

Agenda Item No. 3



**PLEASE NOTE:**

**In an effort to conserve paper, copies of the agenda items and staff reports for the November 15, 2006, SMART District Board meeting are not included in this packet, but are available in the Office of the District Secretary.**



## **AGENDA: SMART DISTRICT BOARD MEETING**

**November 15, 2006**

**1:30 PM**

San Rafael City Council Chambers  
1400 Fifth Street, San Rafael

- I. Call to Order
- II. Approval of October 18, 2006 Board Meeting Minutes – **DISCUSSION/ACTION\*\***
- III. Consent Agenda – **DISCUSSION/ACTION\*\***
  - III-a. SMART Financial Update Project Cost Report - **INFORMATION \*\***
  - III-b. Legal Services Agreement (Greg Dion)- – **DISCUSSION/ACTION\*\***
- IV. Agenda Review
- V. Public Comment on Items Not on the Agenda (Comments Limited to 3 Minutes)
- VI. SMART General Manager Report (Lillian Hames) – **DISCUSSION**
- VII. Real Estate Committee Report (Lucrecia Milla) – **DISCUSSION**
- VIII. District Next Steps (Lillian Hames) – **DISCUSSION/ACTION\*\***
  - A. 2006 Election Results
  - B. Direction to Staff
- IX. **Closed Session**
  - a. Closed Session: Conference with Real Property Negotiator (Govt. Code. Section 54956.8)  
Property: Northwestern Pacific Railroad (NWP) Right-of-Way from NWP Milepost 53.8 in Santa Rosa, Sonoma County.  
District Negotiator: Lillian Hames, General Manager  
Negotiating Parties: Railroad Square, LLC  
Owner: SMART District
  - b. Closed Session: Conference with Real Property Negotiator (Govt. Code. Section 54956.8)  
  
Property: Northwestern Pacific Railroad (NWP) Right-of-Way from NWP Milepost

17.5 in San Rafael, Marin County; Gap Closure Project  
District Negotiator: Lillian Hames, General Manager  
Negotiating Parties: TAM, Caltrans  
Owner: SMART District

c. Closed Session: Conference with Legal Counsel-Anticipated Litigation.  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9  
Marin Audubon Society v. SMART, File# 2708-1

d. Closed Session Conference with Legal Counsel-Anticipated Litigation.  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9  
Anna Carissa Suarez v. SMART, et al. (Sonoma County Superior Court, case  
number 2399507)

e. Closed Session: Pending Litigation (Govt. Code, section 54956.9, subd. (a) )  
Frances Wilson v. SMART, et al. Marin County Superior Court, Case # CV-060059.

f. Closed Session: Conference with Real Property Negotiator (Govt. Code. Section  
54956.8)  
Property: Northwestern Pacific Railroad (NWP) Right-of-Way from NWP Milepost  
53.8 in Santa Rosa, Sonoma County.  
District Negotiator: Lillian Hames, General Manager  
Negotiating Parties: Santa Rosa Cannery, LLC  
Owner: SMART District

**X.** Closed Session Report

**XI.** Next Meeting Date: December 20, 2006, **1:30 pm**, Sonoma County Board of  
Supervisors Chambers, Santa Rosa - **DISCUSSION/ACTION**

**XII.** Adjournment - **ACTION**

DISABILITY ACCOMMODATION: if you have a disability that requires the agenda materials to  
be in an alternate format or that requires an interpreter or other person to assist you while  
attending this meeting, please contact SMART at least 72 hours prior to the meeting to ensure  
arrangements for accommodation.

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\* Information will be provided at the meeting. \*\* Information attached.



**MINUTES OF SMART BOARD MEETING**  
**October 18, 2006**  
**1:30 PM Sonoma County Board of Supervisors Chambers**  
**575 Administration Drive, Room 100A**  
**Santa Rosa**

**I Call to Order**

Chair Boro brought the meeting to order. The following Directors were present:

Mike Kerns  
Mike Reilly  
Deborah Fudge  
Mike Healy  
Peter Breen  
Charles McGlashan  
Barbara Pahre  
Jim Eddie

Directors Hal Brown, Carole Dillon-Knutson and Robert Jehn were absent

**II Minutes of the September 20, 2006 SMART Meeting**

Chair Boro asked for approval of the September 20, 2006 SMART Board meeting minutes. Co-Chair Kerns moved to approve the minutes, Director Breen seconded. The minutes were unanimously approved.

**III Consent Agenda**

Chair Boro brought up the Consent Agenda and asked for approval. Director Pahre moved to approve and Vice-Chair Kerns seconded; with no dissenting votes, the consent agenda was approved.

**IV Agenda Review**

Chair Boro asked if there were any changes to the Agenda from staff or the Board. There were none.

**V Public Comment on Non-Agenda Items**

Steve Birdlebough, Friends of SMART, stated there was a letter to the editor of the Press Democrat noting public confusion in regards to freight and passenger service. He thought it should be made clear that there is an operating agreement between SMART and NCRA governing operations and the priority of passenger rail service. He further noted that the public should understand that freight does not take money from SMART.

Chairman Boro stated that the City of San Rafael City Council unanimously voted to endorse SMART's ballot measure. He went on to explain that he was providing copies of the schedule for the Novato Narrows Project, noting Caltrans schedule for completion in 2020.

#### **VI SMART General Manager Report**

Ms. Hames stated that staff has been working on the paperwork to process the \$1.5 million in new TCRP funding. Staff has also been working on finalizing the scope of work for the DEIS and would come back to the Board to propose a contract, budget and schedule in the near future. Staff was also in negotiations with Creative Housing on the Railroad Square project and will be providing updates to the Board.

