

**SPECIAL meeting**  
**BELVEDERE-TIBURON LIBRARY AGENCY**  
**Belvedere-Tiburon Library, Tiburon, California**  
**April 6, 2020**  
**As Approved on April 20, 2020**

**Roll Call, Present:** Chair William Smith, Vice Chair Niran Amir, Treasurer Jeff Slavitz, Thomas Cromwell, M.D., John F. Foran, Maureen Johnson, Ken Weil

**Members Absent:** **None**

**Also Present:** Riley Hurd, Glenn Isaacson, Robert Alten, Rachael Ong, Roxanne Richards, Ann Aylwin, Deborah Mazzolini, Michelyn French, Trudy and Jay Costello, Joey Della Santina, Patty Pickett, Chelsea Navado, Kristin Johnson, Deirdre McCrohan

**CALL TO ORDER:** **Chair Smith called the meeting to order at 4:02 pm**

**OPEN Forum:** Chair Smith opened the floor for any comments from the public regarding items not on the Agenda. There were none.

Riley Hurd, District Counsel for the Agency, clarified protocols for order during the telephone meeting: Speakers should state their name when speaking. When not speaking all participants should mute phones. For public comments and questions, Counsel Hurd will call on speakers in order.

**TRUSTEE CONSIDERATIONS:**

**1. Consideration of Status of Library Expansion Project and Direction to Continue or Stop work**

Counsel Hurd stated that the Belvedere Tiburon Library is an independent Joint Powers Authority of the State of California, a governmental entity that manages and administers the operations of the Belvedere Tiburon Library. The reason for today's Special Agency Meeting is an item of urgent nature, which requires Board discussion. The Library Agency is currently managing a major building and grounds expansion in the middle of the COVID-19 pandemic. In response to the pandemic, the County of Marin has issued new orders regarding construction projects. Counsel Hurd will review and summarize the County's orders and explain the Agency's options. After Public input, there will be a vote by Agency roll call.

In response to the COVID-19 pandemic, the Marin County Lead Health Officer has ordered a countywide shelter in place, and a limitation of activities, including curtailing non-essential construction projects. There are some construction exemptions, including those related to Essential Government Functions (EGF).

The Library Expansion is underway, with an estimated total cost of \$17,000,000, \$12,000,000 of which is construction-related. Currently it is estimated that the

construction is 12% complete. Glenn Isaacson, Project Manager, is present to answer construction-specific questions.

The County of Marin has issued two orders. The most recent order dated March 31, 2020, allows limited types of construction to continue, including Public Works Projects, if the Lead Governmental Agency (LGA) on each Project specifically designates them as EGF.

The questions to be considered by the Agency are: (1) is this Project an EGF? and (2) Who is the LGA?

The order itself does not answer those questions directly. It is up to each agency, within reason, to determine what they consider an EGF, and to determine whether to proceed or not with a particular Public Works Project.

The County Order allows construction deemed an EGF to continue. In this case, the Belvedere Tiburon Library Agency (as the LGA) would decide if the Expansion Project is an EGF.

One might think that the Town of Tiburon may be the LGA with respect to the Library Expansion, as the Town issued the permits for the Project. However, in the context of the Marin County Order, according to Counsel Hurd's conversation with the Marin County Counsel: LGA refers to the Public Entity that issued the Construction Contract in question. This interpretation has been confirmed by the Town of Tiburon Counsel, also. Therefore, it is the sole decision of the Belvedere Tiburon Library Agency, within reason, to make a determination as to whether the Expansion Project, as an EGF, should continue at this time.

Counsel Hurd presented another question: Does the Project need to be considered as essential at this point of time and/or as essential to future operations? He added that, although the Library is currently closed to physical gathering, it is open virtually, with robust public usage of the website. In addition, the Library Staff is performing essential functions such as payroll and maintenance of the virtual portals and content. Libraries, in general, are EGF's, places for communicating, gathering, and education. They are undoubtedly important to the community for the long term.

