



CALIFORNIA STATE
PUBLIC WORKS BOARD

ARNOLD SCHWARZENEGGER, GOVERNOR

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STATE PUBLIC WORKS BOARD
June 23, 2006 Special Meeting
MINUTES

PRESENT:

Mr. Vince Brown, Chief Deputy Director, Department of Finance
Mr. Ron Joseph, Director, Department of General Services
Mr. Gregg Albright, Deputy Director, Department of Transportation

ADVISORY MEMBER:

Director, Employment Development Department

LEGISLATIVE ADVISORS:

Assembly Member
Assembly Member Wilma Chan
Assembly Member Lloyd E. Levine
Senator Gilbert Cedillo
Senator Wesley Chesbro

STAFF PRESENT:

Karen Finn, Administrative Secretary, Public Works Board
Brian Dewey, Assistant Administrative Secretary, Public Works Board
Deborah Cregger, Legal Counsel for the Public Works Board
Stephen Benson, Budget Analyst for the Department of Finance
Christina Ahn, Budget Analyst for the Department of Finance
Matt Schuller, Budget Analyst for the Department of Finance
Koreen Hansen, Budget Analyst for the Department of Finance
Jacqueline Sapp, Budget Analyst for the Department of Finance
Jared Ingram, Budget Analyst for the Department of Finance

OTHERS PRESENT:

Paula Gutierrez, Department of General Services, RESD, APE
Gregory L. Holtom, Department of General Services, RESD, APE
Jonathan Heim, Department of General Services, RESD, APE

CALL TO ORDER AND ROLL CALL:

Mr. Vince Brown, Chairperson of the SPWB and Chief Deputy Director for the Department of Finance, called the meeting to order at 1:26 p.m. Karen Finn, Administrative Secretary for the State Public Works Board, called the roll. A quorum was established.

Mr. Brown asked that it be noted that since no bond items would be on the agenda the State Controller's Office and State Treasurer's Office need not attend and will not be marked absent.

BOND ITEMS:
No Bond Items

CONSENT CALENDAR:

Ms. Finn reported that the Consent Calendar covered items numbered 1 through 2. In summary these items proposed:

- 1 requests to recognize scope change, [1]
- 1 request to approve project augmentation, [2]

There were **two** 20-day letters for this agenda. The first letter was:

1) **Item # 1**, —The letter; to recognize scope changes, is for the California Community Colleges for an Applied Technology Building Reconstruction at the Rio Hondo College in Los Angeles County. It was sent to the appropriate Legislative Committees on June 2, 2006 and expired on June 22, 2006 without comment.

2) **Item # 2**, —The letter; to approve an augmentation, is for the California Community Colleges, for an Advanced Technology Complex at the Victor Valley College in Los Angeles County, It was sent to the appropriate Legislative Committees on June 2, 2006 and expired on June 22, 2006 without comment.

In summary: staff recommends approval of the **Consent Calendar** consisting of Items numbered 1 and 2.

Mr. Brown asked if there was any public comment on these items?
There was no response.

A motion was made by Mr. Joseph and Second by Mr. Albright to approve the Consent Calendar

The Consent Calendar was approved by a 3-0 vote.

ACTION ITEMS

Ms. Finn introduced Action Item No. 3 that deals with state surplus property in the City of Whittier (City). Ms. Finn detailed how this action came about through various letters of request from the City, which cited Government Code § 11011.3. Ms. Finn reported that the staff recommendation was to postpone taking an action on this matter so that the Board could properly notice a closed session agenda item to confer with legal counsel, regarding pending litigation.

Mr. Brown concurred with staff's recommendation and asked if other Board Members cared to speak on this item.

Mr. Joseph asked for further discussion on the item.

The City representatives were asked to step forward and testify.