#### **VII Real Estate Committee Report**

Lucrecia Milla stated that the last committee meeting was cancelled and there was nothing to report out at this time.

#### **VIII Removal of Petaluma Trestle Bridge and Spur Relocation**

Ms. Hames gave an overview of the Petaluma Trestle Bridge issue and the actions that had been taken by the Board in the past. She introduced Mike Bierman, City Manager of Petaluma and representatives from the Army Corps of Engineers. Ms. Hames presented an aerial photograph of the project. She noted that as part of the flood control program, the old railroad trestle bridge was to be torn down and a new industrial spur is constructed in it's place. The City of Petaluma and the US Army Corps would like to delay implementation of the industrial spur until a later time due to a recent funding gap. She noted that this topic will be covered in closed session, as well as open session.

Vice-Chair Kerns asked if there were cost estimates available. Mike Bonn, City of Petaluma, stated the cost originally was \$3.2 million, \$1.4 million for removal of the bridge and \$1.8 million for other remaining items such as the wall. Kerns asked if SMART would decide to go ahead with this, when would the work be done? Mr. Bonn stated it would happen as soon as possible. Director Healy stated it was the last work that needed to be completed for the 100 year flood control project. Director Breen asked if the spur would be needed in the near term. Greg Dion stated it was a legal obligation with regards to freight service. Mr. Bierman stated the total cost for the City's flood control project is \$40 million. What remains are three pieces: \$1.4 million for trestle removal and replacement of the spur line and \$1.8 for river wall work along the river. Mr. Bierman noted that federal funds will be sought to complete the program, that \$3.2 million was currently in the House budget and that Senator Boxer had committed to placing similar wording in the Senate bill.

He went on to note that the City of Petaluma had been working with the Corps and there were two options to remove the trestle bridge, one by an Army Reserve Unit or by a private contractor. He said SMART's approval was required prior to removing the old trestle bridge in advance of the rainy season.

David Schonbrunn stated SMART did not create the floods and why should SMART pay for it. His suggestion would be to have the City of Petaluma borrow the money and then wait for congressional reimbursements themselves. He felt the City should pay for the remedy. He stated that the flood control EIR had certified the project with a replacement bridge going to Dairyemen's. He said a value engineering study had not been completed to

show that the industrial spur was cheaper than building a new bridge. Schonbrunn went on to state that the ultimate use of the Hunt and Behrens site is the real reason the bridge was not replaced and SMART is being asked to give up important rights that compromise railroad operations for a land use issue. He urged the Board to reconsider this proposal and at a minimum request bonding and indemnification for the proposal.

Tom Roth, Congresswoman Woolsey's Office, stated federal funding would be programmed for this effort. He noted this is not just a land use issue, but a safety issue for Petaluma. He noted he had met with NCRA and SMART on this issue and urged the Board to take action quickly to remove the bridge.

Roger Bain, Dairymen's Feed, stated their concern was a commitment that funds would be available to construct the industrial spur.

Director McGlashan asked what the impacts to SMART would be. Ms. Hames stated the spur should not interfere with passenger service but that the switch would have increased operating and capital costs to SMART and that those costs were to be absorbed by the City of Petaluma, according to the draft agreement developed in 2004 but not signed by the City. Director McGlashan asked if there would be a risk to SMART if funding does not appear. Ms. Hames stated it would be a risk to SMART if we allow the trestle bridge to be torn out without a commitment to a capital and operating cost replacement.

### **IX Closed Session**

Chair Boro stated the Board would now go into closed session.

### **X Closed Session Report**

Mr. Dion stated on Item a, direction was given to staff to add four additional conditions to the prior MOU with the City of Petaluma regarding the spur line and the trestle: 1) The City would guarantee construction of the spur line with either a bond, letter of credit or deposits into an escrow account to guarantee the construction of the spur line, 2) The City, if the Corps does not in the near future, would replace the spur when it is legally needed or within one year of adding these conditions to the agreement. If the spur line is not constructed by the time indicated legally or within one year as stated in the agreement, SMART would access those funds to have the work done to construct the spur line, 3) The City will guarantee and pay for any increased operating costs, i.e. lost profit to any entity, if the spur line is not replaced in the time that would be legally necessary. 4) The City will guarantee the workmanship of construction of the trestle and will defend and indemnify SMART with regard to any liability that may result from the deconstruction or reconstruction of the trestle.

Chair Boro asked for a motion. Vice-Chair Kerns moved approval of the amended agreement and Director Healy seconded.

Mr. Schonbrunn stated the conditions you just recommended would not cure the issue of liability that would be caused by building the spur rather than replacing the bridge.

Director Reilly stated his understanding was that the operating agreement with NCRA would place any liability for freight service with the freight carrier and any liability for passenger operations with SMART. Mr. Dion confirmed that statement.

Chair Boro called for the question; there were 8 ayes and 1 no from Director Reilly.

Mr. Dion continued to report out on closed session items. On item b) it was not discussed, item c) there were updates given but nothing further to report, item d) there were updates given but nothing further to report and item e) there were updates given but nothing further to report.

**XI Next Meeting Date November 15 2006 1:30p.m., San Rafael City Council Chambers, San Rafael**

Director Breen stated that the wrong date was listed for the next Board meeting. The correct date would be November 15, 2006 vs. November 18, 2006.

**XII Adjournment**

The meeting adjourned at 3:10 p.m.