



County of El Dorado

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November 5, 2012

Board of Supervisors
330 Fair Lane
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Subject: Joint Exercise of Powers Agreement for the Elk Grove - Rancho Cordova - El Dorado Connector Authority

At the October 16, 2012 regular meeting of the Board of Supervisors (Board), the Board provided the following direction:

- 1.) *Re-examine the voting authority under the Joint Exercise of Powers Agreement for the Elk Grove - Rancho Cordova - El Dorado Connector Authority (Whiterock Connector Authority) with regard to said authority to use eminent domain powers to levy against funds of the County of El Dorado, and to levy against private properties in the County of El Dorado.*
- 2.) *Direct the summaries of financial activities of the Whiterock Connector JPA, since the inception thereof, be provided to the Board.*
- 3.) *Direct the Chief Administrative Officer, County Counsel, and the Department of Transportation to return to the Board on or before November 6, 2012 with a report and identified options for the Board.*

Also contained within the item at the October 16th Board meeting, Supervisor Sweeney reiterated a previous request for a response to certain questions originally posed on February 24, 2010 and again on January 3, 2012. Staff has researched the background material relative to both the Board's direction on October 16th along with the questions posed by Supervisor Sweeney. Staff's response is contained within the summary that follows.

Summary:

This summary first provides a response to the questions originally posed by Supervisor Sweeney. This response is integral to the Board's consideration of the October 16th policy issues. Following this response, staff provides the Board with options to consider relative to Item 1 of the October 16th meeting direction, your reexamination of the voting authority under the JPA.

Response to Supervisor Sweeney's Questions:

- a.) *Should the provisions set forth in MOU Section 7 require a majority vote of the El Dorado County Board of Supervisors?*

Section 7 of the MOU refers to *Article 7 – Voting of the Joint Exercise of Powers Agreement (Agreement) for the Elk Grove – Rancho Cordova – El Dorado Connector Authority (JPA)*. Article 7 provides for the actions and requisite voting requirements that the JPA Board of Directors may take action on. This Article contains many of the specific powers of the JPA and is directly related to the policy considerations of the Board.

Under the provisions of *Article 2 – Creation of Authority and Jurisdiction*, within the Agreement, the JPA was created as a public entity that is separate from the Members. The provisions contained within Article 7 provide certain powers to the JPA “*necessary or reasonably convenient to carry out the purposes*” of the JPA. Some of these powers, if and when enacted, could financially obligate the County of El Dorado (County) and/or its constituents.

As a result, prior to the exercising of certain powers by the JPA, the Board may desire to deliberate on potential actions of the JPA and provide direction to the County JPA member prior to consideration by the full JPA.

For example, Article 7 defines the parameters associated with the voting requirements necessary for the JPA Board of Directors to exercise the powers of eminent domain. Under the provisions of Article 7, an affirmative vote of four of the JPA Board of Directors is necessary for the JPA to exercise the powers of eminent domain. Although staff has not completed its analysis of the extra-jurisdictional powers of the JPA to exercise independent powers of eminent domain, staff believes that, under the terms of the Agreement, Article 7 provides the JPA Board of Directors with powers to independently exercise its power of eminent domain within the jurisdiction of the County. Because the provisions of Article 7 only require an affirmative vote of four of the JPA Board of Directors, a scenario exists wherein eminent domain powers could be exercised by the JPA when the County member has dissented on that vote.

Additionally, under other provisions within Article 7, a unanimous affirmative vote of all five of the JPA Board of Directors is required for the following actions:

- i.) adopt a funding plan;*
- ii.) establish start-up contributions from Members;*
- iii.) obtain and secure funding from public and private sources, including bond issuances, levying and collecting or causing to be collected, transportation impact fees on new residential, commercial and industrial development;*
- iv.) form a special assessment district;*
- v.) negotiate and enter into reimbursement agreements, cause taxes, assessments, fees or charges to be levied in a manner to accomplish the purposes of the Authority;*
- vi.) issue bonds.*

Under the terms of Article 7 of the Agreement, staff believes that the current form of the Agreement may provide the JPA Board of Directors with powers to financially obligate the County.

At its December 12, 2006 regular Board meeting, the Board adopted the Resolution authorizing the Chair of the Board to execute the Agreement. Although not reflected within the conformed agenda, staff has researched the actions by the Board and the Board provided direction to

those members appointed to represent the County to come back to the full Board prior to any vote by the JPA involving financial matters. At the time, the County members acknowledged that they would do so.

- b.) *Copy of the "proposed MOU" with funding and financial plans dated 02-27-09 which was apparently provided to the JPA Board created from the MOU.*

Staff is currently researching and compiling these documents and was not able to provide these documents in the timeframe provided for subsequent to the October 16, 2012 Board meeting. Staff will forward the requested documents to the Board as soon as practicable.

As a related matter, the JPA is currently considering an updated Plan of Finance and has targeted further discussion of the Plan of Finance at its December 2012 regular meeting. This Plan of Finance will provide for the delivery strategy of the Capital Southeast Connector infrastructure, including potential financing strategies.

- c.) *Has an alignment been adopted per Section 8 of the MOU? If so, is that information available to the public?*

The JPA Board of Directors certified a programmatic environmental impact report at their regular meeting of the JPA held on August 12, 2011. Subsequently, the JPA Board of Directors approved a resolution at its regular meeting of the JPA held on October 14, 2011 that approved the selection of the general alignment of the connector project. This information is available on the Capital Southeast Connector Website and at its physical office located at 10640 Mather Boulevard, Suite 120, Mather, CA 95655.