Mr. James Markman, attorney for the City of Whittier and Redevelopment Agency, spoke of the process which brought the issue before the Board, noting the unique qualities of this item. Mr. Markman spoke of the wide range of values associated with the sale was because of differing values given to the land use entitlements of which there was no current plan and it would need to be re-zoned in the future. The City's goal was to do a transaction with the Department of General Services (DGS) that produces a positive development on the site which is to become the gateway to the west side of Whittier Boulevard. Mr. Markman stated that the conditions under Government Code § 11011.3 had not been followed because a request for a third party appraiser was asked for by the City and rejected by DGS. He stated that he didn't believe that the initial offers that were received by DGS were an accurate basis for which to determine a sales price. The City was worried that a developer might end up overpaying for the land and be unable to get the entitlements from the council to put value back into the property that they paid for, followed by no income production to the City, and no new gateway to the west side of Whittier. Mr. Markman finished with asking for the Board to follow the staff advice and hoped that the Board would come to the conclusion that a third party appraiser is warranted.

Mr. Joseph asked how Mr. Markman tied the ultimate appraised value with and to the ultimate land use entitlements. Mr. Joseph stated that he considered the offer of \$107 million as-in condition valid.

Mr. Markman stated he didn't believe an offer without any contingencies would help establish a fair price of the lands true value.

Mr. Joseph remarked that the appraisals were wildly divergent and varied. He questioned the use of yet another appraisal.

Mr. Markman said he believed that a new appraiser would have the advantage of all the history and information to date which would help set a more accurate sales price.

More questions were raised concerning any documentation that showed an official request by the City for a third party appraisal.

Mr. Vinatieri, Council Member to the City, reported that he had visited the people in the community (of Whittier) to ask what the people would like to happen with the property and reported that overall the people would like: places to live, work, and shop, all within the City itself.

Mr. Joseph asked if it was true that the decisions on how it was zoned; commercial, residential, and industrial, were all in the purview of the City regardless of whom or how much was paid for the land.

Mr. Vinatieri answered that this was true but that without reasonable overview and working in good faith through the process worried that the property would end up being overpriced and sit for years undeveloped without producing anything of value for the community and the City.

Mr. Joseph spoke to all, stating that he believed that conditions under the Government Code § had been legally met and followed. He believed that given the evidence and history to date didn't think another appraisal would be of much help in determining a sales price.

Mr. Joseph put forth the motion to "set the price for the subject property in Whittier at \$107 million, as is, subject to close within 60 days, and that this be the adopted price so

the state can move forward, and the City of Whittier can have the opportunity to move forward as well.”

Mr. Brown spoke of Mr. Joseph’s motion saying he believed that it would be prudent to seek legal counsel advice in a closed session before proceeding with this action.

Mr. Albright asked a question regarding the independent appraisers because he saw no evidence in the past of showing that an agreeable appraiser had been found.

Mr. Joseph stated that he believed that there was no problem with either DGS or the City’s choices of appraiser’s in the past and no question at all of their professionalism or abilities.

Mr. Albright asked a follow up question concerning whether the offer of \$107 million would still be valid by the next Board meeting if this item was tabled until after a closed session.

Dates were discussed but no answer was declared.

Mr. Brown noted that Mr. Joseph’s motion was lacking seconding. No second was given. Mr. Brown then asked for a motion for the staff recommendation. A motion was made by Mr. Albright , seconded by Mr. Brown.

Mr. Brown voted aye.

Mr. Albright voted aye.

Mr. Joseph voted nay.

Action Item #3 was approved by a 2/1 vote.

Mr. Joseph then questioned the scheduling of the next meeting concerning the closed session.

Ms. Finn said that it entirely up to the Board’s desire for when to schedule, barring time to legally notice it.

Ms. Connie LeLouis, attorney from the Attorney Generals office, gave options on scheduling a closed session.

Ms. Finn then reported on Action Item #4 concerning the determination of the sales price for the land in the City of Whittier. Again the recommendation was to postpone taking action at this time until a closed session could be scheduled and legal counsel to confer and receive legal advice regarding pending litigation.

Mr. Albright made the motion to approve the staff recommendation.

