

Meeting of the Board of Directors

**Location:** Rancho Cordova Council Chambers  
2729 Prospect Park Drive  
Rancho Cordova, CA

**Date:** Friday, December 14, 2012, 8:30 am – 10:30 am

**Roll Call:** Directors Hume, Knight, Nottoli, Sander, Starsky

Members of the public may comment on any item on the agenda at the time that it is taken up by the Board. We ask that members of the public complete a request to speak form, submit it to the Clerk of the Board, and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a time limit on individual remarks at the beginning of the discussion.

**Public Communications:** Any person wishing to address the Board on any item not on the agenda may do so at this time. After ten minutes of testimony, any additional testimony may be heard following the New Business Items.

1. Executive Director's Report

Consent Agenda

2. Minutes of October 12, 2012, Board Meeting
3. Authorize Amendment No. 1 to the Contract with CH2MHill for Facilitation & Committee Engagement Services
  - a. Attachment – Staff Report
  - b. Attachment – Resolution

New Business Items

4. Adopt a Resolution to Address Concerns Raised by El Dorado County Regarding the JPA's Powers to Incur Financial Obligations and Exercise the Power of Eminent Domain
  - a. Attachment – Staff Report
  - b. Attachment – Resolution
5. Presentation on the Economic Benefits Study
  - a. Attachment – Staff Report
  - b. Attachment – Presentation
6. Discussion on the Draft Plan of Finance
  - a. Attachment – Staff Report
  - b. Attachment – Plan of Finance
7. Recognition of Director Knight's Service to the Authority
  - a. Attachment – Staff Report
  - b. Attachment – Resolution
8. Adjournment

The Board may take action on any matter, however listed on this Agenda, and whether or not listed on this Agenda, to the extent permitted by applicable law. Staff Reports are subject to change without prior notice.

*If requested, this agenda can be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Board Secretary for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting, should telephone or otherwise contact the Board Secretary as soon as possible. The Board Secretary may be reached at 10640 Mather Blvd., Suite 120, Mather, CA 95655 or by telephone at 916-876-9094.*



Capital SouthEast Connector Board of Directors

Item # 4  
Resolution

December 14, 2012

**Adopt a Resolution to Address Concerns Raised by El Dorado County Regarding the Connector JPA's Powers to Incur Financial Obligations and Exercise its Power of Eminent Domain**

**Issue:** To adopt a Resolution to address concerns raised by El Dorado County regarding the JPA's powers.

**Recommendation:** Staff recommends that the Board approve the proposed Resolution and direct staff to continue to pursue a mutually agreeable solution to the issues raised by El Dorado County

**Discussion:** On December 5, 2012, the JPA received a letter from El Dorado County dated November 29, 2012, attached hereto, requesting that the JPA amend certain provisions of its "Joint Exercise of Powers Agreement," originally adopted December 6, 2006 ("Formation Document").

The letter reflects that on November 6, 2012, the El Dorado County Board of Supervisors initiated, by its own accord, an item related to the Connector JPA that expressed two concerns: (1) that the JPA can act independent of the County to financially obligate the County and/or its constituents; and (2) the JPA can exercise its eminent domain powers in the County of El Dorado without the approval of the County's member on the JPA Board because the Joint Powers Agreement only requires the affirmative vote of four of the five Board members to exercise eminent domain.

According to the County's November 29<sup>th</sup> letter, on December 18, 2012, the El Dorado County Board of Supervisors will consider withdrawing from the JPA in the absence of an amendment to the Formation Document.

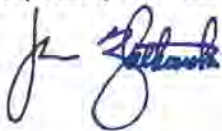
JPA staff, working with Director Knight, has explained to the County that an amendment to the Formation Document must be approved by all of the member jurisdictions, and cannot be completed within the timeframe requested. Furthermore, staff does not believe such an amendment is appropriate or necessary. The JPA does not foresee any circumstances that would require it to exercise eminent domain in a member jurisdiction without the consent of that entity's representative to the JPA's Board of Directors, and the JPA would not, and could not, financially obligate any member jurisdiction without the consent of its governing board.