- d.) *Has the JPA created any debt or bond obligations?*

Subsequent to the October 16, 2012 Board meeting, staff contacted the JPA's Executive Director to inquire as to the status of the JPA's current debt or bond obligations. Via these recent communications with the JPA's Executive Director, staff understands that the JPA has not issued any bonds and/or instruments of indebtedness at this time.

- e.) *Would bonding under the JPA conflict with El Dorado County 1990 Measure A?*

El Dorado County 1990 Measure A refers to the "Citizen's Right to Vote on Revenue Bonds Initiative" passed by the electorate in 1990. Staff has not completed the requisite research of the provisions of this initiative as to its applicability to the JPA's ability to issue bonds at the time of this letter. The initial opinion is that provisions of Measure A may be applicable in certain situations. An example is if the JPA were to enter into a lease-leaseback agreement to assist in the infrastructure delivery. This funding option could be a viable financing option for the JPA.

- f.) *Please seek comments from County Counsel regarding their observations about the MOU.*

County Counsel was consulted regarding their observations about the Agreement and has provided opinions that have been incorporated into the analysis and the recommendations incorporated into this letter.

Options for the Board to consider:

The questions previously raised by Supervisor Sweeney highlight certain risks to the County that could result from the provisions currently contained within the Agreement. A summary of some of these risks has been outlined within the previous sections of this letter. Staff believes that the following options are available to the Board to mitigate these risks.

Recommended options:

- 1.) *Request that the JPA agree to an amendment to the Agreement with provisions that are more satisfactory to the County:*

Under the provisions of *Article 18 – Amendments*, the Agreement may be amended only by the unanimous written agreement of the Members. Other provisions within *Article 18- Amendments* limit the modification, amendment of or revision to the Agreement. Specific to this option, Article 18 provisions limit actions by the JPA Board of Directors if there have been bonds issued by the JPA. Specifically, actions by the JPA are limited when those actions would materially and adversely affect the rating of bonds issued by the JPA, bondholders holding such bonds or limit or reduce the obligations of the Members, in the aggregate, the payments of the Funding Plan which are for the benefit of the owners of the bonds.

Because the JPA has not yet issued bonds or created debt applicable to the provisions of Article 18, an option for the Board to consider is to make a formal written request to the JPA to amend or modify the Agreement. This request would need to contain proposed language to many of the current Articles that is sufficient to address the risks to the County that currently exist within the Agreement. Proposed language has not yet been developed and/or discussed with the JPA staff.

Should the Board elect to make a formal request for an amendment or modification to the existing Agreement, this request would have to be considered and acted upon by the JPA Board of Directors.

- 2.) *Develop Binding Direction to the Board-Appointed Member:*

Under this option, the Board could develop binding direction to the County member and provide notice to the JPA that the JPA should not rely upon representation by the County member in those instances wherein that member's representation is inconsistent with direction provided by the full Board. This option has limited effectiveness against a County member that elects to vote in a manner which is inconsistent with the direction of the full Board. Staff believes that this option is limited in achieving full protection against all of the possible risks.

- 3.) *Exercise rights under the Agreement to withdraw from JPA and negotiate separate Agreement specific to the County:*

Under *Article 3 – Term and Termination* of the Agreement, a member may withdraw its membership when the following provisions have been satisfied:

- a.) *all bonds or other instruments of indebtedness issued by the Authority, if any, have been paid in full or provisions have been made for payment in full; and*
- b.) *all outstanding obligations and liabilities of the Authority have been paid in full or provisions have been made for payment in full.*

As previously stated, staff understands, via recent communications with the JPA's Executive Director, that the JPA has not issued any bonds and/or instruments of indebtedness at this time. Because the JPA has not issued any bonds and/or instrument of indebtedness at this time, an option for the Board is to exercise its authority under the Agreement to withdraw its membership in the JPA.

Should the Board elect to withdraw its membership from the JPA, the Board would have an option to either:

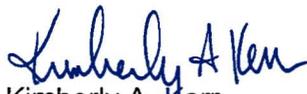
- i.) enter into a future separate and independent agreement with the JPA;
- ii.) to no longer participate in the JPA; and/or
- iii.) to first withdraw from the JPA and consider rejoining the JPA in the future under conditions more favorable to the County.

These options incorporate consideration that funding for those elements of the road improvements currently contained within the Capital Southeast Connector infrastructure plan that are located within the County are already provided for within project components of the County's Zone 8 Traffic Impact Mitigation Fee program, including the Silva Valley Interchange Set-aside component.

There are advantages to the County to remain a member of the JPA. Currently excluded from local funding sources are supplemental roadway appurtenances. Examples of these appurtenances include landscaping improvements, corridor signage standardization elements and other amenities that would unify the corridor between jurisdictions. Funding for these amenities could be provided for through the JPA. Additionally, County membership in the JPA would allow the JPA to lobby for State, Federal and private funding on behalf of the entire JPA, including the County. Obtaining alternative funding sources could offset local costs for the County project elements and assist the County with its objective to lower the cost of local development impact fees. Remaining a participant in the JPA through a mechanism alternative to direct membership could also provide for similar opportunities to the County.

Should the Board elect to pursue any of these options, staff is ready to return to the Board on the November 13, 2012 regular Board meeting with an item further outlining elements necessary for the Board to consider.

Sincerely,



Kimberly A. Kerr
Assistant Chief Administrative Officer

cc: Terri Daly, CAO
Bob Slater, DOT
Patricia Beck, County Counsel