

## **Window Dressing or Effective Oversight? Citizen Oversight Committee, Measure D Bonds Cabrillo Community College District**

### ***Synopsis***

An investigation was completed to determine if the Cabrillo Community College District had clearly identified and described the projects proposed to the voters and effectively initiated, structured and implemented the Citizen Oversight Committee (COC) required as part of Measure D, a \$118.5 million Bond Fund passed by county voters in March 2004. The investigation reviewed the performance of the oversight committee, including its reports to the public. The investigation did not reveal any misappropriation of funds or any violations of the law or regulations in the creation and operation of the committee. However, it did reveal several areas where the district and the committee could improve oversight and provide greater transparency to the public in the expenditure of the bond funds.

### ***Definitions***

#### **COC**

Citizen Oversight Committee.

#### **Independent Audit**

An audit by a Certified Public Accountant of the financial statement of the District's Measure D Bond Fund and a performance audit to assure that funds have only been expended on voter approved projects.

#### **Measure D Funds**

The \$118.5 million Measure D Bond Funds passed by the County voters in March 2004 to use for construction, rehabilitation and leasing of school facilities.

### ***Background***

#### **Legislation**

Proposition 39, an initiative constitutional amendment and statute, was passed by state voters in November of 2000. It amended the California Constitution and resulted in a revision to the California Education Code. It provided for a 55% vote to pass local bond measures, in lieu of the standard 2/3 vote requirement, if specific accountability requirements were incorporated in the bond measure. These "accountability requirements" (Article XIII A Sec 1 (b) (3) of the California Constitution) for school bond measures are summarized as follows:

- Must require that funds can only be spent for construction, rehabilitation, and/or leasing of facilities including furnishings and equipment.
- Must contain a list of specific school facilities projects to be funded.

2006-2007 Santa Cruz County Grand Jury Final Report

- Must require an independent annual performance audit to ensure that funds have only been spent for the projects listed in the measure.
- Must require an independent annual financial audit until funds have been spent.

In addition, California Education Code Sections 15278-15282 directs that the bond measure require the formation of an independent Citizen Oversight Committee. Its purpose is to inform the public as to the district’s compliance with the above accountability requirements. The scope of its activities is divided into two categories, required and optional, as follows:

Required	Optional
<ol style="list-style-type: none"> <li>1. Ensure that the district conforms to accountability requirements.</li> <li>2. Ensure that the district does not spend these funds on salaries or other operating expenses.</li> </ol>	<ol style="list-style-type: none"> <li>1. Receive and review performance audits.</li> <li>2. Receive and review financial audits.</li> <li>3. Inspect school facilities and grounds.</li> <li>4. Receive and review deferred maintenance proposals.</li> <li>5. Review efforts by the district to implement cost-saving measures</li> </ol>

The Education Code also specifies that the Citizen Oversight Committee shall:

- Consist of a least seven members. Four members shall come from specified interest groups.
- Have members who are not district employees, officials, contractors, vendors or consultants.
- Have members who serve for a term of two to four years without compensation.
- Receive from the district all necessary technical and administrative support to further its purpose.
- Hold meetings open to the public with published meeting minutes.
- Report on its activities to the public at least once per year.

Measure D bonds for the Cabrillo Community College District for \$118.5 million committed the district to incorporate statutory requirements described above to qualify for the 55% voter approval standard.

**Status of Measure D funds**

Design and construction is well under way on a number of projects. Some projects are complete. As of June 30, 2006, \$24.4 million had been expended and a total of \$101. 2 million had been committed. The oversight committee has published two annual reports, and two annual financial and performance audits have been conducted. Enough work has been completed to allow an initial evaluation of the performance of the district and the Citizen Oversight Committee in meeting their obligations under Measure D.

