

THE MEASURE E CITIZENS' OVERSIGHT COMMITTEE
OF THE BEVERLY HILLS UNIFIED SCHOOL DISTRICT
OVERSIGHT REPORT
AS OF DECEMBER 31, 2009

The Citizens' Oversight Committee (COC or Committee) respectfully submits to the citizens of the City of Beverly Hills, the first oversight report on the activities of the Measure E Bond Fund Program. This report is also presented to the Board of Education of the Beverly Hills Unified School District ("BHUSD or District"). This report covers the period from March 3, 2009 through December 31, 2009.

I. INTRODUCTION

On November 4, 2008, the voters of the City of Beverly Hills approved the issuance of a general obligation bond of the Beverly Hills Unified School District in the amount of Three Hundred Thirty Four Million (\$334,000,000) Dollars for the specific purpose of making capital improvements to all five schools within the BHUSD and the District Annex Building. This funding was approved pursuant to the provisions of Article XIII A of the California Constitution within the parameters as set forth in Proposition 39, which, in conjunction with the California Education Code, mandated the establishment of a Citizens' Oversight Committee. On February 3, 2009, the Board of Education approved Resolution 2008-2009-014 establishing a Citizen's Oversight Committee.

On December 9, 2008, the Board of Education approved a resolution authorizing the issuance of an initial series of bonds in the amount of \$75 million to be used for the purposes specified in the election materials for the above election. Furthermore, via this resolution, the Board of Education directed the Los Angeles County Office of Education to establish, hold and maintain a fund to be known as the "Beverly Hills Unified School District Series 2009 General Obligation Bond Building Fund".

II. FINANCIAL REPORT

i. Funding

On March 3, 2009, the BHUSD received the proceeds of the first sale of the General Obligation Bonds issued pursuant to the approval of Measure E. These proceeds amounted to \$72,044,664.00. The Balance in the Measure E Fund, held by the LA County Treasurer, as of December 31, 2009 is \$61,153,853.54.

ii. Expenditures

Based on the financial information and reports provided to the Citizens' Oversight Committee, the District has informed this committee that the total expenditures for the Measure E Program through December 31, 2009 were \$7,417,905 as categorized below:

Vendor (Over \$25,000)	Expenditure	Explanation
Accu-Test Structural Laboratories	\$73,259	Structural Testing for all five schools
AT&T Datacom	\$164,141	Cabling for Wireless – From Measure K
CST Environmental Acquisition, LP	\$323,080	Demolition of Building E Annex at Horace Mann
CTL Environmental Services	\$49,994	Demolition Monitoring Services for Horace Mann
Dougherty & Dougherty	\$2,470,710	Architects for Alternative Education and K-8
Gensler Architects	\$383,531	Architects for BHHS – New Entry Building
LPA Architects	\$1,343,977	Architects for BHHS Renovation
LVH Entertainment Systems	\$118,164	Upgrade Auditorium Systems at El Rodeo, Hawthorne and Horace Mann– Measure K Project
Miller, Brown and Dannis	\$185,046	Attorneys for the District for Strategic Concepts lawsuit
Strategic Concepts	\$2,047,491	
Non-Itemized Vendor Total	\$258,512	
TOTAL EXPENDITURES - 12/31/09	\$7,417,905	

Recap of Fund 21.2 – Measure E

1 st Bond Issuance – Series 2009 February 10, 2009	\$72,044,664.00
Interest Income earned through December 31, 2009	\$744,069.72
Bond Issuance Costs “Rebate”	\$62,727.79
Vendor Expenditures	\$7,417,904.88
CASH BALANCE PER BOOKS	<u>\$65,433,556.63</u>
Interest Income not yet received from County	(\$262,468.18)
Due from General Fund (01.0) – Interfund Borrowing	(\$4,000,000.00)
Due from Building Fund (22.0) – Prior Year Interest Income	(\$17,234.91)
CASH BALANCE IN LOS ANGELES COUNTY – 12/31/09	<u>\$61,153,853.54</u>

The District Auditors, Vavrinik, Trine, Day & Co. have been contracted to perform a quarterly reconciliation of the District’s internal cash records to the LA County Treasurer records.

iii. Transfer of Measure E Funds between District Accounts – Interfund borrowing

The COC has been informed by the District that on November 4, 2009 and then again on December 1, 2009, intra District book transfers of \$2.0 million each have been executed between the Measure E account and the General Fund to cover cash flow timing shortfalls for the District. (All the BHUSD funds are maintained in one account by the LA County Treasurer.) According to the District, the transfer of funds between in-house categories (except for certain categorical funds) is a very common temporary cash management practice with both BHUSD and most school districts and is a temporary situation until funds are transferred to the District from the State of California and local sources (including the JPA).

