NEVADA COUNTY TRANSPORTATION COMMISSION
Minutes of Special Meeting
March 9, 2011

A special meeting of the Nevada County Transportation Commission (NCTC) was held on Wednesday, March 9, 2011, in the Nevada County Board of Supervisors Council Chambers, 950 Maidu Avenue, Nevada City, California. The meeting was scheduled for 8:30 a.m.

Members Present: Nate Beason, Ann Guerra, Sally Harris, Larry Jostes, Dan Miller, Ed Scofield

Members Absent: Carolyn Wallace Dee

Staff Present: Dan Landon, Executive Director; Nancy Holman, Administrative Services Officer

Standing Orders: Chairman Jostes convened the Nevada County Transportation Commission meeting at 8:30 a.m.

Pledge of Allegiance:

ACTION ITEM

1. Authorize Execution of Funding Agreement with City of Grass Valley Committing Redevelopment Agency Funds for Construction of the Dorsey Drive Interchange Project.

Executive Director Landon explained that the purpose of the agreement was to facilitate the transfer of $5,235,000 of Redevelopment Agency (RDA) funds from the City of Grass Valley to the NCTC to be held for the express purpose of constructing the Dorsey Drive Interchange. He noted there was a letter in the agenda packet from Dan Holler, Grass Valley's City Administrator, requesting that the Commission meet and address this subject. A second item was a resolution that was adopted the night before by the RDA and Grass Valley giving the City authority to hold the funds and then transfer them to NCTC. Also included in the agenda packet was an agreement between NCTC and Grass Valley. Executive Director Landon stated that because there had been questions raised about the agreement the night before, a red-lined copy of the agreement with changes made by NCTC's legal counsel, Nancy Miller, had also been provided to each Commissioner. Ms. Miller's changes included a statement that NCTC is not making any representation that the Dorsey Drive Interchange project is or will be fully funded, and any allocations to the project will be subject to future NCTC action. She deleted the Eligible Costs Section in the agreement to indicate that all of the funds are for construction related costs of the Dorsey Drive Interchange. This allows NCTC to terminate the agreement if NCTC determines that the project is not fully funded. She modified the Exhibit A [Project Description, Cost Estimate, and Schedule] to clarify that not all of the funding had been allocated or received and is based on estimates. Mr. Landon noted that in reviewing the agreement, staff had found some typos that needed to be corrected.

Referring to Grass Valley's intention to transfer RDA funds to NCTC, Commissioner Beason questioned, "This is legal, right?" Chairman Jostes responded that staff assured him that the issue had been thoroughly reviewed by legal counsel. Chairman Jostes asked Executive Director Landon if there were any issues of legality that were troubling in any way. Mr. Landon responded there were none and added that Nancy Miller, NCTC's attorney, was the principle author of the agreement and assured him that based on the fact that NCTC has the ability to give the money back, the Commission is not in any jeopardy should the state determine that the city acted inappropriately.

Commissioner Beason stated he supported the transfer of the funds which support the project. He questioned what the logic was to make the city think the RDA funds were more secure under NCTC. He wondered if it was the idea that the funds were applied toward a project. Executive Director Landon responded that was the indication from the city.

Chairman Jostes stated that the funding was partially encumbered by the agreement between Grass Valley and its Redevelopment Agency, and the city had felt that another level of segregation was appropriate. Executive Director Landon responded that he was correct. Chairman Jostes questioned, if there was no potential of the state government interjecting itself into this, would NCTC be considering an agreement to receive the funds? Mr. Landon responded this was being done solely in response to the potential of having the money taken by the state, so the city was attempting to have it under contractual agreement. Chairman Jostes questioned that if the state were to come back to NCTC and other entities and ask for the money, who would be their contact: NCTC, Grass Valley, or the Redevelopment Agency? Who would have to address the concerns of the state? Mr. Dan Holler, City Administrator of Grass Valley, responded there were two different agreements in place; Grass Valley had an agreement between the Agency and the city, and then the city and NCTC had an agreement with multiple pieces to it. If there was an issue in terms of dissolution of the Redevelopment Agency, the state would come back to the city. Therefore the city would be on the "hook", if you will, for those funds to be moved back to the Redevelopment Agency and distributed under whatever new legislation came about. Chairman Jostes stated that with the agreement NCTC would be signing, the City of Grass Valley had the right for an immediate termination if they so desired, based on this reason, which would in fact force the movement of the money back to the city. Mr. Holler agreed the money would go back to the city, back to the Redevelopment Agency, and then to a successor agency. He clarified the reason for the contract. That under existing legislation, to the extent you have funds committed, and a contractual obligation, which is a legal obligation of those funds, there is protection that the state will not come in and impair the contract. Mr. Holler explained that by creating a contract between the Agency and the city, and then further having an agreement with NCTC for a particular project, it brought one more level of protection that those funds were secured. Mr. Holler stated that under state and federal contractual law, the state cannot come in and say, "we are going to violate your contract and make you default on those obligations".

Chairman Jostes remarked that one weakness of what Mr. Holler said was that these funds would now be considered obligated through a contract, but in fact, they only become obligated if the project goes forward. So using the term "that they are contracted to an obligation", Grass Valley believes it makes the case that it is in fact obligated, if certain events take place. Mr. Holler responded in the affirmative. He said they have a contractual obligation to provide those funds under those conditions. The City has an "O.P.A." agreement, an owner participation agreement, for example, and as long as the private party performs, the city makes the payment. It would be no different than that. Mr. Holler continued that the one uniqueness to this agreement is that the city actually has the cash in hand that they can move over, so there is no way for them to default. He stated that they can move the cash into the position to say we have fully funded and secured our obligation. If the other factors do not happen, then Chairman Jostes would be correct and the funds would need to be moved back. It would be similar to other obligations the city has with other parties. If they do not perform, the city does not make the payment, and those funds become deobligated and would go back to whatever successor agency may get created through new legislation.

Chairman Jostes questioned how the money would be shown on NCTC's books. He stated he thought it would be a separate line item, but questioned if it would be defined or would there be specific documentation with it that essentially put it in escrow in some fashion. Executive Director Landon responded that he had talked to the County Auditor-Controller about setting up an account or fund whereby this money, and interest that would be accrued to it, would be separate from anything else.

Commissioner Harris stated that as long as it was legal and there was no risk to NCTC, she certainly supported Grass Valley's efforts in this and hoped it would work for them.

Commissioner Scofield stated that in the original agreement it seemed NCTC had a little more discretion as to how the money might be distributed. In the original agreement, it might have said, if the city came in and wanted to purchase a piece of equipment for the project, NCTC could say that they did not think the piece of equipment fit into the project. Now the way the agreement has been written, Grass Valley pretty much has control over those funds. Commissioner Scofield questioned if he was right; that NCTC does not really have any authority to tell Grass Valley how they can spend that money. Executive Director Landon responded that was true. He said the template for the agreement came from the RTMF Funding Agreement. In that RTMF Funding Agreement, there was an attempt to be pretty specific so that agencies did not spend the RTMF for something that was considered inappropriate. He explained that was why the detail was originally there in Number 3 of the agreement with the city; however, when the attorney looked at it the evening before, she noted they did not need that level of specificity. NCTC just needed to stipulate that these funds are only for construction of the project. Mr. Holler stated that action comports with the agreement the city has with the RDA; that the funds are utilized for the construction and construction management of the project.

Commissioner Scofield stated he was also ready to support the agreement. Commissioner Beason said he would second the motion if it was a motion. Commissioner Scofield responded that he would make the motion.

Executive Director Landon noted with the motion made, that in the "Whereas" at the bottom of the page of the funding agreement, there was a typo. The numbers read two million two hundred thirty-five thousand dollars and it should read five million two hundred thirty five thousand dollars. Commissioner Scofield remarked that it was written properly, but that the number was incorrect. Executive Director Landon further noted that in the agreement that had been sent in the packet, on the first page, that both in the second to the last "WHEREAS", and the last "WHEREAS", the term "plus accrued interest" was inserted right after the word "dollars". That way the city has the ability to get rid of all of their funds they are holding and not have the interest hanging over. Also on the first page of the agreement, on the next to the last WHEREAS, where it says, "the RTMF Capital Improvement Program, including the Dorsey Drive Interchange Project", staff added language to indicate that it was the number one priority project of the RTMF. He explained that this was done to strengthen the idea, that as the RTMF agency, this was also NCTC's highest priority, and if this was something appropriate, staff could certainly add it back in. Executive Director Landon explained it was in the original agreement, but the attorney was working from a previous template the night before and therefore did not have this language. Commissioner Scofield questioned if they were working with the redlined agreement. Executive Director Landon responded in the affirmative.

Chairman Jostes had a question regarding Section Number 10-"Project Amendment" on the bottom of page 4 of the agreement which defined the extent to which NCTC could be involved. He asked if this was outlining the typical involvements that the NCTC might have with Caltrans, for example, if Caltrans were administering the project. Executive Director Landon stated that this was correct with regard to the RTMF funds; it was the typical language. Mr. Landon also noted another typo on page 3, that after Section Number 6, "Termination", the next Section showed Number 8, so the sections needed to be renumbered.

Chairman Jostes stated they had a motion and a second to adopt Resolution 11-22. Executive Director Landon responded that is was Resolution 11-20. Chairman Jostes replied it was 11-22 on the agenda, but 11-20 on the document. Executive Director Landon stated there was a typo and it should be 11-20. Chairman Jostes noted the agenda was incorrect. He stated the Commission was being asked to adopt Resolution 11-20 and that they had a motion to approve and had a second. He asked for a vote. The vote was unanimous to adopt Resolution 11-20 authorizing the Executive Director to execute a Funding Agreement with the City of Grass Valley committing Redevelopment Agency Funds for construction of the Dorsey Drive Interchange Project.

PUBLIC COMMENT

David DeMartini, one of the owners of property at 102 Catherine Lane, stated that they were generally in support of the project, but did not feel they had been heard specifically on some of the issues related to the access to their property. The main concerns were access issues related to the elevations shown on the plans. He stated he was not a professional as far as the technicalities and would have to have his brother speak for him, as he was also part owner of the property. The main issue, he thought, was relative to the elevations that they wished would be shared with them so that they knew that there would be proper design to mitigate their concerns. They felt that mitigation was possible, but it had not happened yet, so they were anxious about a project going forward without the proper access points for them. He stated he was unsure if he made himself very clear or not, or if this was the correct forum. Executive Director Landon responded that the Commission only dealt with the funding side of things and he would contact the Caltrans Project Manager who was working on the design and ask him to contact Mr. DeMartini.

Mark DeMartini stated he was David's brother and was also owner of the property there, the property next to it, and also owner of other property on Catherine Lane. He stated his concern was that everyone was focused on funding for this project, but they were not doing everything they could do to minimize the cost of the project and the impacts on property. As a registered civil engineer, he believed there were lots of things that could be done to the project to streamline it, to make it more efficient, still serve the needs of the people, and yet deliver a project that did not have adverse impacts to the area. Mark DeMartini said he was very concerned about the way Joerschke Drive was designed; he did not think the public knew about it being turned into a one way street. He was also very concerned about the design of Dorsey Drive. Unless it had been changed, having two lanes in an eastbound direction did not seem to make a lot of sense, from Catherine Lane toward the freeway. Mark DeMartini said, "that obviously things need to be built and designed, but why not design something that complements the area, rather than cause issues, especially when funding is very short. Let's build a project that fulfills the need and doesn't adversely impact our area; make a more efficient project". Mr. Mark DeMartini stated his other concern were the impacts to David's property. That they had been trying to work with the city for the last two to three years to get some simple issues resolved, but to no avail. He would like to help resolve those issues as there were ways to resolve them; it would take a little bit of care and thought. He thanked the Commission.

COMMISSION ANNOUNCEMENTS

There were no comments.

ADJOURNMENT OF MEETING

Chairman Jostes asked for a motion to adjourn. Commissioner Harris motioned and Commissioner Miller seconded the motion. The meeting adjourned at 8:58 a.m.

Respectfully submitted: Nancy D Holman
Nancy D. Holman, Administrative Services Officer

Approved on: 5/18/11

By: L A Jostes
Lawrence A. Jostes, Chairman
Nevada County Transportation Commission