

MINUTES OF THE BOARD OF DIRECTORS
ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

REGULAR MEETING
July 16 2008

President Stevens called the regular meeting to order at 7:00 p.m., with a salute to the flag. The following were present:

DIRECTORS: JOHN GRECI
SANDY FIGUERS
STEPHEN KALTHOFF
DALE MYERS
SARAH PALMER
DICK QUIGLEY
WILLIAM STEVENS

DIRECTORS ABSENT: NONE

ZONE 7 STAFF: JILL DUERIG, GENERAL MANAGER
AMY NAAMANI, GENERAL COUNSEL
KURT ARENDS, ASSISTANT GENERAL MANAGER, ENGINEERING
VINCE WONG, ASSISTANT GENERAL MANAGER, OPERATIONS
JOHN YUE, ASSISTANT GENERAL MANAGER, FINANCE & BUSINESS SERVICES
ELKE RANK, ASSISTANT PLANNER, ENVIRONMENTAL & PUBLIC AFFAIRS
DENNIS GAMBS, PRINCIPAL ENGINEER
BARBARA MORSE, BOARD SECRETARY

Item 3—Swear in Newly Elected Directors

The Board Secretary, Ms. Barbara Morse, administered the oath of office to the three newly elected Zone 7 Board Members:

Mr. Dick Quigley
Mr. Sandy Figuers
Mr. Dale Myers

Item 4—Reorganization of the Board

President Stevens opened nominations for Board President.

Director Kalthoff nominated Director Palmer to be Board President for FY 2008-09.

The motion was seconded by Director Figuers.

There were no other nominations and nominations were closed.

Director Palmer nominated Director Quigley for Vice-President.

Director Figuers stated that the first motion needs to be voted upon before a second motion can be considered.

The Board voted on Director Kalthoff's motion and elected Director Palmer to be Board President.

President Palmer opened nominations for Vice-President. She then nominated Director Quigley for Vice-President.

The motion was seconded by Director Myers.

There were no other nominations and nominations were closed.

The Board voted and elected Director Quigley to be Vice-President of the Board for FY 2008-09.

Regarding board committees, President Palmer stated that she was reviewing committee requests and she would be contacting other Directors tomorrow either by phone or e-mail with the committee assignments.

Director Myers requested appointment to the following committees: Administration, City Liaison and Ad Hoc Delta.

President Palmer responded that she would consider that request when making the appointments.

Some suggestions were made for restructuring the committees. President Palmer noted that she, too, had some ideas on that and would at least be combining the Ad Hoc Independent District Study Committee with the Administration Committee. She added she would also consider other suggestions.

Director Stevens stated that he believed that Director Myers is the most qualified to serve on the Ad Hoc Delta Committee.

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Before proceeding, President Palmer announced that the agenda will be re-ordered, and Item 11 will be considered after the Closed Session.

Item 5—Citizens Forum—No public comments at this time.

Item 6—Minutes of Regular Meeting of June 18, 2008

On a motion by Director Stevens with second by Director Quigley, the Board approved the minutes of the regular meeting of June 18, 2008. Director Myers abstained.

Item 7—Consent Calendar

Pulled items: Items 7a and 7b, Resolutions of Commendation for former Directors Concannon and Kohlen, respectively. Both former Directors were in attendance.

President Palmer read former Director Concannon's commendation and then presented it to him.

Director Myers thanked former Director Concannon for his outstanding leadership and service to the community over the past 24 years during his time on the Zone 7 Board.

President Palmer read the commendation of former Director Jim Kohnen and then presented it to him.

Former Directors Concannon and Kohnen then each said a few words.

Mr. Concannon thanked the Board and staff for their dedication and effort. He stated he felt that the new Board is one of the most qualified he's seen in his 24-years as a Zone 7 Director. He believed that Zone 7 is in good hands given the expertise and dedication of the General Manager, the staff and the Board.

Mr. Concannon also thanked *The Independent* newspaper for covering Zone 7 meetings for so many years.

Mr. Kohnen stated that he enjoyed his term on the Zone 7 Board. He thanked the staff, Board and his constituents.

President Palmer wished Mr. Concannon and Mr. Kohnen well and commented that they will be missed.

President Palmer noted that the vote on Items 7a and 7b would be melded into the vote on the consent calendar.

