

CITIZENS' OVERSIGHT COMMITTEE UPDATE REPORT JULY - DEC 2012

Horace Mann Auditorium Completed May 2013

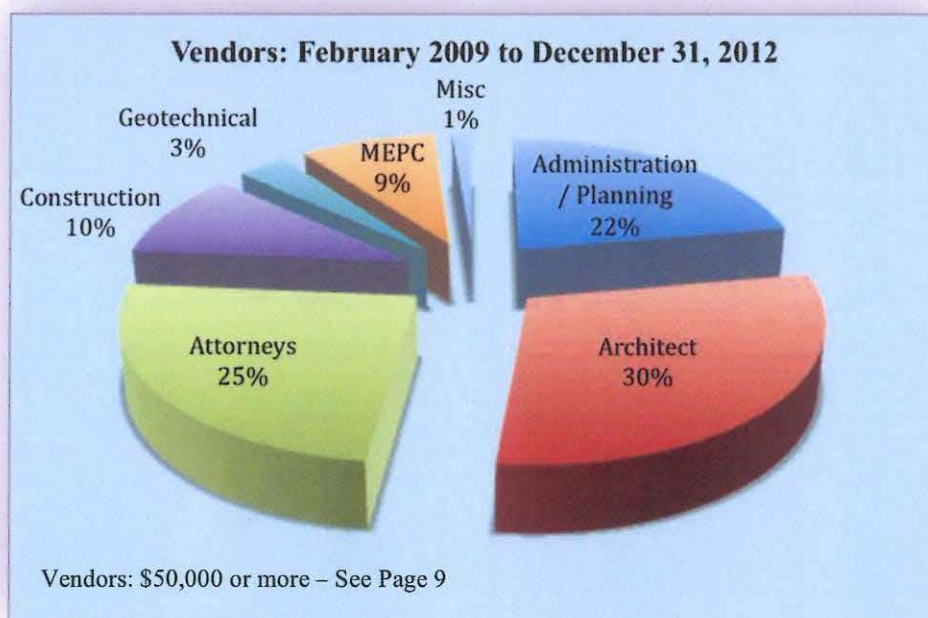


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SIX-MONTH REPORT OF THE CITIZENS' OVERSIGHT COMMITTEE

July 1, 2012 through December 31, 2012

Executive Summary

This Six-Month Report of the Citizens' Oversight Committee (COC) covers the period from July 1, 2012 through December 31, 2012 and updates the issues addressed in the January 1, 2012 through June 30, 2012 Update Report. In some cases, this report incorporates events subsequent to December 31, 2012.

The primary responsibility of the Citizens' Oversight Committee is to monitor the expenditure of funds by the Beverly Hills Unified School District (BHUSD or District) to ensure that they are utilized in the manner prescribed by Measure E to achieve certain goals:

Provide safe and modernized school facilities, make necessary structural, seismic safety repairs, upgrade, repair and reconstruct aging classrooms, infrastructure, multi-use, gyms, libraries, science, technology and labs; roofing, plumbing, heating, ventilation and electrical systems; renovate Beverly Hills Unified School District schools to better protect student/staff from unauthorized entry, security risks and natural disasters.

In exercising this over-arching duty, the various COC sub-committees have engaged in conferences with a variety of decision-makers, reviewed information from numerous sources, attended meetings, conducted independent research, made recommendations and shared their findings with the full Committee – which then submitted its recommendations to the Beverly Hills Board of Education.

Les Bell, one of the current COC's most active members, recently passed away. Les had a positive impact on all of his fellow COC members, District staff and the Board of Education. Les was active, outspoken and committed to the implementation of Measure E funds. He voiced the concerns of the entire Beverly Hills community to protect our children and grandchildren. He will be missed by everyone and represents the need for more members of the COC like him. Unfortunately, Rudy Cole, a past member and former chair of the Measure E COC also passed away in 2013.

This Report covers three specific areas:

- I. Audits: Performance and Financial
- II. Measure E Bond financing
- III. Communications

I. Audits

A. Performance Audit:

On March 21, 2013, Harvey M. Rose Associates, LLC submitted the annually required Performance Audit of the Beverly Hills Unified School District Measure E Program for the fiscal year ended June 30, 2012 ("Audit") which is LINKed to the BHUSD.org web site, located at www.bhusd.org. The referenced report is quite thorough and covers all aspects of the compliance requirements of Measure E and includes a broad series of recommendations.

