

August 20, 2002

Honorable Rodney S. Melville, Presiding Judge  
Santa Barbara County Superior Court  
312-C East Cook Street  
Santa Maria, CA 93456-5369

Mary Anne Harrison, Foreperson  
County Grand Jury  
1100 Anacapa Street  
Santa Barbara, Ca 93106

Board of Supervisor's Response to the 2001-2002 Grand Jury Report entitled  
"Voter Intent"

Dear Judge Melville and Grand Jury Members:

During its regular meeting on August 20, 2002 the Board of Supervisors adopted the following response to the findings and recommendations in the 2001-2002 Grand Jury Report entitled "Voter Intent".

***FINDING #1: The Board of Supervisors (BOS) has continued to make use of Certificates of Participation to fund various capital requirements and to avoid bond issues. This past year has seen a 75% increase of the existing General Long-Term Debt from \$39.6 million to approximately \$70 million, without any endorsement by County voters.***

**Response to Finding #1:** Partially agree.

On 11/6/2001 the Board of Supervisors authorized the County Treasurer-Tax Collector to execute the issuance of non-taxable 2001 Certificates of Participation (COP) in an amount not to exceed \$40 million. The issuance took place on December 1, 2001 for \$31.425 million and increased the total outstanding debt from \$49.975 to \$77.4 million (68% increase), well within the County's \$450 Million legal debt limit. The COPs were issued to fund capital requirements but not to avoid bond issues.

Legislative requirements

Certificates of Participation do not require voter approval. Proposition 218 was approved by the California voters and added to the State Constitution in 1996. The intention of the legislation was to limit the local government ability to increase taxes, assessments, fees, etc. The legislation does not limit government authority to issue debt using existing funding sources. The 2001 issuance of debt is for routine capital acquisition to be repaid using existing revenue streams, reduction of lease payments, grants and other state and federal leveraged reimbursements.

Definition of COPs

The County of Santa Barbara has historically used Certificates of Participation (COPs) as one means of financing its capital needs. Created in conjunction with lease agreements, which encumber County-owned property, COPs are securities issued and marketed to investors in a manner similar to tax-exempt bonds.

In a COP transaction, the County enters into an agreement with a third party, the Santa Barbara County Finance Corporation, to lease an asset (normally a building or building complex) over a specific period of time at a predetermined total cost. The asset, owned by the County and leased to the Finance Corporation, is then subleased back to the County. In this transaction, the Finance Corporation sells certificates in order to make its total lease payment to the County at the beginning of the lease period. With that lump sum (advance) lease payment the County then makes capital expenditures (building, buying or remodeling property).

The Finance Corporation was created as a public benefit, non-profit corporation, to issue certificates and to lease back various assets. The COPs are secured by the annual sublease payments paid by the County for use of the facilities. The sublease payments are used by the Finance Corporation to pay interest and principal on the certificates.

The certificates of participation contain certain covenants, which are deemed by the County to be duties imposed by law. The County must include the applicable sublease payments due each year in its annual budget and make the necessary appropriations. This annual appropriation distinguishes certificates of participation from general obligation bonds. The County is also required to maintain certain levels of liability, property damage, casualty, rental interruption and earthquake insurance in connection with each lease agreement.

County Policy for Issuing Debt

In 1991, the Board of Supervisors established a Debt Advisory Committee to provide advice on the issuance and management of the County’s debt. Members of the Committee are the County Administrator, Auditor-Controller, Treasurer-Tax Collector, County Counsel and one member of the Board of Supervisors. In its review of proposals to issue new debt, the Committee considers the following four factors:

Debt Management	total outstanding and per capita debt, future borrowing plans and sources of revenue
Financial	trends of past operations and current conditions, budget analysis, fund balance projections
Administrative	management policies, adequate provision of mandated services
Economic	assessment of the strength and diversity of the local economy

Legal Debt Limit

The legal debt limit for Santa Barbara County in 2000-01 was \$450 million. Since COPs are not “bonded indebtedness” they do not technically affect the debt to assessed value ratio.

Credit Profile

Standards and Poor’s issued the County of Santa Barbara with an AA- credit rating for the 2001 certificates of participation issuance. Key indicators for the increase in credit rating include very low debt levels, good financial position, and a growing, moderately diverse economy. The overall outlook projected by Standard and Poor’s for Santa Barbara County is “Stable”.