Counsel Hurd researched other County Projects which are currently continuing construction as EGF's and found: San Rafael City deemed 7 School projects and a City Hall Project essential, the County deemed a Southern Marin School Project essential, a San Pablo City Fire Project is continuing, the City of Novato has several projects continuing, the City of Richmond deemed a parking lot essential, but a creek restoration non-essential.

Counsel Hurd delineated aspects of the Library Expansion Project and its timeline for the Agency to consider. First, the number of weeks or months of stoppage for any reason would not be directly proportional to the total time of delay. If the Project were stopped for 6 weeks, it would take much additional time beyond 6 weeks to remobilize the supply

chain and the subcontractor availability. In addition certain outdoor aspects of the Library Project: the Parking Lots and Common Areas, are within a particular distance from the Tiburon Marsh; this location issue already legally requires a construction stop between September 30, 2020, and May 1, 2021, so if these areas are not completed before September 30, 2020, they will not even restart until May of 2021. The Project Plan has a built-in 4-to-5 week float for Project delays, but much of that time has already been used due to weather delays. The Library Agency has a strong working relationship with the contractor, Alten Construction. Alten is also assigned to a number of other Public Work projects in Marin County which are continuing, so has the experience required to continue in the current circumstances.

Counsel Hurd has discussed construction protocols for preventing spread of COVID-19 with Alten staff regarding the Library Project. Alten has already created protocols for their staff, along with required compliance forms for documentation. The protocols include rules for no sick or symptomatic workers on site, one person per commute or construction vehicle, lunches provided on site so that workers don't go out into the community, 6-foot social distancing, all Personal Protective Equipment to be used by each worker: masks, glasses, gloves, sanitizing.

Counsel Hurd invited Project Manager Glenn Isaacson to comment on the Project.

Mr. Isaacson stated that delays in the Project at this stage could be devastating. Uncertainty would create scheduling and cost problems. Schedules have been made according to deadlines such as the Marsh stoppage required, and subcontractors have been booked accordingly. On site, work has been studied for five months so there is a working knowledge of flow amongst the crew now, which would be lost with an interruption. Subcontractor and materials availability could be negatively affected with a delay. Slight delays can lead to longer delays and to financial difficulties.

Counsel Hurd summarized the issues: The Agency needs to decide if this Project is an EGF for which construction should continue. In the mix is the possibility of longer delays and cost increases, and continuity of operations of the Library in the short and long term, and what can be provided to the public if construction does not continue at this time. The County Ordinance allows for Public Works Projects designated as EGF's by the LGA to continue, so the primary question for the Board is whether this is an EGF.

Counsel Hurd added that, with the generally accepted important role that libraries play in communities, and given his consultation with other attorneys, there is a strong case that the Library Project is an EGF. There are other concerns, i.e. the deadly COVID-19 virus, to consider. The Agency must weigh and balance these issues.

Counsel Hurd asked Chair Smith to open the floor to questions from the Agency for himself, the Library Staff, the Project Manager, and the Contractor.

Trustee Cromwell asked what the chances are of the County revisiting the ordinance and re-evaluating the Agency's authority to continue. Counsel Hurd said that this is

unlikely but not out of the question. Trustee Cromwell asked what might happen to the global supply chain for the construction materials. Counsel Hurd replied that materials are currently coming in. Work and use of materials may be slower with fewer workers on site and social distancing to follow.

Vice Chair Amir stated that the current expectation is that COVID-19 will peak 8-10 days from today in Marin County. Marin County has not seen as much impact as some other areas yet. What will happen if the Agency now votes to continue the Project yet needs to revoke the decision at a later date because of a change in the rampancy of COVID-19 in our County? Would the Agency consider a temporary pause until May until the trend for COVID-19 is more clear?

Counsel Hurd said that if the risk changes, he would encourage the board to call another meeting. The Agency could legally revisit the decision based on new information.