**Voter Pamphlet Information**

The California Constitution requires that a bond measure contain a list of specific school facility projects for accountability purposes. The list contained in the voter pamphlet for Measure D was organized into a paragraph format naming categories of projects, albeit with some specific projects noted. This specific list is not used in subsequent documents as the projects are reported on and tracked. In fact, a new approach to the list is developed for each type of report. The following illustrates the point:

Voter Pamphlet (VP).....	9 categories of projects
Master Plan of November 3 2004 (referenced in VP).....	29 projects/categories
COC 1 <sup>st</sup> Annual Report (2005).....	17 projects/categories
2005 Audit Report.....	8 projects/categories
2006 Audit Report.....	7 projects/categories
COC 2 <sup>nd</sup> Annual Report (2006).....	22 projects/categories
Master Plan, Measure D Project list January 18, 2007.....	70 projects

It’s understood that the format of the project descriptions used for the voter pamphlet may have been drafted for ease of reading; however, this format makes the reporting and accountability to the public problematic. It is not as transparent as it could be.

The reference to the District Facilities Master Plan and the November 3, 2003 amendment is not very helpful either. Even if a voter were to take the trouble to find this document, the amendment still deals largely in categories of projects, not strictly a list of specific projects. The net effect is that the specific project list is more obscure than necessary.

It seems clear from the language of the law that there is to be a certain level of specificity in the project list. It states, “A list of specific school facilities projects to be funded...” shall be included in the proposition as an “accountability requirement” (Article XIII A Sec 1 (b) (3). If the list is specific, clear and well defined, it will be traceable in reports to the public as to when funds are expended and when they are not. Accountability will thereby be maintained. It should start with the master plan and the voter pamphlet and then be carried through to other reports and documents.

It is recognized that the list will change somewhat over time to adjust to unforeseen circumstances. This should be covered by annotations to the list. There is no suggestion that anyone is trying to mislead the public, but the public has a right to understand what they are voting for and what they are getting as the projects progress.

### **Independence of the Citizen Oversight Committee**

The Education Code stipulates that an oversight committee member shall not be an employee, or an official of the district or a vendor, contractor or consultant to the district. In order for the committee to provide objective oversight, this independence is essential. It appears that the district has met the letter of the law. The question remains as to whether this specific legal requirement is all that is necessary to provide credible independent oversight.

There are several practical things that the district could do to enhance the independence and thus the credibility of the oversight committee and the district's standing in the eyes of the public. The normal review functions could include additional items which may result in recommendations to the board for consideration. After a response from the board, the oversight committee would go on record with its acceptance or its objection. Some examples that the committee could undertake are:

- By-laws
- Selection of the independent auditor
- Audit scope and methodology (prior to the audit)
- Final audit report (prior to board acceptance)

### **Citizen Oversight Committee Membership**

The seven-member minimum requirement listed in the Education Code allows for five members from interest groups (a business person, taxpayer, senior citizen, representative from a college support organization and a student) as well as two at-large members not belonging to one of these groups. Since it is likely that some expertise that would benefit the committee in its work would be found in the at-large members, the possibility of increasing the number of members to bring a broader range of expertise should be considered. The argument that more at-large members would dilute the voices of the stipulated interest groups is true. However, that was already contemplated in the law when it stipulated that seven members is a minimum.

There are a number of specific areas of expertise that could be invited in press releases and other solicitations and should be given weight in consideration for COC membership. Some of these areas are as follows:

- Accounting
- Financial Management
- Auditing

- Construction
- Construction Management
- School Administration
- Experience with DSA
- Value Engineering

### **Citizen Oversight Committee By-Laws**

The committee's by-laws were prepared by the district and issued to the committee. The by-laws authorize facility inspections and review functions for: the audit report, deferred maintenance proposals and cost-saving measures when offered by the district. The available meeting minutes do not reflect any review of deferred maintenance and cost saving proposals.

The by-laws do not define the process to deal with concerns or issues raised by the oversight committee itself. They do not authorize a committee role in working with the district to establish priorities when projects are delayed or cancelled, as suggested by the text of Measure D. In fact, the by-laws devote twice as much space to what the committee is not authorized to do than what they are authorized to do.

