



CALIFORNIA STATE  
**PUBLIC WORKS BOARD**

ARNOLD SCHWARZENEGGER, GOVERNOR

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STATE PUBLIC WORKS BOARD

December 13, 2010

**MINUTES**

**PRESENT:**

Ms. Cynthia Bryant, Director, Department of Finance  
Mr. Scott Harvey, Chief Deputy Director, Department of General Services  
Ms. Martin Tuttle, Deputy Director, Department of Transportation  
Mr. Jim Lombard, Chief Administrative Officer, State Controller  
Mr. Francisco Lujano, Director Securities Management Division, State Treasurer's Office

**STAFF PRESENT:**

Greg Rogers, Administrative Secretary  
Nathan Brady, Assistant Administrative Secretary  
Brian Dewey, Assistant Administrative Secretary  
Theresa Gunn, Assistant Administrative Secretary  
Chris Lief, Assistant Administrative Secretary  
Aurelia Bethea, Executive Secretary  
Deborah Cregger, Staff Counsel  
Marilyn Munoz, Staff Counsel  
Stephen Benson, Budget Analyst  
Natalie Daniel, Budget Analyst  
Madelynn McClain, Budget Analyst  
Carlos Ochoa, Budget Analyst  
Andrew Ruppenstein, Budget Analyst

**CALL TO ORDER AND ROLL CALL:**

Ms. Cynthia Bryant, Chairperson of the Board and Director of the Department of Finance, called the meeting to order at 10:00 a.m. Mr. Greg Rogers, Administrative Secretary for the Board, called the roll. A quorum was established.

The first order of business was approval and adoption of the Minutes from the November 15, 2010 meeting. Mr. Rogers reported that Board staff have reviewed and recommended approval of the minutes.

**A motion was made by Mr. Lombard and second by Mr. Harvey to approve and adopt the minutes. The minutes were approved by a 5-0 vote.**

Ms. Bryant stated before hearing the bond items, the Board will consider Action Item 1, and Action Item 1 would be voted upon by only the representatives from Department of Transportation, Department of General Services, and Finance.

**Action Item 1:**

Mr. Rogers informed the Board Action Item 1 would establish the scope, cost, and schedule and approve performance criteria for the Department of Corrections and Rehabilitation San Diego County Woman's Detention Facility, Jail Replacement Project and would be presented to the Board by Chris Lief, Assistant Administrative Secretary..

Mr. Lief provided a brief description of the project and stated this action would, upon approval, allocate \$100,000,000 of the \$750,000,000 appropriated in section 15820.903 of the Government Code to partially finance construction for the project. He further stated the state's financial participation is conditioned on the county appropriating the remaining balance of its funding contribution. It is anticipated the county would appropriate this remaining balance in its fiscal year 2011-12 budget.

Mr. Lief informed the Board the County was engaged in two separate Superior Court actions concerning CEQA review for this project. The first case was the *City of Santee v. County of San Diego*, which challenged the adequacy of the Environmental Impact Report prepared for the San Diego Women's Detention Facility. The second case was *County of San Diego v. Ryan Companies US, Inc.* (Ryan Companies), which was an eminent domain case extinguishing Ryan Companies' contractual rights to develop a portion of land that was subject to a Disposition and Development Agreement between Ryan Companies and San Diego County. The portion of land in question overlaps a portion of the project area for the County's proposed new women's detention facility. A date for final resolution of these two lawsuits was unknown at the time of this meeting. However, resolution of these lawsuits to the state's satisfaction was among the conditions precedent to the state's financial participation in this project. Those conditions were set forth in a Memorandum of Understanding to be considered by the Board as part of Bond Item 2.

Mr. Lief noted that the County completed its performance criteria for the project and was nearly ready to solicit design-build proposals for the project. As will be describe in Bond Item 2 for this project, the state would not contribute funding towards the project until these issues are resolved to the Board's satisfaction. Representatives from CDCR and the County were present to answer questions if necessary.

Mr. Lief reported in summary, staff recommended establishing the scope, cost, and schedule and approving performance criteria for the Department of Corrections and Rehabilitation San Diego County Women's Detention Facility.

Mr. Harvey inquired as to whether the lawsuits would run their course relating to CEQA if the City of Santee prevails and the County mitigation measures could become an obstacle, will the project be stopped and is the eminent domain simply about money or is there a chance that Ryan Companies will preserve an interest in the property. Are these issues solvable or are they really an obstacle? Mr. Lief informed Mr. Harvey that both issues appear to be solvable. Mr. Tuttle asked for the construction start date and Mr. Lief informed him that it was estimated to begin in December 2012. Mr. Lombard asked, if the lawsuits are not favorable to the State of California and the County moves forward with the project, how the County would fund the other \$100 million. Mr. Lief informed Mr. Lombard that the project will be completed in two phases and should the state funding never materialize the County would probably only complete the first phase of the project.