Director Stevens moved for the approval of the consent calendar, Items 7a through 7d. The motion was seconded by Director Figuers, and the following resolutions were approved by a vote of 7-0.

Resolution No. 09-3203 Approving commendation for former Director James Concannon.
(Item 7a)

Resolution No. 09-3204 Approving commendation for former Director James B. Kohnen.
(Item 7b)

Resolution No. 09-3205 Approving contract with Padre Associates for environmental compliance support services for FY 2008-2009, in the not-to-exceed amount of \$50,000. (Item 7c)

Resolution No. 09-3206 Requesting and authorizing the Alameda County Board of Supervisors to approve granting the Permanent Easement and Temporary Construction Easements to the City of Livermore, Arroyo las Positas, Livermore (70113 and 70114). (Item 7d)

Item 8—Staffing Update: None this month

Item 9—Flood Protection and Storm Water Drainage Development Impact Fee Ordinance Adoption

Mr. Arends presented a brief history of this item.

- In 2006, the Stream Management Master Plan (SMMP) was approved to update and replace the 1960 Flood Control Master Plan.

- The SMMP identifies a suite of new Flood Protection and Storm Water Drainage Projects which, if adopted, will require a new ordinance to implement the collection of new developments' fair share of the funding needed.
- In October 2007, HDR Engineering, Inc., was retained by Zone 7 to perform the Development Impact Fee Study. The Study included an Engineering Report which identified the rational nexus between new development and the flood protection and storm water drainage projects of the SMMP and their proportionate share of costs.
- Staff held a governmental agency stakeholder meeting on May 1. Many concerns were expressed concerning the method HDR used to calculate the fees.
- On May 21, 2008, the Board approved additional work by HDR to calculate the fee using an alternative methodology.
- A second governmental stakeholder meeting was held on July 1, 2008 to explain the new methodology used to calculate the amount of the fee and gather input from stakeholders.
- While staffs of local Cities present expressed a higher comfort level with the new methodology used by HDR to calculate fees, they expressed concerns about the amount of the proposed increase
- On July 8, 2008, Zone 7 received a letter jointly signed by elected officials from the three cities which requests that the Board refer the item to staff and an inter-agency liaison committee in order to address their concerns.

He continued by saying that it is staff's recommendation that this item be continued to a future meeting. In the interim, staff will coordinate a meeting between the Board's Liaison Committee and representatives of the City Councils as requested by their letters.

Director Figuers moved that this item be continued and that discussions continue with representatives of the three cities. The motion was seconded by Director Quigley.

Director Myers requested that, depending on the composition of the Liaison Committee, it might be helpful to have a Zone 7 staff/board briefing on the status of the StreamWISE project.

President Palmer agreed and incorporated the request into the motion.

Director Figuers' motion was then voted upon and passed unanimously.

Item 10—Solar Photovoltaic Project: Approval of CEQA Document

The action before the Board was approval of the Final Mitigated Negative Declaration for the planned Solar Photovoltaic Project at the Del Valle Water Treatment Plant. The Board heard a presentation on the Project from Ms. Elke Rank, Assistant Planner.

Proposed Project:

- Power Purchase Agreement (PPA) with Renewable Technologies, Inc. (RTI) to supply solar power to the Del Valle Water Treatment Plant. Under this agreement, RTI would design, install, operate, maintain, and own the photovoltaic system. The Board authorized the General Manager to finalize and execute the PPA at the April 16 Board meeting.
- Project will include approximately 169 solar panels on an east-west tracking system, all located on a 2-acre area within the DVWTP facility, which borders Sycamore Grove Park and residential/vineyard land uses. Construction period of four to five months—August to December 2008.
- At its peak output, it is estimated that the photovoltaic system will supply 300 kW (AC) at DVWTP. Over the span of a year, the photovoltaic system is expected to supply approximately 54% of the total energy needed for this facility.

CEQA

- Pursuant to the California Environmental Quality Act (CEQA), an Initial Study/draft Mitigated Negative Declaration (IS/MND) was prepared and distributed for public comment.
- The CEQA document was mailed to neighbors and interested parties on March 16, 2008, and was made available at three local libraries – Dublin, Pleasanton, and Livermore.
- The CEQA-required public review period, was May 16, 2008 to June 16, 2008.
- Notices of availability were also placed in both the Valley Times and the Tri-Valley Herald.