Selected Performance Audit findings:

1. Both the 2008 and the 2012 plans lacked adopted educational specifications, or an articulation of what is required of proposed or future educational facilities to support the District's educational program. The California Department of Education and the State Allocation Board consider the establishment of good educational specifications critical to successfully designing and constructing school facilities consistent with educational goals;
2. In some areas such as the competitive bidding process for services, the Facilities and Planning Department and the District office did not adhere to a "Best Practices" model in compliance with Public Contract Codes; and
3. The District spent more than anticipated in the fiscal year ending June 30, 2012 on legal and related professional services and the Measure E budget was never amended to reflect these and changes in project plans.

B. Financial Audit:

Christy White Accountancy performed the annually required financial audit and issued their report dated January 25, 2013 for the fiscal year ending June 30, 2012. The Financial audit found that as of June 30, 2012, the District had spent approximately \$21,500,000 – or 29% - of the \$72,000,000 raised through the 2009 Measure Bond Issuance, and 6.5% of the \$334,000,000 total amount that has been authorized by Measure E.

To provide the citizenry with an overview of how the Measure E funds have thus far been expended, the following schedules are appended hereto:

1. A schedule reflecting the vendors who have received more than \$50,000 for the 6 month period ending December 31, 2012;
2. A breakdown of the recipients of at least \$50,000 of Measure E funds from February 2009 through December 31, 2012 together with a short explanation identifying the purpose of the expense; and
3. A cash flow summary from the approval of Measure E through December 31, 2012.

C. Recommendations:

The Board of Education should comply with the recommendations that are set forth in the Harvey M Rose Associates, LLC Performance Audit and the Christy White Accountancy Financial Audit reports which are useful and productive.

While Measure E expenditures and contracts have been individually approved for specific projects by the Board of Education, the absence of an approved master and implementation plan and the lack of a

comprehensive list of approved specific projects renders it extremely difficult to determine the percentage of the Measure E funds that have thus far been spent against any defined objectives that are to be achieved. This problem has been caused, in part, by Measure E itself, which provides a general description of uses for the funds, but does not include an itemized list of projects with budgets and timelines.

There are eight areas of concern with four major recommendations in the Performance Audit pertaining to the Measure E funds, including:

1. The need to finalize the District-wide facilities master plan that incorporates a Board-approved education specification and an approach to implementing green technology.
2. Once the Master Plan is approved, the District should update project and site level budgets delineated by school as well as non-construction-related expenditures such as legal fees.
3. The District should revise its contracting policies to include all professional services and prepare a model contract with standard terms and conditions that applies to all vendors.
4. The District should require legal and other professional services firms to provide the COC with cover pages of invoices that include summary information regarding the work performed and consultants used with a goal of facilitating transparency.

In addition, there are four other COC concerns:

5. The \$334,000,000 is inadequate to perform the requisite work at the four elementary schools and Beverly Hills High School as originally envisioned by the draft Master Plan.
6. Due to staff turnover and the retirement of the Chief Facilities Official, coordination and efficient completion of the existing as well as future projects has become more difficult;
7. The Board of Education must prioritize the tasks to be completed that will include a list of specific projects and attendant budgets, protections against cost overruns, enforceable deadlines and any resultant penalties; and
8. The guidelines promulgated by the California Department of Education and State Allocation Board should be followed.

II. Measure E Bond Financing

The Beverly Hills Unified School District's ability to issue additional bonds to finance its future plans for Measure E is impacted and constrained by a number of factors including:

1. The incremental property tax increase necessary to support a bond measure is limited by Proposition 39 that places a ceiling of an additional \$60 for each \$100,000 of assessed valuation in any particular year;
2. The tax base that is premised upon future property assessed value growth, and interest rate assumptions are key variables in determining the amount and timing of future bond issuance;
3. The current and future structure of the bond financing which, among other variables, includes the length of time it will take to repay bond holders, and the mix of current interest to be paid periodically (Current Interest Bonds-"CIBs") and all interest paid upon maturity (Capital Appreciation Bonds-"CABs");

4. There is currently State legislation under consideration that would reduce the maximum term of CABs from 40 years to 25 years and may impact the structuring of future bond sales; and
5. Project cash flow needs based on a Board-approved plan respecting the utilization of remaining Measure E funds.

Complicating the foregoing is the fact that the interest rate projections and anticipated assessed valuation increases of the property tax base made at the time Measure E bonds were approved by the voters have not materialized.