Mr. Joseph spoke against the motion stating he believed that the requirements for Government Code § 11011.3 had been satisfied and saw no reason not to move forward and accept the sale.

Mr. Brown second the motion.

Mr. Brown voted aye.

Mr. Albright voted aye.

Mr. Joseph voted nay.

Action Item #4 was approved by a 2/1 vote.

NEXT MEETING:

Ms. Finn reported that the next meeting is set for:

Friday, July 14, 2006, at 2:00 PM, at the State Capitol, Room 113.

(Mr. Sanford, post meeting edit add) I would like to add a final note that the Screening Meeting on July 19th for the August PWB Meeting will be changing location from the Cedar Room to the Cypress Room at the 915 L Street Building.

Mr. Brown asked for any other comments or questions from the public before we adjourn?
There was no response.

Mr. Brown adjourned the meeting at 2:12 p.m.

AGENDA AND STAFF ANALYSIS

**NOTICE OF SPECIAL MEETING
STATE PUBLIC WORKS BOARD
Friday
June 23, 2006**

The **STATE PUBLIC WORKS BOARD** will meet on, **Friday, June 23, 2006, at 1:30 p.m. in Room 113 in the State Capitol, Sacramento, California.** In accordance with provisions of Section 11125 of the Government Code, a copy of the Agenda is attached.

Karen Finn
Administrative Secretary

Attachment

STATE PUBLIC WORKS BOARD

**Friday
June 23, 2006**

1:30 p.m.

**Room 113
State Capitol
Sacramento, California**

I. Roll Call

Michael C. Genest, Director, Department of Finance
Ron Joseph, Director, Department of General Services
Gregg Albright, Deputy Director, Department of Transportation
State Controller's Office
State Treasurer's Office
Director, Employment Development Department
(Advisory Member)

* * * * *

Assembly Member, Legislative Advisor
Assembly Member, Wilma Chan, Legislative Advisor
Assembly Member, Lloyd E. Levine, Legislative Advisor
Senator, Wesley Chesbro, Legislative Advisor
Senator, Gilbert Cedillo, Legislative Advisor
Senator, Legislative Advisor

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BOND ITEM

BOND ITEM –

NO BOND ITEMS

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CONSENT ITEM

CONSENT ITEM – 1

**CALIFORNIA COMMUNITY COLLEGES (6870)
RIO HONDO COLLEGE, APPLIED TECHNOLOGY BUILDING RECONSTRUCTION
LOS ANGELES COUNTY**

Authority: Chapter 38/05, Item 6870-301-6041 (29)

Recognize scope change

APPROVED 3/0

CONSENT ITEM

STAFF ANALYSIS ITEM – 1

California Community Colleges
Rio Hondo College, Applied Technology Building Reconstruction
Los Angeles County

Action Requested

The requested action will recognize a scope change.

Scope Description

The project is not within scope. The authorized scope of the project provides for a 44,410 assignable square feet (asf) vocational instructional building comprised of 2,500 asf lecture, 37,830 asf laboratory, 2,580 asf office, 875 asf technology service space and 625 asf of other space.

In recent years, the Rio Hondo College has been experiencing a decline in computer related enrollment and a corresponding increase in welding related instruction. After consulting local employment experts and unions in the area, the District found that this trend is occurring in the employment sector as well. As a result of these findings, the District requests a revised scope to modify the project space to align with market demand. The revised scope will be 2,545 asf of lecture, 37,830 asf laboratory, 2,505 asf office, 892 asf technology service space and 638 asf of other space for a total of 44,410 asf. More specifically, the District will increase the welding program space from 1,250 asf to more than 3,800 asf and reduce the computer laboratory space from 5,625 asf to approximately 3,000 asf.

On June 2, 2006 the Department of Finance notified the chairs of the Joint Legislative Budget, the Senate Appropriations, and Assembly Appropriations Committees of its intent to recognize this scope change after June 22, 2006

Funding and Project Cost Verification

The project is within cost. State funds do not change as a result of this change in scope.