CEQA: Environmental Impacts

- No unavoidable significant impacts were found.
- Six potentially significant impacts that can be mitigated to a level that is less than significant. These were found to be for the construction period only:
 - Air quality
 - Cultural resources
 - Geology & soils
 - Hydrology and water quality
 - Noise
 - Traffic
 - All can be mitigated with the appropriate procedures and/or abatement/protection plan, and then follow up with monitoring.
- Two less-than-significant impacts were identified. These are minor and do not require mitigation.
 - Aesthetics
 - Biological resources

CEQA: Comments and Responses

- Office of Planning & Research-State Clearinghouse: No comments from state agencies.
- City of Livermore: No comment.
- Alameda County Public Works Agency: No comment.
- Tri-Valley Conservancy: Visual/aesthetics; access; conservation easements/values.
- Livermore Area Recreation & Park District: Visual/aesthetics; glare; wetland habitat; birds of prey; recreational experience. (Received after comment period closed.)

CEQA: Final Initial Study/Mitigated Negative Declaration

Key changes:

- Additional photograph considering the viewpoint from Sycamore Grove Park that looks down onto the DVWTP and the proposed project site.
- Minor clarification to impacts analysis relating to red-legged frogs, California tiger salamanders, and birds of prey.
- Minor revision to an existing mitigation measure to further ensure no impacts to a nearby wetland area at Sycamore Grove Park.
- Clarification of existing conservation easements held by the Tri Valley Conservancy.
- Additional clarification specifying lack of access required though adjacent properties.

Next Steps:

- Take and consider public comment.
- Consider adoption of the IS/MND and MMRP.
- Following approval, a Notice of Determination must be prepared within 5 days.
- There is a required 30-day public protest period following the filing of the Notice of Determination, during which time a person or agency may challenge the approval of the project.
- Construction may commence following the filing of the Notice of Determination.

Recommended Action:

- Open public hearing and take comments.
- Adopt resolution.

Directors Questions/Comments:

Regarding the design of the solar array, President Palmer asked if there would be east/west tracking and then noted that efficiency of the panels would be greatly increased if they are angled approximately 21 degrees to the south.

Mr. Dennis Gambs, project manager, confirmed that the panels will be angled for maximum efficiency.

President Palmer also commented that the panels are good for wildlife, and snakes, in particular, like it under the panels during the hot summer months.

Noting that he was not on the Board when this project was first discussed, Director Figuers asked a number of questions related to the project: (Responses are in italics.)

Will this project produce one phase or three phase power? *The project will produce DC power, and inverters will step up the voltage to match the existing current in the system which is three phase.*

What is the current cost of electricity for the DV plant? Is that peaking power or flat rate? *14 cents per kilowatt hour was the melded rate from last year. PG&E changed the rates in February so that is an estimate.*

So this is five to ten times more expensive than PG&E? *It is a small amount less than the current PG&E rate. The first year total savings would be about \$16,000.*

So, it is fairly close at the current time? *Ms. Duerig noted that the project saves more money over the life of the project and that the estimates were fiscally conservative.*

What is the length of the contract (PPA)? *Twenty years.*

If the panels are damaged by hail, earthquake or anything else, who pays? *The contractor.*

Is there any cost recovery that the contractor could collect from Zone 7? *Ms. Duerig responded that all O&M costs are the responsibility of the contractor. They are also responsible for maintaining that cost so if efficiency goes down, they are the ones that lose money, not Zone 7.*

How about upgrading the system? *We have built into it some buying options about half way through. However, it is extremely unlikely unless something is significantly better that they choose to do it because they own the equipment throughout. If they could make more money with something that is more efficient, chances are they will be proposing it.*

Director Kalthoff asked if the contractor gets a tax rebate? *Mr. Gambs responded that a federal tax subsidy is helping to make this happen. The actual subsidy will go to the contractor.*

Director Quigley noted that the state is in the midst of an energy crisis, and rates will be going up. He felt this project will have an exciting payback over time and lead us to other places. He had recently spent half a day in Sacramento at an ACWA energy committee meeting listening to what's on the horizon for energy.

Director Myers requested that, in the future, reports (such as the Mitigated Negative Declaration for this project) be sent to the Board early enough so that they can be reviewed before the board meeting.