Notwithstanding these facts, the JPA understands the premise of the County's concerns, and would like to address them to the extent possible. As such, we have proposed that the County continue the item to allow the parties to finalize language to address those concerns given the timing of the receipt of the November 29<sup>th</sup> letter. In the interim, staff recommends that the Board adopt a Resolution outlining the County's concerns and demonstrating the JPA's commitment to address these issues. The proposed Resolution states that:

- (1) The JPA will not exercise its power of eminent domain without the affected jurisdiction's policy board's consideration and concurrence; and
- (2) The JPA will not commit any member jurisdiction to a financial obligation without the prior consideration and concurrence of the affected entity's policy board; and
- (3) The member entity's consent to a financial obligation shall be obtained through an agreement approved by both the member entity's governing board and the Connector JPA; and
- (4) The JPA will take no steps to exercise the power of eminent domain or financially obligate a member entity prior to entering into the contemplated agreement.

This Resolution, if adopted, will be provided to the El Dorado County Board of Supervisors in advance of its meeting on December 18, 2012. Staff will also attend that Board meeting to ensure that any questions brought forward are addressed.

Respectfully Submitted:

A handwritten signature in blue ink, appearing to read "Tom Zlotkowski".

Tom Zlotkowski  
Executive Director

# COUNTY OF EL DORADO

330 Fair Lane  
Placerville, CA 95667  
(530) 621-5390  
(530) 622-3645 Fax

JAMES S. MITRISIN  
Clerk of the Board



# BOARD OF SUPERVISORS

JOHN R. KNIGHT  
District I  
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District II  
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District III  
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District IV  
NORMA SANTIAGO  
District V

CS Connector JPA

DEC 05 2012

November 29, 2012

Capital Southeast Connector JPA  
10640 Mather Boulevard, Suite 120  
Mather, CA 95655  
Attention: Tom Zlotkowski, Executive Director

**Subject: Request to Amend Certain Provisions of the Joint Exercise of Powers Agreement for the Elk Grove – Rancho Cordova – El Dorado Connector Authority Agreement; Alternative Consideration of Separate Agreement Upon Withdrawal**

At its regular meeting on November 6, 2012, the County of El Dorado (County) Board of Supervisors (Board) voted to formally request that the Elk Grove – Rancho Cordova – El Dorado Connector Authority (JPA) amend certain provisions of the *Joint Exercise of Powers Agreement for the Elk Grove – Rancho Cordova – El Dorado Connector Authority* (Agreement). Additionally, at the November 6, 2012 meeting, the Board directed that further consideration of this issue be placed on its agenda for the regular County Board meeting to be held on Tuesday, December 18, 2012.

Among other issues, the County is particularly concerned about authority provided to the JPA in *Article 4 – Powers* and *Article 7 – Voting* of the Agreement, as this authorization pertains to the jurisdiction of the County.

Within the Agreement, under the provisions of *Article 2 – Creation of Authority and Jurisdiction*, the JPA was created as a public entity that is separate from the Members. The provisions contained within *Article 7 – Voting* provide certain powers to the JPA "necessary or reasonably convenient to carry out the purposes" of the JPA. The County is concerned that, under the current terms of the Agreement, the JPA Board of Directors could act independent of the County to financially obligate the County and/or its constituents.

Additionally, the County is concerned with certain provisions of Articles 4 and 7 that define the parameters associated with the voting requirements necessary for the JPA Board of Directors to exercise the powers of eminent domain within the County. Under the provisions of *Article 7 - Voting*, an affirmative vote of four of the JPA Board of Directors is necessary for the JPA to exercise the powers of eminent domain. Although the County has not completed its analysis of the extra-jurisdictional powers of the JPA to exercise independent powers of eminent domain within the County, the County believes that, as to the terms of the Agreement, *Article 7 - Voting* may provide 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 representative member has dissented on that vote.

At its December 12, 2006 regular County Board meeting, the County Board adopted the Resolution authorizing the Chair of the County Board to execute the Agreement. County records indicate that the County Board provided direction to County's sitting members appointed to the JPA to come back to the full County Board prior to any vote by the JPA involving financial matters. Although the County understands that the County JPA members were directed to return to the full County Board and that the County would expect the JPA to act consistent with this consideration, the County desires that the Agreement reflects that prior to the JPA exercising certain eminent domain and bonding powers provided for by the Agreement within the jurisdiction of the County, and/or prior to taking action on matters that would obligate the County, that those matters be brought before the County Board for policy consideration and direction prior to any action by the full JPA Board of Directors.