### **Independent Audit Report**

The performance audit dated June 30, 2005 reported on some categories of projects traceable to the Master Facilities Plan and the November 3, 2003 amendment, but not on a complete specific project list that could be regularly monitored in future reports. It did not list the authorized projects for which no funds have been expended. Such listing may not be required by the law but would enhance transparency and aid the voter in understanding the status of the Measure D projects. This first audit report does not mention the total number of invoices paid with Measure D funds and the number of invoices checked and their total value. Such numbers would give a better insight to the scope of the audit and the basis for accepting the conclusions of the audit. It merely states that they found no non-compliances. Since we do not know the size of the sample and the total number of invoices, the Grand Jury does not have a basis for judging the reliability of the implied conclusion that there have been no misappropriations of funds.

The performance audit dated June 30, 2006 has similar shortcomings. Although the inspected invoices (totaling 25% of expended funds) are listed, the total available invoices for inspection are not listed. Furthermore, the 25% value was not applied to each category of expenditure. All that is certified is that they found no misappropriations in what they looked at. We, therefore, do not have an independent auditor's opinion that there have been no misappropriations of funds.

### **Construction Quality Control and Construction Safety Programs**

The Citizen Oversight Committee appears to have no role in the review of construction quality control and construction safety programs. Although such a role is not required by

law, one might expect that the committee would insist on seeing program documentation to confirm that such programs are in place. Quality control problems could have a serious impact on cost and schedule. The public is reliant on the district to oversee these functions. The district contracts with contractors, the construction manager and inspector of record to assure quality and safety. However, in order to manage these areas and ensure compliance, an agreement on the definition of roles and responsibilities is critical.

The district has not fully implemented or defined an integrated program that captures all construction activities. The design team and the construction contractors play the key role, but the oversight function of the district over the contractors, construction manager and the inspector of record is critical to such projects. Many elements are in place, but there is no single document for each of these two areas that defines the role and responsibilities of all the parties.

### ***Findings***

1. The specific project list which defines for the voters what they are voting on is not clear and consistent in the District Master Plan, voter pamphlet, COC Annual Report and the performance audits.
2. The district has narrowly interpreted (as reflected by the development and provisions in the by-laws) the requirement for COC independence. It meets the minimum membership requirements specified in the California Education Code.
3. The district limited the membership to the legally required seven members and did not pursue expanding the number of members to obtain relevant expertise on the oversight committee to provide more effective oversight.
4. The Citizen Oversight Committee by-laws were, in effect, imposed on the committee without significant discussion or a vote by the committee members. These by-laws limited the committee's authorized activities (only four listed activities) to less than what was communicated to the voters that is to "work with the Citizen's Oversight Committee on prioritizing ... projects..." per the voter pamphlet.
5. The independent performance audit reports by two CPAs did not express an opinion about whether or not there had been any misappropriation of funds.
6. The district has not defined and published an integrated construction quality control program document and a construction safety program document for the Measure D projects.
7. One inspector of record did not agree that he had responsibility for what was called "quality control" by the construction manager.

## **Conclusions**

1. Greater transparency can and should be achieved in tracking projects. In order for the oversight committee, auditors, district staff and the public to track the specific projects throughout the life of the Measure D program, it is necessary for the district to define and maintain a consistent, detailed specific list in all the public documents.
2. The oversight committee would be more credible and effective if it were to function with more independence and a broader scope of authorized activities.
3. The oversight committee could be more effective if it were to have members with expertise covering more of the relevant Measure D program activities.
4. The oversight committee should be given the opportunity to review, discuss, propose and then formally adopt its own by-laws.
5. The performance audits are not adequate to establish, with credibility, that there have been no misappropriations of funds.
6. Some projects have had significant quality control problems. One inspector of record was released from the program by the district in part due to disagreements over the inspector's role in quality control. With regard to construction safety, there have not been major safety incidents to date. In both these areas, however, a more defined and rigorous approach to management is needed.
7. The members of the COC are sincere and civic minded. They deserve our thanks for being willing to serve. Furthermore, the district staff was found to be cooperative and competent in their dealings with the Grand Jury.
8. The oversight of the Measure D Bond projects is more than "window dressing," but it can be improved.