\$11,419,000 total authorized project costs

\$378,000 project costs previously allocated: preliminary plans \$378,000

\$11,041,000 project costs to be allocated: working drawings \$450,000, construction \$9,499,000 (\$8,402,000 contracts; \$588,000 contingency; \$509,000 construction management, administration, testing and inspection) at CCCI 4328 and equipment \$1,092,000 at EPI 2649

CEQA

The district will complete the filing of a Notice of Exemption prior to the State Public Works Board approval of preliminary plans.

Due Diligence

Community college districts are local entities and the state does not have title to their real property, hence districts acknowledge that they have full responsibility for clearing due diligence issues for general obligation bond projects.

Project Schedule

The project schedule is as follows:

Approve preliminary plans	July 2006
Approve working drawings	January 2007
Complete Construction	May 2008

Staff Recommendation: Recognize scope change

CONSENT ITEM

CONSENT ITEM – 2

**CALIFORNIA COMMUNITY COLLEGES (6870)
VICTOR VALLEY COLLEGE, ADVANCED TECHNOLOGY COMPLEX
LOS ANGELES COUNTY**

*Authority: Chapter 50/99, 6870-301-0574 (84.1)
Chapter 106/01, 6870-301-0574 (72)
Chapter 33/02, Section 34 (a)(4)(D), 6870-801-0660
Chapter 208/04, Item 6870-491-Reappropriation W*

**Approve augmentation for the construction phase of the project \$2,052,000
(11 percent of Total Project)**

APPROVED 3/0

CONSENT ITEM

STAFF ANALYSIS ITEM – 2

California Community Colleges
Victor Valley College, Advanced Technology Complex
Los Angeles County

Action Requested

The requested action will approve an augmentation for the construction phase of the project.

Scope Description

The project is within scope. The authorized project constructs a 34,300 assignable square feet (asf) advanced technology instructional building. It will include 28,035 asf of computerized laboratories, 2,249 asf office and 4,016 asf other space.

Funding and Project Cost Verification

The project is not within cost. An augmentation of \$2,052,000 (11 percent of total project) in state funds is required to accept all bids on this project. This augmentation is primarily attributed to labor and material cost increases in the construction market as the bidding process was delayed nearly two years due to title exceptions on the campus.

On June 2, 2006 the Department of Finance notified the chairs of the Joint Legislative Budget, the Senate Appropriations, and Assembly Appropriations Committees of its recommendation that the Public Works Board approve this augmentation after June 22, 2006.

\$18,660,000 total authorized project costs

\$20,712,000 total estimated project costs

\$15,038,000 project costs previously allocated: preliminary plans \$575,000 at CCCI 3847, working drawings \$565,000 at CCCI 4019, and construction \$13,898,000 (\$11,893,000 contracts; \$595,000 contingency; and \$1,410,000 construction management, administration, testing, and inspection) at CCCI 4019

\$3,622,000 project costs to be allocated: construction \$670,000 (\$575,000 contracts; \$29,000 contingency; and \$66,000 construction management, administration, testing, and inspection) at CCCI 4019 and equipment \$2,952,000 at EPI 2564

\$2,052,000 project funds to be augmented: construction \$2,052,000 (\$1,780,000 contracts; \$88,000 contingency; and \$184,000 construction management, administration, testing, and inspection) at CCCI 4597

CEQA

A Notice of Exemption, # 1999128259, was filed with the state Clearinghouse on December 28, 1999 and the waiting period has expired.

Due Diligence

Community college districts are local entities and the state does not have title to their real property, hence districts acknowledge that they have full responsibility for clearing due diligence issues for general obligation bond projects.