Education Code 42603 states:

The governing board of any school district may direct that moneys held in any fund or account may be temporarily transferred to another fund or account of the district for payment of obligations. The transfer shall be accounted for as temporary borrowing between funds or accounts and shall not be available for appropriation or be considered income to the borrowing fund or account. Amounts transferred shall be repaid either in the same fiscal year or in the following fiscal year if the transfer takes place within the final 120 calendar days of a fiscal year. Borrowing shall occur only when the fund or account receiving the money will earn sufficient income during the current fiscal year, to repay the amount transferred. No more than 75 percent of the maximum of moneys held in any fund or account during a current fiscal year may be transferred.

At the June 9, 2009 regularly scheduled Board Meeting, the Board of Education voted to authorize the Superintendent or Assistant Superintendent of Business Services to approve temporary interfund borrowings in an amount not to exceed \$2.0 million per transfer. According to the District, the first \$2.0 million will be repaid when the “apportionment from the state is received in the next few weeks” with the remaining \$2.0 to be repaid by the end of the fiscal year.

In addition to the \$4 million transfers, the COC has been advised that the following additional interfund transfers took place during fiscal year 2008-2009 between Measure E and other BHUSD funds:

2008-2009 Interfund Borrowing		
Interfund Borrowing from Fund 21.2/22.0 (Measure E) to Fund 35.0 (State Facilities)		
Temporary Cash Borrowing (2/23/09)	\$132,500	Repaid 3/30/09
Temporary Cash Borrowing (2/25/09)	\$500,000	Repaid 5/20/09
Temporary Cash Borrowing (5/20/09)	\$1,210,000	Repaid 7/17/09
Interfund Borrowing from Fund 21.2/22.0 (Measure E) to Fund 14.0 (Deferred Maintenance)		
Temporary Cash Borrowing (3/16/09)	\$205,000	Repaid 5/20/09
Temporary Cash Borrowing (3/16/09)	\$456,732	Repaid 5/20/09

iv. Measure E Audits

Vavrinik, Trine, Day & Co. (the "Auditors") has completed the Measure E financial audit and their Agreed-Upon Procedures engagement for the period ending June 30, 2009 and issued their reports dated November 30, 2009. These reports have been reviewed by the COC's Audit Committee and will be presented for approval by the COC at its January 21, 2010 meeting. The Auditors' reports will be presented for Board of Education approval at a future meeting.

The Auditors issued an opinion that the Measure E financial statements present fairly, in all material respects, the financial position of the Fund at June 30, 2009 and the changes in financial position of the Fund for the eight-month period then ended.

In their Report on Agreed-Upon Procedures for the period ended June 30, 2009, the Auditors identified five transactions totaling \$2,769 which they determined were disallowed costs. These items represented conference, rental car and meal costs. The COC anticipates that the Board of Education will charge these costs back to the General Fund. Otherwise, the Auditors concluded that based upon the agreed-upon procedures performed, for the period ended June 30, 2009, the BHUSD has properly accounted for the expenditures of funds held in the Measure E program and that such expenditures were made on authorized bond projects.

The COC did not participate in the selection of the Audit Firm as Vavrinik, Trine, Day & Co. was contracted with the District prior to the establishment of the Committee. Proposition 39 language authorizes a school district to be the sole entity that selects an audit firm and that audit must be prepared for the district. However, Proposition 39 language encourages COC's to be involved in the selection process and work in conjunction with the district throughout the process. Future audits will utilize a RFP process involving both the COC and the District.

III. ROLE AND RESPONSIBILITY OF CITIZENS' OVERSIGHT COMMITTEE

The Committee conducts its meeting in accordance with provisions of the Ralph M. Brown Public Meetings Act, Government Code Sections 54950 et seq. Meeting notices and agendas are sent to members of the committee within the required period of time and are posted on the BHUSD website (<http://www.bhusd.org>).

During the period from April 23 through December 31, 2009, the Committee convened ten meetings. The Committee also requested and held a study session with the Board of Education on September 3, 2009. The Committee will adopt its 2010 meeting schedule at an upcoming meeting. Meetings are generally held at 4:00 on the third Thursday of the month at the offices of the District or at one of the BHUSD campuses.

