



Special Meeting of the Board of Directors

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

Date: Friday December 9, 2011, 10:30 am – 10:45 am

Roll Call: Directors Budge, Hume, Knight, Nottoli, 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.

Action Item

1. Motion: Consider prior Approval of the General Alignment and Certification of the Program Environmental Impact Report (EIR)
 - a. Attachment - Staff Report to be provided at meeting

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 # 1
Resolution**

December 9, 2011

Consider prior Approval of the General Alignment and Certification of the Program Environmental Impact Report (EIR)

Issue: Staff recommends that the Board consider the prior approval of the General Alignment and Certification of the Program Environmental Impact Report, and consider whether the Board should clarify statements in the Draft EIR in light of recent court decisions and information provided after certification of the Final EIR.

Recommendation: Staff recommends that, in light of the recent court decisions, it may be beneficial to clarify certain statements in the draft EIR. In order to accomplish this, the Board would have to decertify the Program EIR for the Connector Project, rescind its approval of the General Alignment, and direct staff to revise those portions of the draft EIR staff determines need clarification and recirculate any chapters of the draft EIR, if required under the California Environmental Quality Act (CEQA).

Discussion: On August 12, 2011, the JPA Board certified a Program EIR for the Capital SouthEast Connector Project. Subsequently, on October 14, 2011, the JPA Board adopted a General Alignment for the Connector Project, relying on the certified Program EIR.

Following the adoption of the General Alignment in October, the JPA received a lawsuit challenging the adequacy of the adopted Program EIR. In addition, two appellate court decisions have been published since the certification of the EIR, *Madera Oversight Coalition v. Madera County* and *Pfeiffer v. City of Sunnyvale*, both of which address the issue of “baseline conditions” to be analyzed in an EIR.

Given the litigation and new case law, staff recommends that the Board direct staff to clarify those portions of the Draft EIR deemed necessary. In order to accomplish this, staff recommends the Board decertify the Program EIR, rescind its approval of the General Alignment, and recirculate any chapters of the draft EIR, if required under CEQA. Staff anticipates that the revisions to the document will be minimal and may include a clarification of the baseline used for the analysis of traffic impacts in Chapter 16, and the incorporation of a brief discussion regarding the cumulative agricultural impacts of the project in Chapter 18, as originally identified in Chapter 11 of the Draft EIR.

Respectfully Submitted,

Tom Zlotkowski
Executive Director

RESOLUTION NO. 2011-22

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE CAPITAL SOUTHEAST CONNECTOR
AUTHORITY DECERTIFYING THE PROGRAM EIR AND
RESCINDING ITS APPROVAL OF THE GENERAL ALIGNMENT**

WHEREAS, on August 12, 2011, the JPA Board certified the Program EIR for the Capital SouthEast Connector Project, pursuant to Resolution 2011-15; and

WHEREAS, on November 10, 2011, the JPA Board adopted a General Alignment for the Capital SouthEast Connector Project, and adopted the necessary Mitigation Monitoring and Reporting Plan and Findings of Fact and a Statement of Overriding Considerations, pursuant to Resolutions 2011-18, 2011-17, and 2011-16, respectively; and

WHEREAS, in light of recent court appellate court decisions, the Board has determined that it may be beneficial to clarify certain statements in the Program EIR; and

WHEREAS, in order to accomplish this, the Board must decertify the Program EIR and rescind its approval of the General Alignment.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE CAPITAL SOUTHEAST CONNECTOR JPA RESOLVES AS FOLLOWS:

1. The Board of Directors hereby rescinds its approval of Resolution 2011-15, certifying the Program EIR for the Capital SouthEast Connector Project.
2. The Board of Directors hereby rescinds its approval of Resolution 2011-16, adopting Findings of Fact and a Statement of Overriding Considerations.
3. The Board of Directors hereby rescinds its approval of Resolution 2011-17, adopting a Mitigation Monitoring and Reporting Program.
4. The Board of Directors hereby rescinds its approval of Resolution 2011-18, adopting a General Alignment for the Capital SouthEast Connector Project.
5. The Board of Directors directs staff to clarify those portions of the Draft EIR deemed necessary, and to recirculate any chapters of the Draft EIR, if required under CEQA.

6. The Board of Directors directs staff to comply with all public noticing requirements under CEQA, and to bring back resolutions for the certification of the Program EIR and approval of a General Alignment as soon as possible.

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

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PASSED AND ADOPTED this 9th day of December, 2011, by the following vote:

AYES:

NOES:

ABSENT:

Chairperson

ATTEST:

Secretary