

FINAL REPORT - CASE NO. 12-06
SAN JOAQUIN DELTA COMMUNITY COLLEGE

SUMMARY

The 2006/2007 Civil Grand Jury began an investigation, prompted by a citizen complaint, regarding issues with San Joaquin Delta Community College Administration and the Board of Trustees. The 2007/2008 Civil Grand Jury received citizen complaints alleging Brown Act violations and misuse of Measure L funds. The 2007/2008 Grand Jury also investigated the role of the Measure L Bond Oversight Committee.

Despite recommendations from staff and hired consultants, the Board of Trustees continued to pursue Mountain House as the site for the new south county center/campus potentially increasing taxpayer costs by tens of millions of dollars.

The Grand Jury has no confidence in the Delta College Board of Trustees as they are currently constituted. The District needs capable trustees who are able to meet the task of bringing Delta College into the 21st century.

REASON FOR INVESTIGATION

The 2006-2007 and 2007-2008 Civil Grand Juries received several citizen complaints stating that violations of the Brown Act, as well as violation of Government Code Section 54963 (disclosure of closed session discussion and confidential information), had occurred with regard to San Joaquin Delta Community College Board of Trustees. The complainants also asked that these juries investigate the use of Measure L funds with regard to San Joaquin Delta Community College, in particular the Mountain House campus. The 2006-2007 Civil Grand Jury began an investigation but was unable to complete the investigation before their term of service expired. The 2007-2008 Civil Grand Jury continued the investigation of the 2006-2007 Grand Jury as well as new complaints they had received. As the investigation progressed, it was deemed necessary to examine the role of the Measure L Oversight Committee.

BACKGROUND

South San Joaquin County population increased dramatically in the early 1990s. Rapid growth in and near Tracy was projected into the coming decades. Based on these facts and assumptions, the San Joaquin Delta College District Board of Trustees and staff began searching for an adequate site to locate a new center/campus in the Tracy area.

San Joaquin County voters passed Measure L, a \$250 million school bond, in a 2004 General Election. These funds were to be used for specific projects which were outlined by the San Joaquin Delta Community College Board of Trustees. Among the many projects listed for bond usage were: establishing an expanded San Joaquin Delta College Education Center in Tracy/Mountain House area to accommodate growth and increasing student enrollment, provide permanent classrooms, lab, library, job training and college transfer counseling facilities in Phase I of the Mountain House education center.

A south county center/campus in the Tracy area was the top priority on the list of projects for Measure L building expenditures. The land had been previously purchased and contracts for the building of the campus were in progress. The center/campus was to be built in three phases. Phase I was listed as an 85,000 square foot building. The estimate to build this facility was \$55 million.

In 2003, Delta College and PCCP Mountain House, LLC began working together on a plan to develop their respective properties at Mountain House. The developer was to provide funds to cover Delta's fees and infrastructure costs. Difficult and protracted negotiations (including an offer by the City of Tracy) led to a settlement agreement between Delta College and the Developer in November 2005. There continued to be board and staff frustration with PCCP.

A closed-session meeting of the Delta College Board of Trustees was held on February 9, 2006, where Delta College's attorney and administrative team informed the Board of Trustees that PCCP would be missing the deadline for the delivery of the Letters of Credit, which would result in a breach of the contract. The Board then discussed the possibility of returning to the deal offered by the City of Tracy and the proposed site at 11th and Chrisman streets. The day after this closed-session meeting, phone calls and a faxed letter indicated that one or more board members had relayed confidential, closed-session information about the "breach of contract" discussion to the developer and his consultant. If true, this is a violation of the Brown Act.

METHOD OF INVESTIGATION

Interviews Conducted

- Delta Community College President
- Delta Community College Trustees
- Land Developer at Mountain House and PCCP representative
- Former Vice President of Finance, Delta Community College
- Current and former members of the Measure L Bond Oversight Committee

- Measure L Bond Program Executive for Delta Community College
- Vice President Finance, Delta Community College
- Director of Facilities and Operations, Delta Community College
- Athletic Director, Delta Community College

Materials Reviewed

- Contracts for personnel involved in Measure L projects
- Expense summaries for expenditures for Measure L funds
- San Joaquin Delta Community College District – Proposition 39, Reference Document, San Joaquin County Counsel
- Full text of Measure L ballot initiative
- San Joaquin Delta Community College District – Measure L – Training Manual for Citizens’ Oversight Committee
- Confidential Real Property Negotiations Memorandum, Evaluation of the City of Tracy campus proposal by PPV, Inc.; dated September 30, 2005
- San Joaquin Delta Community College District Resolution No. 04-15, establishing a Citizens’ Bond Oversight Committee
- Citizens’ Bond Oversight Committee Bylaws, May 2004
- Citizens’ Oversight Committee Annual Reports: 2004-05, 2005-06,
- Citizens’ Oversight Committee Annual Reports: 2006-07 (partial draft)
- The Brown Act – Pamphlet, California Attorney General’s Office
- San Joaquin Delta Community College District Feasibility Study for the Tracy/Manteca Education Center dated January 20, 1998
- San Joaquin Delta Community College District Letter of Intent – Delta College Center at Mountain House dated May 1, 2001
- Draft supplemental Environmental Impact Report Delta College Center at Mountain House dated September 2001
- Final Environmental Impact Report College Park at Mountain House Specific Plan III Volume III dated June 24, 2005
- Resolution No. 03-44, Resolution of the Board of Trustees of the San Joaquin Delta Community College District Ordering an Election, and Establishing Specifications of the Election Order
- City of Tracy offer to San Joaquin Delta College of center/campus land – Letter from the Tracy City Manager to Board of Trustees San Joaquin Delta College dated November 1, 2005 and attached supporting information – page four through page seven dated September 26, 2005
- Agenda and Minutes of Delta College Board of Trustees meeting dated February 9, 2006
- Letter to the Delta College Board of Trustees from PCCP dated February 10, 2006
- San Joaquin LAFCO (Local Agency Formation Commission) agenda item No. 2 packet dated December 7, 2007

Sites Visited

- Mountain House campus location
- Proposed Tracy site at 11th Street and Chrisman Road
- Delta College Open House – Lodi
- Oversight Committee meeting

FINDINGS

1. The Delta College Board of Trustees made decisions which have caused serious problems and wasted millions of dollars of Measure L funds. The District needs capable trustees who are able to meet the task of bringing Delta College into the 21st century.
2. This Grand Jury found that the Board of Trustees of Delta Community College was ill prepared to handle the Measure L Bond funds. At the time the bond measure was proposed, the Board of Trustees knew that they would not be able to obtain the amount of money necessary to cover all of the proposed needs as listed on the ballot. There appears to have been no clear path to fulfill student needs for the future.
3. Despite Brown Act training, there continues to be numerous allegations of Brown Act violations by the Delta College Board of Trustees. This Grand Jury found evidence of closed-session discussion being shared outside of the Board of Trustee meetings.
4. The public/private partnership between Delta and the developer has delayed construction and has and will cost Delta in many ways such as money, credibility, and community support. Delta College now finds itself in a worse position having no power to cause infrastructure to be completed at the Mountain House site. Public/private partnerships are fraught with complications. Differing goals and divergent project timelines make these partnerships extremely difficult to work successfully.
5. The Board of Trustees has had to completely revise the entire Mountain House site plan to accommodate lack of infrastructure availability from the developer.
6. The Board of Trustees did not heed nor follow their staff recommendations or the recommendations of consultants, hired by this Board. This Grand Jury finds that making these decisions prior to having been given all facts and pertinent information has caused this Board of Trustees numerous problems.
7. The City of Tracy offered a 108 acre site to Delta College, including all fees and infrastructure at an estimated cost of \$6 to \$10 million. The City of Tracy included an offer to cap Delta's cost and to contribute an additional \$2 million toward mutually defined joint-use facilities. Delta's staff and consultant PPV, Inc. recommended leaving the Mountain House site for the Tracy location. Staff

estimated that by going to Tracy and selling the Mountain House property Delta College could save as much as \$50 million. Delta College Board of Trustees on a split vote (4-3) decided to stay with the Mountain House location.

8. The demographic studies used by the Delta College District for facilities planning are questionable at best. They did not take into consideration the curriculum type that might be needed i.e. brick and mortar vs. internet usage.
9. Although the original estimate for the building of a center/campus at Mountain House was \$55 million, as of January 2008, the estimate has climbed to approximately \$94 million and could go much higher costing District taxpayers tens of millions of dollars. These figures do not include funds for Phase II and Phase III. At this time the plans call for portables (trailers) to be used to house students.
10. Private agendas and public bickering have delayed the progress of the use of bond funds. This has resulted in a reduction of projects that will be completed and has caused the complete cancellation of other projects. Therefore, costs have risen by tens of millions of dollars due to inflation.
11. Due to a lack of oversight by the Trustees, the Bond Management Company has wasted untold dollars and delayed all projects.
12. Citizens' Bond Oversight Committee meets quarterly to review past expenditures related to Measure L. Although Proposition 39 outlines responsibilities, committee members were trained to believe they do not have a mandate to question Measure L expenditures other than those deemed illegal. Although Proposition 39 outlines much broader responsibilities, committee members have been trained that their role is to review financial statements to ensure only authorized expenditures are charged to Measure L, to review project budgets and to the annual report. New committee members received no organized training.
13. Brown Act Violations have occurred at meetings of the Citizens' Bond Oversight Committee. Meeting agendas were not posted at the meeting site 72 hours in advance and were not available to the public at one meeting attended by this Grand Jury's members.
14. The formation of the new Measure L team and chairperson is a step in the right direction in getting control of bond funds and projects.

RECOMMENDATIONS

1. Delta College trustees and administrators avoid making the same mistake by entering into a public/private partnership to develop a center/campus in Lodi or Galt.
2. The Board of Trustees thoroughly evaluate all staff and consultants' recommendations prior to making bond decisions and commitments.
3. The Board of Trustees use the most current student usage numbers to determine curriculum needs for students, i.e. brick and mortar vs. internet usage.
4. The Board of Trustees refocus on the needs of the students and not personal agendas and work together as a cohesive unit.
5. Delta College trustees and administration support and work with their new, recently formed committee, Measure L Team, to oversee the various bond programs.
6. The Delta College Board of Trustees to comply with the Brown Act. Further training on the Brown Act to be given to ensure understanding and compliance.
7. The Bond Oversight Committee meet once per month in an effort to pre-approve all expenses charged to Measure L funds.
8. This Grand Jury recommends that the Citizens' Bond Oversight Committee question all changes in projects selected for funding, project plans, or delays in construction. This is a precautionary measure to ensure that Measure L funds are not being wasted.
9. The Citizens' Bond Oversight Committee to ensure that all aspects of the Brown Act are adhered to in order to give the public a clear picture of the committees' workings. The Grand Jury believes that the Brown Act ensures a transparent democracy. The violation of the Brown Act cannot be tolerated.

RESPONSE REQUIRED

Pursuant to Section 933.05 of the Penal Code:

The San Joaquin Delta Community College Board of Trustees report to the Presiding Judge of the San Joaquin County Superior Court, in writing and within 90 days of publication of this report, with a response as follows:

As to each finding in the report a response indicating one of the following:

- a. The respondent agrees with the finding.
- b. The respondent disagrees with the finding, with an explanation of the reasons

therefore.

As to each recommendation, a response indicating one of the following:

- a. The recommendation has been implemented, with a summary of the action taken.
- b. The recommendation has not yet been implemented, but will be with a time frame for implementation.
- c. The recommendation requires further analysis, with an explanation of the scope of analysis and a time frame not to exceed six months.
- d. The recommendation will not be implemented, with an explanation therefore.