Project Schedule

The project schedule is as follows:

Complete Construction March 2008

Staff Recommendation: Approve augmentation

ACTION ITEM

ACTION ITEM – 3

**DEPARTMENT OF GENERAL SERVICES (1760)
DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)
FRED C. NELLES YOUTH CORRECTIONAL FACILITY, 74 ACRES OF LAND WITH
IMPROVEMENTS – WHITTIER BOULEVARD
CITY OF WHITTIER, COUNTY OF LOS ANGELES
Surplus Parcel Number SSL 628**

Consider determining a sales price of the surplused Fred C. Nelles Youth Correctional facility, 74 acres of land located in the City of Whittier

ACTION ITEM #3 “STAFF RECOMMENDATION” WAS APPROVED BY A 2/1 VOTE.

**MR. VINCE BROWN VOTED AYE
MR. GREGG ALBRIGHT VOTED AYE
MR. RON JOSEPH VOTED NAY**

ACTION ITEM

STAFF ANALYSIS ITEM – 3

Department of General Services
Department of Corrections and Rehabilitation

Fred C. Nelles Youth Correctional Facility 74 acres of land with improvements on Whittier Blvd.
City of Whittier, Los Angeles County

Action requested

Consider determining a sales price of the surplused Fred C. Nelles Youth Correctional facility, 74 acres of land located in the City of Whittier.

Factual Background:

Effective 1/1/05 approximately 75 acres known as the Fred C. Nelles Youth Correctional Facility ("Nelles Property") was authorized for sale by the Director of General Services with the approval of the State Public Works Board ("SPWB") in Chapter 925 of the Statutes of 2004 (chaptered on 9/30/04). In May, 2004, the Whittier Redevelopment Agency¹ entered into a memorandum of understanding ("MOU") with developer Greenleaf Development Company LLC relative to potential development of the Nelles Property.

Government Code Section 11011.1 requires the land declared surplus by the Legislature be offered to *local governmental agencies*. Except for specifically enumerated public and governmental uses, the property is to be offered to local agencies at fair market value; none of the exceptions to fair market value apply here. In and about June 2005, the Department of General Services ("DGS") offered the Nelles Property to area local governments and on June 23, 2005 the City notified DGS in writing of its interest in the Nelles Property for a mixed use development project.

Offer/rejection/bid chronology based upon information provided by DGS and the City:

- The City held public meetings regarding the potential developable uses of the Nelles Property on March 17, 2005 and May 12, 2005. DGS attended with its land use planner who later prepared an initial concept plan incorporating the results of these public meetings as well as the results of the market analysis prepared by DGS' economic consultant.
- DGS retained an appraiser to analyze the state's market and community driven concept plan. The DGS appraiser valued this concept plan at **\$108.5 million**. On August 16, 2005, the City was offered the Nelles Property based upon this appraised value.
- The City retained an appraiser who prepared an appraisal showing a value for the Nelles Property, as of May 13, 2005, of approximately **\$52.3 million** assuming no entitlements. On or about September 6, 2005 DGS was provided with this appraisal.
- On September 20, 2005, the City entered into an amended and restated MOU with its developer, which included more specific land use objectives.

¹ Various documents that were reviewed refer to the City of Whittier and the Whittier Redevelopment Agency interchangeably, for purposes of this analysis we will refer to the City of Whittier and/or the Whittier Redevelopment Agency as the "City".