President Palmer agreed that the Board needs sufficient time to read the reports.

President Palmer opened the meeting to comments from the public.

Mr. Craig Lewis, Vice-President of Government Relations, GreenVolts, stated that his company is a solar technology and development company. He congratulated Zone 7 for what appears to be an excellent solar project. GreenVolts is looking to develop solar projects in Alameda County, including within the Zone 7 service area. He wanted to get a clarification on the existing project with respect to whether the drainage fee will apply on this project, and if so, does it apply to the total area? Or at least get clarification on the assumptions that were used. There is a power purchase agreement in place so

all of the financial assumptions have been included in that. We are requesting clarification on what the assumption was on the drainage fee and what area it applied to.

Ms. Naamani responded that the drainage fee will apply to this project; however, it has not yet been assessed because the project has not yet commenced. But at the time that happens, the fees will be calculated and applied accordingly. She confirmed that Zone 7 would pay the drainage fee on its own project.

When Mr. Lewis began asking more detailed questions regarding the specific financial assumptions that are made when determining the drainage fee, Ms. Naamani requested that Mr. Lewis put his questions in written form and allow staff to do research and respond. This is outside of the scope of the CEQA review that we're doing tonight and that specific information is not available right now.

There were no further comments and the public hearing was closed.

Director Figuers moved for the approval of Resolution No. 09-3207 adopting and certifying the Final Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program for the Solar Photovoltaic Project. The motion was seconded by Director Quigley and passed by a vote of 7-0.

Item 11—This item moved to after Closed Session.

Item 12—Committees

There were no committee meetings during the past month.

Item 13—Items for Future Agendas—Directors

None.

Item 14—Reports—Directors

President Palmer reminded the Board that the retreat is scheduled for August 14, 2008. The location is the Purple Orchid Inn on Cross Road south of Livermore. The start time is 9:00 a.m.

Director Quigley prepared a written report of his activities during the last month. He noted that he would be happy to answer questions on the report.

President Palmer noted that she had just returned from Quito, Ecuador in South America. She stated that it was very interesting to see the infrastructure. In some places, there are no municipal wastewater treatment plants, and septic tanks are used for all wastewater disposal and the streams show it. In other areas, there are wastewater treatment plants, and in those areas there are trout in the streams along with clear water..

Item 15—Staff Reports (Information items. No action taken.)

- a. General Manager's Report
- b. Recent & Upcoming Public Outreach Activities
- c. Verbal reports

Mr. Wong advised that Public Policy Institute of California (PPIC) would be releasing a new report on the Delta which will include their recommendation for 1) moving away from a “through Delta” conveyance system; and 2) building a fully isolated facility (estimated size of 12,000 to 15,000 cfs) for the Delta which would satisfy economic and environmental objectives. It is felt that the benefits to the salinity problem alone would warrant the cost of the project. The PPIC report was prepared by a multidisciplinary team of experts and underwent peer review by a 40-person panel with backgrounds in economics, science, and engineering. The new report may be found on www.ppic.org.

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The Board recessed for a short break at 7:45 p.m., before going into closed session.

Item 19—Closed Session

- a) Conference with Legal Counsel - Existing litigation pursuant to Subdivision (a) of Government Code Section 54956.9: 4 cases
 - i. Watershed Enforcers v. California Department of Water Resources et al., Alameda County Superior Court Case, No: RG06292124
 - ii. Alameda County Flood Control & Water Conservation District, Zone 7 v. Hugh Walker, et al., Alameda County, Superior Court Case No. VG07341354
 - iii. Alameda County Flood Control & Water Conservation District, Zone 7 v. Schmidig Family Limited Partnership/The Ferrari Family Limited Partnership, Alameda County Superior Court Case No: VG06292840
 - iv. Alameda County Flood Control & Water Conservation District, Zone 7 v. McNealy & Fragulia et al., Alameda, County Superior Court Case No: VG06893136
- b) Conference with Legal Counsel –Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: 3 cases
- c) Conference with Legal Counsel –Initiation of litigation pursuant to Subdivision (c) of Government Code Section 54956.9: 1 case
- d) Conference with Labor Negotiators:
Agency Negotiator: Jill Duerig
Unrepresented Employee: Environmental & Public Affairs Manager

Item 20—Open Session and Report Out of Closed Session

Ms. Naamani gave the following report out of closed session:

Closed Session Report Out:

Item a(ii): By unanimous vote, the Board of Directors authorized settlement of eminent domain litigation with Greenridge Power, LLC, for \$50,000.00 inclusive of fees and costs and authorized the General Manager to execute all necessary documents to effectuate extinguishment of wind power easements upon the conservation easement to be acquired from the Walker family.