Description of 2001 COP Issuance

The table below identifies the construction projects including funding sources and locations:

Project	Funding Source	Location	\$ Amount
Clerk-Recorder Building	Recorder's Automation Fund	City of Santa Barbara	\$2.28
Casa Nueva Building	Social Services Department Lease at 228 West Carrillo APCD and SBCAG Lease Payments	Goleta / unincorporated	\$5.55
Mental Health Building	ADMHS Lease at 114 East Haley	Goleta / unincorporated	\$2.25
Court Clerk's Office	Courthouse Construction Fund Criminal Justice Facility Fund	City of Santa Maria	\$3.13
Juvenile Hall Expansion	Criminal Justice Facility Fund	City of Santa Maria	\$3.93
Juvenile Court	Courthouse Construction Fund Criminal Justice Facility Fund	City of Santa Maria	\$2.63
District Attorney Facility	Criminal Justice Facility Fund	City of Santa Barbara	\$5.85
SB Parking Structure	Courthouse Construction Fund Criminal Justice Facility Fund	City of Santa Barbara	\$2.20
		Total	<b>\$27.82</b>

Note: The gross issuance was \$31.425 million, \$27.82 million of which was net proceeds. This variance covers the 10% reserve requirement plus additional financing expenses.

Since the projects had sufficient funds to support the COP payments into perpetuity, the Board determined that General Obligations Bonds, or additional taxes, were not necessary for these particular projects.

The Criminal Justice Facility Fund, the Courthouse Construction Fund and an \$8 million Board of Corrections grant secured by Probation for the North County Juvenile Hall enabled funding for five out of the eight total capital projects. These construction funds result from proceeds from a surcharge on certain fines which are designated by statute for the financing of court and criminal justice related acquisition, construction and rehabilitation projects.

The Mental Health Building and Casa Nueva Building projects were derived from the Board policy that County departments should not reside in leased space on a permanent basis. When operations are located in leased facilities, the County is subject to premiums for the landlord, property taxes (County owned land is exempt from property tax) and have less control over the duration and use of the leased property. The above-mentioned lease revenue is sufficient to provide for the construction of permanent facilities on county owned land adjacent to other county services. In some cases government facilities are very specific to program operations and are not available in the marketplace, such as the juvenile hall.

While the Clerk-Recorder function does not currently reside in leased space, the program has the appropriate financing stream to support the payments over the life of the COP.

***RECOMMENDATION #1: The Board of Supervisors should reconsider the use of Certificates of Participation to fund long-term capital projects.***

**Response to Recommendation #1:** The recommendation has been implemented.

The Board of Supervisors issued Certificates of Participation in 2001 as described above and projects are materially underway. The Board is not in a position to stop existing projects without major cost and interruption of critical services to the community. The recommendation to "reconsider the use of Certificates of

Participation” will be considered in the context of Board policy and future use of the COP financing mechanism.

The Board of Supervisors undergoes careful scrutiny regarding COP decision-making by undergoing the following process:

1. Capital projects in need of financing are identified through the annual Five-Year Capital Improvement Plan (CIP) process. The CIP is conceptually adopted annually following public capital workshops conducted in both North and South County.
2. Projects with sufficient funding sources are then referred to the County Administrator’s Office for further analysis. Projects receive a more detailed review with projected impacts to the operating budget, County-wide debt feasibility analysis, financing options and community polling.
3. The County Administrator’s Office works in conjunction with General Services Facilities to compare facility designs with the adopted County standards of the Space Utilization Report. The report validates the size and scope of facilities based on a set of parameters adopted by the Board, such as projected growth, number of employees, industry standard guidelines for space based on position.
4. Once staff had completed its analysis, the project is presented to the County Debt Advisory Committee (DAC). The DAC reviews project consistency with Board adopted debt policy and project checklist and then provides a recommendation to the Board of Supervisors on matters relating to any new issuance of debt.
5. Projects that receive recommendation for approval are then referred to the Board of Supervisors for multiple public hearings. The Board understands that public participation is crucial for local government to operate effectively. As to the 2001 COP issuance, the Board held numerous public hearings in both North and South County, televised an informational video on COPs on the County public access channel, and provided access to staff reports through links on the County web site.

