasser clarify his objection regarding design-build projects. She stated that it seemed like the objection would apply to any design-build project, not just the High Speed Rail project. She asked if this meant that the state can't have an eminent domain or condemnation proceeding on any design-build project anywhere in California.

Mr. Wasser responded, saying that he could not categorically state that all design-build projects statewide are not eligible for condemnation actions. He stated that in the case of High Speed Rail, an estimated 15% design is performed in-house, then the project is turned over to the contractor, who is responsible for the remaining 85% of design. Mr. Wasser noted that because so much design is done after a Resolution of Necessity is adopted, the statute cannot be satisfied.

Ms. Lukenbill commented that over a thousand properties have been acquired over the past four years, and that the Board has adopted many Resolutions of Necessity, but there have only been a handful of amended Resolutions or additional properties needed for the project.

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

A motion was made by Mr. McGuire and seconded by Ms. Wong-Hernandez to approve the Action Item. Action Item 3 was approved by a 2-0 vote (Ms. Wong- Hernandez and Mr. McGuire, all voting aye).

REPORTABLES:

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. Wong-Hernandez stated the next Board meeting is scheduled for Monday, February 12, 2018 at 10:00 a.m. in Room 113 at the State Capitol.

The meeting was adjourned at 10:32 a.m.