Keygent Advisors, a public finance and management consulting firm and advisor to the District, prepared an updated analysis of Measure E Bond Financing Options. These options have been presented to this Committee and to the District's Finance Committee. The Finance Committee has formally commented on the Keygent analysis, a copy of which can be found in the Appendix.

Based on the analysis of Keygent Advisors and the District's Finance Committee, the Citizens Oversight Committee has reached the following conclusions:

1. Unless property taxes increase from their current levels, there will be insufficient borrowing capacity to complete the anticipated construction and refurbishment work authorized by Measure E and, by reason thereof, the number of projects may have to be reduced, or work may have to be placed on an indefinite hiatus;
2. The District's ability to devise a new bond issuance program is constrained by Proposition 39 and pending State legislation;
3. A detailed plan must be completed and adopted by the Board of Education which delineates the achievable goals utilizing the remaining Measure E funds; and
4. The District should continue to work with their financial advisors to address these issues.

III. Communications

A major goal of the Citizens' Oversight Committee is to enhance public awareness of the issues relating to Measure E and its implementation as well as to maximize the transparency of the process. In furtherance of that goal, the COC website, located at www.bhusd.org, has been redesigned with a new graphical and textual interface.

Further, the Citizens' Oversight Committee approached the District to utilize KBEV to feature programs relating to bond finance and constructions issues, but the request has not yet been acted upon.

IV. **Appendix**

- Vendors paid over \$50,000 for the 6 months ended Dec, 31 2012 Page 8
- Vendors, by Name, paid over \$50,000 from Feb. 2009 to Dec. 31, 2012..... Page 9
- Cash Balance Summary - Revenues & Expenses CHARTS-Page 10
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- Finance Letter Page 12 -13
- Harvey M. Rose Associates, LLC Performance Audit(2012)..... [LINK](#)
- Keygent Advisors Opinion Report [LINK](#)

Members of the Citizen's Oversight Committee

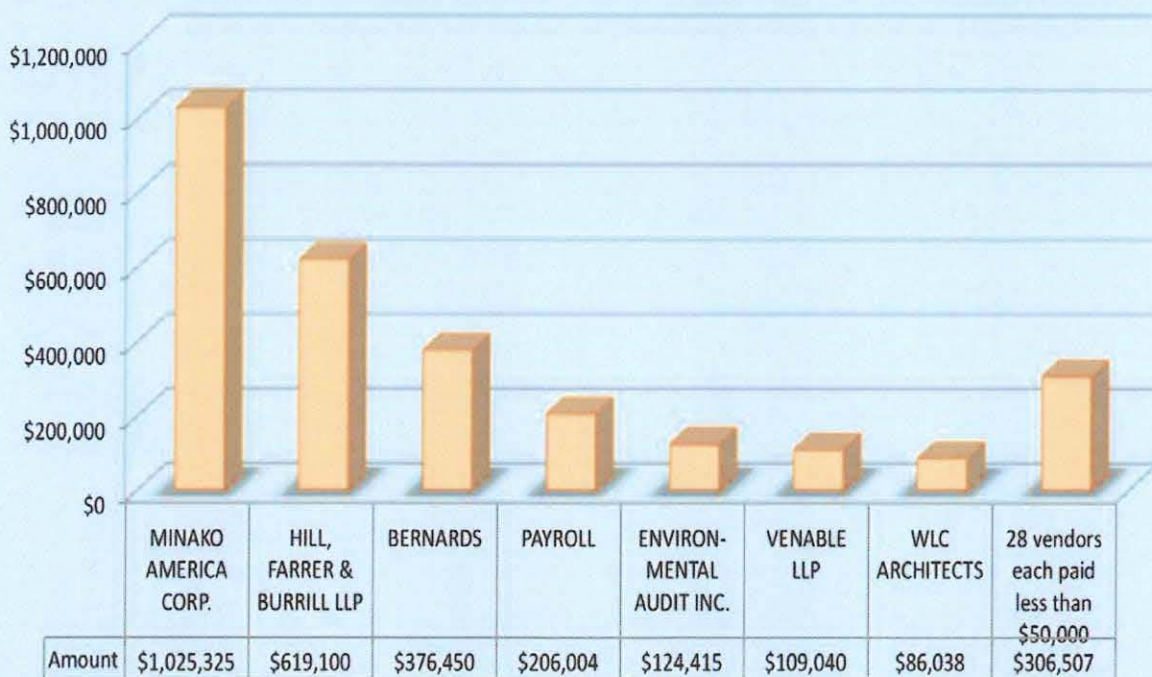
- Woodrow Clark II, Ph.D. - Chair
- Fran Cohen, MBA, MSIA
- Craig Davis, MS
- Fred Fenster, Esq. - Chair - Ethics
- Howard Goldstein, Esq. - Chair - Communications
- Steve Hendry, CPA - Vice-Chair
- Joe Safier, CPA - Chair - Audit Committee
- Shirley Zaragoza, MA, CAS