All DAC and Board meetings are subject to the Open Meetings (Brown) Act and are appropriately noticed at least 72 hours in advance.

Finally, the issue of debt vs. cash basis for capital projects is a policy decision with many considerations to evaluate. While the interest expense incurred may be costly on debt financed capital projects, it may be more cost effective than leasing facilities, due to the limited supply and costly premiums associated with commercial rents. Another consideration is lost opportunities to leverage state and federal funds. Many programs may submit capital costs for reimbursement or apply for capital grants. For example, the Board of Corrections has granted the County approximately \$8.0 million for the North County Juvenile Hall assuming construction is completed by March 2004. On a cash basis, the County would not be able to acquire the funds necessary for construction in such a limited period of time. The issuance of the 2001 COP enabled the County to acquire the funds while using the Criminal Justice Construction fund as a revenue stream to pay for the annual COP payments. Finally, one of the responsibilities of the Board is to ensure that one generation is not overly burdened to pay for capital projects that will benefit future generations. Debt allows for the even distribution of cost over the life of the asset, or period of benefit.

***FINDING #2: The voters did not approve either Measure K98 or O98 version of the County Native Oak Protection ordinance. The Board of Supervisors requesting that their ordinance personnel develop an Oak Tree Protection measure followed this vote of no ordinance. This effort is presently continuing under a voluntary two-year test program.***

**Response to Finding #2:** Partially agree.

Agree that the voters did not approve either K98 or O98. These were competing measures, the first sponsored by environmental groups and the second by vineyard interests. The fact that both were rejected in the same election may mean that a majority of voters a) did not want any oak protection; b) wanted a more balanced approach than either of the two competing measures; or c) the voters were communicating their dislike of determining land use

policy by initiative rather than the legislative process which allows participation and interaction through workshops, environmental review, and public hearings. This sentiment was reflected in a NewsPress editorial that encouraged voters to vote no on both measures, and asked the Board of Supervisors to provide leadership and establish an oak protection program.

Furthermore, it is agreed that the vote directing the preparation of an ordinance followed the defeat of both measures in November 1998. The need for clarification of the County's rules for oak tree protection became evident in November 1997 when Kendall Jackson removed a larger number of oaks to plant vineyards. In February 1998, the Board unanimously initiated community meetings, generally referred to as "the oaks collaborative," to draft consensus regulations. Over 400 people were invited to participate, including grape growers, vintners, farmers, ranchers, scientists and other interested parties. A balanced group of approximately 25 core participants and other occasional participants met on a regular basis. After several meetings when consensus appeared to be failing, environmental groups drafted the "ACORN" initiative that became measure K98. Vineyard interests responded by drafting the initiative that became O98. On July 21, 1998, the Board of Supervisors adopted the resolution calling an election placing Measures K98 and O98 on the November 3, 1998 countywide ballot and approved the text of Measure O98.

After both measures failed, the oak collaborative meetings resumed for several more months. After a total of 16 meetings over 14 months, the group agreed to a set of recommendations for mapping oak woodlands, pilot regeneration projects, education and incentives. These recommendations led to a pilot mapping study, a local oak symposium, and two County-funded oak planting projects with more than 500 valley oaks planted. However, the group was unable to agree on how to implement a goal they had created at the beginning of the process: "Create a clear set of guidelines to avoid/prevent large scale oak removal and to maintain viable oak habitats. Create oak removal thresholds beyond which a site-specific discretionary review will be required. In some cases, mitigation will be acceptable." It was generally agreed that oaks, particularly valley oaks, did merit protection. The disagreement was over how to get there.

On September 14, 1999, recognizing that complete consensus was not forthcoming, the Board directed P&D to hold another series of public workshops and to draft regulations based on the work to date of the Collaborative Process, public comment and policies of the Comprehensive Plan which call for the encouragement of agricultural expansion and the protection of natural resources. A proposed program and alternatives were forwarded to the Board by the Planning Commission in July 2001.