Pursuant to Resolution 2008-2009-014 of the Board of Education of the Beverly Hills Unified School District, passed on February 3, 2009, ***the Board of Education has tasked the Citizens' Oversight Committee with the following duties:***

Section 2 – Purpose of the Citizens' Oversight Committee

The purpose of the Citizens' Oversight Committee shall be to:

1. Review spending of Measure E proceeds and ensure that these funds are used only on school improvements, as described in the official ballot "To repair/upgrade and improve security and safety at all Beverly Hills Unified School District schools, qualify for state grants if possible, address building safety/health issues and make other improvements to school sites and buildings, shall the District issue \$334,000,000 of bonds at interest rates within the legal limit with annual audits and a citizens oversight."
2. Establish and maintain quality communications between the Beverly Hills Unified School District and the community.
3. Assure the Board of Education that the goals of the Measure E bond are being met.

Section 4 – Responsibilities of the Citizens’ Oversight Committee

The Citizens’ Oversight Committee will pursue five primary goals in order to achieve its charter.

1. Receive an annual auditor’s report.
2. Ensure the funds are used only on school building improvements, not district salaries or administration.
3. Provide regular quarterly reports to the Beverly Hills Unified School District Board of Education that these expenditures match those promised during the bond campaign. In addition, release the findings to the general public. (The COC held its first meeting in April, 2009. Pursuant to the charge above, the first report by the COC would have been issued in August, 2009. However, due to the learning curve, start-up time and waiting for the District to answer questions, this first report is being issued later than anticipated. The COC currently intends to adhere to the quarterly report schedule in the future.)
4. Review the district’s maintenance effort ensuring proper maintenance of school buildings after repair and renovation.
5. Review the district’s school building repair funding plan comprised of local and state bond funds, and other funding sources.

IV. SCOPE OF MEASURE E AND SPECIFIC PROJECTS

On September 22, 2009, The Board of Education voted unanimously to approve a Citizens’ Oversight Committee recommended audit of Measure E expenditures, make payments for contract work that has been in process and hold any new Measure E projects until further notice. The Auditors have been engaged by the District to perform a review of expenditures in the Measure E fund from July 1 through September 30, 2009 and to verify that these expenditures have been in accordance with the purpose that was specified to the registered voters of Beverly Hills. The COC has been informed by the District that this supplemental expenditure report had been completed prior to the date of this report, December 31, 2009. However, the results will not be made public until such time as the attorneys involved in the Strategic Concepts/Karen Christiansen lawsuits have reviewed this report and the expenditures.

In order to address critical health & safety issues, the Board of Education approved at their November 24, 2009 Board Meeting, to proceed with the four repair and replacement projects listed below. These projects will be managed by the Director of Maintenance and Operations, the Interim Director of Facilities and the District’s Architect for the K-8 schools, Dougherty & Dougherty.

- Development of plans, specs and bid documents to replace the existing boilers at Beverly Vista
- Development of plans, specs and bid documents to install handrails at Beverly Vista to facilitate proper student flow and safety
- Development of plans, specs and bid documents to address the sewer ejector at Hawthorne and Horace Mann
- Development of plans, specs and bid documents for the joint BHUSD/City of Beverly Hills technology system upgrade of the local and wide area networks

To date, the only project that has been completed has been the demolition of Building E Annex at Horace Mann.

On January 13, 2009, the final Measure K Citizens’ Oversight Committee report was presented to the Board of Education and the Community. Contrary to this report which stated that the Measure K Program had been completed, the Measure E Citizens’ Oversight Committee has learned that there are two projects that were not completed using Measure K funds but were paid with Measure E money:

- Auditorium renovations, rigging, drapery, dimming, distribution, control and electrical Project at El Rodeo, Hawthorne and Horace Mann.
- Cabling for wireless system

While the bond language in Measure E does not specifically address covering any shortfall of Measure K projects, the expenditures for these types of projects are permissible expenditures under the Measure E bond language.

i. Strategic Concepts, LLC

On August 6, 2008, the Board of Education approved an amendment to a contract with Strategic Concepts, LLC ("Strategic Concepts") dated June 3, 2008 and engaged Strategic Concepts to perform Program and Construction Management services for the Measure E Program.

On August 13, 2009, the District issued the following press release regarding Strategic Concepts

"Beverly Hills Unified School District (District) has determined that due to irregularities in the procedure for formation of the contracts between the District and Strategic Concepts, LLC, the contracts are not valid. Therefore, as of today, Strategic Concepts, LLC, is not working for the District."

