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ABSTRACT

A special report of the California Legislature's Joint Legislative Audit Committee addresses the school site acquisition process to attempt to discern how the system has allowed a minimum of nine Los Angeles public schools to be built on toxic lands. The report examines two such sites, the Jefferson Middle School (JMS) and the combined elementary and high school complex in the South Gate (California) community. The state's school construction site approval process was determined to be sufficiently enough flawed that it contributed to the California Department of Education's (CDE's) decision to not stop the JMS acquisition process. It also reveals that a willingness to act with due diligence to ensure that new schools are built on clean sites is lacking in both the Los Angeles Unified School District and CDE despite evidence suggesting that CDE practices and procedures may have resulted in other toxic sites being acquired for schools. The report recommends suspected toxic sites be reassessed and, if necessary, cleaned up; that the CDE immediately modify its internal site approval protocol to ensure local compliance with the law; and that districts with a history of failing to ensure that their school sites are toxin free be placed under strict state oversight. (GR)

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TOXIC SCHOOL SITES IN LOS ANGELES:

WEAKNESSES IN THE SITE ACQUISITION PROCESS

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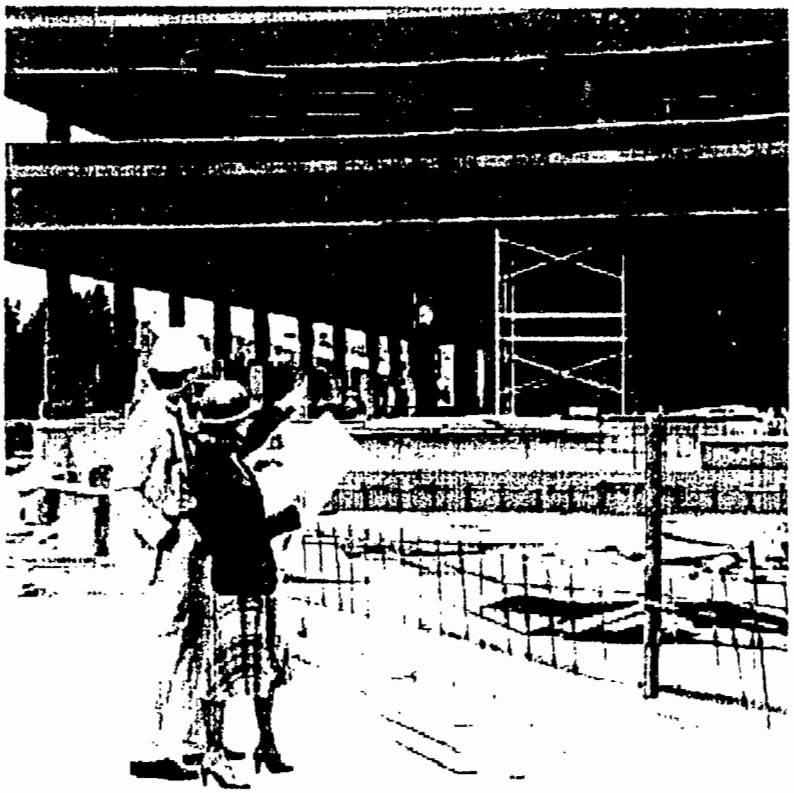

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Joint Legislative Audit Committee
An Informational Public Hearing
AUGUST 1998

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TOXIC SCHOOL SITES IN LOS ANGELES: WEAKNESSES IN THE SITE ACQUISITION PROCESS

Special Report of the Joint Legislative Audit Committee

Chairman, Scott Wildman

August 1998

Project Director, Bryan Steele

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EXECUTIVE SUMMARY

Currently, some California public schools are being built on toxic lands.

Provisions of the education code specifically direct California school districts to select only those sites that are free of toxins, or sites that can be efficiently cleansed of toxins, for the construction of schools. The state provides a program, that when properly followed, should ensure that local districts complete their site acquisition duties with due diligence. This system, however, appears to have broken down to the extent that we have identified a minimum of nine schools in the Los Angeles Unified School District (LAUSD) where:

- Local agencies suspected serious toxic contamination prior to state approval:
- State authorities knew toxins were suspected at these sites prior to approval:
- The state nonetheless approved acquisition of these sites:
- Schools were built, or are in the process of being built, on these suspect sites.

All of the above occurred without any indication that those toxins initially suspected were properly identified and/or sufficiently cleaned-up.

One of the nine toxic sites, Jefferson Middle School (JMS), was accidentally discovered towards the end of its construction in 1995 by the California Department of Toxic Substance Control (DTSC). The DTSC stumbled upon the new school site as it is located across the street from a federal Superfund site. Concerned that the JMS site was never adequately assessed or remediated after reviewing pertinent records, the DTSC took control of the environmental oversight process. The resulting assessment not only discovered toxic soil but groundwater contamination at toxic levels 60,000 times above minimum health standards as defined by the Department of Health Services (DHS). In the instance of JMS, the LAUSD was forced by the state to conduct an additional assessment that resulted in dramatic remedial clean-up efforts that otherwise would never have taken place had the District remained in control of the project.

Now a second and third LAUSD school, South Gate Senior High School and South Gate Elementary School, have very recently come to the attention of state regulators and are currently under review due to soil contamination 105,000 times above the DHS minimum standard for certain toxins.

Further, the California Environmental Protection Agency (Cal/EPA) indicated prior to the release of this report that they are independently looking at as many as ten southern California schools for possible toxic contamination.

Not only do toxic school sites pose a very real health threat to children and the community, but the financial implications of such health threats and the probable clean-up costs could reach alarming levels. The committee recommends that:

- All site approvals granted by the state where toxins were suspected at the time of approval must be reassessed, and if necessary, cleaned-up under the oversight of the DTSC or the California Environmental Protection Agency (CAL/EPA).
- The California Department of Education (CDE) should immediately modify its internal site approval protocol so that state oversight activities ensure local compliance with the law.
- Districts with a history of failing to ensure school sites are toxin free must be subject to strict state oversight. These districts should be required to certify that all new school sites are safe by the DTSC prior to submission for CDE approval.

PUBLIC SCHOOL SITE APPROVAL:
A SYSTEM IN CRISIS

There is no doubt that some California schools are built on hazardous toxic sites. The Joint Legislative Audit (JLAC) held an informational hearing on June 17, 1998, at which time the Director of the DTSC, Jesse Huff, explained how the LAUSD failed to adhere to state laws governing toxic safety at the JMS site.[1] Since the June 17, 1998 hearing, the committee has learned of at least eight additional LAUSD sites where schools were, or are in the process of being built on contaminated land. This unacceptable course of events apparently continues despite existing state laws and oversight procedures designed to prevent the building of schools on toxic land.

The reason why local districts choose hazardous sites for new schools was addressed in the committee's recent report: School Site Acquisition and Environmental Issues. This report concluded that at least one district, the LAUSD, chose toxic sites upon which to build new schools due in part to political expedience.

[1] School Site Acquisition and Environmental Issues, pg. 11-12.

WHO IS RESPONSIBLE FOR ENSURING NEW SCHOOL SITES ARE TOXIC FREE?

LOCAL RESPONSIBILITY

It is clear that the first line of responsibility for ensuring that new schools are safe from harmful contaminants lies with the local school district. California Education Code Sections 17211-17213 provide local districts with very specific guidelines for the school site acquisition process. This section of the Education Code begins:

> 17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education.
>
> 17212. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the 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.

Section 17213 goes on to list a number of criteria that must be satisfied prior to the purchase of a new school site that includes:

- All toxins must be removed;
- The site being considered must not be designated as a toxic release site;
- The site must be free of pipelines carrying hazardous materials;

- Districts must coordinate with applicable state environmental oversight agencies during the remediation process whenever toxins are suspected;
- All required mitigation must be complete prior to occupancy;
- The outside agency overseeing the mitigation process must certify the site is clean prior to occupancy.

The apparent clarity of these codes as they apply to toxic issues was accented in the JLAC hearing testimony of DTSC's Director, Jesse Huff, when he stated, with regard to toxic contamination and the JMS process:

> 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.[2]

It is arguable that the LAUSD repeatedly failed to follow those state guidelines governing the site acquisition process.

There is no question that school districts hold the primary responsibility for ensuring that new school sites are free from toxic contamination. Further, it would be reasonable to assume that a system of checks and balances would exist to ensure that local districts perform their duties with due diligence. Education Code Section 17213 states:

> The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:
>
> (a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

[2] School Site Acquisition and Environmental Issues, pg. 12.

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

The above referenced codes give the impression that "the governing board of a local school district" is prohibited from approving a project if the "lead agency" makes a negative determination. Yet, according to Public Resources Code Section 21063:

> "Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, or other political subdivision.

Further, Public Resources Code Section 21067 subsequently states:

> "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

In the case of school site acquisition the "Public Agency" and the "Lead Agency" are one and the same -- the local school district. Therefore, despite the appearance of local checks and balances that oversee the selection of school sites, the agency acquiring the land oversees itself. The only way any real system of checks and balances can exist on the local level is if the local district voluntarily seeks oversight from an outside agency.

There can be no doubt that when a school is built on a toxic site, it is first and foremost the result of local school district inattention.

STATE RESPONSIBILITY

Beyond the local responsibility to ensure that school sites are safe from toxic hazards, the state also participates in the site approval process. The California Department of Education states on the first page of their School Site Selection and Approval Guide under the banner "Role of the Department" that:

> Education Code Sections 17211 through 17215[3] and California Code of Regulations, Title 5, Education, Sections 14000 through 14046, require the State Department of Education to review and approve all new school sites and additions to school sites, regardless of the funding source.

Title 5 of the California Code of Regulations appears emphatic when it comes to the question of toxic sites. Title 5, which derives its authority from Education Code Section 17251, not only requires an environmental impact report (EIR) for each proposed new school, but requires that each EIR or negative declaration:

> must include a statement verifying that the site to be acquired for school purposes is not currently or formerly a hazardous, acutely hazardous substance release, or solid waste disposal site or, if so, that the wastes have been removed.[4]

The first major step in the site acquisition process should be to certify the site is toxin free – period. To issue an EIR without first cleaning up all toxins or for the state to issue their approval prior to the clean-up of all toxins is inconsistent with existing law.

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[3] Formerly Education Code Sections 39000 – 39007.
[4] California Code of Regulations, Title 5, Education Section 14011, g, I, H.

The fact that toxic sites are currently approved by the state for school construction illustrates a serious flaw in the way site approval is currently being conducted.

The established CDE site review process addresses the requirements of the above regulations. The CDE's School Site Selection and Approval Guide offers the following direction to local school districts:

> If the site is to be purchased with state funds, provide the School Facilities Planning Division consultant with maps of three acceptable sites for comparison purposes. The School Facilities Planning Division consultant will use a "Site Review Form" to evaluate each site. After the School Facilities Planning Division consultant approves the site, the school district must obtain authorization from the Department of General Services, Office of Local Assistance [recently renamed the Office of Public School Construction] to proceed with site appraisals. Final approval of the site of choice will be given by the School Facilities Planning Division consultant after the district has met the requirements listed in SPF Form 4.01, School Site Approval Procedures," and has satisfactorily completed the SPF Form 4.02, "School Site Report."[5]

In addition to Forms 4.01 and 4.02 there is an additional form not mentioned, Form 4.03, wherein it requires the local district to sign off on the following statement:

> To the best of my knowledge the proposed site is suitable for educational purposes and is free from any hazard, which could be considered harmful to student safety. Such hazards may include but are not limited to earthquake faults, flood hazards, toxins in the soil, close proximity to gas and power lines, airports, traffic hazards, railroad tracks and toxic producing industries.[6]

[5] CDE's School Site Selection and Approval Guide pg. 7.
[6] See Appendix.

For 4.01 and 4.02 to be considered complete in the context of possible toxic contamination, the local district must certify the above to be true. Despite reviews of toxic related site approval documentation, the committee has yet to discover any signed 4.03 form. This indicates CDE protocol is not being followed. However, Title 5 requires that toxins be remediated prior to the completion of the EIR and therefore should not be a factor in the state approval process. If the state's site approval Form 4.0 has the "toxic" box marked, it logically follows that the state should send the district back to the drawing board.

It is unclear exactly how CDE site consultants are trained or to what standards they are held to concerning their job performance in the field. To gain a better understanding of these internal managerial issues, the committee sent a formal request to the current Director of the School Facilities Planning Division (SFPD), Ann Evans, that asked:

- Please supply my office with the established internal protocol that governs the performance of CDE field School Facilities Planning consultants as related to the school site approval process;
- Please provide an analysis that defines any evolution of responsibilities of these CDE field consultants between the time of the Jefferson Middle School site approval and now;
- Please explain exactly what are the responsibilities of the CDE to ensure that schools are not built on toxic sites.[7]

The committee received a response from Deputy Superintendent of the CDE's Department Management Services Branch, Susan Lang.[8] Ms. Lang's response was essentially a restatement of her department's School Site Selection and Approval Guide. It was the hope of this committee that the CDE would have established internal procedures defining performance criteria for field consultants above and beyond the brief guide provided to local districts. It is now clear that both CDE staff and local districts receive direction from the same manual.

[7] Letter from Bryan Steele to Ann Evans, August 17, 1998.

Further, Ms. Lang explains that:

> The CDE School Facilities Planning Division consultants meet regularly to discuss site review problems. Division policies on how to handle new and unusual issues are a group decision. This is done in order to maintain a uniform handling of the same issue in the future.

There is concern that the SFPD may be relying on ill defined criteria and anecdotal discussions as the basis of directing and evaluating internal staff performance. What happens when there is staff turnover? Is it reasonable to expect that a discussion held today will be appreciated by a new field representative six months later? It is possible that some of the SFPD's apparent inability to ensure school sites are free of toxic contamination is tied to its lack of established internal protocols. It is apparent that the CDE's site approval process would be significantly enhanced by formally establishing performance-based staff guidelines.

As to the actual approval process, Lang explains:

> The CDE consultant reviews all the information submitted by the district. If there are problems identified in the studies, CDE will request further studies and/or information. Based upon this new information, CDE will approve the site, conditionally approve the site on the basis that the identified problem is mitigated, or decline the site. Letters are then transmitted to the district.

Of specific concern here is the notion of conditional approval. There is no indication that the CDE follows up on its conditional site approvals. Of what value is a conditional approval if there is no follow-up to confirm that the outstanding problem has been adequately addressed?

It is reasonable to question whether the CDE's site approval process is effective.

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[8] Letter from Susan Lang to Bryan Steele August 25, 1998.

JEFFERSON MIDDLE SCHOOL: A case study

During the Joint Legislative Audit Committee's (JLAC) June 17, 1998, hearing, testimony focused on the Los Angeles Unified School District's (LAUSD) Jefferson Middle School (JMS), where buildings were erected on a seriously contaminated toxic site.

The following is a short chronology of the JMS project:

> The LAUSD began the process of purchasing the JMS site during the summer of 1986.[9] On January 9, 1989, the California Department of Education (CDE) approved the purchase of the JMS project for state funding[10] despite their knowledge that serious toxic concerns existed at the site.[11] The LAUSD conducted what Director of the DTSC, Jesse Huff, characterized as an "insufficient" toxic assessment and remediation effort at the site prior to construction without seeking the assistance of state environmental regulators.[12] At no time did the LAUSD seek outside assistance as required until forced to do so by the state.[13]

During construction of the new school in 1995, a DTSC scientist working on a federal Superfund site (Hard Chrome Products) located across the street from the JMS site noticed construction activities and made inquiries.[14] Subsequent to the DTSC coincidentally becoming aware of the JMS project, Cal/EPA intervened and demanded a thorough toxic assessment. This resulted in significant remediation actions that otherwise may never have taken place if the matter had been left in the hands of the LAUSD. Today, JMS is accepting its first group of students while soil remediation is underway and ground water remediation is being planned. The full cost of soil

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[9] Office of Public School Construction Report, 7/20/98.
[10] Letter from Betty Hanson to LAUSD Board of Education, January 9, 1989.
[11] Letter From Rodger Friermuth to Betty Hanson, November 14, 1988.
[12] School Site Acquisition and Environmental Issues, JLAC Report July 1998, pg. 12.
[13] Ibid., pg., 12.
[14] Cal/EPA Preliminary Assessment, Hard Chrome Products, ID# V9299-252-01-0, November 22. 1985, pg.8.

and groundwater remediation, the extent that those measures will be successful and exactly who will pay for these remediation efforts has yet to be determined.

The LAUSD appears to have failed in its responsibilities to ensure the JMS site was safe from toxic contamination by engaging in the following actions:

- The LAUSD produced its EIR before assessing, much less remediating, toxic hazards at the site;
- Despite the suspicion of toxic contamination, the LAUSD failed to seek the support of any state regulatory agency for assistance;
- In apparent conflict with existing law, the JMS is currently occupied prior to the completion of all mitigation efforts.

The LAUSD, by ignoring its responsibilities to act with due diligence, appears again to be suffering from chronic bureaucratic dysfunction. In fact, this was exactly the conclusion of a June 1997 organizational audit conducted by the international accounting firm, Arthur Anderson. Arthur Anderson concluded in their audit that:

> District productivity is hampered by political gamesmanship and the maneuverings of the Board, senior staff and their representatives. The lack of trust and respect among peers is evident through viewing their communications and looking at their actions towards each other. Congenial talk with limited real action and an abundance of protective memos seems to be the modus operandi. This environment is very inefficient and characterized by limited cross-functional collaboration between divisions. The Board, senior staff and divisions work most effectively together in crisis-type situations where they rally for the good of the District, temporarily putting aside their own priorities.[15]

[15] LAUSD Organizational Review, Prepared by Arthur Anderson, June 12, 1997.

It is from this managerial morass that JMS was apparently conceived and built. The details of how the LAUSD went about the planning and construction of the JMS project can be viewed in JLAC's July 1998 post-hearing report School Site and Acquisition and Environmental Issues.

The committee requested from the LAUSD a list of school sites where toxic issues have been or continue to be an issue.[16] To date the district has been unable to provide such a list.

In addition, it appears the LAUSD not only fails to appreciate its past mistakes but has also failed to learn from these mistakes. In a formal response to the committee's School Site and Acquisition and Environmental Issues report, the LAUSD's Chief Administrative Officer, David Koch wrote:

> Jefferson Middle School is safe for occupancy by students, faculty and the community. It poses no threat to the health and safety of individuals attending or visiting the site.

First and foremost, it should be remembered that the only reason Mr. Koch is able to make this claim today is because the state intervened and forced the district to conduct an adequate site assessment, and then initiate clean-up efforts prior to allowing students to attend the school. Had the DTSC scientist not stumbled upon JMS back in 1995, students would currently be exposed to levels of toxin that could very well be harmful. Additionally, there is no indication that Mr. Koch is able to make similar statements about the other eight identified district school sites currently occupied by, or being readied for, students and staff.

Mr. Koch continues in his response to the committee's report by stating:

> Using state-of-the-art technology, environmental experts removed a number of underground concrete and steel tanks from the site prior to the construction of the school, cleaned the soil, and performed hundreds of tests to ready the site for occupancy. While

[16] Letter from Scott Wildman to Diane Doi, August 14, 1998.

> some pollutants remain in the groundwater some 150 feet below the surface, there is no pathway to the surface. Thus, these pollutants pose no health risks to either the students or the community. The only way the groundwater can impact the community is if its used for drinking water. However, the Regional Water Quality Control Board has determined that the submerged groundwater is not a health threat since it is not a source of drinking water and cannot impact the surrounding community.

This statement appears inaccurate. A recent letter from the California Regional Water Quality Control Board (CRWQCB)[17] to JLAC indicates that the soil at JMS is anything but clean. In addition, the very contaminants being targeted in the soil, volatile organic compounds (VOCs), migrate up through the soil and collect in buildings in a way that is similar to radon gas. In fact, the process used to extract VOCs is akin to a giant vacuum that attempts to extract the hazardous materials by sucking it to the surface for collection. While the AQMD has indicated that this process does not pose a threat to humans in the area, conducting such remediation efforts while the school is occupied directly contradicts regulations that require all remediation be completed before occupancy.

When asked, "What assurances exist that preclude VOCs from eventually collecting in school buildings to the detriment of human health?" DTSC Director, Jesse Huff, responded:

> The RWQCB is currently operating a soil vapor extraction (SVE) system for contamination occurring in the northeast part of the site. This system actively and aggressively pulls volatile organic chemical (VOCs) vapors from an extensive underground collection system into an activated charcoal collection/filtration system. As long as this system is operating, subsurface vapors should be pulled into the collection system and will not migrate to the surface or into buildings at the school. As described above, DTSC asked that LAUSD conduct air emissions testing of the SVE system. As

[17] Letter from CRWQB Executive Officer, Dennis Dickerson to Scott Wildman August 17, 1998.

long as the system is operated within its design constraints. no significant risks are expected to occur.[18]

Further, there are substantive issues at JMS that add to these health concerns. The groundwater referred to by Mr. Koch contains Chromium 6, a highly carcinogenic compound at levels 540 times higher than allowed by law.[19] Not only is it likely the LAUSD will be drawn into the clean-up efforts of the Superfund site across the street due to shared groundwater responsibilities, there is great concern that these highly polluted waters will eventually mingle with aquifers that are used by the community. Towards that end, the CRWQCB is currently monitoring area wells to ensure that such migratory contamination does not take place prior to complete remediation under the JMS site.[20]

Mr. Koch continues in his response to the committee's report by saying:

> The fenced-off vacant property across the street from the school is a former industrial site that has had some industrial pollution issues. It posses no safety risk for those who attend or visit the Jefferson Middle School. This industrial site has had pollutants removed from the top soil and has subsequently been turned into an asphalt lot. The asphalt locks the contaminants in place and prevents them from leaving the site.

When Mr. Koch makes the statement that the site across the street has "some industrial pollution issues" he is referring to a federally designated Superfund site that was deemed so dangerous to the community that the DTSC required the owner to:

- Remove the top soil;
- Take the soil to a special incinerator for burning;
- Pave-over what remained with asphalt;

[18] Letter from Jesse Huff to Scott Wildman, August 12, 1998.
[19] Memo from Cal/EPA Dr. Deborah Oudiz to Ken Chiang, October 9, 1996
[20] Ibid.

- Erect a high cyclone fence around the entire property.

Mr. Koch concludes his remarks by saying:

> By aggressively and diligently making Jefferson Middle School safe for occupancy, the District has not only provided local residents with a new campus, but also contributed to a more environmentally sound community.

The LAUSD has exhibited a lackadaisical attitude concerning the critical health and safety issues by virtually ignoring these issues during the JMS site acquisition process. As LAUSD is currently poised to purchase more urban land for new schools, there is a strong indication that it is likely to repeat its errors.

SOUTH GATE: A Case Study

Another of the LAUSD's nine identified toxic sites is actually a combined senior high and elementary school site in the community of South Gate. The high school portion of the selected and subsequently CDE approved, site was recently home to seventeen businesses. The project's EIR, after noting that, ". . . significant soil contamination was present in several samples" states:

- The highest concentration of contaminants was found at the Electro-Coatings property on Chakemco Street. Soil samples revealed extremely high levels of chromium where concentrations in the soil were as high as 21,000 ppm and 17,400 ppm. The Total Threshold Limit of Concentrations (TTLC) is used to classify materials as hazardous waste. The TTLC for chromium is 500 ppm.[21] This concern was a plating operation with chrome baths for the plating of items. Their waste handling practices were neither efficient or modern. Elevated levels of copper, nickel and zinc were also found on this property.
- Extremely high concentrations of the pesticide Chlordane (790 ppm)[22] and fuel hydrocarbons (1100 ppm), tentatively identified by the laboratory as diesel oil, were found in samples from soils at the New Horizon property. This property is located on Chakemco Street, adjacent to the Electro Coatings property.
- Samples from the Universal Cast Iron property on Tweedy Place revealed high concentrations of lead (4300 ppm and 3900 ppm in a replicate sample).[23] Elevated levels of arsenic, barium, cadmium, copper nickel, zinc, and small amounts of organic solvents were also found in the property.

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[21] TTLC refers to waste management methodology and is not used as a means of assessing health risk. The Cal/EPA determines health risk for Chromium 6 based on the Preliminary Remedial Goal (PRG) of 0.2 ppm. There is a question, however, as to whether the chromium sited in this EIR is the benign Chromium 3 or the highly carcinogenic Chromium 6 that is normally associated with the chrome plating process. Toxicologists with the DTSC indicate that this lack of distinction in the EIR constitutes a critical flaw in the site assessment process. However, based on the TTLC of 500 ppm, it is reasonable to assume the contaminant in question is Chromium 6.

[22] The US/EPA's Region 9 PRG for chlordane is 0.34 ppm making this contaminant level 2,324 times above the healthful limit.

[23] The Cal/EPA screening value for lead is 130 ppm making the above contaminant levels 33 times above what is considered healthful.

- Soil samples from Pyramid Dye Casting property on Tweedy Boulevard revealed elevated levels of barium, cadmium, copper, lead, zinc, and fuel hydrocarbons, tentatively identified in the laboratory as motor oil.
- Elevated levels of fuel hydrocarbons were found at the Bender Equipment property, also on Tweedy Boulevard.

The EIR goes on to discuss remediation at the various parcels including Electro Coating where levels of chromium at 21,000 ppm are 105,000 times higher than the allowable limit. For this location, planned remediation includes:

> ...using chemical fixation or excavation and disposal to an appropriate landfill and remediation of TRHP using bioremediation or excavation and disposal to an appropriate landfill.

It is problematic to combine certain types of remediation methodologies in close proximity to each other. In the case cited above, chemical fixation tends to be incompatible with life so that any effort to use this type of remediation in close proximity with bioremediation would likely result in the latter's failure. The close proximity of many different types of toxic hazard at the South Gate site inherently complicates remediation efforts.

Another concern is the veracity of the groundwater samples taken in 1989. Considering the high levels of toxins at the South Gate site and the heavy rains of the past decade, it is reasonable to assume that these older tests may not be representative of current conditions.

What further complicates the combined South Gate project is the site approval letter issued by the CDE. On August 11, 1992, Ms. Betty Hanson (former CDE field consultant) wrote in her site approval letter to the LAUSD that:

> The California Department of Education (CDE) approves the parcel of property described on the attached legal description for school purposes by the district because it can meet

> the site standards of the CDE if the mitigations are performed as indicated in the environmental assessment report. However, the district should consider the potential for undue time delays in relocating the businesses and for the inherent problems related to the extensive environmental clean-up of the site with respect to time and cost.
>
> Even though the site is approved, the district is encouraged to continue efforts to retain the Tweedy Park site for a permanent school or to consider the Pasquale triangle across the street from the Tweedy Park as a possible option.

The site approval letter then continues with the same standardized language found in other CDE approval letters. Besides the fact that this approval was granted in the face of extreme toxic contamination along with problematic remediation issues, the following may represent a subversion of CDE protocol. According to the CDE's School Site Selection and Approval Guide,

> Districts applying for state school building funds are required to present for review by the School Facilities Planning Division's consultant three potential school sites from which the appropriate site can be selected.

Both the South Gate Sr. High and Elementary schools received state funding. Yet in this instance, it appears that the CDE favored the two other sites presented by the LAUSD but nonetheless agreed to approve the one heavily toxic site. It is unclear from the above whether the CDE is choosing the best of three possible sites or whether the LAUSD did the choosing. If the above scenario represents the LAUSD choosing from its own list of "best possible," then the committee is curious as to what exactly is the point of a district being asked to present three alternatives at the time of state site approval.

WHY DID THE CDE APPROVE THE JMS PROJECT?

The CDE field representative who approved the nine identified toxic LAUSD school sites was Betty Hanson who worked for the CDE from 1988 - 1994. According to a November 14, 1988, letter from the LAUSD Facilities Manager of the School Planning Branch, Ms. Hanson was sent a number of documents as part of the JMS site review process that included the project's EIR. In this EIR it states:

> 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.

Yet just seven weeks later, Ms. Hanson signed the final CDE approval letter for the JMS site as she did for eight other LAUSD school sites where toxic concerns were known at the time of approval. JLAC has found no indication that any of the toxic LAUSD sites approved by Ms. Hanson, other than the JMS site, have been properly assessed or remediated. For each of the following schools, the site review form indicated toxins. Yet, the site approval letters for each of these schools did not indicate toxins, except in one case where it made a vague reference to toxins.

1. Nevin Avenue Elementary School

Date of Site Review:	August 4, 1988
Date of Approval:	September 27, 1988
Condition of Approval:	None
Reference to Toxins:	None

2. Jefferson New Senior High School

Date of Site Review:	July 29, 1988
Date of Approval:	January 9, 1989
Condition of Approval:	None
Reference to Toxins:	None

3. Jefferson Junior High School

Date of Site Review:	July 29, 1988
Date of Approval:	January 9, 1989
Condition of Approval:	None
Reference to Toxins:	None

4. New Belmont Elementary School #2

Date of Site Review:	June 3, 1991
Date of Approval:	May 14, 1992
Condition of Approval:	None
Reference to Toxins:	None

5. Newel Street Elementary School

Date of Site Review:	March 22, 1990
Date of Approval:	July 28, 1992
Condition of Approval:	None
Reference to Toxins:	"Proper mitigation should be taken..."

6. South Gate High School #3

Date of Site Review:	June 26, 1989
Date of Approval:	August 6, 1992
Condition of Approval:	None
Reference to Toxins:	Extensive environmental clean-up.

7. South Gate Elementary School #3, August 11, 1992

Date of Site Review:	not available
Date of Approval:	August 6, 1992
Condition of Approval:	None
Reference to Toxins:	Extensive environmental clean-up

8. Belmont Senior High School

Date of Site Review:	November 11, 1993
Date of Approval:	January 18, 1994
Condition of Approval:	Contingent on environmental assessment not remediation.
Reference to Toxins:	None

9. Johnson Senior H.S.

Date of Site Review:	July 7, 1988, revised December 12, 1993
Date of Approval:	July 5, 1994
Condition of Approval:	None
Reference to Toxins:	None

In the case of each of these schools, the CDE site review document indicates toxic concerns. Yet acquisition was nonetheless approved by the CDE without any indication that the LAUSD performed due diligence or even coordinated with any state environmental regulatory agency.

Ms. Hanson was asked to assist the committee with its understanding of events surrounding her approval of the JMS site.[24] Ms. Hanson opted not to cooperate with the committee's fact-finding efforts.

[24] Letter from Scott Wildman to Betty Hanson, August 11, 1998 .

Betty Hanson left the employ of the CDE in 1994 and was hired two months later by the LAUSD at $125.00 per hour as a consultant. A comprehensive JLAC report covering the LAUSD's use of outside consultants is being compiled.

Another cosigner to many of Ms. Hanson's site approval letters, including the JMS site approval letter, was then CDE Assistant Superintendent and Director of School Facilities Planning Division (SFPD), Duwayne Brooks. The committee wrote Mr. Brooks, who is now Director of the CDE's Child Nutrition and Food Distribution Division to inquire about the events surrounding the approval of JMS. The committee received two responses to its inquiry, one from Mr. Brooks and another from the current director of the SFPD, Ann Evans, who stated "I have enclosed [Mr. Brook's] response for your information and I concur with the information he presented."[25] Mr. Brooks has not worked for the SFPD for some time but the following words bear the full support of the current director of SFPD, Ms. Evans. In its response to the committee, the CDE/Brooks letter states:

> The information submitted to CDE by the district for Jefferson Junior High Site #1 stated that the geological study did not address soil contamination since access to the site could not be obtained from the owner. Denial of access by owners was not an uncommon situation. The information submitted by the district also stated that the current use of the property indicated that hazardous materials (most likely paints and varnishes) were used on the site, and potential problems depended on what precautions the owners had taken in handling those materials. The district stated that they had no knowledge of any contamination problems, and the existence of any problems could only be obtained through the testing once access to the site was obtained.

This response is cause for concern. If the CDE had insufficient information to certify the site free of toxins – amidst assertions that toxins were very likely a problem – then why did the CDE grant their approval to this project?

Because strong suspicions of serious hazards were not confirmed, the CDE refused to stop the acquisition process at Jefferson Middle School.

The CDE/ Brooks letter continues:

> My recent review of the Jefferson site package indicates that the procedures in place at the time were properly followed. While the information provided to the CDE by the district acknowledges the possibility of toxic materials on the proposed site, a condition of approval by the CDE was for the district to follow the investigation and mitigation requirements in existence at the time. The approval letter issued by the CDE directed the district not to move forward with a project involving the acquisition of the site unless the district completed the necessary investigation and mitigation requirements of Education Code Section 39002[26] and Public Resources Code Section 21151.2. Those were the requirements in place at the time.

It is unclear exactly how the JMS approval letter can be viewed as providing any form of specific direction to the LAUSD. The body of this approval letter states in its entirety:

> The State Department of Education approves the acquisition, for school purposes, by your district of the parcel of property described on the attachment.
>
> This approval is given under the provisions of Educational Code Section 39000, et. seq., and Title 5, Sections 14000, et. seq. Please note the local governing board's responsibilities under Education Code Section 39002 and Public Resources Code Section 21151.2.

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[25] Letter from Ann Evans to Scott Wildman, August 13, 1998 .
[26] Now Ed. Code 17212.

The attachment referred to above includes some but not all the documents required by the CDE's School Site Selection and Approval Guide. References to toxic issues within these documents are limited to:

- SPF 4.0: An overall site review check sheet, that includes some 50 places to enter data, wherein the box labeled "Toxic" is checked.[27]
- A page entitled SITE DIAGRAM which states "See attached map" and the hand written statement: "Potential toxic from furniture factory resins etc."[28]
- SPF 4.02: A four-page document covering numerous site issues included one sentence on the last page, which reads "Soil could be contaminated."[29]

The characterization of this 1989 approval letter as having "directed the district not to move forward with a project involving the acquisition of the site unless the district completed the necessary investigation and mitigation requirements" is unconvincing as the JMS approval letter is a carbon copy of many other CDE approval letters reviewed by this committee – including those sites where no toxic concerns exist.[30] Further, there are two examples of CDE approval letters signed by Ms. Hanson that do make emphatic statements concerning toxic issues. On January 18, 1994, Ms Hanson signed an approval letter for a toxic site that stated:

> Approval is contingent upon the Phase II environmental assessment results that would insure the health and safety of the students and would be consistent with the cost standards of Office of Local Assistance.[31]

In this case, the CDE acknowledged that an environmental assessment had not been done, and further acknowledged that suspicions were strong enough to warrant the granting of only a

[27] CDE form: School Facilities Planning Division Sire Review.
[28] See Appendix.
[29] See Appendix.
[30] CDE Site Approval letters From Betty Hanson to LAUSD Board: September 27, 1988; January 9, 1998.
[31] Letter from Betty Hanson to LAUSD Board, January 18, 1994.

conditional approval directly tied to this assessment. Another CDE approval letter of a toxic LAUSD site signed by Hanson states:

> Prior mitigation should be taken regarding removal of storage tanks, potential migration of contaminants from adjacent landfills, and shallow soil removal as described in the Phase II Environmental Assessment Report dated November 1990 and February 1991 by Exeltech.[32]

There seems to be no discernible criteria for any of the CDE site approval letters signed by Ms. Hanson. Three of the eight letters approving suspected toxic sites make some reference to the toxic issue but the remaining five approval letters do not. Regardless, for the CDE to grant site approval in the face of yet to be assessed toxic concerns appears to directly contradict those laws governing the approval process.

Finally, the CDE/Brooks letter concludes with the following:

> There are several factors used in considering potential sites for school purposes: Size, configuration, location (e.g., near students), surrounding area (away from airports, freeways, heavy industrial), cost, geological conditions, etc.
>
> Of primary concern to the CDE is the safety and educational appropriateness of the proposed site. Rarely is there an ideal site, and in large urban areas, totally clean sites are often very scarce. Each factor must be weighed carefully, and, taking all factors into consideration, a site with suspected, but mitigatable, hazards (such as toxic material) can be an acceptable site (and might even be the best site) for school purposes contingent on the hazard being mitigated prior to use as a school site.

The CDE appears to be grouping variables that are a legitimate part of a reasonable cost/benefit analysis along with toxic concerns. Based on clearly worded provisions of law, absence of toxic

contamination should not be viewed as a variable, but as a required element in any land acquisition process. Further, the belief that no "ideal site" in urban settings for schools exists is the same argument promoted at the June 17, 1998. JLAC hearing by the LAUSD – an assertion that was discredited by subsequent testimony and the committee's post-hearing analysis.[33]

The committee concluded in our report that a willingness to act with due diligence is needed to ensure that new schools are built on clean sites – a willingness both the LAUSD and CDE seems to have lacked.

As discussed in School Site Acquisition and Environmental Issues, environmental mitigation procedures are not wholly predictable with regards to cost, effectiveness and timeliness. In addition, the extent and therefore the cost of remediating a hazardous site is often very difficult to assess. Since initial toxic assessment and the remediation process itself are both problematic, it is troubling that the state might consider a highly toxic site as the "best" of numerous alternatives.

The CDE/ Brooks letter concludes its remarks with the following:

> Given the information at the time, the review that was completed, and the directions given to the district to follow the appropriate Education Code Section and Public Resources Code Section, I believe that due diligence was exercised by the CDE in this situation.[34]

What is troubling is not so much the CDE's denial of any lack of diligence but the apparent indication that future efforts will not be influenced by past inadequacies. As discussed above, there is no evidence of any explicit direction provided to the LAUSD by the CDE concerning toxic remediation at JMS. Again, the JMS authorization letter mirrors many of the other CDE

[32] Letter from Betty Hanson to LAUSD Board, July 28, 1992.
[33] School Site Acquisition and Environmental Issues, JLAC Report July 1998, pg. 8-9.
[34] Letter from Duwayne Brooks to Scott Wildman, August 14, 1998.

approval letters reviewed by this committee where toxins were not evident. For the CDE to present the JMS site approval letter as a tailor-made document that specifically addresses the unique approval needs of this site is unacceptable.

There is every indication that inadequate CDE practices and procedures may have resulted in other toxic sites being acquired for schools.

THE OFFICE OF PUBLIC SCHOOL CONSTRUCTION

Once the CDE approves a site for new construction, the matter is turned over to the Office of Public School Construction (OPSC -- formerly known as the Office of Local Assistance – OLA) for funding. The OPSC is an interagency support division of the California Department of General Services. It is the OPSC's job, in part, to provide administrative support for the State Allocation Board (SAB). The job of the OPSC/SAB is to:

> Administer the state's school building lease-purchase program while providing financial assistance to school districts for the development of school sites, construction, and reconstruction or replacement of school buildings and purchasing of furniture and equipment.[35]

Further, the CDE, in its Site Selection and Approval Guide states:

> In addition, the Schools Facilities Planning Division is responsible for ensuring that school districts applying for state school building funds comply with all State Allocation Board policies regarding site acquisitions as outlined in the Applicant Handbook: Lease Purchase Law of 1976, sections 3860 through 3865. Approval of a site by the Department of Education is required prior to Phase II apportionment by the State Allocation Board for site acquisition.

It appears clear that the OPSC should expect CDE site approval letters to indicate that a site is toxic free.

To gain a greater understanding of the OPSC/SAB process and particular how the state came to fund the JMS project, the committee wrote to the OPSC's Assistant Executive Officer, Bruce

[35] California 1998 - 1999 Budget, Program 10 Paragraph D. #1760.

Hancock.[36] Central to the committee's inquiry was why the OPSC approved the JMS project for funding when toxic hazards were, at the least, suspected. Hancock responded to the committee's inquiry by stating:

> Prior to the State Allocation Board (SAB) approval for acquisition [of the JMS site], the OLA received only one document that made reference to toxins at the location. This document was the Field Site Review Form completed by the California Department of Education (CDE) dated July 29, 1988. In the form, the CDE representative checked a box entitled "toxic," and wrote "pending geological." When the CDE approval letter followed five months later, on January 9, 1989, without reference to any toxic issues, the OLA made the assumption that no toxic contamination had been discovered or existed. On this basis, the OLA recommended that the SAB approve the site acquisition costs.

As referenced earlier in this report, the CDE requires that local districts have ready three prospective sites when applying for state site approval. As to why the JMS site was selected over the other possible sites suggested by the LAUSD when all the sites had apparent toxic contamination problems, Mr. Hancock responded:

> As already mentioned above, the OLA did not believe that toxic conditions existed at the site. In addition, a cover letter from the CDE, which accompanied the field Site Review Form,[37] indicated that alternative sites had been reviewed and were "unacceptable for further consideration." In summary, the OLA believed the review had been completed in accordance with SAB and CDE policies and regulations.
>
> The legal authority and responsibility for site safety and approval has been granted by law to the CDE. The SAB relies on the CDE to ensure that sites are safe and suitable for school use upon site approval by the CDE.[38]

[36] Letter from Scott Wildman to Bruce Hancock, August 10, 1998.
[37] Memo from Betty Hanson to OPSC, November 22, 1988.
[38] Letter from Bruce Hancock to Scott Wildman, August 17, 1998.

While Mr. Hancock expressed his regret that OLA officials did not scrutinize those CDE documents pertaining to the JMS project more fully, it is reasonable that the OLA should have expected the CDE to perform their duties with due diligence. If this were not the case, any state agency attempting to conduct their business responsibly would become mired in the need to duplicate the efforts of other supporting agencies.

SAB concern over the CDE site approval process in not new. Going back as far as 1989, the same year Ms. Hanson began approving schools with outstanding toxic issues, an October 25, 1989, SAB board meeting was held to specifically discuss "State Department of Education Site Approval/Acquisition Procedure." The purpose of the meeting is recorded as, " . . . to present the State Department of Education's (CDE) methodology for ensuring that toxic conditions do no exist on proposed school sites." Minutes of the meeting record the following as part of the meetings discussion:

> Specifically relating to the presence of potentially toxic and hazardous substances, the CDE currently requires that the site review process give specific consideration to such conditions as chemical plants, refineries, fuel storage facilities, nuclear generating plants, and agricultural areas in which pesticides and fertilizers have been used. Also, consideration is given to whether a site is located near or downwind from a stockyard, fertilizer plant or sewage treatment facility, or other similar facility.
>
> These procedures represent only one facet of a through site review and analysis process. Additional geological studies or soil analysis may be requested by the CDE if there is evidence to suggest that additional is warranted.

The SAB minutes conclude with:

> The CDE believes its site review and approval process comprehensive, rigorous and appropriate. This procedure and requirements are constantly reviewed and updated to

reflect and address issues and conditions that may potentially impact the site, its use, the students, staff and the general public. The primary criteria in the CDE's site review process continues to be student safety and educational appropriateness.

The committee has found that a large gulf may exist between CDE theory and CDE practice.

CONCLUSIONS

1. There can be no doubt that when a school is built on a toxic site, it is first and foremost the result of local school district inattention.

2. The fact that toxic sites are currently approved by the state for school construction illustrates a serious flaw in the way site approval is currently being conducted.

3. It is reasonable to question whether the CDE's site approval process is effective.

4. Because strong suspicions of serious hazards were not confirmed, the CDE refused to stop the acquisition process at Jefferson Middle School.

5. The committee concluded in our report that a willingness to act with due diligence is needed to ensure that new schools are built on clean sites – a willingness both the LAUSD and CDE seems to lack.

6. There is every indication that the inadequate CDE practices and procedures may have resulted in other toxic sites being acquired for schools.

RECOMMENDATIONS

- All site approvals granted by the state where toxins were suspected at the time must be reviewed and if necessary cleaned-up under the direction of the DTSC.

- The state must immediately reconfigure its internal site approval protocol so that state oversight activities ensure local compliance with the law.

- Districts with a history of failing to ensure school sites are toxic free must be subject to strict state oversight. It must be required of these districts that all new school sites be approved by the DTSC prior to submission for state approval.