- In and around October 2005, in response to the City's more specific land use document, the DGS revised its offer to the City to **\$97 million** predicated on a January 2006 close of escrow with no conditions. (DGS essentially took their appraisal of \$108.8 million and present valued to current day.) DGS also proceeded to prepare a revised concept plan based upon the City's revised MOU. DGS presented this revised concept plan to the City in early December 2005.
- The City had their retained appraiser prepare a revised appraisal, which valued the property as of November 1, 2005 at approximately **\$54 million**, again assuming no entitlements.
- DGS wrote the City on November 22, 2005 indicating they will proceed with "alternative measures" to market the Nelles Property and went on to say that DGS would be requesting the SPWB to "review the valuation information obtained and prepared by the DGS and the City" and that the "value of the property will be determined by the SPWB".
- The City made a formal offer of **\$83 million** (based on appraisal work, not a full appraisal) on December 1, 2005. The offer was not a "cash offer" and provided for close of escrow at the time entitlements were obtained. According to DGS, this offer included the first relatively detailed conceptual site plan for the City's developer.
- DGS' retained appraiser was directed to value the City's concept plan and, as of December 1, 2005, concluded the value to be **\$106.6 million**. DGS notified the City by letter on December 23, 2005, that it could not accept the City's \$83 million offer and provided the revised value of \$106.6 million along with other necessary terms including a prompt closing not tied to entitlements. This letter went on to discuss Government Code Section 11011.3 ("Section 11011.3") and went on to inform the City that Section 11011.3 "does not require a 'third' appraisal".
- On January 3, 2006 the City wrote DGS requesting the SPWB put on their agenda consideration of an "appropriate price" for the Nelles Property. DGS passed along the City's request to SPWB staff; however, a direct request from the City to the SPWB was not received until May 8, 2006.
- On or about late December 2005 DGS embarked on a competitive sale process by advertising and requesting proposals for the purchase of the Nelles Property. DGS' Request for Proposal established a minimum acceptable price for the Nelles Property as **\$106.6 million**.
- DGS reports that on March 24, 2006, they received 13 offers to purchase the Nelles Property in response to their Request for Proposal; three offers were only for a portion of the property. (The City offered \$12,126,600 for 25 acres it desired for commercial retail development.) According to DGS, five of the offers equaled or exceeded the DGS appraised value of **\$106.6 million** and five of the offers were lower ranging from \$65 million to 106 million. Most of the offers were contingent on the City granting entitlements for the property.
- Meruelo Maddux Properties offered **\$107 million** for the Nelles Property, on an essentially "as is" basis. The offer is subject to a due diligence period of 60 days, and a close of escrow expected to be 60 days after completion of the due diligence period.

Staff Recommendation:

We have received a letter 2 days ago from an attorney representing the City of Whittier expressing concerns about the process that has occurred surrounding the determination of the sales price for the Nelles property. Accordingly, staff's recommendation is to postpone taking action on this matter so that we can properly notice a closed-session agenda item to confer with and receive advice from legal counsel regarding pending litigation.

ACTION ITEM

ACTION ITEM – 4

DEPARTMENT OF GENERAL SERVICES (1760)
DEPARTMENT OF CORRECTIONS AND REHABILITATION (5225)
FRED C. NELLES YOUTH CORRECTIONAL FACILITY, 74 ACRES OF LAND WITH
IMPROVEMENTS – WHITTIER BOULEVARD
CITY OF WHITTIER, COUNTY OF LOS ANGELES
Surplus Parcel Number SSL 628

Authority: Chapter 925 of the Statutes of 2004

Consider approving the sale of approximately 74 acres of land known as the Fred C. Nelles Youth Correctional facility located in the City of Whittier. If approved, the sale shall be contingent upon the defeasance of the appropriate amount of the State Public Works Board Lease Revenue Bonds (Department of Youth Authority) 2000 Series B (Various Correctional Projects) associated with the financing of a single story maintenance building located on the property.

ACTION ITEM #4 “STAFF RECOMMENDATION” WAS APPROVED BY A 2/1 VOTE.

MR. VINCE BROWN VOTED AYE
MR. GREGG ALBRIGHT VOTED AYE
MR. RON JOSEPH VOTED NAY

ACTION ITEM

STAFF ANALYSIS ITEM – 4

Department of General Services
Department of Corrections and Rehabilitation

Fred C. Nelles Youth Correctional Facility 74 acres of land with improvements on Whittier Blvd.
City of Whittier, Los Angeles County

Action requested

Consider approving the sale of approximately 74 acres of land known as the Fred C. Nelles Youth Correctional facility located in the City of Whittier. If approved, the sale shall be contingent upon the defeasance of the appropriate amount of the State Public Works Board Lease Revenue Bonds (Department of Youth Authority) 2000 Series B (Various Correctional Projects) associated with the financing of a single story maintenance building located on the property.

