



Measure X Citizens' Bond Oversight Committee
Meeting Minutes
June 16, 2022 – 6:00 P.M.
Zoom Conference Call

Present:	John Gould Gordon Machado Jim Rogers Michael Dziuba Elvira Robinson Cynthia Matory	Community At-Large Business Community Senior Citizens' Organization Taxpayers Association Support Organization Student Organization
Absent:	John Flaherty	Community At-Large
Staff:	Dr. Kathleen Rose Graciano Mendoza Ann Kennedy Matt Kennedy Mike Chegini Carol Anderson David Casnocha	Superintendent/President Vice President of Administrative Services Financial Manager, AKG Program Manager, AKG Communications Manager, AKG Program Support, AKG Bond Counsel

A. CALL TO ORDER

The meeting was called to order at 5:00 P.M. with a quorum by Ms. Robinson.

B. APPROVE RESOLUTION #0002 TO ENACT AB 361

AB 361, effective September 16, 2021, authorizes the Citizens' Bond Oversight Committee (CBOC) to continue meeting via teleconference as authorized by the Governor's Emergency Order N-29-20 which expired on September 30, 2021.

John Gould made a motion to approve Resolution #002, seconded by Gordon Machado. The resolution was unanimously approved by a roll call vote.

C. ROLL CALL

Roll call attendance was taken.

D. APPROVAL OF AGENDA

John Gould made a motion to approve the agenda, seconded by Gordon Machado. The agenda was unanimously approved as presented by a roll call vote.

E. APPROVAL OF FEBRUARY 17, 2022 MEETING MINUTES

Mr. Gould made a motion to approve the minutes, seconded by Ms. Matory. The minutes were unanimously approved as presented by a roll call vote.

F. APPROVAL OF APRIL 19, 2022 SPECIAL MEETING MINUTES

Mr. Gould made a motion to approve the minutes, seconded by Ms. Matory. The minutes were unanimously approved as presented by a roll call vote.

G. COMMENTS FROM THE PUBLIC

No comments were received from the public.

H. COMMUNICATIONS RECEIVED VIA THE MEASURE X WEBSITE

No comments were received via the Measure X website since the last meeting.

I. REVIEW OF COMMITTEE'S BYLAWS

David Casnocha, the District's bond counsel, provided a brief background on General Obligation bonds. Mr. Casnocha noted that the Measure X election was conducted under the auspices of Article XIII A of the California Constitution, which allowed the passage of the Measure at a 55% voter approval rate as long as the following conditions were met:

1. Two thirds of the Board of Trustees had to vote favorably to place the Measure on the ballot;
2. Within the ballot language, the District had to agree that they would restrain the tax rate in support of the bonds to no more than \$25 per \$100,00 of assessed value;
3. The District would conduct annual performance and financial audits;
4. The District would provide a list of projects to the community in the context of the election to demonstrate what the money would be spent on;
5. The District would form a Citizens' Bond Oversight Committee, empowering the committee with the responsibilities that the State legislature adopted as part implementation legislation associated with Proposition 39. The implementation legislation made its way into the education code.

The responsibilities of an oversight committee were preempted by the passage of legislation by the State legislature, and the committee bylaws seek to implement those responsibilities, as discussed below:

1. The principal responsibilities of the oversight committee have been defined as a matter of statewide concern and is what drives the contents of the bylaws.
2. The name of the committee is the "Independent" Citizens' Bond Oversight Committee. Mr. Casnocha defined "independent" as:
 - i. Free of conflict of interest – Members can not have a conflict of interest in the performance of their responsibilities. Conflicts of interest include:
 - a) District employees
 - b) A vendor doing business with the district
 - c) A financial interest in contracts that are being awarded and funded with bond funds
 - d) Benefitting professionally in your job by the expenditure of bond funds
 - ii. Must be able to do your job as a member of the committee independent of any interference by the Board of Trustees. Board members should not be participating in committee meetings and talking with members.
 - iii. Committee members should be able to perform their own independent responsibilities. The committee does not define their own responsibilities, they are outlined in the bylaws.
3. Oversight committee members do not provide advice to the Board of Trustees, do not make decisions on the expenditure of public funds, or influence the decision about the expenditure of public funds. Therefore, oversight committee members do not have to file a Conflict of Interest Form 700 with the Fair Political Practices Commission.

4. Although the oversight committee is not an advisory committee or elected officials, the committee is subject to the procedural requirements of the Brown Act, which has as its legislative purpose “the conduct of government’s business in the transparent sunshine of public scrutiny”. One hundred percent (100%) of oversight committee business must be done in public. The following are important to remember:
 - a) Brown Act committees can only talk about what is on the agenda. If a committee member has an item they would like to discuss at the next scheduled meeting, they need to reach out to the committee chair and request the item be placed on the next agenda.
 - b) There is no “closed session” for oversight committees.
 - c) Committee members can not gather in any form (via email, in person or telephone) and function as a committee without a properly noticed meeting. A “serial” meeting is when members of the committee communicate with other members of the committee about committee business. For example, if one member sends an email to another member on a topic that is within the committee’s purview, that member then shares that information with another member, etc. This is a serial meeting and this type of communication is prohibited.