However, we disagree that oak protection is presently continuing under a voluntary two-year test program as no such program is currently in place. The Board's direction on April 9, 2002 was to develop, in collaboration with members of the agricultural and environmental groups, a two-year pilot voluntary program that encourages protection and planting of coast live oaks and regulations to prevent "large scale removals" of coast live oaks. The Board also directed staff to develop regulatory protections for the deciduous oaks (valley and blue) with an additional focus on promoting regeneration. The Board has deferred action pending direct discussions between agricultural and environmental groups. The Board will continue to receive status reports on the program. The next expected update is on September 17, 2002.

***RECOMMENDATION #2: The Board of Supervisors should reevaluate the use of critical resources within the Planning and development Department to develop an Oak Tree ordinance, which the majority of votes have refused to approve two times.***

**Response to Recommendation #2:**

As the Board of Supervisors interprets, the recommendation has been implemented. From a budgetary standpoint, Planning and Development staff concluded its work on drafting a proposed program and alternatives, conducting environmental review and Planning Commission hearings in FY 2001-2002. During the 2002-03 County budget process the Board evaluated Planning and Development's resources and adopted a budget for Planning and Development includes \$41,500 for responding to additional Board direction. The Agricultural Commissioner's

2002-03 budget includes \$150,000 for implementation of the regulating and voluntary program currently under discussion.

However, if this recommendation implies that the County should not proceed with the drafting of any Oak Tree Ordinances, the Board disagrees that was the intention of the voters. Please refer to the first paragraph in the response to Finding #2.

***FINDING #3: A review of Measure D (1/2 cent sales tax for roads) shows that the majority of the items enumerated in the ballot measure are being implemented with the exception of the 101 widening. Only \$6.4 million of the proposed \$15 million has been allocated. In October 1996, the Santa Barbara County Association of Governments (SBCAG) Board, in a procedure which was legal, voted to transfer \$6 million from the funding for the Highway 101 widening to Local Programs.***

Response to Finding #3: Partially agree. The statement below is the July 18, 2002 adopted response of the Santa Barbara County Association of Governments with which the Board concurs:

“Acting in its capacity as the Local Transportation Authority for Santa Barbara County, the SBCAG board adopted an Expenditure Plan in 1989 specifying how the sales tax revenues generated by the approval of Measure D would be expended. Measure D was approved by Santa Barbara County voters in November 1989. This measure authorized the imposition of a local sales tax of ½% for a period of 20 years and required that these revenues be used for transportation projects and programs specified in the Expenditure Plan.

The Measure D Expenditure Plan approved by SBCAG specifies generally that 70% of the revenues are to be allocated annually to the County of Santa Barbara and each of the cities on a formula basis for use on eligible transportation projects selected by each local agency and included in a program of projects. The remaining 30% of Measure D revenues must be allocated by SBCAG for paratransit services (0.5%) and to implement 15 regional highway improvement projects (29.5%) identified in the Expenditure Plan. The Expenditure Plan may be amended only upon approval by a 2/3 vote of the SBCAG board of directors.

Of the 15 regional highway projects identified in the plan, all but one are fully or partially implemented. The only project that has yet to be implemented is a project described in the plan as “Route 101 from San Ysidro Road to the Ventura County Line—Widen and improve interchanges.” The Expenditure Plan allocated \$15.0 million for this project (in 1989 dollars).

In October 1996, the SBCAG board approved an amendment to the Measure D Expenditure Plan. This amendment reduced the amount of Measure D funds allocated for the Route 101 Widening Project by \$7.5 million and reallocated these funds to the cities and the county on a formula basis for use on projects selected by the local agencies. The entire \$7.5 million was disbursed by SBCAG to the local agencies during FY 00-01 and FY 01-02 as specified in the approved Expenditure Plan amendment.

Thus, SBCAG is in substantial agreement with the Grand Jury’s Finding 3. Specifically, SBCAG agrees that 1) the majority of the projects specified in the Measure D Expenditure Plan have been implemented and 2) the Expenditure Plan was legally amended by the SBCAG board to transfer funding for the Highway 101 widening project.”

The Board would like to thank the Grand Jury for its Report on “Voter Intent”.

Sincerely,

August 20, 2002

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Gail Marshall, Chair  
Board of Supervisors