



# NEVADA COUNTY TRANSPORTATION COMMISSION

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## MINUTES OF SPECIAL MEETING April 18, 2012

A special meeting of the Nevada County Transportation Commission (NCTC) and the Nevada County Airport Land Use Commission (NCALUC) was held on Wednesday, April 18, 2012 in the City of Grass Valley Council Chambers, 125 East Main Street, Grass Valley, California. The meeting was scheduled for 8:30 a.m.

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

Members Absent: Carolyn Wallace Dee

Staff Present: Daniel Landon, Executive Director; Toni Perry, Administrative Assistant

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

Pledge of Allegiance

### PUBLIC COMMENT

There were no public comments.

**At 8:32 a.m. Chairman Jostes ADJOURNED THE NEVADA COUNTY TRANSPORTATION COMMISSION AND CONVENEED THE NEVADA COUNTY AIRPORT LAND USE COMMISSION.**

### CLOSED SESSION

Conference with Legal Counsel: Pursuant to Government Code Section 54956.9(a), Existing Litigation. Name of Case: City of Grass Valley et al. v. Nevada County Airport Land Use Commission et al.; Nevada County Superior Court Case No. 77990.

Chairman Jostes announced the Closed Session with Legal Counsel. Commissioner Miller recused himself from the Closed Session. The other five Commissioners present, Legal Counsel Nancy Miller of Miller & Owen Attorneys at Law, and Executive Director Landon left the council chambers to meet in a private room.

Chairman Jostes reopened the meeting from the Closed Session at 9:02 a.m. He stated there was no information to report from the Closed Session.

**At 9:02 a.m. Chairman Jostes ADJOURNED THE NEVADA COUNTY AIRPORT LAND USE COMMISSION AND RECONVENED THE NEVADA COUNTY TRANSPORTATION COMMISSION.**

ACTION ITEM

1. Amendment No. 1 to the Cooperative Agreement with the City of Grass Valley and Caltrans for Construction of the Dorsey Drive Interchange Project

Executive Director Landon reviewed that the amendment to the Cooperative Agreement was necessitated by the action that the Commission took in December and the amended agreement reflects those actions. He said that NCTC attorney, Nancy Miller, was present to talk with the Commission about some of the discussions she has had with the City of Grass Valley Attorney regarding the use of the Redevelopment Agency (RDA) funds. Mr. Landon said City of Grass Valley staff would give an overview of how the project is moving forward. He was a member of the selection committee for the Construction Management Services consultant and he is confident in their abilities and believes that they understand the issues at hand. Mr. Landon said that Caltrans District 3 agreed to provide the updated cost estimate in order to be in synch with the submission of the allocation request to the California Transportation Commission (CTC). He said all of the steps are coming together and he is encouraged after 22 years of working on the project to be this close to getting it built.

Trisha Tillotson, Senior Civil Engineer for the City of Grass Valley, said the city had already approved the Freeway Agreement and the amended Cooperative Agreement, and she was hoping the NCTC would approve the amended Cooperative Agreement that day. She said both agreements are on critical time paths in order to get CTC approval of the funding in July. A review of the project has begun by HDR, Inc. and there is a meeting with Caltrans on April 30<sup>th</sup> to go over the Constructability Review. Ms. Tillotson said after that point the city is expecting Caltrans to complete any minor revisions on the plans, and in the meantime, the city is completing final touches on the special provisions. She said it is expected the CTC will approve the funding for the Dorsey Drive Interchange on July 26. She stated the city has to submit the Project Authorization documents to Caltrans in order to proceed with construction, and she thought those would be submitted the following week in order to be in line for the CTC approval. Ms. Tillotson said every aspect has a real tight deadline, but it is all on schedule. She said the city expects E-76 approval from the federal government and Caltrans the beginning of August. She added that the utility relocations are on schedule and they are expecting to be able to go to bid the end of August or beginning of September. She asked the Commission if there were any questions; there were none.

Executive Director Landon said the other issue was the concern of what happens if at some point the state takes back the RDA funds that have been pledged for the project. He asked NCTC Legal Counsel Nancy Miller to report on her activities regarding the subject.

Nancy Miller, NCTC's Legal Counsel, said she has been having discussions with the City of Grass Valley's attorney regarding the RDA funds and how that would affect the Dorsey Drive Interchange project. She stated that although the RDA Program has been eliminated, the RDA money that is available for the project was transferred to NCTC prior to the enactment of the legislation that eliminated RDA's. Ms. Miller said the Dorsey Drive Interchange Funding Agreement is not on the ROPS (recognized obligation payment schedule) list of the Oversight Committee so she has no concern that there might be a problem with the Oversight Committee. She said the next question was whether the state will have some potential interest; she thought there was a small potential that

the state would go to the city for some explanation of the transfer of the money. She said if that happens the expenditure of the RDA funds has been scheduled to be more like a contingency spent towards the end of the project. Ms. Miller added that the project is not expected to start construction until next spring and by then the time period for the state to come back and challenge the expenditure of the money will have expired. By next spring it will be known for certain whether the RDA funds will be available and if there is any risk at all in terms of expending them.

Commissioner Beason reviewed that NCTC approved \$10.6 million in STIP (State Transportation Improvement Program) Funds and then the city had concerns over potential constructions costs and asked for an additional \$3.6 million that was approved as a built-in contingency. He said the project is currently estimated at \$17 million, so the \$3.6 million offset the amount already in the local contingency fund. Commissioner Beason said if the state were to determine that they could and would remove the RDA funds, then the project would get hit in the contingency. His question was what would be done then. By putting the RDA funds in contingency, the thought is if they take them it would not be that big of a loss, but he did not see it that way. Nancy Miller said there was a difference of opinion because that amount is an additional contingency; it is a contingency for all other things too, but that is the purpose of the contingency. She said if for some reason the money were not there, there would be adequate funds. Executive Director Landon said there would be the \$17 million. Commissioner Beason said a portion of the \$17 million is RDA money. Nancy Miller said that is correct, but the contingency is not really the cost of the project. Commissioner Beason said he does not want to be in a position six months from now to say "wait a minute, we really meant this". Nancy Miller said there is always the possibility that there would not be enough contingency, but that is true in every construction project where there could be the unknown. She noted they used professionals to estimate the project, but recalled that there was an overrun of utility relocation costs on this project already.

Commissioner Beason said he was not saying that they did not plan appropriately for the unknown; he just wanted to review what would be done in the worst case scenario and be sure everyone was on the same page. He referred to page 2 of the staff memo, paragraph 4, the second sentence where it states: "If the bids exceed the project allocation, NCTC and Grass Valley will utilize the Local Contingency to fully fund the project." Nancy Miller replied that was their intent. Commissioner Beason said he is more comfortable because there are two contingencies written in the agreement, but he did not want the Commission to think that all the money could be spent and then figure out where the remainder of the money is going to come from. Nancy Miller said that issue was discussed at length and city staff knows this as well when bids come in; she is assured that everyone is very aware of the issue of contingency. Commissioner Beason wanted to be sure that there was a lid on the costs, and the possibility of project modifications if costs got too out of hand. Executive Director Landon referred to number four of the Cooperative Agreement Amendment where it notes: "If it becomes apparent that the total maximum cost for WORK will exceed the maximum amount programmed for expenditure, NCTC shall work promptly with CITY to determine necessary additional costs and the source of the additional funds, subject to any modifications or decreases to the PROJECT's cost consistent with the CITY'S authority under Section II, 1. herein." He said they would determine if there was any other money or the project would have to be rescoped. Nancy Miller told Commissioner Beason that his questions were really good and she reassured him that a lot of time had been spent thinking about all the questions he asked. Commissioner Beason said the Commission has a tendency to get into things and then they are not exactly sure what was decided two years previously and he wanted to make sure everyone remembers what was agreed upon.

Commissioner Harris said she thought Executive Director Landon's point was important when he said, "...then we will get together and say is there any other money or do we need to look at the

scope.” She said the answer is most likely there is no other money and that is a reality and it needs to be stated.

Chairman Jostes gave a theoretical situation that if the RDA money was taken away before the end of the year, the question that comes up is do you go forward with the project. Executive Director Landon added the question, do you award the bid? Chairman Jostes asked do you award the bid based on that amount of money, or do you force yourself to find ways to change the scope of the project to keep it within some level of comfort on overexpenditures. He asked if the RDA money is pulled away in that timeframe, who makes the decision to proceed, or to not proceed, with the project; i.e., where does the authority lie on committing to the project if some funds are pulled away. Executive Director Landon replied the City of Grass Valley is the lead agency for construction, so they hold the authority; however, the Amendment to the Cooperative Agreement limits the Commission’s liability to \$60,000. He said the city would have to come up with additional money if they wanted to keep the project scope the same.