Beverly Hills Unified School District
Measure E Vendors with total expenditures over \$50,000
in descending dollar order Cash Basis
For the six months ended December 31, 2012
(UNAUDITED)

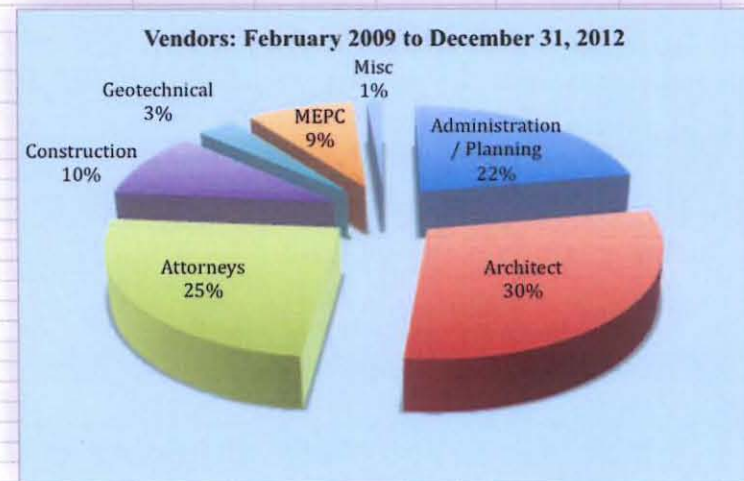
<u>Amount</u>	<u>Vendor Name</u>	<u>Explanation</u>
\$1,025,325.00	MINAKO AMERICA CORPORATION	Contractor - Horace Mann Auditorium
\$619,100.13	HILL, FARRER & BURRILL LLP	Attorney - MTA matter
\$376,449.68	BERNARDS	Project Manager
\$206,004.21	PAYROLL	Staff Payroll
\$124,414.65	ENVIRONMENTAL AUDIT INC.	Hazardous Materials Analysis
\$109,039.62	VENABLE LLP	Attorney - MTA matter
\$86,037.54	WLC ARCHITECTS	Architect - Horace Mann
\$306,506.75	28 vendors each paid less than \$50,000	
\$2,852,877.58		

NOTE - all amounts and vendors are unaudited
Source - BHUSD Business Office – data sorted and summarized by the COC

**VENDORS Paid over \$50,000 Six Months
ended December 31, 2012**



Amount	Vendor Name	Purpose/Explanation	Administration / Planning	Architect	Attorneys	Construction	Geotechnical	MEPC	Misc
\$2,419,890	DOUGHERTY & DOUGHERTY ARCHITECTS	Architect - K-8 schools		\$2,419,890					
\$2,335,194	HILL, FARRER & BURRILL LLP **	Attorney - MTA matter			\$2,335,194				
\$2,107,838	QUINN EMANUEL *	Attorney - Strategic Concepts litigation			\$2,107,838				
\$2,058,696	STRATEGIC CONCEPTS	former Project Manager	\$2,058,696						
\$1,728,097	BERNARDS	Project Manager	\$1,728,097						
\$1,445,441	LPA ARCHITECTURE	Architect - BHHS & Haw		\$1,445,441					
\$1,201,895	WLC ARCHITECTS	Architect - Horace Mann		\$1,201,895					
\$1,094,990	PAYROLL	staff payroll	\$1,094,990						
\$1,034,289	BANERJEE POCOCK & ASSOCIATES	MEPC consultant (see below)						\$1,034,289	
\$1,025,325	MINAKO AMERICA CORPORATION	Contractor - Horace Mann Auditorium				\$1,025,325			
\$937,978	DLR GROUP WWCOT	Architect - Hawthorne		\$937,978					
\$768,515	LEIGHTON CONSULTING, INC.	Geotechnical consultant					\$768,515		
\$596,846	HENRIKSON OWEN & ASSOCIATES, INC.	MEPC consultant (see below)						\$596,846	
\$493,767	HMC ARCHITECTS	Architect - El Rodeo		\$493,767					
\$467,471	ENVIRONMENTAL AUDIT INC.	Hazardous Materials analysis consultant						\$467,471	
\$434,249	DANNIS WOLIVER KELLEY (DWK) *	former attorney - Strategic Concepts litigation			\$434,249				
\$385,956	GENSLER	Architect - BHHS & Haw		\$385,956					
\$358,978	CST ENVIRONMENTAL ACQUISITION LP	Horace Mann Bldg. E Annex demolition				\$358,978			
\$322,259	DeJONG RICHTER	Master Plan consultant	\$322,259						
\$313,986	MILLER BROWN DANNIS ATTORNEYS *	former attorney - Strategic Concepts litigation			\$313,986				
\$308,847	LA TANYA KIRK-CARTER	Forensic accountant							\$308,847
\$261,276	DIGITAL TELECOMMUNICATIONS CORPORATION	Telecommunications contractor				\$261,276			
\$237,714	VENABLE LLP	Attorney - Horace Mann & MTA matter			\$237,714				
\$189,579	ALSTON & BIRD LLP	Attorney - MTA matter			\$189,579				
\$169,506	BEST, BEST & KRIEGER	Attorney - Contract review counsel			\$169,506				
\$166,253	WILLIAM SCOTSMAN	Temporary housing rentals				\$166,253			
\$164,140	AT&T DATACOM	Telecommunications contractor				\$164,140			
\$149,560	AUTOMATIC BOILER COMPANY	Construction contractor				\$149,560			
\$132,414	Architect Fees on Buildings/Reimbursables	Architectural consultant		\$132,414					
\$118,164	LVH ENTERTAINMENT SYSTEMS	Auditorium sound contractor - Measure K				\$118,164			
\$73,260	ACCU-TEST STRUCTURAL LABORATORIES INC.	Construction testing				\$73,260			
\$54,441	CLASS LEASING, INC.	Temporary housing rentals - Horace Mann				\$54,441			
\$52,352	CBS PERSONNEL SERVICES dba STAFFMARK	Temporary staffing	\$52,352						
\$50,434	UCMI, INC.	DSA req'd Inspector of Record for HM Auditorium				\$50,434			
			\$5,256,394	\$7,017,342	\$5,788,067	\$2,421,833	\$768,515	\$2,098,606	\$308,847
		Pct of total expenditures ==>	21.6%	28.8%	23.7%	9.9%	3.2%	8.6%	1.3%
\$721,199	118 vendors each paid less than \$50,000	Pct of total expenditures ==>	97.0%						
\$24,380,803	<==== Total expenditures								
Notes:	* To date, these attorneys worked solely on the Strategic Concepts litigation. To date the Board has reimbursed the Measure E fund \$2.5 million for legal and other expenses related to this matter. The reimbursement was part of a financial settlement with a former vendor.								
	** payments to Hill, Farrar & Burrill included payments to other professionals								
	MEPC = Mechanical, Electrical, Plumbing and Civil Engineering								
	Source - BHUSD Business Office - data sorted and summarized by the COC								



BEVERLY HILLS UNIFIED SCHOOL DISTRICT
MEASURE E CASH BALANCE SUMMARY ROLLFORWARD - CASH BASIS
FROM FEBRUARY 2009 THROUGH DECEMBER 31, 2012
(UNAUDITED)

2009 Bond Proceeds		\$72,044,664
Plus - Revenues		
2008-09 interest income	\$479,138	
2009-10 interest income	\$934,446	
2009-10 other local revenue	\$65,878	
2010-11 interest income	\$842,576	
2011-12 interest income	\$554,091	
2011-12 Vendor settlement (partial)	\$2,500,000	
2012-13 interest income(July-Dec 2012)	\$100,973	
 Total revenue	 \$5,477,102	 \$5,477,102
 Less - Expenditures		
2008-09 expenditures	\$4,176,409	
2009-10 expenditures	\$3,828,334	
2010-11 expenditures	\$5,701,440	
2011-12 expenditures	\$7,821,742	
2012-13 expenditures	\$2,852,878	
 Total expenditures	 \$24,380,803	 (\$24,380,803)
 Fund balance as of December 31, 2012 (UNAUDITED)		 \$53,140,963

NOTE - all amounts prior to June 30, 2012 are from audited financial statements,
fiscal 2013 amounts (through December 31, 2012) are unaudited

Source - BHUSD Business Office – data sorted and summarized by the COC

Revenues and Expenses Graphs- Next Page

Revenues 2009-2013



Expenditures 2009-2013





A Special Report to the Beverly Hills Community from the Finance Committee of BHUSD

March, 2013

Dear Neighbors:

Over the past several months our community has been inundated with statements urging that the Beverly Hills Unified School District comply with the 2008 Measure E campaign promise of no increase in the \$49.71 property tax rate, and denouncing the use of Capital Appreciation Bonds (CABs) to fund the upgrading of substandard school buildings. In keeping with the mission of our committee which is, in part, to educate the public regarding the financial position and outlook of the school district, we are taking this opportunity to respond to those statements.

