



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
December 9, 2011

MINUTES

PRESENT:

Mr. Pedro Reyes, Chief Deputy Director, Policy, Department of Finance
Mr. Esteban Almanza, Chief Deputy Director, Department of General Services
Mr. Martin Tuttle, Deputy Director, Department of Transportation

STAFF PRESENT:

Greg Rogers, Administrative Secretary
Theresa Gunn, Assistant Administrative Secretary
Brian Dewey, Assistant Administrative Secretary
Chris Lief, Principal Budget Analyst
Madelynn McClain, Budget Analyst
Shryl Thomas, Budget Analyst
Natalie Daniel, Budget Analyst
Randy Katz, Budget Analyst
Stephen Benson, Budget Analyst
Shelly Renner, Staff Counsel

CALL TO ORDER AND ROLL CALL:

Mr. Pedro Reyes, Chairperson of the Board and Chief Deputy 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.

Mr. Reyes informed the Board that Action Item #1 would be heard prior to approval and adoption of the minutes.

ACTION ITEMS:

ACTION ITEM 1: Action Item #1 was for the Administrative Office of the Courts' (AOC) New Woodland Courthouse Parking Site, located in Yolo County.

Ms. Madelynn McClain, Budget Analyst with the Department of Finance, presented the item to the Board. Ms. McClain stated that the Board approved this site for site selection in December 2010 and the acquisition of the main courthouse site in March 2011. Ms. McClain noted that this item was submitted to Board staff one month past the due date to be included on the December 2011 Board agenda, which resulted in a limited time frame for Board staff to review and analyze the transaction. In this compressed review time, staff noted the following major concerns with the acquisition.

- 1. Relocation assistance and potential unknown relocation costs.** A complete relocation analysis is necessary to determine what, if any, relocation assistance would be required for the current tenant if the AOC does not renew the lease in April 2012.

2. **Page 11 under Section 12 of the Property Acquisition Agreement, specifically the “Post-Sale Covenants, Railroad Proximity Covenant” section.** Two sections were found to be unacceptable to staff. In summary, the two sections were:

- a. Section 12(d)(3)(i) – states that the buyer is knowingly purchasing a piece of property next to an active rail yard, while containing vague wording that denies the state the ability to “...seek compensation or damages from SELLER with respect to any impact upon the Property which may result from the Permitted Effects.” Staff requested removal of this statement with further development and clarification of the definition of Permitted Effects.
- b. Section 12(d)(3)(ii) – contains language that requires the State of California, the Judicial Council of California, and the AOC to waive all rights to “(i) institute legal proceedings against SELLER to reduce or lessen the Permitted Effects, and (ii) directly participate in petition drives, lobbying efforts or other activities seeking the enactment of federal, state or local laws or ordinances to reduce or lessen the Permitted Effects specifically with respect to the Property.” Staff requested removal of the entire section due to the fact the Judicial Council does not have the authority to restrict the state’s ability to pursue legal action against another party, nor to restrict lobbying efforts.

3. **Page 13 under Section 16 of the Property Acquisition Agreement, specifically the “As-Is Sale; Release by State” section.** It is not the state’s normal practice to accept land with an “as-is” clause; however, it is within the Board’s discretion to accept such a clause as long as sufficient protections are in place. Ms. McClain noted concerns in the following areas:

- a. The presence of underground storage tanks
- b. Subsurface anomalies
- c. Historic uses of the property noted in the Condition of Property Statement
- d. Increase risk of unforeseen conditions that could result in future state liabilities
- e. Limited Representations and Warranties provided by Union Pacific

Ms. McClain stated that although additional information indicating the seller’s consideration to modify the Property Acquisition Agreement to address some of the above concerns recently surfaced, there was insufficient written information; therefore, staff recommended deferment of this request to a subsequent Board meeting to give the AOC sufficient time to address the outstanding issues and resubmit the acquisition package for review.

Representatives from the Administrative Office of the Courts were present to provide an update to Action Item #1 and answer any proposed questions by the Board. Mr. Reyes invited AOC staff to approach the podium and address issues presented by Ms. McClain.

Mr. Warren (Mike) Smith, Project Manager for the Yolo Courthouse, appeared on behalf of AOC. Mr. Reyes asked Mr. Smith why the AOC was late in submitting the action item to Board staff. Mr. Smith apologized for the late submittal and stated that late submittal was due in part to negotiations within AOC as well as an approximate year spent negotiating terms with Union Pacific, who had been hesitant to sell the property.

Mr. Smith explained that out of the 13 parcels reviewed to accommodate the 225 off-site parking spaces, this parcel site was the only practical and available parcel site that is equipped to handle such spaces without the inconvenience of impacting residential neighborhoods.

In regard to staff’s concerns presented by Ms. McClain, Mr. Smith addressed the following:

- Language under Section 12(d)(3)(i) was modified to acknowledge the presence of an active Union Pacific rail line that has normal daily operations and creates noise vibrations.

- Language under Section 12(d)(3)(i), regarding “Permitted Effects” that could be misinterpreted to state that negligent acts and derailments were under the Property, was deleted by Union Pacific. The revised language now only includes the daily operations of the railroad.
- Language under Section 12(d)(3)(ii) has been completely deleted.
- The use of the term “as-is” in the Property Acquisition Agreement would remain.

