



MEASURE D CITIZEN'S OVERSIGHT COMMITTEE  
September 30, 2010  
Minutes

The meeting of the Measure D Citizen's Oversight Committee was held at, 6500 Soquel Drive, room 804, Aptos, CA on Thursday, September 30, 2010 at 10:00 am.

Present: Michael Bethke, Kathy Blackwood, Diane Craddock, Bob Dills, John Fry, Leigh Ann Lively, Bud Winslow

Absent: None.

Staff: Paul Anderson, Doug Deaver, Brian King, Victoria Lewis, Graciano Mendoza, Joe Nugent

Brian King called the meeting to order at 10:05.

I. Introductions: The committee introduced themselves.

II. Agenda Modifications:

Add: Elect new chair and vice chair.  
Separate agenda item for the Green Technology Center project bid and architect  
Distribution of amended minutes  
The agenda was approved as modified. (Fry/Winslow).

III. Comments from the Public: None.

IV. Minutes:

The minutes of July 22, 2010 were approved with the following clarifications:

- Add Paul Anderson under staff in attendance.
- Allied Health Classrooms:
  - 5<sup>th</sup> line: Receipt of state funds "is contingent" on the state budget passing should read "will be released upon" the state budget passing.
  - One line above, add "The committee recommended September 25<sup>th</sup>."
  - Last sentence: "During construction staff walked the building once a month and rejected several items long ago." John asked that the minutes

- Scotts Valley Center:
  - strike 2<sup>nd</sup> sentence. “\$1.5 million of measure C funds allocated; not enough to purchase a building.”
  - If Governing Board is aware of Measure C & D funded . . . aware is not issue.
  
- Litigation Update:
  - It was recommended to spell out acronyms (3D BIM).
  - SAC claim was settled. Add “Information about the settlement will be disclosed upon advice of counsel and when appropriate.”
  
- Allied Health Classrooms: provided a preliminary punch list in March 2010.
  
- Secondary effects, space planning:
  - 10 (not 12) classrooms, 2 assembly rooms. 12 total.
  
- There was a discussion of capitalization of proper nouns and it was recommended to capitalize the word “state.”

Staff will revise the July 2010 minutes and distribute to the committee via email.

V. David Casnocha, Bond Counsel, Committee Orientation:

David has served as Cabrillo’s municipal bond attorney for many years and was involved in drafting Measure D. Prop 39 requires a 55% voter threshold for approval of bond funds and mandates a seven member Citizens’ Oversight Committee. The California Education Code (Ed Code) defines the role and responsibilities of the committee. In April, 2004 the Cabrillo Governing Board of Trustees approved a resolution and bylaws establishing this committee. The bylaws state that the committee is an oversight committee, not an independent legal entity nor an advisory committee to the Board.

The three primary legislative responsibilities according to the Ed Code are to:

- i. Review the expenditures of bond funds and to determine expenditures were for qualified bond projects, such as construction, renovation, furniture or equipment consistent with Measure D, not teacher or administrator salaries or for expenditures not consistent with Measure D. The full ballot text lists potential qualified bond projects. The primary role of the committee is to independently review expenditures to confirm that funds have been appropriately spent on bond projects, not on teacher or administrative salaries. Not long after the 2004 election, the Attorney General issued an opinion that administrator salaries directly connected to bond expenditures may be reimbursed from bond funds as long as these expenditures were incurred “but for” bond projects. (Note: to date, no administrative salaries have been charged to the bond (e.g., minutes, website, annual report, Board reports)).
- ii. Inform the public of its conclusions with regard to reviewing expenditures.
- iii. Submit an annual written report. The committee presents to the Board of Trustees its conclusions whether money has been spent appropriately. Usually, the chair of the committee appears before the Board.

In executing these responsibilities, the Ed Code specifies other appropriate activities, such as to receive and review audits, to inspect the new facilities funded by bond money, and to review the District's efforts to maximize bond funds by implementing cost saving measures. The full text of Measure D is included in each committee member's binder. David noted the list of Measure D projects is dynamic and could now include projects that were not listed in the original ballot text, as long as it is of the type of project that voters approved.

Term limits: The law allows no more than two consecutive two year terms. According to David Casnocha, a member appointed mid-term would be eligible to complete the existing term and serve one additional two-year term.

The committee will stay in existence until the last written report for the fiscal year in which the last dollar was spent is submitted to the Board. Based on the current status of Measure D project, one could reasonably assume that the Measure D Oversight Committee could be in existence for three more years.

David has reviewed the bylaws with the committee and noted that members are not required to submit a Form 700, the Statement of Economic Interests Form, because the committee is not a legal entity.

The bylaws need to be revised to reflect that if there is one year left in the program and the term of the members has expired, the existing members can continue to serve on the committee until a successor is replaced and not be considered part of their term.