Capital Appreciation Bonds (CABs)

CABs are bonds on which interest payments are deferred until maturity. To attract investors, CAB interest rates are higher than those of Current Interest Bonds (CIBs). CABs are utilized when there is insufficient taxing capacity to fund the semi-annual interest payments of CIBs. School construction typically is funded by a combination of CABs and CIBs. In a number of cases school districts have abused the practice of issuing CABs by utilizing them exclusively or nearly so, extending bond maturity dates to as long as 40 years, placing the burden of repayment on future taxpayers who may not benefit from the capital improvements, and incurring exorbitant bond retirement costs as high as 20 times the amount borrowed.

CABs can be utilized responsibly, however, by limiting their maturities and costs of retirement, conservatively projecting the growth of assessed property valuation and future interest rates, and issuing "callable" bonds to permit conversion to CIBs if interest rates become lower, or if assessed valuation of taxable property becomes higher than projected. Such limitations and conditions are proposed in recently introduced state legislation. State and county officials who have expressed opposition to irresponsible strategies involving CABs recognize the practicality of responsibly issued CABs. For example, the president of the California Assn. of County Treasurers and Tax Collectors has stated that CABs with maturities of less than 25 years and low debt payments can be a responsible way to fund school improvements, and the California Assn. of School Business Officials has expressed support for the responsible use of CABs to pay for school construction.

Why the Measure E promise of a \$49.71 property tax rate is not valid

The Measure E bond campaign in 2008 included a promise that there would be no change in the property tax rate of \$49.71 in effect at that time to retire the earlier BHUSD bond issuances, Proposition S and Measure K. That promise was based upon four assumptions that did not materialize.

1. The projected growth in assessed property valuation was precluded by the real estate crisis:

<u>Fiscal</u> <u>Year</u>	<u>Projected</u> <u>growth</u>	<u>Actual</u> <u>growth</u>
2009-10	7.03%	6.12%
2010-11	4.50%	2.62% (reduction)
2011-12	4.50%	1.22%
2012-13	4.50%	6.48%

In the four years following the Measure E campaign there was a ten percent compounded difference between the projected and actual growth in assessed valuation. Moreover, current projections of assessed value growth for the next three years are 2%, 3% and 4% respectively, all well below 4.50% annually, which was projected for those years in 2008. The inadequate growth in property valuation necessitates higher property tax rates, and that alone invalidates the 2008 promise.

2. The projected CAB interest rate of 5.50% did not materialize. Current 40-year CAB interest rates are approximately 6.00%. Since future bonds will be issued over time, it is prudent to plan for future rate increases. For this reason, current projections for future bonds range from 6.00% to 7.75% depending on the maturity dates and other factors. Interest rates that are higher than projected result in lower proceeds from the bond sales and/or delayed issuance of the bonds.

3. The original bond issuance schedule was not consistent with the stated purpose of upgrading substandard school buildings. More than half the bonds were scheduled to be issued in 2018, ten years after the passage of Measure E. Because of the inadequate growth in assessed property valuation to date and the increased interest rate projections, future bond issuances would have to be delayed significantly beyond the original schedule.

4. At least 90% of Measure E bonds were originally planned as CABs, half of which having maturities of up to 40 years. In order to remain near the \$49.71 tax rate, future bond issuances would have to consist entirely of CABs with long-term maturities. Under current governmental oversight and proposed state legislation the District would be prohibited from issuing such bonds.

With the benefit 20/20 hindsight, it is obvious that the 2008 campaign promise was “too good to be true.” Community leaders who endorsed it in good faith should recognize now that it is not realistic, and they should support a reasonable alternative for funding essential upgrades of our school buildings.

Sincerely yours,
Finance Committee, BHUSD
Mel Spitz, Chairman
Bob Sternsheim, Vice Chairman
Marty Frank
Terry M. White
Herb Young

Note: The facts in this letter have been reviewed and verified by Keygent Advisors, a Public Finance and Management Consulting firm.