## **Recommendations**

1. For bond measures, the district should develop a clearly numbered specific facilities project list for the voter pamphlet and use that specific list in future tracking and reporting.
2. For future Citizen Oversight Committee annual reports, the committee should develop a specific facilities project list that translates all of the Measure D project categories to a project list and identifies those projects for which Measure D funds are planned but have not been expended to date.
3. The independence of the oversight committee should be strengthened. The committee should be more proactive and take the following steps with the district's concurrence and cooperation:
  - Review, recommend changes to the district, if any and, formally adopt the by-laws, with or without comments.

- Review and formally comment on the selection of the independent auditor prior to the appointment.
  - Review and formally recommend changes to the District, if any, on the audit scope and methodology prior to the audit being conducted.
  - Review and comment to the District on the final audit report and formally accept with or without comments.
4. Increase efforts to solicit membership in the Citizen Oversight Committee to a broader audience such as with newspaper advertisements and/or announcements inviting individuals with specific relevant expertise to apply.
  5. Revise by-laws to describe the process for resolving issues of concern to the oversight committee.
  6. Revise by-laws to include the committee's role in prioritizing projects for delays or cancellations as described in Measure D.
  7. The district should document the roles and responsibilities of the district, the construction manager, the contractors and the inspector of record for construction quality control and safety.
  8. In the future, the auditor should use a more specific facilities project list.
  9. In future audits, the processes and a sufficient number of invoices should be tested to allow the auditor to render an opinion with a high and defined level of confidence that there has been no misappropriation of funds.
  10. In future audits, the auditor should report on the number of invoices examined and the total invoices processed for the Measure D fund.

***Responses Requested***

<b><i>Entity</i></b>	<b><i>Findings</i></b>	<b><i>Recommendations</i></b>	<b><i>Respond Within</i></b>
Cabrillo Community College Governing Board	1 - 7	1 - 10	90 Days October 1, 2007

## **References**

### **Documents**

Voter Pamphlet for Santa Cruz County March 2, 2004  
Cabrillo College District Facilities Master Plan November 3, 2003 update  
Cabrillo College District Facilities Master Plan March 7, 2007 update  
Cabrillo College Organizational Chart dated September 2, 2004  
Citizens Oversight Committee Annual Report March 2004 through June 2005  
Citizens Oversight Committee Annual Report March 2005 through June 2006  
COC Meeting Minutes dated August 24, 2004  
COC Meeting Minutes dated December 14, 2004  
COC Meeting Minutes dated March 8, 2005  
COC Meeting Minutes dated June 14, 2005  
COC Meeting Minutes dated July 12, 2005  
COC Meeting Minutes dated August 4, 2005  
COC Meeting Minutes dated Nov 9, 2005  
COC Meeting Minutes dated February 7, 2006  
COC Meeting Minutes dated May 9, 2006  
COC Meeting Minutes dated August 8, 2006  
Measure D Bond Fund Financial and Performance Audit June 2005  
Measure D Bond Fund Financial and Performance Audit June 2006  
District By-Laws for Citizens Oversight Committee — undated  
Stradling/Yocca/Carlson/Routh--Bond Council Agreement of May 1, 2003  
Bogard/Kitchell Agreement for Construction Management Services of January 7, 2004  
and amended March 1, 2006  
Bogard/ Kitchel (David Tanza) letter of March 15, 2007 Subject: Quality Control  
CA Constitution Article XIII A Section 1 Subdivision (b) Paragraph 3  
CA Education Code Section 15278-15282  
CA Building Standards Administrative Code, Part 1, Title 24, Sec 4-341 to 343

### **Web Sites**

Cabrillo Community College and COC: [www.cabrillo.edu](http://www.cabrillo.edu)  
California Constitution text: [www.leginfo.ca.gov/const.html](http://www.leginfo.ca.gov/const.html)  
California Education Code: [www.leginfo.ca.gov](http://www.leginfo.ca.gov)  
San Joaquin Delta College and COC: [www.bond.deltacollege.edu](http://www.bond.deltacollege.edu)  
El Camino College and COC: [www.elcamino.edu](http://www.elcamino.edu)

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