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

**A motion was made by Mr. Harvey and second by Mr. Tuttle to approve Action Item 1. Action Item 1 was approved by a 3-0 vote.**

## **BOND ITEMS:**

Mr. Rogers noted there were 2 Bond Items on December's agenda and if there were no objections, Bond Item 2 would be discussed first as it pertained to Action Item 1 that was just acted upon. Hearing no objections, Bond Item 2 was discussed first.

### **BOND ITEM 2**

Mr. Lief informed the Board Bond Item 2 was for the Department of Corrections and Rehabilitation San Diego County Women's Detention Facility, Jail Replacement Project and if approved, the requested action would adopt a resolution (1) declaring the official intent of the Board to reimburse certain capital expenditures from the proceeds of any future interim loans and/or the sale of tax-exempt bonds, (2) approving and authorizing the execution and delivery of a Memorandum of Understanding (the "MOU"), and (3) other related actions. Mr. Lief reminded the Board that this action would not be committing any state funds; rather it would allow the County to eventually be reimbursed for any reimbursable project activities by the state assuming the outstanding unresolved issues are addressed. This would allow the project to proceed and would present no risk to the state. During the term of the MOU, the San Diego Project would be subject to state oversight and approvals in order to maintain eligibility in the AB 900 Jail Financing Program. Once all issues are resolved, a future bond item would be presented to the Board for a resolution that would authorize staff to initiate interim financing loans from appropriate state resources. Mr. Lief stated in summary, staff recommended adoption of the resolution.

Mr. Harvey questioned how long the state will wait for resolution of the court cases. Mr. Lief stated the term of the agreement would terminate the earlier of the 18 months after the construction start date, December 31, 2014, or when staff returns to the Board with an item for the Board to enter into regular agreements with the County. Mr. Harvey inquired if the lawsuits are not resolved and the County does not return to the Board the state moneys could then be reallocated in 2014. Mr. Lief confirmed Mr. Harvey's question. Mr. Tuttle asked if the County was committed to the project schedule regardless of the litigation. Mr. Lief informed Mr. Tuttle that the County is prepared to move forward. Mr. Lombard asked about the significance of waiting 18 months after the construction start date for the conditions to be satisfied. Mr. Lief stated the 18 months is intended to ensure time to sell the bonds as tax-exempt for the project.

There were no further questions from the Board and none from the public.

**A motion was made by Mr. Tuttle and second by Mr. Lombard to approve and adopt the resolution Bond Item 2. Bond Item 2 was approved by a 5-0 vote.**

### **BOND ITEM 1**

Mr. Lief informed the board that Bond Item 1 was for the Department of Corrections and Rehabilitation 2010 Series A, Project Addition, California State Prison, Los Angeles County, Enhanced Outpatient Program Treatment and Office Space (LAC Project). If approved, the requested action would adopt a resolution (1) determining that a Cost Reduction has occurred with respect to the CIW, Chino Acute/Intermediate Care Facility Project financed with the 2010A Bonds; (2) approving and authorizing actions related to adjustment of the Base Rental payments under the Facility Lease for the CIW Project, (3) approving the execution of a Site Lease and a Facility Lease and related certificates for the addition of the LAC Project pursuant to section 212.07 of the Supplemental Indenture for the 2010A Bonds, and (4) other related actions. Mr. Lief stated in summary, staff recommended adopting the resolution.

There were no questions from the Board and none from the public.

**A motion was made by Mr. Lombard and second by Mr. Tuttle to approve and adopt the resolution Bond Item 2. Bond Item 2 was approved by a 5-0 vote.**

## **CONSENT ITEMS:**

Mr. Rogers stated the Consent Calendar consists of Items 1 through 10. In summary these items were proposed:

- 5 requests to authorize site selection [Items 1-5]
- 1 request to recognize a scope change [Item 6]
- 1 request to recognize revised project cost [Item 7]
- 1 request to approve preliminary plans for site cleanup Phase II and performance criteria and approve concept drawings for Design-Build Phase I—Site Preparation and Non-Secure Facilities [Item 8]
- 1 request to authorize the Department of Corrections and Rehabilitation's execution of: a Ground Lease with the County of Madera; an Easement Agreement for Grants of Access, Utilities, and Repairs Easements with the County of Madera; and a Right of Entry for Construction with the County of Madera [Item 9]
- 1 requests to establish scope, cost, and schedule [Item 10]

There were 2 legislative notification letters associated with the Consent Calendar, one for item 6, a scope change, and one for item 10, to establish the scope, cost and schedule.