To facilitate this request, the County is hereby requesting that the JPA consider this letter as the County's formal request to amend the Agreement, pursuant to the provisions set forth in *Article 18 – Amendments* of the Agreement as follows:

*Article 2 – Creation of Authority and Jurisdiction:*

The County hereby requests that the following language be substituted under Article 2:

*The Members hereby created the Elk Grove – Rancho Cordova – El Dorado Connector Authority ("Authority" or "JPA"), as public entity separate from each of the Members, subject to the restrictions set forth herein and the authority of the County of El Dorado's exercise of eminent domain within its jurisdiction of the County of El Dorado. The County of El Dorado Board of Supervisors shall reserve the right to consider and act prior to the Authority taking action and the Authority shall be bound by the independent action(s) of the County of El Dorado Board of Supervisors as to matters within the jurisdiction of the County of El Dorado.*

*Article 7 – Voting:*

The County hereby requests that the following language be added to Article 7:

*For all matters described under this article that are associated with the jurisdiction of the County of El Dorado, prior to any action by the Authority Board of Directors, the County of El Dorado Board of Supervisors shall reserve the right to first consider and act on these matters. The Authority agrees that the Authority will be bound by decisions made by the County of El Dorado Board of Supervisors as to the application of these matters within the jurisdiction of the County of El Dorado.*

*The Agreement may also need minor modifications to conform to the intent and purpose of the above.*

Should the JPA agree to the proposed amendments, the County will work with the JPA to finalize the necessary Amendment.

Alternatively, the County's concerns could be addressed by the County first withdrawing its membership from the JPA and by then entering into a subsequent and separate agreement with the JPA to address all JPA affairs pertaining to the County.

As previously stated, at their November 6, 2012 meeting, the County Board directed that further consideration of this issue be placed on its agenda for the regular meeting to be held on Tuesday, December 18, 2012. In order to facilitate the County's further consideration of this issue, the County respectfully requests that this request be placed on the December 14, 2012 JPA meeting agenda for consideration by the JPA Board of Directors and that the JPA's decision be conveyed to the County prior to December 18, 2012.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "John R. Knight". The signature is stylized and cursive, with a large initial "J" and "K".

John R. Knight, Chair  
El Dorado County Board of Supervisors

cc: Supervisor Ray Nutting, District 2 El Dorado County Board Member  
Supervisor Jack Sweeney, District 3 El Dorado County Board Member  
Supervisor Ron Briggs, District 4 El Dorado County Board Member  
Supervisor Norma Santiago, District 5 El Dorado County Board Member  
Director Patrick Hume, City of Elk Grove  
Director Jeff Starsky, City of Folsom  
Director Dave Sander, City of Rancho Cordova  
Director Don Nottoli, Sacramento County  
Chief Administrative Officer Terri Daly, El Dorado County  
Assistant Chief Administrative Officer Kim Kerr, El Dorado County  
County Counsel Lou Green, El Dorado County  
Principal Assistant County Counsel Patricia Beck, El Dorado County



Item # 4  
Resolution

RESOLUTION NO. 2012-25

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE CAPITAL SOUTHEAST CONNECTOR AUTHORITY  
TO ADDRESS CONCERNS RAISED BY EL DORADO COUNTY REGARDING THE JPA'S POWERS TO  
INCUR FINANCIAL OBLIGATIONS AND EXERCISE ITS POWER OF EMINENT DOMAIN**

**WHEREAS**, the JPA received a letter from El Dorado County on December 5, 2012, requesting that the JPA amend its Joint Exercise of Powers Agreement; and

**WHEREAS**, the JPA intends to enter into a mutually acceptable agreement with each member entity to address the concerns raised by El Dorado County; and

**WHEREAS**, given the timing of the letter provided by the County, staff did not have sufficient time to work with County staff to develop an agreement prior to the Board of Supervisor's December 18<sup>th</sup> meeting; and

**WHEREAS**, the JPA has requested a 60 to 90 day continuance from El Dorado County to address these issues, but has resolved to pass this Resolution in the interim to demonstrate the JPA's commitment to mutually address them; and

**WHEREAS**, the JPA has an obligation to act in an equitable manner with all of its member jurisdictions on all policy issues that could affect the JPA.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Capital SouthEast Connector Authority that:

- (1) The JPA will not exercise its power of eminent domain without the affected jurisdiction's policy board's consideration and concurrence; and
- (2) The JPA will not commit any member jurisdiction to a financial obligation without the prior consideration and concurrence of the affected entity's policy board; and
- (3) The member entity's consent to a financial obligation shall be obtained through an agreement approved by both the member entity's governing board and the Connector JPA; and
- (4) The JPA will take no steps to exercise the power of eminent domain or financially obligate a member entity prior to entering into the contemplated agreement

This Resolution shall take effect from and after the date of its passage and adoption.

\*\*\*\*\*

PASSED AND ADOPTED this 14<sup>th</sup> day of December, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary