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ABSTRACT

A public hearing of California's Joint Legislative Audit Committee examined land acquisition policy and practice in relation to new school construction projects during which the following two areas of concern were identified: (1) acquiring land for new schools in congested urban settings; and (2) managing the conflict that may arise from local, state, and federal environmental regulation. This report focuses on the Los Angeles Unified School District and San Diego City Unified School District's approaches to acquiring urban land for new school construction, the role of the State Allocation Board, and the complexities of asserting Eminent Domain. Also addressed are the collaborative problems and administrative misadventures that contributed to one California school, the Jefferson Middle School, being built on contaminated land. Appendices present witness testimony, environmental reports, and state agency action concerning Jefferson Middle School. (GR)

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SCHOOL SITE ACQUISITION AND ENVIRONMENTAL ISSUES

Joint Legislative Audit Committee
Post Hearing Briefing Paper
JULY 1998

SITE ACQUISITION AND RELATED ENVIRONMENTAL CONCERNS

Report of the Joint Legislative Audit Committee
Chairman, Scott Wildman

July 1998

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Acquiring Urban Land for Public School Construction and Related Environmental Concerns

Joint Legislative Audit Committee Informational Hearing, June 17, 1998
A POST HEARING REPORT

EXECUTIVE SUMMARY

On June 17, 1998, an informational hearing was held by the Joint Legislative Audit Committee. The hearing examined land acquisition policy and practice in relation to new school construction projects. During the course of the hearing, witnesses identified two distinct areas of concern:

1. Acquiring land for new schools in congested urban settings;
2. Managing the conflict that may arise from local, state and federal environmental regulation.

Considerable testimony focused on the Los Angeles Unified School District's (LAUSD) Jefferson Middle School, a story that dramatizes what can go wrong when districts build schools on contaminated land.

Witnesses from the LAUSD and the San Diego City Unified School District (SDCUSD) described how their districts acquire land for new schools in crowded urban neighborhoods. The LAUSD described a process that appeared to be driven largely by administrative expediencies, where members of the community are merely informed rather than involved in the decision making process. It is the clearly stated opinion of the LAUSD that purchasing industrial land contaminated with toxins for the purpose of building new schools is at times unavoidable.

SDCUSD testified to an approach that is significantly different than LAUSD's top-down methods of land acquisition. The SDCUSD explained that they bring the community into the process from day one as active collaborators. It is the SDCUSD's opinion that this high degree of collaboration has resulted in their district having never seriously considered the use of contaminated land for new schools. This laudable aversion to building on toxic properties by the SDCUSD exists despite this district having recently built many schools in crowded urban neighborhoods.

THE STORY OF LAUSD'S JEFFERSON MIDDLE SCHOOL

The LAUSD purchased a highly toxic 15-acre site for their new Jefferson Middle School in 1990. The site is located in a highly industrialized area and directly across the street from a federal superfund site. Soil and water beneath the Jefferson site not only contain

the known carcinogen Chromium 6 at levels 540 percent higher than allowed by law, but other harmful toxins as well. While the LAUSD removed and replaced the top 15 – 20 feet of soil at the site prior to building the new school, they arguably hid the extent of the toxic problem from the state. There is every indication that the district not only failed to properly assess the contaminants at the Jefferson site, but may have withheld what they did know from state officials in a rush to receive $11,834,812 in state land purchase funding.

Jefferson's toxic problems became known after a state EPA scientist noticed by coincidence, while across the street working on the clean-up of the neighboring superfund site, Hard Chrome Products, that a school was under construction. The LAUSD subsequently was required to conduct new toxic assessments that in turn demonstrated the extent of the contamination problem. Today, soil and water remediation efforts are under way at the site. There is concern, however, that not only are these mitigation efforts after-the-fact, but the precise nature of their success is unknown. Students are scheduled to begin classes at the Jefferson Middle School site this fall.

Financial liability concerning the mitigation of the contaminated groundwater is very much an outstanding controversy. LAUSD may be named a responsible party to the groundwater clean-up effort at a yet to be determined cost to the public. On July 10, 1998, the LAUSD formally requested that the State Allocation Board (SAB) reimburse the district for $513,000 in toxic clean-up costs at the Jefferson site. The SAB has yet to approve this additional funding request.

Other issues discussed at the hearing:

- Identification of toxic contaminants prior to eviction by eminent domain requires cooperation with those who may be unwillingly evicted.
- Districts that otherwise practice due diligence can be tangled in the overlapping authority and conflicting/changing rules of various government oversight agencies.

BUILDING SCHOOLS IN URBAN SETTINGS

Urban school districts like San Diego and Los Angeles do not always have the option of buying vacant land for new schools. Instead, urban districts often have the complicated task of acquiring land through the process of eminent domain, where private land is taken by a public agency through force of law.

Oftentimes, controversy arises when choosing the type of land to be acquired for new a school project: desirable residential or business properties vs. otherwise vacant or unwanted industrial land which may be degraded by toxic contamination.

The Los Angeles Unified School District (LAUSD) and the San Diego City Unified School District (SDCUSD) offered testimony that demonstrated two very different approaches to acquiring urban land. The LAUSD represented this process as a case of either/or: either evict residents and business owners from their property, and thereby reduce the already limited supply of low-income housing and local jobs, or remediate land contaminated by industrial use. In contrast, the SDCUSD stressed active collaboration between community members and district staff as a means of avoiding even the consideration of contaminated property.

The LAUSD's Approach to Acquiring Urban Land for New School Construction

Speaking for the LAUSD, Real Estate and Asset Management Branch Director, Robert Niccum, testified that choosing the location for a new school is inherently a political process. Niccum testified that:

> The problem [with residential land] is that you have to take out some of the homes of those students in the process of building that new school. So you're close to the students who remain but some of them have now moved out of the community.
>
> It is no surprise that people are going to object to being moved out of their homes or apartments. So school districts frequently will hit a buzz saw in what seems to them as being the best environment for a new school. So for the elected official, the choice becomes a very difficult one.
>
> The committee is obviously interested in receiving information about the Jefferson Middle School project. It has been alluded to earlier that although the site ultimately acquired involved industrial property, the original site that was identified for that school involved primarily residential property -- 162 homes and apartments. The upshot of that school site exploration was that my school board member and I found ourselves in front of 900 residents of the community and the city council member criticizing us for taking a site that would displace that many people. When you get that kind of adverse reaction in a community there is a strong incentive to look at other kinds of property.
>
> The other kinds of property then become and include industrial kinds of property. [Industrial properties] are not inherently the kinds of properties one thinks of in terms of a school. But because they don't involve taking homes they do come into

consideration. The problem is of course that if the site itself is not contaminated, it is probably next to one that is contaminated or nearby other uses that are polluting the air. Even taking commercial properties doesn't solve the political problem that you have when moving people out of their residences because you are taking jobs.

Even if there is no perfect site, a school board can't throw up its hands and say: We can't build schools. The kids are coming so the school board has to do something. So we have to weigh, balance, consider and analyze all the factors involved with a particular site and community reaction. There is no formula for picking the least ugly duckling. You can't say we will never take industrial property. Instead, what you have to do is collect sufficient information so that the elected official can make an informed choice.

Decision makers face impossible kinds of comparisons in that process: How many stores are we willing to wipe out in order to save thirty apartments; how much farther are we willing to make kids walk in order to reduce the displacement of homes by 20 percent? In short, the process of urban school settings is one of trade-offs, but the one trade-off that can never be made, and that LA Unified would never make, is the safety of students.

Niccum's testimony demonstrates an approach which relies heavily on political considerations rather than objective environmental criteria. It appears the LAUSD listens for the reaction of community members and politicians, and then follows the path of least resistance. It is understandable, therefore, that the district and many local residents would opt for attempting to remediate contamination on fallow toxic properties rather than proceed with residential evictions. The question remains: Is this approach consistent with legislative intent which clearly states that school will only be built on safe sites? (Education Code, Section 17211 et. seq.)

What kind of informed choice does this top-down scenario represent? Considering the emotional aspect of eviction and the complicated nature of environmental remediation, it is no wonder that a community often chooses remediating unsightly land over displacing residents -- especially when the remediation process is represented as completely safe. The result is that the LAUSD may be, in some cases, acquiring urban land for new school construction based on political expedience, while disregarding the environmental costs and health risks associated with the cleanup of polluted land.

While the LAUSD claims to work collaboratively with community members before making final construction decisions, the evidence does not support these assertions. Prior to those events that recently led to significant community unrest, there were only three community meetings on record pertaining to the Jefferson school. The following is the only record of an individual meeting related to the Jefferson project available to the committee after an exhaustive period of discovery:

> The most recent community meeting regarding the proposed [Jefferson] project was held on June 8, 1988 at the Main Street School in southeastern Los Angeles. The purpose of this meeting was to inform the community of the proposed project and identify relocation and acquisition procedures. The community input received at this meeting primarily discussed issues involved in the overall Jefferson High School attendance area site selection process such as displacement of residential homes although no homes are located on this site and the poor quality of the schools in general. Site specific concerns addressed included traffic and loss of jobs.[1]

One of the tenets of collaboration is the meaningful sharing of decisions. Having community members attend at a few meetings to vent their general concerns does not appear to constitute meaningful collaboration.

It is important to remember that city populations increase beyond school capacities because of enrollment growth and local planning failures. Eviction by eminent domain can be an after-the-fact approach to urban planning. Residents and businesses are asked to move from neighborhoods to make way for schools because city and district officials fail to plan for their classroom capacity needs as those needs arise, and because the state has failed to adequately fund new school construction for the past several decades.

The SDCUSD's Approach to Acquiring Urban Land for New School Construction

The SDCUSD's approach to acquiring urban land for new schools can be characterized as the opposite of the LAUSD.[1] SDCUSD officials testified that by focusing on community collaboration, the district and community work together from the onset to seek solutions as a team. Representing the SDCUSD, Business Services Director, Pat Zollar, testified that:

> In the past 5 years, SDCUSD has purchased over 50 acres of property for the construction of 7 new schools, 5 of those in urban areas of our district. Of the 50 acres, all but 3 of the 200 parcels had existing conditions on them such as primarily multi-family apartments and a few commercial businesses such as liquor and small convenience stores. None of our land purchases to date have required the condemnation or the purchase of former industrial land.
>
> **Q**: *How did you accomplish all this land acquisition without having to resort to purchasing environmentally damaged land or incurring community unrest?*
>
> **A**: We work very closely with our community. I think that is the key issue. We are able to bring everyone along so that there is meaningful community

[1] Draft Environmental Impact Report, Jefferson New Junior High School No.1, LAUSD June 1988.

collaboration. In addition, although relocation funds are pretty much set, there is room to maneuver. Our goal is to leave each resident and owner whole.

For example, in one urban area where we had to acquire 13 acres, the district had looked at a site that would have been the most cost effective. It was a couple of blocks away from a commercial street where the land is more expensive. But along that [commercial] strip is where the community was dealing with drug houses and a liquor store where illicit drugs were sold. The community wanted to rid themselves of these problems.

At the same time the community identified a canyon area where there had been illegal dumping for many years. To use the canyon would have required cleaning and leveling it in order to use the site. We showed [community members] the numbers and the cost benefit analysis so that we came together on the need to place the new school along the strip of commercial property. The end product was a safe place for the school and a benefit for the community. It's that kind of give and take dialogue that takes many many hours of community and evening meetings -- but it can be done.

Q: *During this or any other acquisition process, did you have any difficulty disclosing any information to the public?*

A: No.

Q: *Is there any proprietary information where you feel a need to withhold from public view?*

A: No.

***Q**: Do you feel this open information policy has helped the process?*

A: Yes, absolutely.

Accenting the need for meaningful community collaboration was the testimony of Concerned Citizens of South Central Los Angeles (CCSCLA), represented by Executive Director, Juanita Tate. It is CCSCLA's position that the LAUSD did not adequately inform the community about the toxic hazards at Jefferson. According to CCSCLA materials made available at the hearing, a local resident first made CCSCLA aware of the contaminant risk at Jefferson in October 1996 -- seven years after the LAUSD first acknowledged the problem in their initial Environmental Assessment (EIR). Compounding this lack of public communication is the ongoing difficulty encountered by CCSCLA when making information requests of the LAUSD.

Of specific concern to the committee is the personnel shift that coincided with the hearing. The director of the LAUSD's Environmental Health and Safety Branch, Hamid Arabzadeh, testified at the hearing that some mistakes were made in the building of Jefferson – a conclusion that was reinforced by the testimony of other witnesses. The committee was informed by Arabzadeh that forty-eight hours after testifying before the committee, he was asked to sign a retraction of his testimony and informed of his impending termination. As of July 13, 1998, Arabzadeh, who holds numerous degrees in environmental science, has spent years working in the private sector as an environmental consultant and who currently teaches environmental theory at UC, Irvine, was placed on involuntary administrative leave. While the committee is not suggesting that Arabzadeh's pending termination is directly caused by his testimony, it is concerned by Arabzadeh's allegations and with the timing of LAUSD's actions.

The fact that the LAUSD improperly handled the environmental mitigation of Jefferson is, according to testimony given by the California Environmental Protection Agency, irrefutable. Director of the Department of Toxic Substances Control (DTSC), Jesse Huff, offered the following testimony before the committee:

Our experience indicates that initially there was a scientific reason for concern over the use of this former industrial site. Numerous businesses including a former W.W. II defense plant, furniture manufacturers, metal plating operations and a gas station occupied the Jefferson Middle School (JMS) property for various industrial operations from approximately 1930 to 1985. In view of waste handling practices of the time, 1930-1970, it is likely that wastes spilled and/or were released on the ground. Given the previous site uses, the initial environmental assessment should have been conducted under the oversight of an environmental agency.

Today, however, there is no immediate health threat posed by the property's current condition. During the school construction, the top layer of soil, ranging from 15 - 25 feet below grade surface, was removed and back filled by materials that were spread over the entire school property. Under the oversight of the department, the LAUSD conducted additional site assessment at the school site in June 1997. Based on a review of the cite assessment report for the property, dated July 18, 1997, the department's toxicologists determined that there is no health threat to students, employees or the public from any hazardous substances in the soil at the Jefferson Middle School site.

However, environmental concerns still exist at the property due to the potential for contamination remaining in the ground water. Further investigation is warranted because tricloroethelene, total chromium and hexavalant chromium have impacted the ground water in the north and northwest portion of the school site.

In September 1997, the LAUSD requested that the Water Board be the lead agency to the Jefferson site.

In March 1996, the department requested and received the Phase I and Phase II reports for the JMS site. Our review of the Phase I and II environmental assessment reports indicated they were inadequate for a site of its size -- its about 13 acres -- with past extensive industrial activity. The focus of the Phase I appears to be underground fuel storage tanks. It provided very little detail of the nature of the industrial activities.

The Phase II also focused on areas with underground tanks with only 17 soil samples collected and analyzed for heavy metals only.

The JMS project did not come to the department's attention until July 1995. The department immediately offered the LAUSD oversight assistance. At that time it was DTSC's understanding that the Water Board was providing oversight assistance on some aspects of the project. The LAUSD did not express interest in working with the department until April 1997, when they requested DTSC oversight under its voluntary program for additional site assessment to address additional public concern.

To ensure that future school acquisitions do not incur problems similar to those seen at JMS, the LAUSD should conduct appropriate environmental due diligence including risk evaluation prior to acquisition.

As I read it, the law is very clear as to what needs to happen. It seems to me that throughout the state of California the law is followed, the law is observed. It seems to me that our review of the preliminary assessment, Phase I and II, found them both to be deficient. There is so much process built into the law now that it is very troubling that this in fact did occur. Local school districts, particularly the largest one in the state, should be able to read the law.

The committee also heard from the LAUSD's outside environmental counsel, James M. Wakefield, who was recently hired to assist with the Jefferson problem. Wakefield argued that a national security blackout surrounding W.W. II defense manufacturing at the site prohibited the district's otherwise diligent efforts to understand all past uses of the Jefferson site. While the committee respects Wakefield's position, it would seem reasonable to assume that, absent complete information, due diligence would require an even more exhaustive toxic discovery effort than normal, particularly in light of what was known about the Jefferson site prior to purchase and especially when the construction of our public schools is involved.

Especially troubling is counsel's use of the terms "normal" and "required" when refuting charges of failed due diligence on the part of the LAUSD. It strikes the committee as reasonable that there is nothing *normal* about building a school on environmentally degraded property when that property has a known history of toxic industrial use and for which there are otherwise incomplete records. Further, seeking the shelter of legal *requirements* as a means of explaining away why the district did not make an extra discovery effort appears problematic – especially when the actions of the district seem to be less than forthright. This entire discussion is not about fulfilling some narrow interpretation of "what is required" but whether or not the district acted responsibly.

Despite Mr. Huff's assertion that the Jefferson site, which is scheduled to open for classes this September 1998, is safe, and that no further ground remediation is currently underway, Director of the Los Angeles Regional Water Control Board, James Ross, testified to the contrary. Ross testified that there is current soil remediation underway at the Jefferson site that began operation November 14, 1997, to remove the contaminant trichloroethylene (TCE), another known carcinogen from the soil. According to recent LAUSD reports made to the Water Board, there has been an approximate 50 percent reduction of TCEs since start-up. While Ross testified that he expected soil remediation to be complete in time for the beginning of school, in a follow-up letter from his

Executive Director, James D. Kuykendall, it is Kuykendall's expectation that soil remediation efforts will continue for a minimum of one year.

Further complicating Ross' position was testimony from ENVIRONMENTAL STRATEGIES Principal, Rosanne Harding, REA, who once worked on the Jefferson acquisition project for the LAUSD and now is a private environmental consultant. Harding stressed the unpredictability of many environmental remediation processes including the technique being used at Jefferson. Harding also testified that toxic remediation, especially heavy metals, is "all experimental." It was Harding's opinion that the exposure to liability of a school district should make such sites as Jefferson unacceptable. In further support of Harding's assertions was additional testimony provided by Arabzadeh who stated:

> We know something about a minority of toxins and even less about the effects of these toxins when combined. This is compounded by the unique characteristics of adolescent development.

What further concerns the committee is that all remediation efforts overseen by the state began after the school buildings were substantially completed.[2] The remediation technique of choice, soil vapor extraction (SVE), is not, according to experts, the best technique of many available but rather, the only choice left considering that the school had already been built by the time the district was required to properly test and remediate environmental concerns. Further, there is only one SVE currently in operation on the 15-acre site.

Not only is the success of SVE indeterminate but it is highly contingent on the nature of the contaminant and soil. Clay and dampness, for instance, are especially problematic for

[2] Letter from Assistant Executive Director of the California Regional Quality Control Board, James D. Kuykendall, to Assemblymember Scott Wildman, July 20, 1998.

the success of SVE. Clay was found recently in soil borings taken from the Jefferson site as were high levels of moist soil.[3]

It remains unclear whether these remediation efforts are sufficient enough to ensure an acceptable level of safety at Jefferson Middle School.

Beyond SVE, one remediation technique that would solve many of the Jefferson site's problems involves:

- Removing all the new soil to an adequate depth;
- Installing an impermeable barrier over the contaminated soil;
- Replacing the soil with new fill;
- Rebuilding the structures.

When asked if such an approach would have been prudent before building the school, Kuykendall stated in a letter to the committee that:

> For hexavalant chromium and VOC, any non-permeable barrier would be of value. Such barriers are normally installed near the surface either as a shallow clay compacted layer, asphalt or concrete pavement or as an actual vapor fabric barrier placed under building footprints.[4]

To install such a non-permeable layer now would, of course, require the entire new school to be razed. However, a nonpermiable barrier would accomplish two objectives:

1. Protect against harmful VOCs, which have the ability to convert to deadly vinyl chloride gas, from collecting in classrooms and offices over time;

[3] December 3, 1997, Letter from Miller Brooks Environmental to David Hung, California Regional Water Control Board.
[4] Letter from Assistant Executive Director of the California Regional Quality Control Board, James D. Kuykendall, to Assemblymember Scott Wildman, July 20, 1998.

2. Stem the percolation of further heavy metals into the ground water.

The need for such drastic action is refuted by those involved in remediation efforts. It is important to realize, however, that statements supporting the success of current remediation efforts are based on expectations that are admittedly founded in part on hope, conjecture and theory. While razing the new school is a drastic alternative, such a measure demonstrates how the district might have initially acted had safety been of primary concern, and objective analysis had driven district decisions.

WHY WAS THE JEFFERSON PROJECT APPROVED BY BOTH THE CALIFORNIA DEPARTMENT OF EDUCATION (CDE) AND THE STATE OFFICE OF PUBLIC SCHOOL CONSTRUCTION (OPSC) DESPITE OUTSTANDING TOXIC ISSUES?

Before a new school-building project can receive state funding it must first be approved by the California Department of Education (CDE). Concerning the CDE's site approval responsibilities, the following testimony dialogue with the CDE's School Planning Director Henry J. Heydt ensued:

> **Q**: *What is the involvement of your field staff with the site selection process?*
>
> **A**: Field staff are very active and physically review the sites – usually a selection of three [prospective sites]. The district must then conduct a geotechnic evaluation of the site. Toxicity is evaluated if there is anything on the site. When the report comes in and toxicity levels are too high, we do not approve the site.

[Why CDE field representative Betty Hanson approved the Jefferson project to her superiors remains unclear. The question of CDE approval will be examined in greater detail as an addendum to this report].

Q: *Do you take the word of the district as to what the levels of toxicity are at the site?*

A: Not really. The need to submit a site package includes specific forms [pink sheets] that include toxicity details.

Q: *How many field staff work for the CDE?*

A: Eight for the state.

Q: *Who in your group makes the determination that each site complies with appropriate environmental regulations?*

A: It is the field reps decision after receiving the site package. The rep then sends the recommendation to the assistant director of the OPSC who normally cosigns them unless there are ongoing mitigation issues.

Q: *In your analysis of site acquisition do you look into any waivers for environmental hazards granted by the district purchaser to the seller?*

A: We really don't get involved in the local decisions. Our criteria is based on the standards we developed in Title 5. Categorically, our limit to involvement is Title 5.

Q: *So you don't really offer any oversight, just assessment of the information provided.*

A: Yes.

It remains unclear from Heydt's testimony whether or not the CDE has sufficient resources to ensure that proposed school projects ascribe to legal guidelines.

The other agency with potential involvement in site approval is the DTSC (Department of Toxic Substances Control). When asked if his department had the necessary oversight authority to intervene if deemed necessary, Huff replied:

> **A**: The department has complete enforcement authority to intervene at any time, if deemed necessary. However, it is preferable for all parties concerned that appropriate environmental due diligence is conducted prior to property acquisition. Remediation could be conducted if necessary in the event that it was determined that the property should still be acquired. Using this proactive approach would ensure that there are no surprises and that after-the-fact responses would not occur.
>
> **Q:** *Does the DTSC have the adequate resources to fulfill their responsibilities?*
> **A:** The DTSC has sufficient resources. Our resources consist of those used to generally provide responses for information requests of the public as well as resources provided by project proponents through our voluntary program.

The DTSC system failed because, according to Huff's testimony, the department was not informed of the problem at Jefferson until 1995. It is unclear from the testimony of the CDE exactly what caused them to approve the Jefferson site in 1989. Whether the cause of approval was a failed system or failed decisions, determination of this key question will be provided by this committee in its final Jefferson report.

HOW WAS JEFFERSON BUILT SO THAT ENVIRONMENTAL REMEDIATION WAS THE LAST PART OF THE PROJECT RATHER THAN THE FIRST AS DICTATED BY THE SAB, EPA, AND CDE?

One explanation might begin with the tone set by Robert Niccum, the director of the LAUSD's real estate branch, who also serves as the district's California Environmental Quality Act officer. While there is nothing technically inappropriate about this

arrangement, having the district's senior real estate procurer also in charge of coordinating environmental oversight places business concerns in competition with environmental safety. Compounding the unavoidable conflict represented by this arrangement is the chain-of-command authority held over the LAUSD's Health and Environmental Safety Branch by district business officials. In order to ensure complete objectivity in environmental decisions, the LAUSD may wish to consider shifting their environmental oversight branch to a position of more autonomy and more authority in relation to the district's business interests.

Evidence of safety competing with politics and business interests is also evidenced in an LAUSD document entitled "REPORT OF FINDING AND OVERRIDING CONSIDERATIONS: Jefferson Area New Junior High School No. 1" dated October 1988. This document, prepared by the district's real estate department, states as its introduction:

> This report has been prepared in conjunction with the Environmental Impact Report (EIR) relating to the Jefferson Area New Middle School No. 1. The report Consists of three elements: (1) an Impact Summary highlighting the major areas of concern, potential impacts, and mitigating measures, all of which are described more fully in the EIR; (2) the findings of the Board of Education regarding the potential impacts; and (3) the Statement of Overriding Considerations, which sets forward the reasons why the project should be approved notwithstanding possible unavoidable effects.

The EIR portion of this document states under the banner "Human Health" that:

> The results of the site reconnaissance and records search indicate the potential for adverse environmental impact as a result of historic and/or present activities. The proposed junior high school site is located in an area that is predominantly used as a furniture manufacturing facility. This business may handle hazardous materials

related to the furniture finishing activities and reportedly has underground tanks for the storage of fuel oil. There is a potential for hazardous liquids to have impacted the subsurface of the site in the event of improper historic or present storage and handling practices.

The EIR goes on to state that, "A thorough environmental site assessment of potential toxic hazards shall be prepared." But no such "thorough" effort was made until the LAUSD was forced to do so by the California EPA (Cal/EPA) after school construction was substantially completed..

Problems at the Jefferson site came to the attention of state environmental authorities after a Cal/EPA toxicologist noticed the site by coincidence. One day, while working on the federal superfund site across the street, this EPA scientist noticed a new building under construction. Out of curiosity, this state official strolled across the street to the Jefferson site and was shocked to find it was a school.[5]

Possibly the most disturbing aspect of this report is the district's STATEMENT OF OVERRIDING CONSIDERATIONS wherein it states:

> The Board of Education finds that the mitigating measures discussed in the EIR will, when implemented, mitigate or substantively reduce most of the significant effects identified in the final EIR. Nonetheless, certain significant environmental impacts of the project are unavoidable even after incorporation of all mitigation measures. For such effects, the board has balanced the benefits of the project against such unavoidable environmental risks in approving the proposed project.

Had the district followed its own advice and conducted a timely and reasonable toxicity analysis, considering what was known of the site's history at the time, it is reasonable that

[5] EPA Preliminary Assessment, Hard Chrome Products, ID# V-9299-252-01-0, November 22, 1995, Prepared by Ken Chang, pg. 8.

the district would have, at the least, determined further testing was necessary before purchasing the property. Once the school was built, and the Cal/EPA required the district to reanalyze the extent of the property's contamination, the following was discovered:

> There are three contaminants of concern: (1) trichloroethylene (TCE) and (2) hexavalent chromium ("Chrome 6"), both of which are known to cause cancer, and (3) lead which is a heavy metal that can cause serious health problems in young children.

One reason the LAUSD did not know the extent of their toxicity problems is evidenced in a request dated January 23, 1990, made by LAUSD Environmental Health and Safety Branch Director, Susie Wong, wherein it states:

> Since [the Phase II assessment] does not require the contractor to drill to a known groundwater source (drilling will be done to a depth of 50 feet and ground water is known to be at 200 feet) it is requested that the Pollution Liability Insurance requirement be waived for this contract. Should this contractor [Lindmark Engineering] be retained to perform any remediation of the site (Phase III), however, pollution liability requirements should be reinstated.

While the Phase II assessment may technically not "require" drilling to ground water, the entire process, as stated by Huff and others, is based on notions of *due diligence*. It is arguable that had the Phase II assessment been performed with due diligence prior to the purchase of the land, engineers would have found record high levels of the highly carcinogenic Chromium 6 in the soil and groundwater.

While Lindmark's Phase II assessment did not drill to groundwater, it did identify the presence of VOCs. Lindmark's report states:

> Since contamination is volatile, it is recommended that a vapor extraction and vapor cleanup system be used to remove this contamination. Design permitting and installation of such a system is estimated to require four to five months. The actual cleanup will likely require six to twelve months.

Yet the LAUSD did not install such a system until years later at the direction of Cal/EPA and after the school was built. Why the LAUSD failed to follow the advice of even their inadequate Phase II assessment might be due to the "rush" label placed on the project by the district's real estate business office. In an internal memo from Niccum to LAUSD Facilities Project Manager, Rodger R. Friermuth:

> The State Allocation Board approved the Phase II land acquisition portion of the project on January 11, 1998. Therefore, the 60-day clock to acquire the property has started. Please initiate your land acquisition procedures as soon as possible so that we might meet the imposed deadline.

The problem is that Lindmark's Phase II draft report would not be published until June 25, 1990 – eighteen months later. There are numerous other internal documents that discuss the time problem and the yet to be conducted soil tests.[6] It appears in this case that business concerns were placed before due diligence. It further appears that either the LAUSD withheld information from the state or state officials cooperated with the district to circumvent the intent of existing law. Either way, it appears that the Jefferson project lacks the basic elements of district due diligence.

[6] Memo to File, September 19, 1989 signed R. Hobson; To Rodger Friermuth from Royger Hobson dated September 22, 1989; To Rodger Friermuth from Royger Hobson dated October 10, 1989.

Role of the State Allocation Board

SAB Assistant Executive Officer, Lyle Smoot, offered the following testimony concerning the oversight role of his office:

> The SAB is a financing authority and the only issues that the board typically concerns itself directly with are cost issues. In that regard, site acquisition and the cost of site acquisition is an important part of that. The board has limited review authority as regards to a number of issues that go along with cost.
>
> The general movement of the legislature with regards to the state school building program is to have the SAB have less oversight into school construction issues and to concentrate on eligibility for dollars and once that eligibility has been determined, turn those dollars over to the school district where it then becomes a local issue.
>
> The current policy of the SAB is that we only buy clean safe sites for school facilities. In that regard, however, we rely heavily on the local school district, the CDE and other state agencies to go through the process and determine that the sites we provide funding for are safe. We rely heavily on "due diligence."
>
> In the case where environmental remediation is required, the SAB withholds a portion of funding until the site has been fully remedied. Policy is that any cost of remediation, when added to the purchase price that exceeds our determination of the sites total value, must be paid for by the district [e.g., if a site is valued at 7 mil and cleanup is 22 mil, then the district must first make up the difference -- 15 mil -- before SAB will approve any allocation.].

Why did the SAB release funding for the Jefferson project on January 11, 1989, prior to conducting the Phase II assessment and subsequent completion of contaminant remediation as required by law?[7] The committee wrote Smoot in a follow-up hearing letter to inquire about this apparent discrepancy only to find that Smoot had been hired since the hearing by, and gone to work for, the LAUSD. Taking Smoot's place at the SAB is Assistant Executive Officer, Bruce B. Hancock. According to Hancock:

> The SAB approved the site acquisition as well as related relocation and demolition expenses [for the Jefferson site] in January 1989. Neither the Office of Public School Construction (OPSC) nor the SAB had knowledge of toxic contamination issues at that time.[8]

It appears reasonable to wonder: How could the LAUSD have known what they did about the prospective Jefferson property, claimed to state officials that the property was free from toxic contamination and still have remained honest in their dealings?

While toxicity levels in the immediate groundwater do not pose a health risk to humans, there remains the issue of the contaminated water migrating to other aquifers that are used for drinking and of the related financial liability. Issues of liability remain outstanding as more data is collected and various parties jockey for position. The responsible parties for the Hard Chrome Products federal superfund site across the street from Jefferson Middle School are currently attempting to have the LAUSD named as a responsible party for groundwater remediation.[9]

In a letter from Cal/EPA to the Southern California Water Company dated October 9, 1996, Cal/EPA states that the highly carcinogenic Chromium 6 beneath the Jefferson site

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[7] See attached: Jefferson Middle School, Chronology of Events, Office of Public School Construction July 20, 1998.

[8] Letter to the Honorable Scott Wildman from SAB Assistant Executive Officer Bruce B. Hancock, dated July 24, 1998.

[9] October 1, 1997, letter from Stephen T. Holzer, attorney for Parker, Miliken, Clark, O'Hara & Samuelian, to Ken Chang, Project Coordinator, Department of Toxic Substance Control.

exceeds the maximum healthful levels by 540 percent as set by the California Department of Health Services. It is the plan of all responsible parties to remediate the groundwater in question before it migrates and contaminates area wells. The nearest well used for drinking is situated 0.5 miles to the southeast of Jefferson. This nearby well registers levels of Chrome 6 that are currently within healthful limits.

The LAUSD is now requesting that the SAB reimburse them for the costs for environmental remediation at the Jefferson site. On July 10, 1998, the LAUSD requested that the SAB pay an additional $513,000 in environmental remediation costs connected to the Jefferson site.[10] Considering that the LAUSD did not disclose the extent of the Jefferson site's toxic contamination to the SAB or to the California Department of Education in order to be eligible for state funding, this after-the-fact appears presumptive. According to Hancock, the SAB has not yet made a determination concerning this request.

Complexities of Asserting Eminent Domain

During Rosanne Harding's testimony, she expressed concern over the practical dynamics of property assessment prior to the decision to evict. The scenario is itself problematic. Consider the following:

> You are a public entity with eminent domain authority knocking on the door of a prospective target. The public entity announces to the on-going business: "We're here to conduct unsightly, damaging and disruptive boring samples in order to determine if we're going to force you to relocate. There is no good news here for the current owner of the property.

[10] Letter to the Honorable Scott Wildman from SAB Assistant Executive Officer Bruce B. Hancock, dated July 24, 1998.

Harding suggested that the state might consider ways to help facilitate the awkward situation created by prospective eminent domain discovery. Further, Harding suggested that the State may also wish to consider ways to assist local agencies with identifying *responsible parties* by creating a clearing house at the state level of such information already in the hands of various public state and federal agencies. A computer network system could be created, for instance, which would collect existing data and make it available in an accessible form without requiring extensive additional labor.

NAVIGATING THE COURSE OF DUE DILIGENCE:

How things can go wrong even when you do everything right.

The CEQA Deskbook contains a work page that lists forty local, state and federal agencies that a district must consider contacting when contemplating the construction of a new building.[11] There is unquestionably going to be a certain amount of jurisdictional crossover when a district attempts to satisfy all agencies at once. Jurisdictional crossover is precisely what San Juan Unified School District, Assistant Superintendent, David Doomey, testified to before the committee. Doomey began his testimony by recalling the planning for one school that began five years ago. According to Doomey:

> An environmental impact report was prepared by the district that was forwarded to various agencies for review and comment. Some agencies responded and some did not. Those agencies that responded had their comments incorporated in the design of the school. For example, the U.S. Fish and Wildlife Service (USFWS) recommended that the district keep clear of the coastal sage habitat since that is where the gnatcatcher lives. In fact, the tennis courts planned for the high school had to be moved so that the bouncing tennis balls would not disturb the mating habits of the bird.

[11] 1996 California Environmental Quality Act Deskbook, pg. # 134.

As the district began processing its section 404 Wetland Removal Permit, word was received from the Army Corps of Engineers and the U.S. Environmental Protection Agency that they had serious concerns regarding our plans. The concerns raised by both agencies were due to the fact that rules were changed at the federal level.

When our EIR was certified in 1996 a Nation Wide Permit could be granted if less than 10 acres of wet lands were anticipated to be removed. Our original plan indicated that impacts would be less than 9 acres of wetlands. Then in February 1997, the rules changed. A Nation Wide Permit would be granted if wetlands impacts were now less than 3 acres. This change created significant hurtles to the district. It basically required that the district change nearly every element of the school design except the building pad area including moving portions of the school plan to property owned by another landowner.[12]

Doomey concluded his testimony by asking that the state consider "grand-fathering" rules and decisions so that projects are free from trying to second guess, and becoming subject to, future shifts in regulations.

[12] "Remarks to the JLAC, June 17, 1998, by Assistant Superintendent, Capistrano Unified School District, David A. Doomey.

RECOMMENDATIONS

- The Legislature may wish to consider ways to motivate districts to work collaboratively with their constituents.
- Districts must be held accountable and understand that it is clearly unacceptable to violate or attempt to circumvent existing environmental law. The state may wish to consider making willful violation of the education code an offense punishable by personal fine or the threat of jail.
- The Legislature may wish to develop a list of "red flags" that trigger exhaustive environmental discovery when such items as the following exist:
  - A railroad track along one side of the property;
  - Heavy industry or manufacturing on or near prospective school sites.
- Local districts may wish to consider making their environmental staff independent and distinct from real estate and business staff in order to ensure the utmost scientific objectivity in environmental assessments.
- The Legislature should determine ways to assist districts with the awkward dynamics of eminent domain discovery.
- The Legislature may wish to create an office within an existing department that serves as a clearinghouse and liaison between local districts and the many state and federal environmental oversight agencies.
- The Legislature should increase the field and the oversight staff of the Department of Education to avoid the possibility of bad decisions being made due to willfulness or lack of diligence on the part of an overburdened staff.
- The work of the various state agencies responsible for land acquisition and construction assistance and regulation should be coordinated. The legislature may wish to grant the expanded enforcement and oversight authority to those agencies to ensure district compliance with the rules and regulations promulgated by the legislature and other regulatory bodies for the health and safety of our schoolchildren.

Appendix A – Witness Testimony

San Dieguito
Union High School District

710 Encinitas Blvd.
Encinitas, CA 92024-3357
(760) 753-6491

Testimony for a Public Hearing to be Held by the
Joint Legislative Audit Committee
Wednesday, June 17, 1998

Eric J. Hall
Assistant Superintendent, Business Services
San Dieguito Union High School District
Representing the Coalition for Adequate School Housing (C.A.S.H.)

Assemblyman Wildman and members of the Committee, thank you for the opportunity to speak with you regarding public school land acquisition and related environmental issues. The San Dieguito Union High School District is located in northern San Diego County and includes portions of the City of Carlsbad in the north and portions of the City of San Diego in the south. In between, the district covers the cities of Encinitas, Solana Beach and Del Mar and includes portions of the unincorporated area of San Diego County under the jurisdiction of the County of San Diego. In addition to coordinating with five cities and the County of San Diego regarding residential planning projects, the San Dieguito district also coordinates with the five feeder elementary districts, Encinitas Union, Solana Beach Elementary, Cardiff Elementary, Del Mar Union and Rancho Santa Elementary School Districts.

The San Dieguito Union High School District educates students in grades 7-12 (with the exception of the K-8 Rancho Santa Fe Elementary District). The San Dieguito district's enrollment is currently at 9,300 students. We operate four high schools and three junior high schools and are planning for as many as three additional junior high schools and one additional high school project. We work closely with developers and anticipate as many as 25,000 additional homes to be built in our district.

In my current capacity, I serve as the district's CEQA Officer, negotiator for land acquisition, Chief Financial Officer and the Environmental and Health Officer with the district. I work for a medium size district and as such, I wear many hats. I have learned to rely on consultants and contractors to assist in the school facility planning process including the environmental reviews purchase of school sites and the construction of school facilities.

Due to the nature of our geographic area and the number of cities and elementary school districts that we work with, planning is a large part of our district operation. I would like to spend a moment sharing with you our experiences and what we have learned in site acquisition and development for school projects. I will address my comments to four major areas. First, early acquisition, second, school site purchases to district specification, third, CEQA impacts, and fourth, creative design/collaborative efforts.

Early Acquisition

We have found it beneficial to enter into purchase agreements with land owners as early as possible prior to the zoning of the property for additional housing units. This provides the school district with price protection but also requires the district to coordinate with planning agencies well in advance of housing developments. Some C.A.S.H. member districts have purchased land zoned as agricultural or other designations in anticipation of developments that would come many years in the future. This provides districts with an opportunity to purchase land at lower costs. We would recommend some loosening of SAB restrictions to the policy on land acquisition. Penalties for unused sites and the policy on reimbursing districts for land purchase within the last 4 years should be reviewed.

School Sites Purchased to District Specifications

One of the advantages of working with a land developer is that it enables the school district an opportunity to purchase a school site from the developer fully graded with all the utilities sized and at the site for future district use. This enables the school district to reduce it's site development costs and in some instances, C.A.S.H. member districts have been able to negotiate favorable arrangements with developers that provides the district the improved site without any additional cost in the land acquisition. Additionally, when a developer grades a site, the developer takes on the burden of meeting the CEQA compliance as it relates to habitat, waterways or other environmentally sensitive issues involved in site development.

CEQA Impacts

We have significant experience in preparing environmental impact reports, conducting biological studies and focused transportation circulation studies as it relates to school site development. We have also worked closely with the Army Corp of Engineers, the Federal Fish & Wildlife Services as well as the State Department of Fish & Game. In our situation where we are developing suburban sites, habitat, waterways, streambeds and other environmentally sensitive issues have surfaced as challenges that we must deal with. This is why it is an increasingly important for districts to look at working closely with

developers to enable them to develop the school site and to deal with the environmental issues relative to their entire housing project. It is understood that this approach works well under large master plan developments and does not work as well in situations where there are smaller development projects.

A recent experience in the construction of La Costa Canyon High School where the district was required to apply for 404 Wetlands Permit and to mitigate the impact of the gnatcatcher habitat by purchasing offsite mitigation land, provided us with a significant learning experience. This also increased the construction costs of the school by $1.2 million. This particular site was used as grazing by cattle prior to the district's acquisition and a streambed was damned to provide livestock a drinking source (cow pond) which was eventually viewed as valuable streambed and wetlands property. The cow pond and related streambed was over one acre in size and in order to develop the property, we were placed in the wetlands permit process. As a result of that process, the school district was required to reconstruct the streambed with check damns and planting native habitat which required an additional $800,000+ to the project. Additional surveys, consultants and others including the acquisition of offsite mitigation land pushed environmental costs of this project in excess of $1.2 million.

Creative Design/Collaborative Efforts

The last item I would like to briefly touch on is the school district's use of creative design and it's collaborative efforts with other agencies to reduce the cost of school site acquisition and construction. Many C.A.S.H. member districts have looked at creative grade level configurations such as K-8 as opposed to a K-6 and 7-8 separate facilities. Additionally, combining our junior high school grades of 7-8 with a high school grades of 9-12 and creating a 7-12 grade level school on one site has been considered by C.A.S.H. member districts. Sharing gymnasiums, libraries, parking and athletic facilities, and building schools within a school to accommodate students are common practice in school districts. These decrease land acquisition costs. Additionally, districts are designing and building multi-story structures as a cost savings idea as land becomes less available and more expensive. At one time this option was reserved for urban districts, but suburban districts in southern California with increased land costs are looking at other options such as multi-story to reduce land acquisition costs.

Our district has been a leader in the joint use program having pioneered two joint use libraries in the planning stages on two separate school sites with two separate cities. Our district assisted in ushering the State Allocation Board and it's Implementation Committee through the joint use policy development and approval process. Proposition 203 voted in March of 1996 allocated $25 million for joint use projects. Our district is currently awaiting funding as we were low on the list when the State Allocation Board opted to use the lottery as an allocation tool. Additionally, we have worked closely with the cities in joint use agreements with schools and parks, and we have also worked very closely with the San Dieguito Boys & Girls Clubs as we have Boys & Girls Clubs facilities on our junior high/middle school facilities.

In closing, thank you again for the opportunity to meet with you and provide you with some of the lessons we have learned and some of the tools we have used to reduce the funds necessary for site acquisition and also to provide you with insight on the environmental concerns related to developing sites in suburban areas. Should you have any questions, I will be available to answer in person by telephone at (760) 943-3518 or via email at ehall@sduhsd.k12.ca.us.

EJH/jr
6/22/98

REMARKS TO THE JOINT LEGISLATIVE AUDIT COMMITTEE OF THE CALIFORNIA LEGISLATURE

JUNE 17, 1998
PRESENTED BY DAVID A. DOOMEY
ASSISTANT SUPERINTENDENT
CAPISTRANO UNIFIED SCHOOL DISTRICT
VICE CHAIR
COALITION FOR ADEQUATE SCHOOL HOUSING

Assemblyman Wildman and Members of the Committee, thank you for inviting me to speak before you regarding public school land acquisition and related environmental concerns. The Capistrano Unified School District encompasses nearly 200 square miles of territory. We serve over 40,000 students in 40 school sites. In the last 6 years we have constructed 14 schools and we qualify for several more including two new high schools. A recent builder survey revealed that in our district nearly 20,000 homes are projected to be built over the next three year period. CUSD will be acquiring school sites for many years to come.

Land values are high in Orange County. For example, a new planned community is being proposed in our district that has entitlement to develop over 8,000 new homes. The district must build four schools to serve the future students that will be generated from this area. Land values are estimated to exceed $725,000 per acre. Due to the high cost of land, we have proposed to the land owner designing our future schools adjacent to park sites to maximize open field space. An elementary school that would normally require 10 acres can be reduced to 7, and a middle school that normally requires 20 acres can be reduced to 15 acres. Planning such as this will reduce school site acquisition cost by $7,250,000—a savings that will be shared equally between the state and local taxpayers.

ENVIRONMENTAL ISSUES

The environmental issues we face, at this time, do not relate to contaminated or toxic substances. Our problems relate to endangered species, wetlands, and water quality. Most recently our district has been processing permits for a new high school that is desperately needed. We began planning for this school 5 years ago. An Environmental Impact Report (EIR) was prepared by the district which was forwarded to various agencies for review and comment. Some agencies responded and some did not. Those agencies that responded had their comments incorporated in the design of the school. For example, the U.S. Fish and Wildlife Service (USFWS) recommended that the district keep clear of coastal sage habitat since that is where the gnatcatcher lives. In fact, the tennis courts planned for the high school had to be moved so that the bouncing tennis balls would not disturb the mating habits of the bird. As the district began processing its Section 404 Wetland Removal Permit, word was received from the Army Corps of Engineers and U.S. Environmental Protection Agency (EPA) that they had serious concerns regarding our plans. The concerns raised by both agencies was due to the fact that rules were changed at the Federal level. When our EIR was certified in 1996 a Nation Wide Permit could be granted if less that 10 acres of wetlands were anticipated to be removed. Our original plan indicated that impacts would be less than 9 acres of wetlands. Then in February 1997 the rules changed. A Nation Wide Permit would be granted if wetlands impacts were now less that 3 acres. This change created significant hurdles for the District. It basically required that the District change nearly every element of the school design except the building pad area including moving portions of the school plan to property owned by another landowner. It is estimated that our high school project will be delayed by one year. I

would respectfully recommend that in the future when rules change in the middle of the stream that projects are "grand-fathered" according to the certification date of their EIR.

FEDERAL AGENCY COORDINATION

Another example of conflict that exist is when two different Federal Agencies provide conflicting requests. One agency is responsible for coastal sage habitat while a different federal agency is responsible for wetlands impacts. One way to correct this is for better coordination to exist between the two agencies. In an attempt to correct this problem in the future I would recommend a meeting be scheduled inviting all parties to comment during the conceptual planning of school sites. The changes reducing from less than 10 acres of wetlands impacts to less than three acres in obtaining a Nation Wide Permit also required the District to modify our Mitigation Plan required by ACOE. The district requested the proposed mitigation in the Canada Gobernadora Ecological Restoration Area (GERA) in our EIR, but the Section 404 Permit stated the mitigation was to occur in the Chiquita Canyon—property out of the control of the district. Fortunately, the Rancho Mission Viejo company (RMV) was able to work with the district to satisfy this requirement.

During the time CUSD was applying for its 404 permit several major development projects had filed for similar permits. This included applications for permits in San Clemente, San Juan Capistrano, Ladera planned community, and Talega planned community. I believe that impacts from all of these applications increased the concerns of the federal resource agencies. Collectively, the impacts to wetlands would be significant. It

is my recommendation to require the resource agencies to work with all the applicants to address a more global solution regarding mitigation of impacts.

The 401 Water Quality Certification required that the district design and engineer a "natural stream" as approved by the San Diego Regional Water Quality Control Board (RWQCB). This element was not a part of our plans included in the EIR that was circulated in February 1997. This Environment requirement is estimated to cost the District approximately $150,000.

What are we doing in the future to minimize environmental issues in the future?

Acquire rough graded pads with all utilities in place for development of future schools.

JOINT LEGISLATIVE AUDIT COMMITTEE

Wednesday, June 17, 1998

Cost Containment and Programmatic Reforms in School Construction

School Site Acquisition and Environmental Issues

California Department of Education
School Facilities Planning Division Testimony

Thank you for this opportunity to testify on behalf of Superintendent of Public Instruction Delaine Eastin (SPE). Within the California Department of Education (CDE), issues relating to school facilities, including site acquisition, is handled by the School Facilities Planning Division (SFPD).

EC§17251 charges CDE in the matter of school site selection to:

- Consider "especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to land use" elements in general plans,
- "Develop standards" for use by school districts,
- "Provide information relating to the potential impact upon any schoolsite of hazardous substances, solid waste, safety, hazardous air emissions, and other information,"

EC§17212 covers general provisions for school sites including:

- the requirements for geological and soils engineering studies,
- "location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions and other factors affecting operating costs as well as initial costs of the total project,
- "..Final site selection is determined by an evaluation of all factors affecting the public interest and ***is not limited to selection on the basis of raw land cost only.***" (Emphasis added.)

Standards developed by SFPD may be found in the publications School Site Selection and Approval Guide (currently being updated) and California Code of Regulations, Title 5, Sections 14001 through 14013. (See attached.)

The SFPD believes that curriculum and educational program should drive the form of school sites and facilities. The Division assists districts in ensuring the site and facility will meet their educational needs. Most SFPD Field Representatives/Consultants have advanced degrees and teaching and school administration experience. They frequently have first-hand knowledge, from the classroom, school and district level, of student/ teacher requirements. Unlike any other agency in the school construction process, the Department of Education advocates for the educational needs of the children and the adequacy of the site and facility to meet those needs. In approving a site, the primary

objective of the Department of Education is to ensure safety and support learning.

Other site considerations as cited in the publications previously mentioned are suitability of location to meet district needs, soils, topography, adequate acreage and shape of parcel, accessibility, availability of public services and utilities, and availability.

Regarding cost, Title 5, Section 14010(s) says, "The cost and complications of the following (five factors) shall be considered in the site selection process and should not result in undue delays or unreasonable costs consistent with State Allocation Board standards." The five factors are:

- Distance of utilities to the site, availability and affordability of bringing utilities to the site,
- Site preparation including grading, drainage, demolition, hazardous cleanup, including cleanup of indigenous material such as serpentine rock, and off-site development of streets, curbs, gutters and lights,
- Eminent domain, relocation costs, severance damage, title clearance and legal fees,
- Long-term high landscaping or maintenance costs,
- Existence of any wildlife habitat that is on a protected or endangered species list maintained by any state or federal agency, existence of any wetlands, natural waterways, or areas that may support migratory species, or evidence of any environmentally sensitive vegetation.

The Superintendent of Public Instruction may grant exemptions to any of the standards if the district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment. (Title 5(t))

Generally, the cost of the site is driven by non-CDE policies which establish that appraisals shall be based on highest and best use.

CTC Concurrent Technologies Corporation
717 K St. Suite 224 Sacramento, CA 95814 (916) 444-3412 FAX (916) 447-3726

June 29, 1998 *CTC*/RB-L1598-98

Scott Wildman
Assembly Member, Forty-Third District
Chair, Joint Legislative Audit Committee
State Capital
PO Box 94249
Sacramento, CA 94249-0001

Subject: Statement regarding June 17, 1998 Joint Legislature Audit Committee Hearing on "Acquiring Urban Land for Public School Construction and Related Environmental Concerns".

Dear Assemblyman Wildman:

We listened with great interest to the testimony presented at the above hearing and your statement of concern and questions to the persons presenting the testimony. The comments presented clearly demonstrated the need for a life-cycle systems approach to cleaning up and restoring urban land for public school construction. It is vitally important that all project risks are identified, balanced and managed, in a step-wise, integrated, and documented approach, throughout the life cycle of a project, e.g, from site identification/discovery, land acquisition and land use planning, cleanup, construction, financing and indemnification, etc. Such a system has been developed for the US Department of Energy (DOE) by Concurrent Technologies Corporation (*CTC*). This system, entitled LandTech, is summarized in the two attachments: "*CTC* LandTech" and "*CTC* LandTech Reuse Philosophy". Also attached is a more detailed statement covering the LandTech systems approach for acquiring and constructing schools on urban land, which was prepared for presentation at the hearing. Although time constraints did not allow for our presentation, we request that the letter and attachments be included in the Post Hearing Briefing Paper.

Senator Jack O'Connell has provided key policy guidance and laws that have been utilized in formulating the mainframe of LandTech. This includes SR-29, the California Accord, which has been expanded to establish an on-line interactive (the LandTech Project Accord [LPA]), systems approach to integrating, managing and documenting a community-based decision making process for the life of a project. Through this approach, a documented due-diligence trail is established, thus enabling an integration of the technical and community-based decision making components of a project in a manner that continuously identifies and manages issues and concerns. It is this comprehensive due-diligence process that establishes a

technical baseline that has integrity, thus allowing land title to safely transfer, and financing and indemnification to be appropriately structured for capital improvements, as well as new school construction. Additionally, LandTech features Senator O'Connell's AB 2610, which amended Mello-Roos in providing the first form of tax-exempt funding for hazardous substances cleanup. Under LandTech Financial, AB 2610 represents the principal mechanism for financing of cleanup and reuse activities on contaminated land.

We understand that some of the potential urban sites for new schools may be currently abandoned or under utilized industrial or commercial sites, which present issues of real or perceived environmental contamination. We believe that by utilizing DOE's LandTech Program, urban school districts can define a "global" life-cycle systems planning approach that can comprehensively set forth a "roadmap" for both administrators and community-based decision-makers to follow, and provided an offensive approach to mitigating or eliminating the types of technical and community-based liability issues that arose at the Jefferson Middle site.

We have reviewed the California State Department of Education's 1989 "School Site Selection and Approval Guide". The Site Review portion of the Guide, as it relates to Environmental issues, is inadequate. There are numerous guidelines that provide appropriate procedures that can be used to update and expend the Department of Education Guide.

The *CTC* LandTech Website at http://www.ies-systems-landtech.org has a library that contains web site links, publications and other valuable resources that can add to the user's information base. For example, one of the best references is the Cal/EPA's Department of Toxic Substance Controls' "Preliminary Endangerment Assessment Guidance Manual (PEA). After many years of development, this document was published as a final document in January 1994. The PEA is defined in the California Health and Safety Code, Division 20, Chapter 6.8, Section 25319.5 as follows.

> "Preliminary Endangerment Assessment means an activity which is performed to determine whether current or past waste management practices have resulted in the release or threatened release of hazardous substances which pose a threat to public health or the environment.

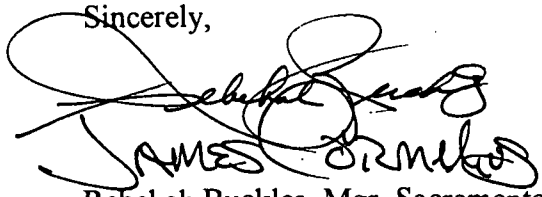
Although all parties involved may have worked in good faith and with the best of intention, it was apparent that there is a major difference of opinion between the State regulatory agencies and the spokesperson from the Jefferson Middle School Concerned Citizens of South Central Los Angeles. (CCSCCA). It appears that the CCSCCA concerns have not been adequately addressed. It can be concluded there could be primarily a communications problem with the State Regulatory Agencies and the citizens from the Jefferson Middle School of South

Los Angeles. It is therefore recommended that an independent scientific peer review is needed to open up channels of communication as it relates to the Jefferson Middle School Site between the school administrators, the regulators and the community. Currently, LandTech is conducting parallel site activities across the country for the Department of Energy and Department of Defense at four separate facilities/installations. These programs cover a diverse range of land reuse and site closure activities, but the common connecting thread between all the projects is the deployment of a life cycle systems approach that establishes consensus built goals and objectives as well as identifying comprehensive issues and concerns along side the management of the project's diverse range of risks. For each project, the LandTech team is responsible for designing, implementing and managing a site specific stakeholder decision making process to achieve tangible and documented results.

We would also recommend that LandTech Financial facilitate the development of a stakeholder driven, state-wide policy that would standardize a risk management approach for safely structuring the $46 billion dollars of financing that is anticipated to meet the next decade of school construction and restoration of California's educational facilities. As the foremost pioneers in the development of a national finance/privatization program for the US Department of Energy, the LandTech Financial team is eminently qualified.

If we can provide further discussion of the material provided, please contact us.

Sincerely,



Rebekah Buckles, Mgr. Sacramento Office
James Cornelius, Consultant, Sac. Office

RB/km

Enclosures(s): as stated

Capistrano Unified School District

Excellence in Education

32972 Calle Perfecto, San Juan Capistrano, California 92675 Telephone (714) 489-7000/FAX 240-6241

May 19, 1998

Mr. Scott Wildman
Chair, Joint Legislative Audit Committee
California Legislature
State Capitol
Sacramento, CA 95814

Subject: Joint Legislative Audit Committee Regarding School Facilities

Dear Mr. Wildman:

As the Vice Chair for the Coalition for Adequate School Housing (CASH) and the Assistant Superintendent, Facilities Planning, for Capistrano Unified School District, I have been made aware of a meeting scheduled for June 17 regarding school site acquisition and environmental issues.

Capistrano Unified School District is the twelfth largest school district in the state, growing at a rate of approximately 7 percent per year for the last several years. We have constructed 14 schools in 6 years, and have several applications on file with the Office of Public School Construction.

Recently, a high school site in our district has gone through a tenuous process regarding site acquisition which included environmental conflicts. If you would like me to be available to provide information on this topic, please feel free to contact my office.

Sincerely,

David A. Doomey
Assistant Superintendent
Facilities Planning
and
Vice Chair, CASH

gdb

Appendix B – Environmental Reports on Jefferson Middle School

INTER-OFFICE CORRESPONDENCE
Los Angeles Unified School District

Date January 31, 1989

TO: Bob Niccum, Director
Real Estate Branch

FROM: Rodger R. Friermuth, Facilities Project Manager
School Planning Branch

SUBJECT: LAND ACQUISITION - JEFFERSON NEW JUNIOR HIGH SCHOOL NO. 1

The State Allocation Board approved the Phase II land acquisition portion of the project on January 11, 1989. Therefore, the 60 day clock to acquire the property has started. Please initiate your land acquisition procedures as soon as possible so that we might meet the imposed deadline.

RRF:dlf

c: M. Barney
C. Cogan
R. Hobson

19-34-1,dlf

Jefferson Area New Junior
High School No. 1
General File

September 19, 1989

Subject: CONDEMNATION

On today, September 12, 1989, Carol Cogan and I talked to Rodger Friermuth regarding whether we should proceed with condemnation or wait for soil test. Rodger said that we should wait for soil test.

Subject: SOIL TEST

On today, September 19, 1989, I called Bill in Safety Department to see when does Geoservice plan to begin work. Bill said he had not heard from Geoservice, but he would give them a call and get back to me.

R. Hobson:del

FOLLOW-UP 9-26-89 DATE

INTER-OFFICE CORRESPONDENCE
Los Angeles Unified School District

TO: Rodger Friermuth, Facilities Project Manager
School Planning Branch

Date September 22, 1989

FROM: Royger L. Hobson, Realty Agent
Real Estate Branch

SUBJECT:

As per our conversation on September 12, 1989 it is my understanding that we should wait for soil test before initiating condemnation action. If there are any changes, please advise.

RLH:del

c: L. Roberts
B. James
D. Brown

FOLLOW-UP 10-6-89
DATE
RLH

INTER-OFFICE CORRESPONDENCE
Los Angeles Unified School District

TO: Thais Rothman, Supervisor
Contract Section

Date January 23, 1990

FROM: Susie Wong
Environmental Health and Safety Branch

SUBJECT: NEW JEFFERSON JUNIOR HIGH SCHOOL SITE ASSESSMENT

As you are aware, the Environmental Health and Safety Branch intends to select Lindmark Engineering to perform a Phase II site assessment of the New Jefferson Junior High School site.

Since this particular assessment does not require the contractor to drill to a known groundwater source (drilling will be done to a depth of 50 feet and groundwater is known to be at 200 feet), it is requested that the Pollution Liability Insurance requirement be waived for this contract. Should this contractor be retained to perform any remediation of the site (Phase III), however, Pollution Liability requirements should be reinstated.

Thank you for your attention to this matter.

Should you have any questions please call me at 7371.

SW:yg

c: D. Koch
D. Brown
C. Cogan ✓

PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
333 SOUTH HOPE STREET, 27TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1488
TELEPHONE (213) 683-6500

STEPHEN T. HOLZER

CLAUDE I. PARKER (1871-1952)
JOHN B. MILLIKEN (1893-1984)
RALPH KOHLMEIER (1900-1976)
JOHN F. O'HARA (RETIRED 1996)

FACSIMILE (213) 683-6669

WRITER'S DIRECT DIAL NUMBER:
(213) 683-6671

October 1, 1997

via facsimile and U.S. Mail
818.551.2874

Ken Chiang
Project Coordinator
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

Re: Hard Chrome Products Site

Dear Mr. Chiang:

We are writing on behalf of Elizabeth G. Murray one of the parties named to the Imminent and Substantial Endangerment and Remedial Action Order, Docket No. I&/SE 96/97-003 (the "Order") issued by the Department of Toxic Substances Control ("DTSC") on March 7, 1997. By this letter we formally request that the Los Angeles Unified School District ("LAUSD"), as the owner of the Jefferson New Middle School ("JNMS") property be added by DTSC as a Responsible Party under the Order.

Consistent with this request, and subject to the caveat below, we recommend a meeting be held among the already named RP's, DTSC, the Los Angeles Regional Water Quality Control Board ("RWQCB") and the LAUSD to discuss the future work to be performed under the Order. Given (1) the obvious migration from under the JNMS property of significant volatile organic compounds ("VOC") contamination in groundwater, and (2) the appearance that a similar migration situation exists with respect to metals (chromium) contamination, it is imperative that the LAUSD should join in performing the work required by the Order so that a comprehensive, coordinated *area*-wide response action may be implemented. A review of groundwater and soil sampling results, groundwater flow direction and upgradient proximity of the JNMS Site to the Hard Chrome Products Site provides ample support for the request and recommendation.

1. THE HARD CHROME PRODUCTS SITE--NO EVIDENCE OF VOC CONTAMINATION CAUSED BY SITE OPERATIONS

As you are aware, the Hard Chrome Products Site is located at 617 East 56th Street, Los Angeles, California. The Site is bordered on the south by East 56th Street with the JNMS property situated across East 56th Street, directly south of Hard Chrome Products. Significantly, as will be discussed later in this letter, the JNMS Site is upgradient of the Hard Chrome Products Site.

Hard Chrome Products began operations as a small electroplating facility in 1943. Through a series of owners, the business was operated fairly continuously until ceasing operations in 1991. Neither TCE nor other VOCs were used at the Site.

In September, 1994, several of the present RP's to the Order retained Fero Engineering ("Fero") to complete a Preliminary Endangerment Assessment ("PEA"). The PEA included a soil and groundwater sampling program as required by DTSC. The PEA, which was finalized and submitted on March 31, 1995, included a discussion of soil investigations conducted prior to Fero's involvement at the Site. These investigations revealed near-surface metals contamination consistent with the history of operations at the Site— i.e., concentrations of soluble lead and of chromium in excess of STLC and TTLC threshold limitations. (See PEA)

During the course of Fero's PEA, Fero oversaw completion of (1) a Site-wide soil gas survey to identify any VOC's in soil; (2) soil borings to a maximum depth of 40 fbg, in addition to widespread surface sampling, to determine the vertical and lateral extent of the metals (lead and chromium) contamination referenced above; and (3) two groundwater monitoring wells, also to evaluate the vertical distribution of metals contamination and to determine whether groundwater had been impacted by such contamination.

These surveys confirmed the information found in the above-referenced pre-Fero studies showing metals (lead and chromium) contamination associated with electroplating activities at the Hard Chrome Products Site but revealing no indication of VOC contamination in site soils (which makes sense, given that, as noted, the Site had been used as an electroplating facility and VOC's, as opposed to metals, were not used). (See PEA)

2. THE JNMS SITE--EVIDENCE THAT THE UPGRADIENT JNMS SITE HAS IMPACTED THE HARD CHROME PRODUCTS SITE WITH BOTH VOC'S AND METALS (CHROMIUM CONTAMINATION)

A. CHROMIUM

The JNMS property has a long history of manufacturing operations--on a significantly larger scale than the operations at Hard Chrome Products. Owned by Weber Showcase & Fixture Company until 1965, the JNMS Site, which encompasses almost one full city block, throughout the past five or more decades has contained large military and civilian factories. (See Declaration of Mr. LaCaze and January 25, 1944 Weber Showcase & Fixture revision of Defense Plant Corporation application)

As established by testimony under oath from a former Weber employee and submitted to the DTSC, and as discussed in the Weber Showcase application, beginning at least as early as World War II the JNMS Site saw the use of large quantities of chromium compounds in defense-related construction projects (lifeboats). (See Declaration of Mr. LaCaze) Subsequent to the war, the Site was operated to manufacture refrigeration equipment and furniture by Weber, Gillespie Furniture Co., DMI Furniture, Inc., and Chairmakers, Inc. These industrial processes typically involve the use of VOC's.

On or about March 25, 1995 a groundwater monitoring well, FW (for "Fero Well")-1 was installed by Layne Environmental, at the request of Fero, in the northwest quadrant of the Hard Chrome Products Site. (See PEA) On or about December 16, 1996, a second well, FW-2, was installed by BC2 Environmental Corporation to the south of Hard Chrome Products Site, on the northwest corner of the JNMS Site.

Three soil samples (15, 25, and 150 fbg) which were collected on the JNMS Site during the installation of FW-2 revealed reportable concentrations of hexavalent chromium. This finding is especially significant because the samples come from soils of the Site not disturbed by construction development of the school. In this regard, soil over the vast majority of the JNMS property was reportedly removed in conjunction with the development process. Accordingly, soil of large portions of the JNMS property, up to fifteen feet, would not be representative of the soils or their potential for contamination. In contrast, our information is that the northwest corner of the JNMS Site was not subject to excavation and soil replacement, thus plainly making the FW-2-

related soil samples more representative of historical site conditions than was the sampling of other areas of the JNMS Site.

Groundwater sampling done under the supervision of both Fero and Miller Brooks, LAUSD's contractor, further confirm that the JNMS Site has a chromium problem independent of any contamination caused by activities at the Hard Chrome Products Site. In this regard a chronology:

1. Fero collected the first groundwater sample from monitoring well FW-1 on March 28, 1995. The sample contained total chromium and hexavalent chromium above mandated maximum contaminant levels (MCLs). (See PEA)

2. On January 7, 1997, samples drawn from both FW-2 and FW-1 were analyzed revealing total chromium and hexavalent chromium above MCLs not only under the Hard Chrome Products Site but also under the JNMS Site. (See sample results provided to DTSC)

3. Fero conducted a groundwater sampling event on August 1, 1997, during which event samples were again collected from both FW-1 and FW-2. The samples were analyzed for total chromium, hexavalent chromium and VOC's. FW-2's sample (from beneath the JNMS Site) revealed total chromium of 909 mg/1 and hexavalent chromium of 739 mg/1, both significantly higher than the results found in the sample from FW-1 under the Hard Chrome Products Site (302 and 263 mg/1, respectively). (See sample results provided to DTSC)

4. In September, 1997 Miller Brooks conducted additional groundwater sampling events of, among other things, FW-1 and FW-2. According to the split samples provided to DTSC, Miller Brooks also found greater levels of the chromium compounds in FW-2 than that found at FW-1.

On January 15, 1997, LAUSD's environmental contractor, Miller Brooks, retained Azimuth Boundary Specialists to survey the well heads on the JNMS property; and Miller Brooks measured the depth to groundwater. Consistent with the findings of Fero, groundwater flow was determined to be moving in a northwesterly direction (e.g., from the JNMS Site toward the Hard Chrome Products Site). (See Table 6, Miller Brooks Report, Results of Laboratory Analysis) This fact, combined with the findings of substantial chromium contamination in both the JNMS Site soils and groundwater soundly suggest that the JNMS Site is contributing chromium contamination to groundwater independent of any migration attributable to the Hard Chrome Products Site. Indeed, it appears as though the JNMS Site's groundwater chromium contribution

is contributing to groundwater chromium contamination at the down gradient Hard Chrome Products Site.

B. VOC's

Soil and groundwater sampling of the JNMS property, the results of which have been provided to both the DTSC and the RWQCB, reveal significant VOC contamination of the JNMS Site and underlying aquifer. (See Miller Brooks sampling results submitted to DTSC) In this regard:

1. We understand that Miller Brooks collected groundwater samples from its five wells located on the JNMS Site (MW-1 through MW-5) on several occasions, with the most recent event with available data taking place on June 3, 1997. The groundwater samples collected on June 3rd were analyzed for VOC'S and metals. All of the samples contained VOC's, e.g., Trichloroethylene (TCE), above the applicable MCL. (See Miller Brooks sampling results submitted to DTSC)

2. As noted above in the discussion of chromium contamination at the JNMS Site, Fero conducted a groundwater sampling event on August 1, 1997, during which samples were collected from monitoring wells FW-1 and FW-2. TCE at 4,200 ug/1 was detected in the sample from FW-1 despite the fact that no TCE was found in the soil of the Hard Chrome Products Site nor was it known to be used at the electroplating facility.

3. In its September sampling event of FW-2 (under the JNMS Site), Miller Brooks found VOC contamination which exceeded the applicable MCL. (See split sample results generated by DTSC)

Consistent through all of these groundwater sampling events in 1996 and 1997 was that groundwater contours revealed groundwater flow to the northwest--i.e., from the JNMS Site toward the Hard Chrome Products Site. It is thus obvious that the down gradient Hard Chrome Products Site is being affected by VOC contamination form the up gradient JNMS Site.

3. SUMMARY OF POINTS RE CHROMIUM AND VOC GROUNDWATER CONTAMINATION

Summarizing the foregoing information:

1. The JNMS Site suffers from significant TCE contamination of the aquifer beneath the property. The source of the TCE appears to be soils of the overlying property.

2. Groundwater flow over the past year reveals consistent flow to the northwest. No historical evidence exists to refute that this is the prevailing flow direction.

3. There were no VOC's found in the soil of the Hard Chrome Products Site; nor was TCE used in the Site's electroplating operations.

4. TCE was recently detected in the groundwater beneath the Hard Chrome Products Site, despite lack of TCE in the soils of the Hard Chrome Products Site.

5. The foregoing leads to the reasonable inference that the JNMS Site's contamination of the groundwater with TCE is impacting the Hard Chrome Products Site.

6. FW-1 on the Hard Chrome Products Site and FW-2 on the JNMS Site reveal chromium and hexavalent chromium contamination of the groundwater beneath the properties, with the higher levels of contamination occurring under the JNMS Site. Soil sampling of undisturbed soils at the JNMS Site reveals chromium contamination which is consistent with the historical operations at the JNMS Site and may be a source of chromium contamination in the underlying groundwater.

7. Since the JNMS Site is upgradient of Hard Chrome Products, the reasonable inference is that the JNMS Site has made its own, independent contribution to groundwater chromium contamination and is in fact adversely affecting the Hard Chrome Products Site.

Given this evidence, we do not see how LAUSD cannot be added as an RP under the Order.

While, as noted at the outset, we propose a meeting with LAUSD to discuss cooperating in response actions, our proposal is subject to the caveat that LAUSD must come to the table prepared to take its responsibilities seriously. Once before, several of the Order RP's

took the initiative to meet with LAUSD to discuss cooperative response actions; our initiative in this regard was met with scorn, threats, and sarcasm by LAUSD, particularly by its counsel. Indeed, counsel for LAUSD threatened retribution against the Order RP's on account of their audacity to exercise their constitutional rights to communicate with DTSC about LAUSD's potential responsibility in this matter.

While I cannot speak for the other Order RP's, I can speak for our client, Mrs. Murray. She is an 85-year old woman, in poor health, whose life savings are threatened by the Order and by the so-far intransigent and contemptuous attitude of the LAUSD with respect to meeting its responsibilities in this matter. I do not plan to waste her money in yet another acrimonious encounter with LAUSD representatives who, for whatever reason, plan to continue to bluster and threaten this woman who presently caught up in a regulatory problem not of her own making. Therefore, please put LAUSD on notice that it should not respond favorably to this proposal for a meeting if that agency plans to continue down the path it took at my client's first attempt at cooperation.

Subject to this caveat, we will look forward to meeting with all parties and agencies at a mutually acceptable date. Please feel free to call if you have any questions.

Sincerely,

Stephen T. Holzer

17269.1

cc: Mrs. Elizabeth G. Murray
Mark E. Elliott, Esq.
Benjamin Felton, Esq.
Patrick Rendon, Esq.
Marguerite Mosnier, Esq.
David Hung, RWQCB
Dennis Dickerson, RWQCB
Rachel Loftin, US EPA

Appendix C – State Agency Action on Jefferson Middle School

MEMORANDUM

Date: September 30, 1992

From: Frank C. Harding, Jr.

To: Bill Van Gundy

Subject: Toxic/Hazardous Site Acquisition Policy

Recently, as part of the overall examination of all real estate related issues, the question of how to handle toxic/hazardous sites for school development has come to the fore. During these discussions it has been pointed out that if the OLA is included in the site selection process from the beginning, as it should be, then perhaps the question of the purchase of t/h sites may be obviated by eliminating them in lieu of more favorable sites early on. It may occur, however, that from time to time the acquisition of a t/h site may be necessary.

To this end I would like to recommend that we revisit and discuss the most recent policy, recommended by myself and adopted by the SAB. This is suggested in light of additional information which has recently come to my attention, as well as the OLA's doctrine of reviewing and revising policy to reflect current laws and trends reflective of the "real world".

The core questions in this issue are 1) Who is responsible for cleaning the site?, 2) Who pays for the clean-up?, 3) Who monitors the clean-up process? There are other questions involved in resolving this issue, but I would like to discuss them as they arise in the discussion of solution.

In determining whether or not and how, to address this issue it seems to me that a, if not the, deciding factor is the existence of regulations which address this specific issue, albeit in the context of a condemnation proceeding, but none the less, concerned with our specific topic, to wit; Article 8, Chapter 9, Title 7 of Part 3 of the Code of Civil Procedure entitled Remediation of Hazardous Substances on Property to be Acquired by School Districts (attached), outlines the procedures to be followed in the event of a condemnation action involving a h/t site acquisition. It seems logical and realistic to me that an excellent argument could be made to adapt the general tenor and methodology of the prescribed legal solution to a format and procedure acceptable to the SAB and OLA thus avoiding continual and possibly rancorous debate, or potential costly legal actions.

One possible suggested process might be as follows:

After it has been determined that the site in question should be purchased for the construction of the needed facilities, and after it has been determined what the fair market value is, and after a price acceptable to buyer(the SAB), and seller has been negotiated the following could occur;

1) SAB allocates monies in the specified amount to be placed in an escrow account.

2) A person/entity, of appropriate experience relative to the type and difficulty of clean-up necessary is chosen to oversee and monitor the clean-up process.

3) The District, OLA, and the person/entity that has be chosen to monitor the clean-up choose a qualified and capable company to perform the clean-up in a timely manner. (This should include issuance of performance bonds, evidence of E&O insurance, etc.)

4) The clean-up goes forward with the person/entity chosen for oversight monitoring progress, or the lack thereof, and submitting monthly reports to the District, the SAB, and OLA. Funds are disbursed for work accomplished from the escrow account by the "trustee" and _____ .

5) Upon satisfactory completion of the clean-up and proper certification of same by the appropriate agency/agencies, the funds remaining in the escrow account are disbursed to the seller(s) and the District takes clear title.

I look forward to discussing and resolving this issue at your early convience.

cc: Lyle Smoot
Bruce Hancock
Phil Shearer
Gary Ness

Chap 9 Title 7 of Part 3 Code of Civil Procedure

property ceases the construction or installation due to such service, the owner shall be compensated for his expenses reasonably incurred for work necessary for either of the following purposes:

(1) To protect against the risk of injury to persons or to other property created by the uncompleted improvement.

(2) To protect the partially installed machinery or equipment from damage, deterioration, or vandalism.

(b) The compensation provided in this section is recoverable only if the work was preceded by notice to the plaintiff except in the case of an emergency. The plaintiff may agree with the owner (1) that the plaintiff will perform work necessary for the purposes of this section or (2) as to the amount of compensation payable under this section. *(Added by Stats.1975, c. 1275, § 2.)*

ARTICLE 8. REMEDIATION OF HAZARDOUS SUBSTANCES ON PROPERTY TO BE ACQUIRED BY SCHOOL DISTRICTS

Section
1263.710. Definitions.
1263.720. Hearings; actions of court; costs of trustee.
1263.730. Funds insufficient to meet actual cost.
1263.740. Appraisal of property.
1263.750. Other remedies available; abandonment of proceeding; compensation for benefit; lien.
1263.760. Offer by plaintiff to purchase property.
1263.770. Application of article.
1264 to 1265. Repealed.

§ 1263.710. Definitions

(a) As used in this article, "hazardous substance," "remedial action," "and removal" shall have the meanings accorded to those terms in Sections 25316, 25322, and 25323, respectively, of the Health and Safety Code.

(b) As used in this article, "required action" means any removal or other remedial action with regard to hazardous substances that is necessary to comply with any requirement of federal, state, or local law. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.720. Hearings; actions of court; costs of trustee

(a) Upon petition of any party to the proceeding, the court in which the proceeding is brought shall specially set for hearing the issue of whether any hazardous substance is present within the property to be taken.

(b) If the court determines that any hazardous substance is present within the property to be taken, the court shall do all of the following:

(1) Identify those measures constituting the required action with regard to the hazardous substance, the probable cost of the required action, and the party that shall be designated by the court to cause the required action to be performed.

(2) Designate a trustee to monitor the completion of the required action and to hold funds, deducted from amounts that are otherwise to be paid to the defendant pursuant to this title, to defray the probable cost of the required action.

(3) Transfer to the trustee funds necessary to defray the probable cost of the required action from amounts deposited with the court pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6 or pursuant to Section 1268.110. In the case of any payment to be made directly to the defendant pursuant to Section 1268.010, the plaintiff shall first pay to the trustee the amount necessary to defray the probable cost of the required action, as identified by the court, and shall pay the remainder of the judgment to the defendant. The total amount transferred or paid to the trustee pursuant to this paragraph shall not exceed an amount equal to 75 percent of the following, as applicable:

(A) Prior to entry of judgment, the amount deposited as the probable amount of compensation pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6.

(B) Subsequent to entry of judgment, the fair market value of the property taken, as determined pursuant to Article 4 (commencing with Section 1263.310). If the amount determined as fair market value pursuant to that article exceeds the amount deposited pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6, that excess shall be available, subject to the 75 percent limit set forth in this paragraph, for transfer to the trustee for the purposes of this paragraph or for reimbursement of the plaintiff for payments made to the trustee pursuant to this paragraph. If the amount determined as fair market value pursuant to Article 4 (commencing with Section 1263.310) is less than the amount deposited pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6, the plaintiff shall be entitled to a return of amounts thereby deposited, a judgment against the defendant, or both, as necessary to ensure that the total amount transferred or paid to the trustee pursuant to this paragraph not exceed an amount equal to 75 percent of the fair market value of the property taken, as determined pursuant to Article 4 (commencing with Section 1263.310).

(4) Establish a procedure by which the trustee shall make one or more payments from the funds it receives pursuant to paragraph (3) to the party causing the required action to be performed, upon completion of all or specified portions of the required action. Any amount of those funds that remains following the completion of all of the required action shall be applied in accordance with the provisions of this title that govern the disposition of the deposit amounts referred to in paragraph (3).

(c) The actual and reasonable costs of the trustee incurred pursuant to this section shall be paid by the plaintiff. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.730. Funds insufficient to meet actual cost

Where the required action is caused to be performed by the plaintiff, and the amount available to the trustee under this article is insufficient to meet the actual cost incurred by the plaintiff to complete the required action,

the plaintiff may either apply to the court for a new hearing regarding identification of the probable cost, or complete the required action at its own expense and bring an action against the defendant to recover the additional costs. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.740. Appraisal of property

The presence of any hazardous substance within a property shall not be considered in appraising the property, for purposes of Section 1263.720, pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6, or pursuant to Article 4 (commencing with Section 1263.310). *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.750. Other remedies available; abandonment of proceeding; compensation for benefit; lien

(a) Notwithstanding any action taken pursuant to this article, the plaintiff shall have available all remedies in law that are available to a purchaser of real property with respect to any cost, loss, or liability for which the plaintiff is not reimbursed under this article.

(b) If the plaintiff abandons the proceeding at any time, the plaintiff shall be entitled to compensation for the benefit, if any, conferred on the property by reason of the remedial action performed pursuant to this article. That benefit shall be applied as an offset to the amount of any entitlement to damages on the part of the defendant pursuant to Section 1268.620 or, if it exceeds the amount of those damages, shall constitute a lien upon the property, to the extent of that excess, when recorded with the county recorder in the county in which the real property is located. The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. The lien shall be enforceable upon the transfer or sale of the property, and the priority of the lien shall be as of the date of recording. In determining the amount of the benefit, if any, neither party shall have the burden of proof.

For the purposes of this subdivision, "benefit" means the extent to which the remedial action has enhanced the fair market value of the property. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.760. Offer by plaintiff to purchase property

An offer by the plaintiff to purchase the property subject to this article shall be deemed to satisfy the requirements of Section 7267.2 of the Government Code. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§ 1263.770. Application of article

This article shall only apply to the acquisition of property by school districts. *(Added by Stats.1991, c. 814 (A.B.1024), § 2.)*

§§ 1264 to 1265. Repealed by Stats.1975, c. 1275, § 1

See, now, §§ 1260.010; Gov.Code § 7275.

CHAPTER 10. DIVIDED INTERESTS

ARTICLE 1. GENERAL PROVISIONS

§ 1265.010. Compensation for particular interests; other interests not affected

Although this chapter provides rules governing compensation for particular interests in property, it does not otherwise limit or affect the right to compensation for any other interest in property. *(Added by Stats.1975, c. 1275, § 2.)*

ARTICLE 2. LEASES

§ 1265.110. Termination; all of leased property acquired

Where all the property subject to a lease is acquired for public use, the lease terminates. *(Added by Stats.1975, c. 1275, § 2.)*

§ 1265.120. Partial termination; part of leased property acquired; rent

Except as provided in Section 1265.130, where part of the property subject to a lease is acquired for public use, the lease terminates as to the part taken and remains in force as to the remainder, and the rent reserved in the lease that is allocable to the part taken is extinguished. *(Added by Stats.1975, c. 1275, § 2.)*

§ 1265.130. Termination; court order; essential part of property taken or remainder not suitable for purposes of lease

Where part of the property subject to a lease is acquired for public use, the court may, upon petition of any party to the lease, terminate the lease if the court determines that an essential part of the property subject to the lease is taken or that the remainder of the property subject to the lease is no longer suitable for the purposes of the lease. *(Added by Stats.1975, c. 1275, § 2.)*

§ 1265.140. Time of termination

The termination or partial termination of a lease pursuant to this article shall be at the earlier of the following times:

(a) The time title to the property is taken by the person who will put it to the public use.

California Environmental Protection Agency
Department of Toxic Substances Control

Los Angeles Unified School District
Jefferson New Middle School #1
644 E. 56th Street, Los Angeles, CA 90011

Health Risk Assessment

Fact Sheet #1 August 1997

The Jefferson Middle School property is not a health threat to students, staff, visitors or neighbors, according to the results of a health risk assessment completed for the site.

INTRODUCTION

The Jefferson New Middle School No. 1 (Jefferson MS) is a newly constructed educational facility located in South Central Los Angeles at 644 East 56th Street. Although construction is complete, opening of its doors has been delayed due to concerns regarding soil and groundwater contamination at the school and on the site of a former chrome plating facility across the street.

There are three contaminants of concern: (1) trichloroethylene (TCE) and (2) hexavalent chromium ("Chrome 6"), both of which are known to cause cancer, and (3) lead which is a heavy metal that can cause serious health problems in young children. *(See Glossary on page 4.)*

In response to these concerns, the Los Angeles Unified School District (District) conducted tests of the soil and the groundwater, and completed a health risk assessment, with the guidance of the Department of Toxic Substances Control (DTSC.)

SITE BACKGROUND

In 1991, after collaborating with parents and concerned community organizations, the District purchased several industrial properties that are now the site of Jefferson MS. The 13-acre site was selected to avoid the taking of low income housing in the area, and to provide an opportunity to revitalize a neighborhood blighted with dilapidated industrial facilities.

History of Industrial Use
Between 1903 and 1922, a portion of the site was used for the manufacture of clay sewer pipes. Between 1924 and 1989, a large portion of the site was occupied by the Weber Showcase and Fixture

Company and some smaller furniture manufacturing and woodworking companies. The facility ceased operation for a short time during World War II (approximately 1942 to 1944) when the site was used used for the manufacture of aircraft (P-38) wings, auxiliary fuel tanks and other military equipment.. A fueling station also operated for a time on the southwest portion of the property.

Nearby Contamination: Hard Chrome Products

An additional health and environmental concern has been presented by a property across the street from the school at 617 East 56th Street. The site, which is a vacant and fully paved lot, was formerly the location of the Hard Chrome Products chrome plating facility. It has been found to have high levels of hexavalent chromium in the soil and in the groundwater at more than 150 feet below ground surface. However, the site does not present a health hazard to school occupants or to the community because the Responsible Parties have removed the surface contamination and paved the property. Further investigation and clean up activities, both on the site and nearby, are being conducted by the Responsible Parties under DTSC's oversight.

PAST ENVIRONMENTAL INVESTIGATIONS AND/OR CLEAN UP ACTIVITIES

Prior to purchasing the properties for Jefferson MS, the District prepared an Environmental Impact Report (EIR) in 1988. The EIR identified the potential for contamination at the site, and proposed a thorough environmental assessment and a remedial (clean up) action plan (RAP) to reduce the contamination.

Completed Phases of Work

In 1989, the District performed a Phase I environmental survey, which identified historical land uses at the site. In 1990, a Phase II environmental assessment defined how far the contamination extended across the property and under the ground. The assessment identified areas with petroleum hydrocarbon contamination in the soil, including gasoline contamination in the area of the former gas station.

With oversight from the Los Angeles City Fire Department, a RAP was developed and implemented. A soil vapor extraction system was installed in the area of the former gas station. Soil in the areas which were contaminated with petroleum hydrocarbons was excavated and removed off-site to a soil disposal facility property equipped to handle such material. This work was completed in October 1996.

An additional area of contamination was found, however, when two underground storage tanks were discovered during site grading. When tanks are made of steel, they are relatively easy to locate underground with metal detection equipment. However, the two tanks discovered during construction were undetected during previous assessments because they were made of concrete. The tanks once contained the solvent TCE, which leaked into the soil and groundwater at a depth of over 150 feet below ground surface. TCE is a chemical which breaks down into other chemicals over time. [Note: To clean up the TCE and other volatile chemicals, a soil vapor extraction system has been installed near the northeast corner of the property. However, it is not currently operating because the District is awaiting a permit to operate from the South Coast Air Quality Management District.]

Also during construction, 15 to 25 feet of clean soil was imported to the site to replace the contaminated soil which was removed and to provide adequate compaction for the building foundations. The clean soil provides an additional barrier to protect against contact with any contaminated soil that may remain at the site.

HEALTH RISK ASSESSMENT

In 1997, the District was informed by the DTSC that community concern about contamination at the school and at the Hard Chrome site was growing. As a result, the District conducted a health risk assessment to reassure the community that the school site would be safe for future occupants. A health risk assessment considers the potential ways that people can be exposed to a chemical (i.e, by breathing, accidentally eating small amounts of dirt, or skin contact) and calculates the chance that adverse health effects, such as cancer, will result from exposure. The primary substances assessed were TCE, hexavalent chromium, and lead.

Sampling was overseen by DTSC and involved the following activities:

- Collection of 35 surface soil samples in all exposed areas (i.e., planters, open grass areas, and playing fields) which were tested for lead and hexavalent chromium.
- Collection of 65 soil gas samples throughout the site which were tested for volatile organic compounds (VOCs) such as TCE.
- A test of the soil vapor extraction system (SVE) was done to determine the types and quantities of the gases sent into the air from normal operation of the SVE system.

The results of these tests were used in the health risk assessment to determine if there would be any risks to people at the school. Hexavalent chromium was not found in the surface soil on the school property and there were very low levels of lead in the soil, which do not present a health threat. The amounts of VOCs released from the SVE system are much lower than what is normally seen in urban air.

DRINKING WATER

Ten drinking water samples from the school were tested for hexavalent chromium and none was found. Samples were also taken from several neighboring residences near the Hard Chrome site and no hexavalent chromium was found. The groundwater contamination does not present a health risk because it exists more than 150 feet beneath the site, and because it is not a source of drinking water for the school or the community.

CURRENT STATUS OF THE SITE

The District has cleaned up most of the soil contamination at the site. TCE and its breakdown chemicals will be removed from the soil using soil vapor extraction, a process which "vacuums" the vapors out of the soil through a series of small wells distributed throughout the area. The vapors are

then adsorbed onto carbon filters. To prevent vapors from escaping to the atmosphere, the system has many safeguards, such as automatic shutoff devices and a back-up carbon filter. In addition, the system will undergo frequent checks by the District's environmental engineers throughout the life of its operation.

Also, the system has been evaluated by the South Coast Air Quality Management District (SCAQMD) and the Regional Water Quality Control Board (RWQCB). A permit to operate the SVE is pending from the SCAQMD. Once the permit is issued, the system will operate for at least six months, with oversight from the RWQCB, until TCE levels are significantly reduced. At that time, the RWQCB will determine if the soil cleanup is sufficient.

FUTURE ACTIVITIES: GROUNDWATER INVESTIGATION

There is known ground water contamination of TCE and Chrome 6 about 150 feet beneath the northernmost portion of the site. Although the TCE contamination is known, the full extent and nature of the Chrome 6 contamination is not known. As a result, additional testing may be conducted to determine the source or sources of it. This information is essential to determine the most appropriate and effective clean up measures, if they are necessary, to protect public health and the environment.

The ground water investigation will involve periodic testing of water samples from the six ground water monitoring wells on the site, using truck-mounted equipment.

COMMUNITY INVOLVEMENT OPPORTUNITIES

DTSC encourages community involvement in decision-making and the exchange of information with interested individuals, groups, or organizations. Project information will be provided to the public through information letters, fact sheets such as this one, direct contact with project personnel and community meetings. Please contact the DTSC personnel listed on page 5 to express your concerns or to ask questions.

GLOSSARY

Chromium/Hexavalent Chromium ("Chrome 6"): A hard, brittle, semi-gray heavy metal used in tanning, paint formulating, and plating to protect metal and plastic substances against corrosion. Known to be toxic at certain levels. In its hexavalent form, chromium is listed as a cancer-causing agent under Proposition 65.

Petroleum Hydrocarbons: A group of organic compound that are processed from oil and have many uses in industry. Some may be toxic and some may not.

Trichloroethylene (TCE): A volatile organic compound that is often used as an industrial degreasing solvent. It is toxic and listed as a cancer-causing chemical under Proposition 65.

MILLER BROOKS
Environmental, Inc.

December 3, 1997

Mr. David Hung
California Regional Water Quality Control Board
Los Angeles Region
101 Centre Plaza Drive
Monterey Park, California 91754-2156

SITE: JEFFERSON NEW MIDDLE SCHOOL NO. 1
644 EAST 56TH STREET
LOS ANGELES, CALIFORNIA

RE: UPDATE ON SITE INVESTIGATION ACTIVITIES

Dear Mr. Hung:

Miller Brooks Environmental, Inc. (Miller Brooks) submits this letter as an update on site investigation activities recently completed at the Los Angeles Unified School District (LAUSD) Jefferson New Middle School No. 1 facility located at 644 East 56th Street, Los Angeles, California. Site investigation activities were conducted in response to the California Regional Water Quality Control Board (CRWQCB), Los Angeles Region, correspondence dated October 7, 1997, and included installation of one groundwater monitoring well upgradient of Well FW-2 (Well MW-6), installation of one groundwater monitoring well downgradient of the site (Well MW-7), and monitoring and sampling of all LAUSD and Hard Chrome Products wells on November 28, 1997.

Information provided with this update includes the following:

- Fluid-level monitoring data collected from LAUSD Monitoring Wells MW-1 through MW-7 and Hard Chrome Products Wells FW-1 and FW-2 on November 28, 1997 (see Table 1);
- Results of laboratory analysis of soil samples collected from Monitoring Wells MW-6 and MW-7 during installation (see Table 2);
- Results of laboratory analysis of groundwater samples collected from LAUSD Monitoring Wells MW-1 through MW-7 and Hard Chrome Products Wells FW-1 and FW-2 on November 28, 1997 (see Table 3; previous analytical results are also included);
- A site vicinity map (see Figure 1);
- A groundwater elevation contour map generated using the November 28, 1997, fluid-level monitoring data (see Figure 2);

18700 Beach Boulevard, Suite 205 · Huntington Beach, CA 92648 · Telephone: (714) 965-9161, Fax: (714) 965-9163

Copies of boring logs and well construction details for Monitoring Wells MW-6 and MW-7 (see Appendix A); and

Copies of official laboratory reports and chain of custody records for soil samples collected from Monitoring Wells MW-6 and MW-7, and for groundwater samples collected from LAUSD Monitoring Wells MW-1 through MW-7 and Hard Chrome Products Wells FW-1 and FW-2 on November 28, 1997 (see Appendix B).

Reports summarizing monitoring well installation and sampling activities, and fourth quarter 1997 groundwater monitoring and sampling activities conducted on November 28, 1997, are currently being prepared and will be submitted for your review upon completion.

Please call us at (714) 965-9161 if you have any questions.

Sincerely,
MILLER BROOKS ENVIRONMENTAL, INC.

Jeffrey R. Maxwell, R.G.
Senior Geologist

cc: Ms. Sharon Thomas, Los Angeles Unified School District

01-0140-001-09

Reviewing Agencies

- ❑ Resources Agency
- ❑ Boating / Waterways
- ❑ Conservation
- ❑ Fish and Game
- ❑ Forestry
- ❑ Colorado River Board
- ❑ Dept. Water Resources
- ❑ Reclamation
- ❑ Parks and Recreation
- ❑ Office of Historic Preservation
- ❑ Native American Heritage Commission
- ❑ S.F. Bay Cons. and Dev't. Commission
- ❑ Coastal Commission
- ❑ Energy Commission
- ❑ State Lands Commission
- ❑ Air Resources Board
- ❑ Solid Waste Management Board
- ❑ SWRCB: Sacramento
- ❑ RWQCB: Region #
- ❑ Water Rights
- ❑ Water Quality
- ❑ Caltrans District
- ❑ Dept. of Transportation Planning
- ❑ Aeronautics
- ❑ California Highway Patrol
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- ❑ Health
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- ❑ Santa Monica Mountains
- ❑ TRPA
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Cal/EPA

Department of Toxic Substances Control

400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

May 18, 1998

Pete Wilson
Governor

Peter M. Rooney
Secretary for Environmental Protection

Honorable Scott Wildman
Chairman, Joint Legislative Audit Committee
California State Assembly
State Capitol, Room 4158
Sacramento, California 95814

Dear Assembly Member Wildman:

Thank you for your recent letter regarding possible toxic contamination at the New Jefferson Middle School (NJMS) construction site in Los Angeles. In your letter, you requested seven items of information concerning the NJMS site.

In response to your request, my staff of the Glendale Office has forwarded the documents indicated below (1, 2, 3 and 5) to your office under a separate cover letter. The numbered items correspond to the item numbers of your letter. The Department of Toxic Substances Control (DTSC) has contacted the Los Angeles Regional Water Quality Control Board (LARWQCB) regarding items 4 through 7 of your letter, and a copy of both your letter and DTSC's response is being forwarded to the LARWQCB.

Items Sent:

1. Imminent and Substantial Endangerment and Remedial Action Order, Docket No. I&/SE 96/97-003, issued by DTSC on March 7, 1997, to the responsible parties for the Hard Chrome Products (HCP) site. The HCP site is located at 617 East 56th Street, directly across the street from the NJMS site.

2. Preliminary Endangerment Assessment (PEA) report, dated March 31, 1995, and Supplemental PEA report, dated February 14, 1996. Both reports were prepared by Fero Environmental Engineering (Fero) for the HCP site.

3. Remedial Investigation/Feasibility Study (RI/FS) Workplan, dated April 28, 1998, for the HCP site. The RI/FS Workplan includes a summary of all soil and groundwater investigations previously conducted at the HCP site.

5. Report of Completion for Interim Removal Action completed in October 1997.

The Los Angeles Unified School District (LAUSD) conducted additional site assessment at the NJMS site in June 1997. Based on DTSC's review of the Additional Site Assessment Report for NJMS dated July 18, 1997, my staff has determined that there is no immediate health threat to students, employees, or the public from any hazardous substances in the soil at the NJMS site. DTSC has also determined that further investigation is warranted because the groundwater in the northern section of the NJMS site is contaminated with trichloroethylene (TCE), total chromium, and hexavalent chromium (Cr+6).

In response to the LAUSD's request, DTSC has referred the groundwater investigation/remediation at the NJMS site to the LARWQCB. Since the LARWQCB is the lead agency for the NJMS site, they should be able to provide a complete set of information related to groundwater investigation. Your staff may contact Mr. Jim Ross of the LARWQCB at (213) 266-7550 for this information.

I feel confident that my staff at the Glendale office has thoroughly evaluated the situation at the NJMS site to ensure public health and safety. If you have any questions regarding this letter, please call me directly or your staff may contact Mr. Hamid Saebfar, Chief, Southern California Cleanup Operations Branch A, at (818) 551-2876.

Very truly yours,

Jesse R. Huff
Director

cc: Mr. Jim Ross
Los Angeles Regional Water Quality Control Board
101 Centre Plaza Drive
Monterey Park, California 91754

Ms. Diane Richardson
Deputy Legislative Secretary
Governor's Office
State Capitol
Sacramento, California 95814

cc: Mr. Chris Reynolds, Legislative Director
California Environmental Protection Agency
555 Capitol Mall, Suite 525
Sacramento, California 95814

Mr. Bob Borzelleri, Chief Deputy Director
Department of Toxic Substances Control
400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-0806

Mr. Paul D. Blais, Deputy Director
Site Mitigation Program
Department of Toxic Substances Control
400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-0806

Ms. Pat Grim, Legislative Director
Department of Toxic Substances Control
400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-0806

Ms. Barbara Coler, Chief
Statewide Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Mr. Hamid Saebfar, Chief
Southern California Cleanup Operations Branch A
Department of Toxic Substances Control
1011 Grandview Avenue
Glendale, California 91201

Cal/EPA

Los Angeles Regional Water Quality Control Board

101 Centre Plaza Drive
Monterey Park, CA
91754-2156
(213) 266-7500
FAX (213) 266-7600

Pete Wilson
Governor

May 22, 1998

Honorable Assemblyman Scott Wildman
Chairman, Joint Legislative Audit Committee
California Legislative
State Capitol
Sacramento, CA 95814

JEFFERSON NEW MIDDLE SCHOOL NO. 1 SITE, 644 EAST 56TH STREET, LOS ANGELES, CALIFORNIA (SLIC NO. 638)

Dear Assembly Member Wildman:

We have received a copy of your May 8, 1998, letter through the Department of Toxic Substances Control (DTSC) requesting information regarding possible toxic contamination related to the Los Angeles Unified School District's (LAUSD's) New Jefferson Middle School (NJMS) construction site. It is our understanding that DTSC has already responded to your request.

This Regional Board is the lead state agency for the environmental issues at the NJMS construction site. We would like to inform you of this fact and assist you in your investigation to the extent we are able to do so.

To that end, the following will summarize the actions we have taken to date and will also provide you a list of our file information.

Specifically, the latest action, for soil cleanup at the NJMS site, was our issuance, on November 7, 1997, of an approval for startup of an on-site soil vapor extraction system. This system will complete remediation of a very localized pocket of solvent contaminants still present in shallow soil resulting from a former leaking underground storage tank. Also, in October 1997, we required that two additional groundwater monitoring wells be installed, one on-site and one off-site to complete definition of known groundwater contamination. The consultant, working for LAUSD, completed this work and provided us with a report detailing the results dated April 15, 1998. This document is currently under review.

Our Board files for this project site are large and we are enclosing a list of the documents currently in the file. As we discussed with Ms. Jennifer Pierce of your staff, we await your decision as to the best method to have the pertinent data sent to you.

If we can be of further help or you have any questions, please contact me at 213/266-7550 or David Hung at 213/266-7611.

Sincerely,

J. E. ROSS, P.E., Unit Chief
Site Cleanup Unit

enclosure
cc: Hamid Saebfar, DTSC, Region 3, Glendale (w/o enclosures)

SLICNUMBER	SITENAME	REPORTNAME	DATE	BOX
638	JEFFERSON MIDDLE SCHOOL	File Folder (5/5/95)		01
638	JEFFERSON MIDDLE SCHOOL	1st Quarter 1998 Groundwater Report	April 98	01
638	JEFFERSON MIDDLE SCHOOL	Response to CRWQCB/ DTSC Memo	April 98	01
638	JEFFERSON MIDDLE SCHOOL	Remedial Excavation Report	Sept 96	01
638	JEFFERSON MIDDLE SCHOOL	Environmental Site Assessment	Nov 89	01
638	JEFFERSON MIDDLE SCHOOL	Subsurface Soil Assessment	Aug 90	01
638	JEFFERSON MIDDLE SCHOOL	Draft Results of Limited Soil Investigation	Dec 93	01
638	JEFFERSON MIDDLE SCHOOL	Remedial Action plan	Dec 94	01
638	JEFFERSON MIDDLE SCHOOL	Tank Closure Report	Mar 95	01
638	JEFFERSON MIDDLE SCHOOL	Area 4 Additional Site Assessment	Mar 95	01
638	JEFFERSON MIDDLE SCHOOL	Interim site Assessment Report Tanks 1 & 2	April 95	01
638	JEFFERSON MIDDLE SCHOOL	Progress Report on VES Operations	Feb 96	01
638	JEFFERSON MIDDLE SCHOOL	Draft Field Sampling Plan	May 96	01
638	JEFFERSON MIDDLE SCHOOL	Quarterly Groundwater Report	Oct 97	01
638	JEFFERSON MIDDLE SCHOOL	Workplan to Install GW Wells	Aug 96	01
638	JEFFERSON MIDDLE SCHOOL	Update on Site Investigation	Dec 97	01
638	JEFFERSON MIDDLE SCHOOL	Area 4 Soil Vapor Survey & Confirmation Soil Sampling Report	Dec 96	01
638	JEFFERSON MIDDLE SCHOOL	Interim Remedial Action Plan	Feb 97	01
638	JEFFERSON MIDDLE SCHOOL	Summary of GW Well Installation & Sampling	Mar 97	01
638	JEFFERSON MIDDLE SCHOOL	Sandborn Doc	May 97	01
638	JEFFERSON MIDDLE SCHOOL	Source Testing Protcol	July 97	01
638	JEFFERSON MIDDLE SCHOOL	Source Test Report	July 97	01
638	JEFFERSON MIDDLE SCHOOL	Additional Site Assessment Report	July 97	01
638	JEFFERSON MIDDLE SCHOOL	Additional Site Assessment Report Tanks 1 & 2	July 96	01

Peter M. Rooney
Secretary for Environmental Protection

California Regional Water Quality Control Board

Los Angeles Region

Internet Address: http://www.swrcb.ca.gov/~rwqcb4
101 Centre Plaza Drive, Monterey Park, California 91754-2156
Phone (323) 266-7500 FAX (323) 266-7600

Pete Wilson
Governor

July 20, 1998

Honorable Assemblyman Scott Wildman
Chairman, Joint Legislative Audit Committee
California Legislative
State Capitol
Sacramento, CA 95814

LOS ANGELES UNIFIED SCHOOL DISTRICT (LAUSD), JEFFERSON NEW MIDDLE SCHOOL NO. 1 SITE, 644 EAST 56TH STREET, LOS ANGELES, CALIFORNIA (SLIC NO. 638)

Dear Assembly Member Wildman:

Reference is made to your letter dated July 8, 1998, regarding your follow-up questions after our June 17th testimony to the Joint Legislative Audit committee for the subject site.

The following are further clarifications in response to your questions listed below:

- *What is the half life of hexavalent chromium after interacting with the well process ?*

  "Half Life" is a term not normally used when referring to hexavalent chromium. The more descriptive term would be the "reduction/oxidation potential" for this compound. Although not chemically stable, hexavalent chromium does not decay at a predetermined rate so a half life value is not available. Hexavalent chromium reduces in an acidic environment and in the absence of oxygen which drives the reduction process. At the Jefferson Middle School site little or no reduction appears to be occurring to the hexavalent chromium in groundwater.

- *Is my understanding correct that Jefferson wells are monitored quarterly ?*

  Yes, all eight (8) on-site monitoring wells have been monitored quarterly since January 1997 with the most current well monitoring data dated May 30, 1998.

- *Is the water sampling process provided by the Jefferson wells of such a nature that readings might be skewed due to the relation of hexavalent chromium 's half-life and the frequency by which these wells are monitored ?*

  The reduction of hexavalent chromium to trivalent chromium (the more stable form) can only occur under conditions previously discussed. The subsurface conditions at the Jefferson Middle School site will not cause a rapid reduction in hexavalent chromium. Therefore, the

hexavalent chromium monitoring well concentrations are essentially stable and not skewed or impacted by the sampling frequency of the monitoring wells.

- *Would you please provide the exact start and prospective end dates of both water and soil extraction processes and the number of units involved at Jefferson ?*

  The on-site soil vapor extraction system (VES) to remove trichloroethylene (TCE) contaminant from the soil beneath the site, began operation November 14, 1997. Only one vapor extraction system is operated at the site. The treatment mechanism includes two carbon filters, operated in series to avoid release of soil vapors during treatment. When the first filter becomes saturated with VOC, the second filter will remove VOC until the system is shut down on the next weekly visit and the system regenerated. Based on the results of a progress report recently submitted by LAUSD's consultant to this Regional Board, an approximate 50% reduction of soil vapor concentration for TCE has been documented since startup. The VES will continue to operate until the concentrations of VOC reaches asymptotic levels or are less than the site specific soil cleanup levels whichever occurs first. Based upon a review of this most recent data, we are now predicting that this VES will continue for a minimum of one year.

- *Is the extent of soil remediation at Jefferson limited to the extraction type or are there additional ongoing soil remediation activities ?*

  The VES is the only soil remediation activities at the Jefferson Middle School site. There are no additional soil remediation activities being performed.

- *What is the primary concern with this soil ? Is it VOCs and if so, what type of VOCs appear to be involved ?*

  The primary concern with the soil cleanup is VOC, specifically, TCE (a solvent). Other VOC were also detected in soil vapor such as methylene chloride, PCE, 1,1,1-TCA, but at low levels.

- *Would it have been better to lay a non permeable buffer before replacing the top 15 feet of soil and thereby reducing the percolation down of hexavalent chromium and the percolation up of VOCs ?*

  For hexavalent chromium and VOC, any nonpermeable barrier would be of value. However, such barriers are normally installed near surface either as a shallow clay compacted layer, asphalt or concrete pavement or as an actual vapor fabric barrier placed under building footprints.

- *What assurances can you offer that upwardly mobile VOCs such as vinyl chloride will never be a problem at Jefferson ?*

  No vinyl chloride has been detected in the soil or soil gas samples collected at the site and analyzed to date. The reduction of TCE to vinyl chloride is an extremely slow process and has not occurred at the site. We anticipate that removal of TCE from soil will be completed before the production of vinyl chloride can occur at this site. Also, upward migration of VOC, primarily TCE, is being controlled by the vapor extraction system. In addition, fifteen feet of clean soil was placed between the surface of the school and the first zone of TCE soil contamination which also helps prevent upward migration of VOC. Finally, upon completion of soil remediation, an additional health risk assessment will be required to evaluate residual VOC contamination at the site.

  Also, emissions from the vapor extraction equipment, are required to meet the limits established by the South Coast Air Quality Management District. Currently these values are non-detect for TCE.

If you have any questions, please call me at 323/266-7632 or Jim Ross, Chief of Site Cleanup Unit, at 323/266-7550.

Sincerely,

James D. Kuykendall
Assistant Executive Officer

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY PETE WILSON, *Governor*

STATE ALLOCATION BOARD
1130 K Street, Suite 400
Sacramento, CA 95814
http://www.dgs.ca.gov/opsc

July 22, 1998

The Honorable Scott Wildman
Member of the State Assembly
State Capitol, Room 4158
Sacramento, CA 95814

Dear Assembly Member Wildman:

At the request of Mr. Brian Steele of your staff, I have looked into the events related to the site acquisition funding surrounding the Los Angeles Unified School District application for the Jefferson School. In particular, I have focused on the following site-related toxic contamination issues:

- A preliminary site approval by the Department of Education, School Facilities Planning Division, was issued in November 1988, with final approval following in January 1989.
- The State Allocation Board (SAB) approved the site acquisition as well as related relocation and demolition expenses in January 1989. Neither the Office of Public School Construction (OPSC) nor the SAB had knowledge of toxic contamination issues at that time.
- The individual parcels making up the total school site were acquired by condemnation between February 1991 and September 1993. The court in recognition of future costs for toxic remediation reduced the value of two of the parcels. This was the first indication to the OPSC that toxic issues existed.
- The remediation of the toxic contamination was accomplished during the site work phase of the construction.
- Currently, additional remediation costs submitted by the District are under consideration by the OPSC. No determination has been made as to their eligibility for State funding. To the OPSC's knowledge all remediation work has been completed.

Should you have any questions or comments, please contact me at (916) 445-3159.

Sincerely,

BRUCE B. HANCOCK
Assistant Executive Officer
State Allocation Board

cc: Ted Dutton

Jefferson Middle School

Los Angeles Unified School District
Application Number 22/64733-13-48
Chronology of Events

DATE	DESCRIPTION
08-20-86	Initial approval by the SAB of the project for Feasibility Study. District's request is for acquisition of 15 acres to construct 131,389 square feet of building area to house 1,642 ADA
07-29-88	Initial site review by CDE on Avalon and Slauson site, now known as the Jefferson Middle School site.
01-09-89	CDE approval of 15 acres for the Jefferson Middle School site.
01-11-89	SAB approves request to acquire three parcels totaling 15 acres. $11,834,812 apportioned.
03-01-89	SAB approves planning phase. District requests change in the scope of the project to 14.8 acres to construct 180,781 square feet of building area to house 2,164 ADA.
03-06-89	District files condemnation on all three parcels.
02-25-91	Judgements rendered on two parcels totaling 13.78 acres.
10-01-91	District authorized $1,878,987.85 for relocation assistance.
09-16-92	SAB approves construction phase with funding subject to future bond funds.
12-16-92	District authorized additional $44,556 for relocation assistance.
01-27-93	SAB approval of increase in site acquisition costs for two parcels resulting from court award. $1,997,139 apportioned by SAB.
04-28-93	SAB approves construction phase funding of $37,865,669 from June 1992 bonds
09-09-93	District authorized additional $848,786.26 for relocation assistance.
10-27-93	SAB approval of increase in site acquisition costs for third parcel resulting from court award. $595,818 apportioned by SAB.
07-06-94	SAB approves bid for construction.
09-14-95	District authorized additional $341,036.85 for relocation assistance.
07-10-98	District requests $513,000 for toxic remediation and $68,067 in change orders. This request is currently under review by OPSC.

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY PETE WILSON, Governor

STATE ALLOCATION BOARD
1130 K Street, Suite 400
Sacramento, CA 95814
http://www.dgs.ca.gov/opsc

July 16, 1998

Honorable Scott Wildman
Member of the Assembly
State Capitol, Room 4158
Sacramento, CA 95814

Dear Assembly Member Wildman:

This letter is in response to your request on July 7, 1998, to Lyle A. Smoot, Assistant Executive Officer to the State Allocation Board for information pertaining to two Los Angeles Unified School District projects: the Jefferson Middle School and the Belmont Learning Complex. As you may be aware, Mr. Smoot left his assignment with the State Allocation Board effective June 30, 1998, to accept a position outside State service. I was subsequently appointed to the position on July 16, 1998. I am pleased to forward the information you requested as follows:

- A Chronology of the application review and approvals related to the Jefferson Middle School (Application No. 22/64733-13-48) is attached for your review. The information was prepared by the Office of Public School Construction.

- A copy of a letter to your attention, dated July 16, 1998, prepared by Mr. Ted Dutton, Executive Officer, Office of Public School Construction, regarding the Belmont Learning Complex is also attached. I believe his letter answered your questions related to this project.

Please let me know if you require further information or if I may offer assistance in any other way. I may be contacted at (916) 445-3159.

Sincerely,

BRUCE B. HANCOCK
Assistant Executive Officer
State Allocation Board

Attachments

Project File: Site Data\22/64733-11\Los Angeles

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
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