Mr. Dziuba asked, as a new member, if he is allowed to reach out to other committee members to get a background and some basics on his responsibilities? Mr. Casnocha replied that it may be a good idea to place a staff report agenda item on the next meeting’s agenda summarizing how Measure X got started and where it is in the process so that the information can be heard from the District and its support team. Although Mr. Casnocha feels that it is ok to reach out to other committee members to get a history on what happens at the meetings (what do you wear, etc.), the smarter thing to do would be to reach out to the District for the historical context of where the committee has been and where the bond program is headed.

5. There are three primary statutory duties of the oversight committee:
 - i. Review Expenditures: this is the most important statutory duty. This is what an oversight committee is empowered to do, to review the expenditure of public funds and determine whether the public funds were spent for the purposes for which they were generated. Section 3.2 of the bylaws states that *“the Committee shall review expenditure reports produced by the District to ensure that (a) bond proceeds were expended only for the purposes set forth in Measure X; and (b) no proceeds were used for teacher or administrative salaries or other operating expenses in compliance with Attorney General Opinion 04-110, issued on November 9, 2004”*.
 - a) It is the committee's responsibility to ensure that the expenditure of bond funds has been in conformance with Article XIII A of the California constitution, which states that bond funds can only be spent for the improvement, furnishing and equipping of school facilities and were the funds spent for the purposes set forth in Measure X. Committee members received the summary of the measure and the resolution, which was the district’s effort to satisfy the Proposition 39

requirement that a project list be presented to the voters. The project list provided in the resolution is not a prioritization of how the Board of Trustees want to spend bond funds, but rather a statement of the boundaries of what the Board is authorized to spend bond funds on. Monies can be spent on projects of the type that are described in the resolution.

- b) Bond proceeds can not be used for teacher or administrative salaries. Administrative salaries were the subject of Attorney General Opinion 04-110. If an employee is performing a service on a project being funded by Measure X and, but for the bond would not be working on the bond project, then those salaries can be paid using bond funds. It is the committee's responsibility to do their due diligence and ask questions on expenditures related to salaries to ensure they are an allowable bond expense.

Committee members can ask District staff for additional information, if staff are not providing the requested information, members can go to the Superintendent/President and request the information and if still not receiving the information, members can go to the Board of Trustees meeting and inform the Board that they need additional information, and it then becomes a Political Resolution. It needs to become a Political Resolution because the oversight committee is not given any legal standing to pursue remedies of law for the misuse of bond funds. The remedies for the misuse of bond funds only lies with an individual taxpayer who has standing to bring a lawsuit. The committee does not have standing to bring a lawsuit, which is why the committees remedies are political, through a public debate about whether an expenditure was lawful or not.

- ii. Inform the Public: The committee shall inform the public concerning the District's expenditure of bond proceeds. All communications to the Board of Trustees or the public shall come from the Chair acting on behalf of the committee. The Chair shall only release information that reflects the majority view of the committee. The public can be informed via the Measure X website, a letter to the editor in a local paper, etc.; it is up to the committee to determine how to inform the public.
- iii. Annual Report: The Annual Report is submitted to the Board of Trustees at a public meeting and is posted to the Measure X website. The Annual Report must include the following:
 - a) A statement indicating that the District is in compliance with Article XIII A of the California Constitution, meaning that the committee is satisfied that all of the bond funds during the accounting period were spent on the construction, repair, furnishing and equipping of school facilities.
 - b) A summary of the committee proceedings and activities for the preceding year.

- 6. Sections 3.4 and 3.5 of the bylaws list the duties of the Board of Trustees and/or the Superintendent/President. The committee has no jurisdiction over the duties listed in these sections. A committee member can ask questions about projects, change orders, delivery methods, etc. and the District has the duty to answer,

however if the committee does not like the answer, the conversation has ended as these items are not part of the committee's scope.

7. Section 4 of the bylaws lists the supplemental authorized activities of the committee identified in the education code to help the committee perform their three essential statutory responsibilities as stated in sections 3.1, 3.2 and 3.3 of the bylaws.
8. Section 5.3 of the bylaws touches on Ethics and conflicts of interest. The essence of "conflict of interest" is having a financial interest in decisions that are made regarding bond projects. You can't have a financial interest in those types of contracts, and you can't maintain employment with a company who is on the receiving end of a bond funded contract. It is important that committee members monitor their own engagements and not take on employment opportunities that are directly connected in some way with the award of a bond funded project. If you would like to take such a position then maybe you shouldn't continue on the oversight committee.