The review period has expired without any adverse comment from the Legislature.

Staff recommended approval of the Consent Calendar consisting of Consent Items 1 through 10.

Mr. Harvey asked a question regarding Consent Item 5. He noticed Consent Item 5 indicated a Phase II ESA investigation recommendation and asked if part of that action is to require a Phase II ESA investigation. Mr. Rogers informed the Board typically when General Services or the Board recommends a Phase II ESA investigation he was informed by staff one is completed.. Mr. Harvey stated that he was aware of an instance in the past when a Phase II ESA investigation was recommended for a particular project and one was never completed; therefore, Mr. Harvey asked to pull Consent Item 5 from the Consent Calendar for a separate vote to include a requirement that performing a Phase II ESA investigation be added to the Board's action. Consent Item 5 was pulled from the Consent Calendar to be voted on separately.

Mr. Tuttle inquired into Consent Item 8, the infill project, as to whether this was a single hospital to serve the state or were there still plans to do additional facilities. Mr. Tuttle further asked what the funding and timeline are for this project. Mr. Rogers stated that at one-time three CDCR hospital facilities were contemplated but, now there would only be one main hospital facility with smaller improvement projects at each prison throughout the state. Mr. Lief informed the Board that the project is completely funded by the infill appropriations of AB 900. The project has four construction packages. The first two are for site preparation and the first phase has begun, and CDCR is in construction. The design-build phase will begin the middle of 2011.

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

**A motion was made by Mr. Harvey and second by Mr. Tuttle to approve Consent Calendar Items 1-4, and 6-10. The Consent Items were approved by a 3-0 vote.**

**A motion was made by Mr. Harvey and second by Mr. Tuttle to approve staff recommendations for Consent Calendar Item 5 with a requirement that the appropriate department conduct a Phase II ESA investigation. Consent Item #5 was approved by a 3-0 vote with the additional requirement.**

## **ACTION ITEMS:**

**ACTION ITEM 2:** Mr. Rogers informed the Board Action Item 2 would approve preliminary plans and recognize a scope change for the California Highway Patrol's Oceanside Area Office located in San Diego County. On November 24, 2010, a 20-day letter was sent to the Joint Legislative Budget Committee recommending the Board recognize this scope change. The notification period expires tomorrow, December 14, 2010. This request was an Action Item because it was contingent on the review period expiring without adverse comment. Staff recommended approving preliminary plans, and recognizing a scope change contingent on expiration of the 20-day notification period without adverse comments.

**A motion was made by Mr. Tuttle and second by Mr. Harvey to approve Action Item 1. Action Item 1 was approved by a 3-0 vote.**

Mr. Brian Dewey, Assistant Administrative Secretary presented the next two Action Items for the Department of Parks and Recreation.

**ACTION ITEM 3:** Mr. Dewey informed the Board Action Item 3 would authorize acquisition of .44 acres adjacent to the Governor's Mansion State Historic Park. The request was recommended as an Action Item to highlight the fact that the building on this property, which was built in 1933, was rated as a Seismic Level Risk VI on DGS' seismic risk rating system, which ranges from 1 (least risk) to 7 (highest risk), and this building exceeded the state's minimum seismic requirements.

Mr. Dewey reported the Seller (Bentley Development) was in the process of acquiring the property from the Church of Scientology, the current owner, and escrow on that deal had not yet closed. Once Bentley acquired the property, they would then lease it back to the Church of Scientology for up to 1 year while the Church readied other space for its Sacramento operations; it is the view of Board staff that the current lease back to the Church did not adequately address potential liability to the state due to the known seismic condition of the building. In addition, DGS was unable to verify the condition of the title that would be held by the seller prior to the close of escrow with the state and there was a possibility of unknown title issues appearing after the close of escrow. Although the seller made certain representations and warranties that title would be conveyed to the state without any issues and Parks obtained a Pro-forma Title Policy that indicated clear title at that time, there was still some risk that unknown title issues could manifest. Representatives from Parks, DGS, and the Attorney General's Office were present to answer questions the Board may have.

Mr. Dewey stated, due to the noted concerns, staff recommended the Board not approve acquisition for this transaction in its current form because of the seismic deficiencies of the building and the fact the liabilities associated therewith had not been adequately addressed. Mr. Dewey reported Board staff have been working with the Attorney General's Office to craft lease amendments to limit the state's liability if the state were to acquire the property but, we do not know if these lease amendments are acceptable to the Church.