Mr. Reyes inquired about the staff’s concerns regarding the possible leak of underground storage tanks. Mr. Smith replied that although no signs of leaking were present during groundwater testing, this possibility would be taken under consideration and handled during project construction. Mr. Smith further stated that due to the parking lot being paved and capped, eliminating the escape of vapors, the AOC assured the Board the site is clean.

Mr. Reyes asked if Mr. Smith’s information resolves Board staff’s concerns regarding the environmental liability policy. Ms. McClain answered that Jim Mullen, Risk Manager with the Administrative Office of the Courts, reassured her that an Environmental Liability Policy would be required through construction and up to two years afterwards.

Mr. Reyes asked Mr. Rogers if staff’s concerns were addressed. Mr. Rogers replied that the basic concerns were addressed.

Mr. Reyes invited members from the public to speak.

The Honorable Lois Wolk, Senator of the Fifth Senate District, expressed support of the Yolo County project and stated that an opportunity to acquire property from the railroad is rare and should not to be missed. Senator Wolk thanked PWB staff for their diligence in pushing this item through, and Board staff for their excellent suggestions and legitimate concerns. Senator Wolk stated that this is a wonderful project and urged the Board to allow the project to move forward. Mr. Reyes thanked Senator Wolk for her support and involvement in such issues.

The Honorable Dave Rosenberg, Presiding Judge with the Yolo Superior Court, thanked the Board and staff for their diligence on this project and expressed remorse for the compressed time frame. Judge Rosenberg reiterated the difficulty of negotiating with railroads and stated how fortunate they were to be in a position to negotiate property with the railroad. He thanked Senator Wolk for her continued support.

Judge Rosenberg expressed great concern that any further time delay could result in Union Pacific withdrawing their offer. Because of this, he suggested the Board approve the project subject to a side letter with AOC which delineates a couple agreements, such as the purchase of suggested insurance, removal of underground storage tanks, and any other suggestions from Board staff.

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

Given the statements from AOC and supporting members, staff gave an alternative recommendation to approve the acquisition contingent upon the following:

- An executed Property Acquisition Agreement with the following changes, as approved by staff:
 - further define “Permitted Effects” as noted in Section 12(d)(3)(ii);
 - deletion of the fourth sentence in Section 12(d)(3)(ii); and
 - deletion of Section 12(d)(3)(ii) entirely.
- The AOC obtaining an Environmental Liability Policy that will offset the “as-is, where-is” language.

With the concurrence of AOC staff, a motion was made by Mr. Almanza and seconded by Mr. Tuttle to approve and adopt the amended recommendation. The Action Item was approved by a 3-0 vote.

APPROVAL OF THE NOVEMBER 10, 2011 MEETING MINUTES

The next order of business was approval and adoption of the minutes from the November 10, 2011 meeting. Mr. Rogers reported staff had reviewed the minutes and recommend approval and adoption of the minutes.

A motion was made by Mr. Tuttle and seconded by Mr. Almanza to approve and adopt the minutes. The minutes were approved by a 3-0 vote.

CONSENT ITEMS:

Mr. Rogers informed the Board there were 14 Consent Items. In summary, these items were proposed:

- 1 request to accept real property through a transfer of title [Item 1]
- 3 requests to authorize site selection [Items 2, 4, & 7]
- 1 request to authorize acquisition [Item 3]
- 2 requests to authorize acceptance of a no-cost acquisition [Items 5 & 9]
- 1 request to approve preliminary plans [Item 6]
- 4 requests under 3 Consent Items to consent to an Agreement and Grant of Easement that affects real property encumbered by various lease revenue bonds [Items 8, 10 & 11]
- 3 requests to recognize revised project costs [Items 12, 13 & 14]

Staff recommended approval of Consent Items 1 through 14.

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

A motion was made by Mr. Almanza and seconded by Mr. Tuttle to approve Consent Calendar Items 1 through 14. The Consent Items were approved by a 3-0 vote.

OTHER BUSINESS

Mr. Rogers stated that there was one item under Other Business.

Mr. Rogers reported that the item under Other Business was to consider authorizing the execution of two contracts (one with Cushman & Wakefield Western, Inc. and the other with Integra Realty Resources) for valuation services to assist the Board with its asset transfer financings.

Staff recommended authorizing the execution of the two contracts

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

A motion was made by Mr. Tuttle and seconded by Mr. Almanza to approve the two contracts. The motion was approved by a 3-0 vote.

REPORTABLES:

Mr. Rogers reported that there were four reportable items for this month:

- 2 requests to consider approving an augmentation:
 - Department of Motor Vehicles, Shasta County, in the amount of \$100,000
 - Department of Parks and Recreation, Los Angeles County, in the amount of \$16,000

- 2 requests to consider approving a reversion of project savings for the Department of Corrections and Rehabilitation:
 - Fresno County, in the amount of \$6.1 million
 - Marin County, in the amount of \$17.9 million

NEXT MEETING:

Mr. Rogers stated that the next Public Works Board meeting is scheduled for **Friday, January 13, 2012, at 10:00 a.m., at the State Capitol, in Room 113.**

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

The meeting was adjourned at 10:30 a.m.