J. **STAFF REPORTS**

Dr. Rose provided the committee with the following updates:

1. The District still does not have a finalized agreement with Dividend Homes. The District is however moving forward with a septic system for the San Benito County Campus and all agencies are aware of the District's septic plan. Conversations are continuing regarding the steps to connect to the Hollister city sewer lines in the future.
2. On May 10th, The Board of Trustees received a report on the Civil Grand Jury report and outcome, as well as the interventions the District is taking in response to the findings and recommendations.
3. Dr. Pedro Avila has accepted the position of Superintendent/President and will be joining the District in mid-July.

K. **PROGRAM OVERVIEW AND PROJECT UPDATES**

Mr. Kennedy gave a Measure X program update.

San Benito County Campus Update

Construction documents for the San Benito County Campus are still in review with the Division of the State Architect. DSA approval is expected in November 2022.

Ms. Robinson asked if the south side of the building would be facing Tres Pinos. Mr. Kennedy noted that the view from the South is from the corner of Fairview Road and Highway 25; you would see the side of the building.

Gilroy Campus Update

Theater Modernization: Ms. Robinson asked if Mr. Kennedy could explain what the Theater Modernization would entail? Mr. Kennedy explained that the following improvements will be made:

1. New seating to meet Americans with Disability Act (ADA) compliance
2. New ADA compliant restrooms
3. Acoustical improvements

Wayfinding Signage: Ms. Robinson asked where the monument sign was going to be located. Mr. Kennedy answered that the sign will be located at the main entrance by the traffic signal on the sloped area that slopes towards the campus.

Ms. Robinson would like the committee to have a tour of the Gilroy campus, maybe this summer. Ms. Kennedy asked if the committee would like the tour to be scheduled before the next meeting or would the committee like to schedule it separate from the next meeting. Ms. Robinson would like to schedule the tour of the Gavilan Campus the hour before the next CBOC meeting. Ms. Robinson encouraged the two new members to reach out to the District to schedule a meeting of the San Benito County Campus site.

Mr. Dziuba didn't see security on the project summary report and asked if the District is adding security, video, or blue phones to the campus. Mr. Kennedy explained that in our Site Improvement, Security and Infrastructure project we have a subproject for a perimeter door locking system. We are also developing future subprojects that will include a Public Address (PA) system for the campus.

Mr. Rogers asked about the map that was shown and wondered what will replace the library once it's demolished? Mr. Kennedy stated that once the old library is demolished a new quad area will be built, creating a quiet area on campus.

L. BOND LIST REVISION (BLR) #3

Ms. Kennedy reviewed the BLR process, noting that the following changes to a Board Approved Project List must go to the Board of Trustees for approval:

1. Project name change
2. Project scope change
3. Project budget change

Bond List Revision #3 went to the BOT for approval on April 12, 2022 to update the scope for the San Benito County Campus and to recognize interest earned into the program. Interest earned gets allocated to Contingency.

M. PROGRAM FINANCIAL UPDATES

Ms. Kennedy reviewed the Fiscal year 2021-2022, Q3 Whole Program Report, Project Summary Report and the Sub-Project Detail Report with the committee. These reports are from inception of the bond program through March 31, 2022. Changes made with Bond List Revision #3 are not reflected in the Q3 reports as the BLR was not approved until after the close of Q3. FY2021-2022, Q2 reports were also provided to the committee since they were not reviewed at the special meeting on April 19th. The committee agreed that Ms. Kennedy did not need to review the Q2 reports since the information is contained within the Q3 reports.

Ms. Kennedy noted that Project 3101 – San Benito County Campus had a lot of spend in the previous quarters and then the documents went to DSA, resulting in less spend in Q3 while we are waiting on DSA approval.

Mr. Gould made a motion that the Fiscal year 2021-2022 Q2 and Q3 Whole Program Reports, Project Summary Reports and Sub-project Detail Reports be received and accepted by the committee as presented. Ms. Matory seconded the motion. The motion was unanimously approved by a roll call vote.

N. MEMBER TERM CHART

The term chart was reviewed.

O. FUTURE MEETING DATES

Based on the District's financial reporting calendar, the following dates were proposed and tentatively agreed upon by the committee:

- September 27, 2022
- December 6, 2022
- February 21, 2023
- May 23, 2023

These are target dates. Ms. Anderson will reach out to establish quorum and adjust meetings accordingly.

P. TOPICS FOR NEXT MEETING

In addition to the standing agenda topics, the following items will be included on the next agenda:

- Election of Chair and Vice Chair
- Preparations for Annual Report

Q. ADJOURNMENT

The meeting was adjourned at 6:42 P.M.