Mr. Harvey noted that while he appreciated staff efforts to limit liability to the state, his concerns went beyond liability and focused on potential injury and loss of life related to acquiring the leased-back seismically deficient building that would be open to the public. Mr. Tuttle asked about the urgency on acting on this issue this month. Mr. Warren Westrup, Parks Special Projects Manager, explained that if the Board were to hold-off on making a decision on this Item today the state could lose out on this critical location. Ms. Kathy Taylor, Parks staff, presented information on the project, the building, and potential state use of the building. Mr. Harvey voiced his concern regarding the buildings seismic risk level and the state placing members of the public at risk for any amount time. Mr. Roger Duke, President and CEO of Bentley Acquisitions, gave background information on the use of the building and the details of the acquisition.

Mr. Dennis Corelis, DGS Seismic Specialist, gave a brief interpretation of the seismic engineering report prepared for the building and state seismic policy in general. Mr. Tuttle suggested the Board approve a contingent action. Board staff presented the Board with an alternative recommendation that would include contingencies for the concerns as discussed. Specifically, Mr. Dewey suggested the following action:

**Approval of the acquisition is contingent upon Board staff having verified that the lease amendments drafted by the Attorney General's Office have been incorporated in substantially the same form as drafted into the lease that will be assigned to the state and Board staff have verified no title issues that would be adverse to the state prior to acquisition.**

Mr. Dewey further clarified that the above action would allow the reduction of the lease term, between Parks and the Lessee, from 2 years to 1 year.

**A motion was made by Mr. Tuttle and second by Ms. Bryant by to approve staff recommendation for Action Item 3. Action item 3 was approved by a 2-1 vote, with Mr. Harvey voting no.**

ACTION ITEM 4: Mr. Dewey reported Action Item 4 would authorize acquisition of approximately 8 acres for the California Indian Heritage Center (New Park Unit) in Yolo County. Mr. Dewey noted that this request had been recommended as an Action Item because the purchase price exceeds the appraised value of the property, as approved by DGS, by \$200,000 or 8.7 percent. It was further noted that the Board does not normally approve acquisitions in excess of the appraised value.

Mr. Dewey stated that the State Constitution prohibits the gift of public funds. In most circumstances, paying more than the fair market value for real property could be viewed as a gift of public funds. However, on rare occasions, courts have determined that paying more than the fair market value did not result in a gift of public funds because, in those cases, the public benefit of the purchases clearly outweighs the additional costs.

Parks' legal counsel provided the Board with an opinion that contemplated the possible Constitutional issue related to the gift of public funds and concluded that the proposed purchase price does not constitute a gift of public funds because of the significant public benefit.

The public benefit, as described by Mr. Dewey and Parks staff, for this acquisition is two-fold. First, Parks has indicated that without this property, there will be insufficient buildable space on an adjacent 42-acre property being offered to Parks by the City of West Sacramento at no cost, to build the California Indian Heritage Center at this location, which is otherwise well suited for this use. Because of the past difficulties locating a suitable site for the project, the search for additional sites could take years and add significant costs to this project. Finally, by acquiring this property at slightly above fair market value, Parks would be able to preserve a promising option to acquire the larger 42-acre property at no cost, which would result in significant overall project cost savings. Parks argued that each of these public benefits justify the negotiated purchase price of \$2.5 million.

Mr. Dewey also noted that although the City of West Sacramento has made significant commitments to transfer the adjacent property to Parks, the City has retained some discretion to withhold final approval of the gift. While there is some risk that the purchase of this property may not result in desired public benefits, these risks do not appear to outweigh the public benefit of preserving the ability to develop a California Indian Heritage on the City's property.

Mr. Dewey recommended that the Board adopt the staff recommendation to authorize acquisition.

Mr. Tuttle asked when the appraisal had been preformed. Mr. Jerry Leong of DGS staff stated the appraisal was at least 6 months current. Mr. Tuttle expressed his concerns that the state would

pay more than fair market value for property, especially given the current economic conditions and the state's financial difficulties. Parks staff pointed-out that the acquisition this property would allow Parks to acquire an adjacent 42-acre parcel worth approximately \$6 million at no cost, thus, the additional \$200,000 paid over the estimated fair market value would leverage the \$6 million value of the 42-acre parcel, which would result in significant savings and benefit to the state.

**A motion was made by Mr. Harvey and second Ms. Bryant by to approve staff recommendation to authorize acquisition. Action Item 3 was approved by a 2-1 vote, with Mr. Tuttle voting no.**

### **OTHER BUSINESS**

Mr. Rogers stated there were no Items under Other Business.

### **REPORTABLES:**

Mr. Rogers informed the Board there were 4 items to report approved by staff under the authority delegated by the Board.

### **NEXT MEETING:**

Mr. Rogers announced the next Board meeting is scheduled for January 14, 2011, at 10:00am, at the State Capitol, in Room 113.

There were no comments or questions from the public.

The meeting was concluded at 11:30 am.