VI. Elect Committee Chair and Vice Chair: Michael Bethke was nominated as chair (Winslow/Dills). The motion carried unanimously. John Fry was nominated as vice chair (Dills/Winslow). The motion carried unanimously.

VII. 2009-10 Annual Report and 2009-10 Bond Audit Timeline:

|                  |   |
|------------------|---|
| October 2010     | Bond audit completed  |
| November 2010    | Draft annual report distributed to the committee for review |
| December 2, 2010 | Committee review of draft annual report due                 |
| January 2011     | Annual report submitted to Governing Board                  |

Victoria stated that, because the committee requested seeing the details of the audit and final expenditures for projects prior to writing the annual report, the audit will be completed before the draft annual report. The committee will receive a draft of the annual report in November with feedback due to staff the first week of December. It is anticipated that the annual report will be presented to the Board at the January meeting.

VIII. Project Status Updates:

Doug reviewed the September Facilities Master Plan report summarizing the Measure D funded projects.

Arts Education Complex

A mediation is scheduled in December, 2010. Bob asked if claims are not resolved at the mediation, is the next step arbitration? Doug answered, yes. The water leaks in the two performing arts buildings are part of the claim against the architect. In addition, rooms do not meet acoustic levels they should. Bob asked whether staff has received a cross complaint from the architect on installation? The District has not received cross complaints at this time.

Building 300 remodel: The project is on target on budget and classes are scheduled for spring 2011. Equipment funds are available immediately; staff hopes to begin purchasing equipment mid-October. Staff has requested that the contractor finish earlier in order for building networking equipment to be installed as soon as possible. Michael asked if there are any seismic upgrades required. No, the basic shell of the building is not being modified.

Allied Health: The Open House was a terrific success with over 200 people in attendance; there was good media coverage and staff was commended for putting on a successful event. The final contractor change order will be presented to the Board at the October 2010 meeting next Monday. The non-compliant stairwell railing will be repaired in January since there is no Wintersession and the repair requires that the area be totally blocked off. Escrow funds will be released after the stairwell is repaired. There are four outstanding contractor issues that amount to approximately \$65,000.

Secondary effects: Secondary effects projects are being deferred until claims are resolved. Staff noted that additional funds are being sought for remodel work. It appears that the college won't be able to do as much remodel as was hoped in 2003 given the cost of new construction. Kathy asked whether the college is considering issuing another bond: Brian replied that the Governing Board was very clear that there is no chance of going out to voters in the near future, especially with 20% unemployment in South County. Brian also noted that the property tax bill will be revised to show only two lines for Cabrillo, the 1998 and the 2004 bond issues.

John asked for clarity on the Facilities Master Plan (FMP) semi-annual update, page 3, notes A-K. The text elsewhere in the report is well written but the numbers and format on page 3 obfuscate understanding. He asked that this report be improved to reflect generally accepted best practices. Brian noted that both Victoria and Graciano are new in their positions and are open to input on how to improve this report. Kathy requested that the column "spent and allocated" be split into 2 columns, "spent" and "allocated." Pages 8-9 should have a column with the remaining balance or some other note. Bob asked whether claims are reflected in allocated or encumbered. Claims are not reflected in this report. It was recommended to create a separate claims status report, a one page summary for this committee.

### Green Technology Center

There was a good pool of 9 bids and they came in bunched well, however, the low bid was \$1M higher than anticipated. Staff spent a lot of time talking to the architect, line item by line item, to see where the project could be reduced without affecting the LEED platinum certification. The architect is contractually obligated to redesign for no additional fee if the bid exceeds budget by more than 5%. Their estimate was \$5.3 million including a \$300,000 contingency. Staff reviewed the bid and schedule of values and has determined that the bid can be reduced by a minimum of \$340,000 and that the overall project budget can be reduced by \$500,000, reducing the required augmentation to \$517,000.

John asked how many deductive alternatives when went to bid? Staff response: none. The project was \$200,000 under budget when it went out to bid. The committee asked if the District will use a third party to establish a deductive change order system. Staff responded that a third party has not been contacted at this time, but that could be a possibility. The EDA funding and LEED platinum were factors that may have inflated costs because of the unknowns.

Staff's concern is that a redesign and rebid could be higher and would likely jeopardize the \$3,365,000 EDA funds.

Michael asked if supplemental grant funding might be available. Supplemental funds are not available from EDA. Bob asked whether the college is obligated to achieve LEED certification to the platinum level. Yes, EDA would be very disappointed if not certified at platinum level. It was recommended that staff pursue value engineering options and additional funding.

### Action items:

The following items will be distributed to the committee prior to the next meeting:

1. Revised July 2010 minutes
2. Draft 2009-10 audit
3. Draft annual report
4. Revise bylaws to reflect end of Measure D program

It was recommended that the minutes be posted with a signature (hard copy or electronic) showing they have been approved.

IX. Next meeting: Thursday, Dec 2nd at 9:00 am. The meeting adjourned at 11:50 am.