Item a (iv): By unanimous vote, the Board of Directors authorized settlement of eminent domain litigation with McNealy and Fragulia Family Trusts for \$370,000.00 exclusive of attorney's fees and costs.

Item c: By 5-2 vote, with Directors Myers and Stevens opposed, the Board of Directors directed and authorized the General Counsel to initiate litigation as necessary, which if formally commenced, shall be disclosed upon inquiry.

Item d: By unanimous vote, the Board of Directors adopted Resolution No. 09-3208 approving a new salary schedule for the Environmental & Public Affairs Manager, Zone 7

Item 11—Award of Construction Contract for the Chain of Lakes Wells No. 1 & 2—Facilities and Sitework Project, Project Number 180-08

Mr. Arends stated that the Chain of Lakes Wells No. 1 & 2—Facilities and Sitework Project, Project Number 180-08, was advertised for bids, and on July 8, five bids were received and opened. After review of the bids, staff determined that due to the totality of the circumstances surrounding the bids received, we are recommending that the Board reject all bids and rebid the project as soon as possible.

President Palmer asked for discussion from the Board. There was none.

President Palmer asked for public comment on this item. She requested that the comments be kept to a maximum of three minutes.

Mr. John Busby, attorney for Mountain Cascade, spoke to the Board. He stated that his client was the low bidder with a bid that was nearly \$1 million below the engineers estimate. A bid bond was posted. He urged that the Board award the construction contract for this project to Mountain Cascade which he said was the lowest responsible, responsive bidder. He understands staff has some concerns about some of the issues in the Mountain Cascade bid although they have not formally written or asked about any of those things. In fact, when he inquired, he was told they would not tell him. He didn't think that was fair play. The Mountain Cascade bid is responsive; it is the low bid, and he urged that the contract be awarded to Mountain Cascade tonight.

There were no further public comments.

Based on staff's information and in the best interests of Zone 7, Director Greci moved for the adoption of Resolution No. 09-3209 which rejects all bids received and authorizes rebidding of this project as soon as possible. The motion was seconded by Director Quigley and passed by a vote of 7-0.

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Referring back to Item 13, Items for Future Agendas, Director Myers requested that an item be agendized to allow discussion regarding conveyance of a select piece of Arroyo del Valle right of way to the City of Pleasanton.

Ms. Duerig suggested that it might be more appropriate to wait until after the Stream Management Master Plan (SMMP) has been adopted. Only because the committee has indicated that perhaps we should be looking at acquiring more property along the arroyos not less. Once that is resolved by the full board it will be easier to agendize an individual property adjacent to an arroyo.

Director Myers asked if the SMMP is proposing any significant changes along that reach of the Arroyo del Valle.

Ms. Duerig responded that there had been a general comment that philosophically we should be looking at acquiring as much and as wide a swath as we could—whether it was through ownership or easements and that when property or parcels become available we should look into acquiring them because they provide opportunities for habitat adjacent to the riparian corridor. She wasn't sure if this particular parcel fits that criteria but we have some basic philosophical questions to answer first. If that policy is not adopted, it would head us in one direction and make it more likely to be deemed surplus. If we head in another direction, it makes it less likely. It would be good to have that basic philosophical answer first.

President Palmer agreed that it would be premature to discuss this item too soon. She estimated 3 to 4 months would be a likely timetable when it could appear on the agenda.

There was some discussion on how soon this item should be placed on the agenda. It was ultimately decided that 3 to 4 months was an appropriate time period.

Upcoming Board Schedule

There is no need for a special meeting this month.

- a. Board Retreat: August 14, 2008, 9:00 a.m. to 3:30 p.m.
Location: Purple Orchid Inn, 4549 Cross Road, Livermore
- b. Regular Board Meeting: August 20, 2008, 7:00 p.m.

There was no further business and the meeting was adjourned at 9:25 p.m.