Project Description and Impact of the Outstanding 2000 Series B Lease Revenue Bonds:

Pursuant to Government Code Section 11011.1 and as authorized by Chapter 925, Statutes of 2004, the Director of the Department of General Services (DGS) is authorized, with the approval of the State Public Works Board (SPWB), to sell, exchange, or lease for current market value, or for any lesser consideration authorized by law, all or part of approximately 75 acres located at Fred C. Nelles Youth Correctional Facility on Whittier Boulevard, in the County of Los Angeles (Nelles Property).

In June 2000, the State Public works Board issued \$8,785,000 in Lease Revenue Bonds (Department of Youth Authority) 2000 Series B (Various Correctional Projects) to provide funds to finance and refinance, on behalf of the Department of Youth Authority (currently reorganized into the California Department of Corrections and Rehabilitation), used to fund the costs of construction of certain capital improvements to various facilities. Approximately \$2,687,000 of these lease revenue bonds (Bonds) were used for the construction of a 19,600 square foot, free-standing, one-story maintenance building located on the Nelles Property. The Bonds were issued under the terms of the Master Indenture dated as of April 1, 1994, as amended, and as supplemented by the Thirty-Second Supplemental Indenture, dated as of June 1, 2000 (Bond Indenture) between the SPWB and the Treasurer of the State of California, as trustee (Bond Trustee).

The Bonds are secured in part by a Site Lease and a Facility Lease, each dated as of June 1, 2000 by and between the SPWB and the Department of Youth Authority (SPWB Leases). Pursuant to the terms of the SPWB Leases and the Bond Indenture, the SPWB may not terminate the SPWB Leases and the DGS/State cannot sell or transfer the Nelles Property so long as the Bonds are outstanding; however, the Bonds may be fully defeased in accordance with their terms pursuant to the terms and conditions of the Bond Indenture. Once the Bonds are fully defeased, they will no longer be outstanding; the SPWB's obligations under the Bond Indenture will be discharged with respect to the Bonds. Once the defeasance of the Bonds has occurred the SPWB leases may be terminated and the State/DGS may sell or transfer the Nelles Property.

The SPWB staff has retained Orrick, Herrington & Sutcliffe as our bond counsel for this transaction and DGS has contracted with Lamont Financial for financial advisory services related to the defeasance of the Bonds. Staff has begun working through the defeasance process with these consultants together with the Bond Trustee.

While the Bonds do not need to be defeased prior to the SPWB approving the sale of the Nelles Property, any approval by the SPWB for the sale of the Nelles Property must be contingent upon all of the Bonds being defeased prior to the sale or transfer of the Nelles Property; this must be an absolute condition precedent to the sale.

Staff has reviewed several drafts of the subject purchase and sale agreement (Purchase Agreement) prepared by DGS related to the Nelles Property. Review of the Purchase Agreement by SPWB staff is typical in order to ensure staff has a full understanding of the terms and conditions of the sale. The SPWB does not actually 'approve' the Purchase Agreement rather; the SPWB's role under Chapter 925 of the Statutes of 2004 is to 'approve' the sale. Here, staff's review of the Purchase Agreement has been in conjunction with our retained bond counsel as it is especially important that the language in the Purchase Agreement contain a clear and unambiguous language that the Bonds be defeased prior to any sale of the Nelles Property. As of the time of finalizing this staff analysis, neither staff nor our retained bond counsel feels the terms in the Purchase Agreement are finalized as they relate to defeasing the bonds; further review and drafting is required.

Staff Recommendation: **Related to the recommendation in the previous Item 3, staff's recommendation is to postpone taking action on this matter so that we can properly notice a closed-session agenda item to confer with and receive advice from legal counsel regarding pending litigation.**

OTHER BUSINESS

OTHER ITEM –

No other business

REPORTABLES

To be presented at meeting.

Respectfully Submitted
By:

KAREN FINN
Administrative Secretary