Project Manager Isaacson said that consideration was given to that issue but the large- looming item of the site work on the north side parking lot and park takes precedence and MUST begin on May 1: for the earthwork, a subcontractor must be mobilized now to deliver heavy equipment to the site. Otherwise, a near-year long delay could be very costly to the project and could create even further delays.

Trustee Cromwell added that naming any dates with respect to COVID-19 peaking or waning is not possible or practical. There is no way to be sure of its timing.

Counsel Hurd reiterated that the focus of the Agency should be on the question of this project as an EGF, not on any projected timing of COVID-19.

Trustee Smith said that the Project had already lost time due to weather, and that float time was no longer substantially available in the Project. Project Manager Isaacson reaffirmed this, and reminded the Agency that there could be other unavoidable delays.

Treasurer Slavitz asked whether, if the Agency designates the Project as EGF, the Contractor would indemnify the Agency from liability related to COVID-19. Counsel Hurd said that the existing contract between the Agency and Alten Construction already indemnifies the Library for any scenario of injury, illness, or death to contractor employees. Indemnity of the Library already exists. The responsibility for the construction workers lies with the contractor, and protocols are mandated by the County for the contractor. If the Project is directed by the Agency to proceed, specific COVID-19 language could be added to the contract if agreed by the contractor.

Trustee Foran asked if the Agency decided to stop the Project, thus breaking the supply chain, would the Agency be liable for damage claims by suppliers, and how much damage could suppliers seek. Counsel Hurd said that the COVID-19 pandemic is legally considered a Force Majeure, and that this legal provision of Force Majeure could be invoked, and the Agency should not be liable for monetary damages, should it decide to stop the project due to the pandemic.

Trustee Weil asked about the ability and willingness off Alten Construction to continue working on the Project assuming that the Agency decides to go forward at this time.

Robert Alten of Alten Construction replied that his company has spent the last 3 weeks in all-company meetings regarding COVID-19 protocol updates and feedback from its staff. It is the desire of the staff and management to push forward on company projects. The Project Supervisors want to continue working and are prepared to work following the new safety guidelines, which are changing daily. Alten is continuing to work on several Marin County sites, and is proud of how the workers are handling it. They need to work and want to work. They have a good understanding of what they are up against and they want to follow procedures and continue working. The company is being overly cautious, requiring temperature checks of workers at every site, and requiring that workers commute alone. Projects that are continuing under Alten's umbrella are The College of Marin IBC, Benicia Valley School, San Pedro School MAC Building, San Rafael Fire downtown, Marin Catholic Gym overflow for Marin General, San Pablo Fire Station, and Oakland's Glenview Elementary School.

Chair Smith asked about the importance of time frame in considering a project.

Counsel Hurd said that there is no time frame specified for EGF in the Marin County Order. His observation is that time frame of continuing projects is not just here and now, but relates to future continuity with respect to an EGF. There is a very strong argument for the role that Libraries play in society, in education, and for future functionality when the stay at home order is lifted. The EGF should be the main consideration for the Agency.

Chair Smith opened the floor to Public Comment. Counsel Hurd will note the names of requested speakers and call on them in order.

Jay Costello, member of the Public, 1916 Mar West, requested a review of a memo he had sent to the Town of Tiburon Building Department.

Counsel Hurd stated that any material sent to the Town of Tiburon would not be incorporated into Library Agency meeting, and was informal noticing by email to the Town, and that Mr. Costello must make any comments he wishes considered orally at this time.

Mr. Costello said that all construction in Tiburon is important to the community. If continuing construction is allowed for the Library, it should also be allowed for restaurants, as restaurants are also essential. The Library employs fewer employees than the hundreds employed at local restaurants, which draw outside people into the community. The Library should not be given special treatment.

Ann Aylwin, member of the public, 56 Lagoon, Belvedere, and Vice President of the Library Foundation said that the ultimate goal of tonight's meeting would be making the best decision for everyone in the community on every level. If schools are continuing, the Library is in the same category. If schools do not re-open, but the shelter in place is

lifted, the Library could be an especially essential resource to be open. Therefore, the construction should be resolved as soon as possible. The new Library spaces indoors and out will provide an essential service to rebuild our sense of community. To have a fully functional expanded Library will help the community. If can be done safely, as contractors have indicated it will, it makes sense to continue.