Commissioner Miller said when he spoke about the Dorsey Drive project to Tim Kiser, Grass Valley Public Works Director and City Engineer, Mr. Kiser indicated it has been discussed and thought through, if for some unknown reason the RDA money does get taken away by the state, the city is prepared to scale back the project, probably along Dorsey Drive as far as street improvements. Chairman Jostes said that was good, and two things could happen: 1) The RDA money could be taken away, and he had no idea on the probability of that; and 2) the probability that the bids could come in higher than expected and he expects the probability of that to be much higher. Commissioner Miller said if the city needed more money they would have to use gas tax dollars or something like that. Chairman Jostes said the important thing is in the thinking process of the city. Executive Director Landon said the thing that gives him comfort is the city is already more than one year into that statute of limitations on the state’s ability to pull back the funds. He said by the time the city is ready to award the bid, it will be at the end of that period. Chairman Beason said unless the state pulls the money sooner and then there could be a contract issuance issue.

Tim Kiser said there are huge checks and balances to the whole process. The city will not get authorization from the federal government or Caltrans if the funding is not in place. He stated that there is a stack of paperwork for the federal process that must be filled out and approved. Mr. Kiser added the city has also validated their agreements with the RDA, so even if the state comes back, the city has the choice to follow through with that validation process and consider suing the state saying that they have a validated agreement that the state had the opportunity to challenge. He said the city attorney has told him it is basically law, so the state would be challenging law. He added that the city is low on the list for RDA issues and they are already one year into the process. He said he would be more concerned with the state not passing their budget, than RDA issues. Mr. Kiser said if there is a budget shortfall for the Dorsey Drive Interchange project, the city has already looked at the \$300-400,000 per year in gas tax money with thoughts of putting it aside to cover a shortfall. He said they have gotten preliminary costs for the construction inspection and it has come in about \$1 million less than what is budgeted. He said the city is looking at every opportunity, and with every bump in the road they are looking five and six steps ahead as to where they can find money, asking what they can reserve, asking if they need to hold off doing overlay projects for the next three years to be sure that the gas tax money is available to use. Mr. Kiser said the direction he has gotten from the Grass Valley City Council is that the Dorsey Drive Interchange is the number one project for the city and whatever it takes to get it built is the direction his staff has to take.

Chairman Jostes had a question on the RDA funds as it related to an article in that morning’s newspaper where there was some concern about municipalities like Grass Valley being able to make

some payment schedules. He asked if there was any way that the RDA money for Dorsey Drive could be touched. Dan Holler, Grass Valley City Administrator, responded if you look at the property tax flow out of the RDA area, the debt structure is adequate to pay that. He said more of the discussion was what type of reserves are needed long-term for bond covenants and those elements, but if you get down to where all you are doing is paying debt service, the city has about \$1.8 million in total revenue from the tax increment of the agency. Mr. Holler said there is about \$1 million in the highest debt service payment, and close to \$1 million in actual debt payment, therefore they are not quite two-to-one coverage. He said he is not worried about being able to do the debt payment. Mr. Holler said the article in the newspaper addressed a lot of issues: looking at reserves and the city has them; is there a portion of some obligations in continuing projects – they continue those; the debt actually has the first claim on that so they are not as concerned about that area of it. He responded to Chairman Jostes' question if the state would come back and tackle the RDA funds and he said no; most of the money talked about are bond dollars and there are restrictions on what they can be used for. Mr. Holler said one of the elements in the law talked about continued use of bond proceeds for the purpose of which the bonds were issued; he said this falls right in line with that in terms of the use for this project, so there are a number of pieces in there that allow that to be able to move forward. Chairman Jostes asked Mr. Holler if he thought the issue mentioned in the newspaper had any impact on the Dorsey Drive project. Mr. Holler answered no.

Chairman Jostes asked the Commissioners if there were any other questions or comments. There were none.

Commissioner Miller made a motion to authorize the execution of Amendment No. 1 to the Cooperative Agreement between the Nevada County Transportation Commission, the City of Grass Valley, and Caltrans for construction of the Dorsey Drive Interchange project. Commissioner Scofield seconded the motion. The motion passed unanimously.

SCHEDULE FOR NEXT MEETING

The next regularly scheduled meeting of the Nevada County Transportation Commission is on May 16, 2012 at the Nevada City Council Chambers, 317 Broad Street, Nevada City, CA.

ADJOURNMENT OF MEETING

Commissioner Harris made a motion to adjourn the meeting. Commissioner Guerra seconded the motion. Chairman Jostes adjourned the meeting at 9:20 a.m.

Respectfully submitted: Antoinette Perry  
Antoinette Perry, Administrative Assistant

Approved on: May 16, 2012

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