There were no other public comments, and Chair Smith closed the public comments at 4:56 pm and opened the floor to comments from the Agency Board.

Trustee Foran expressed concern about both the health and economic risks related to the Project. He has been impressed with the Alten team, and walks by the Library to watch their work each day. He has noted that they observe the protocols of social distancing amongst themselves, in addition to working behind a chain link fence, separating them from the local community. The health risk seems to be properly covered. The economic risk seems greater: a delay will subject the project to rising supply chain costs, claims & damages, and will increase the already serious budget problem, in which case the Library could end up with a hole in the ground and no project completion possible.

Trustee Johnson said that the decision might be different if the Project had not already started and was not facing a deadline. Therefore, she favors moving ahead as an EGF to avoid economic impact and further delay. She expressed appreciation for the workers compliance with the COVID-19 Order.

Treasurer Slavitz agreed that the risk of delay is too high, and that construction personnel are operating in a safe manner. He is in favor of going ahead with the Project as an EGF.

Vice Chair Amir expressed earlier doubts about being able to continue in the face of COVID-19 in terms of risk to the community. She now understands the financial impact of a delay and is reassured by the steps the contractor is putting in place to make sure the workplace is as safe as possible. She added that the Agency should reserve the right to recall a meeting and revisit the decision if the situation with COVID-19 is becoming worse.

Trustee Cromwell said that he agreed with the previous speakers. Although he also had some concerns about a closed Library being an EGF, the robust online usage is convincing in terms of valuable continuing Library service to the public. The local community will continue to need the resources that the Library can deliver. He considers the Library an EGF and believes that, in light of the practical problem of a possible delay until May 2021, the Project should continue - with assurance that the contractors are conforming to the proper practices.

Trustee Weil said that he concurred with previous expressions by fellow Board members. He expressed appreciation for Counsel Hurd's legal perspective and for reassurances from Project Manager Isaacson and Contractor Alten. He said he had no

question that the Library is an essential part of the community, not just for today but also for the future. He agreed that the Project is an EGF and should go forward.

Chair Smith thanked Mr. Alten for joining the meeting and for his care and concern for his workers and for the community Mr. Isaacson for pertinent information on the Project and for Counsel Hurd for a framing of legal detail. He expressed support of going forward as an EGF. He said that if the Project was closed down now, the Library might not be functional in the near-term future.

Counsel Hurd said that the current Government Order for telephone meetings requires that votes be taken by roll call.

Counsel Hurd asked that Chair Smith call for a motion to declare the Library Expansion Project an Essential Government Function for all the reasons stated in the meeting, including continuity of operations and the essential community function of Libraries, and directing Library Staff to compose a letter informing Alten of this decision with direction to continue and to abide by the Government Orders related to the COVID-19 pandemic.

Chair Smith called for a motion.

**Motion to declare the Library Expansion Project an Essential Government Function for all the reasons stated in the meeting, including continuity of operations and the essential community function of Libraries, and directing Library Staff to compose a letter informing Alten of this decision with direction to continue and to abide by the Government Orders related to the COVID-19 pandemic made by Trustee Cromwell, Seconded by Trustee Johnson.**

**Roll call vote: Trustee John F. Foran, Aye, Trustee Thomas Cromwell, M.D., Aye, Vice Chair Niran Amir, Aye, Treasurer Jeff Slavitz, Aye, Trustee Ken Weil, Aye, Trustee Maureen Johnson, Aye, Chair William Smith, Aye. Motion passed unanimously.**

Counsel Hurd will work with Library Staff to formalize the letter to Alten Construction.

Chair Smith adjourned the meeting at 5:09 pm

Respectfully Submitted,

Kristin M. Johnson, Clerk of the Belvedere-Tiburon Library Agency Board