The COC has not been privy to any of the non-public details of the circumstances surrounding this termination despite numerous requests to be completely informed.

The District has chosen to utilize Measure E bond proceeds to pay the costs, including legal fees, associated with the Strategic Concepts and Ms. Karen Christiansen litigation, after initially stating to the Committee that Measure E bond proceeds would not be used for this litigation arising out of a contract negotiated, signed and initiated before the vote approving Measure E. The District has informed the Committee that through December 31, 2009 approximately \$185,000 of such litigation costs have been paid out of Measure E funds.

Other than seeing a copy of the publicly available initial complaints filed by BHUSD and Strategic Concepts, the Committee has been rebuffed in any attempts to ascertain the nature of this litigation and the reasons why the District feels that legal costs should be paid out of Measure E proceeds. The District, on the advice of counsel has chosen not to share a legal opinion from their bond counsel that such use of funds is in accordance with the bond language.

In addition, at our December meeting we received a copy of the engagement letter between the District and litigation counsel, Miller, Brown & Dannis, describing in broad terms the nature of their engagement.

ii. Arbitrage

The COC understands that the District is required by law to spend at least 85% of the initial bond sale, approximately \$61.2 million (\$72,044.664.00 x 85%) by February 12, 2012 or pay an IRS penalty.

As previously mentioned the Board of Education has placed a moratorium on the spending of all Measure E Funds, with the exception of a few small projects approved above, and has not finalized the Master Plan.

According to La Tanya Kirk-Carter, Interim Director of Facilities, there are likely to be sufficient seismic and safety projects at the K-8 schools to cover the \$61 million that must be spent by February 12, 2012.

V. DISTRICT PERSONNEL CHANGES

Cheryl Plotkin, Assistant Superintendent Business Operations resigned as of August 31, 2009. To date, a permanent replacement has not been hired. Gary Mortimer, appointed as Interim Chief Business Officer following Ms. Plotkin's departure, completed his contract on December 11, 2009. In addition, Sandy Franke, Director of Business Operations has resigned.

The School Board commissioned an RFQ committee to interview and make recommendations for a new Program Management firm. Pursuant to these recommendations, a Program Manager, New CBO (Chief Business Officer) and Director of Facilities will be interviewed and selected during the spring of 2010.

VI. CITIZENS' OVERSIGHT COMMITTEE COMMENTS

The Committee has expressed concern about the following aspects of the Measure E Program.

i. Transfer of Funds between the Measure E Program and the General Fund

As indicated earlier in this report, \$4.0 million was transferred from the Measure E Fund to the general fund to cover a cash flow shortage. It has been expressed to the Citizens' Oversight Committee by the District that intra District book transfers between different funds (ie. the transfer of \$4.0 million between the Measure E fund and the general fund) is a standard operating practice for School Districts, and actively encouraged by LA County. All Beverly Hills Unified School District funds are held in a single account. All transfers are legally required to be repaid, with interest, by the end of the fiscal year. Also according to District Staff there are a variety of safeguards in place to ensure that the funds are not out of balance at the end of the fiscal year. Therefore, this transfer must be repaid to the Measure E fund by June 30, 2010.

The Citizens' Oversight Committee is of the opinion that under normal conditions, the current, and any future transfers from Measure E to any other fund will be paid back in a timely manner. However, since we are the "watchdog" group overseeing Measure E, it is our job to both inform the public of the usage of the Measure E proceeds, as well as to foresee any possible ramifications of the expenditures of Measure E proceeds. The District has agreed to inform the Citizens' Oversight Committee in a timely manner of any intra or inter District book transfers of Measure E funds.

ii. Role and Responsibility of Citizens' Oversight Committee

In addition to the role and responsibility of the COC as defined in Resolution 2008-2009-014, the Education Code of the State of California (section 15278) authorizes the COC to engage in any of the following activities in furtherance of its purpose. The language within the Education Code is somewhat flexible, and the COC contends that our continuing role should encompass the additional duties as outlined from the Education Code rather than narrower definition as approved by the Beverly Hills Unified School District Board of Education.

1. Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
2. Review efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:
 - a. Mechanisms designed to reduce the costs of professional fees.
 - b. Mechanisms designed to reduce the costs of site preparation.
 - c. Recommendations regarding the joint use of core facilities.
 - d. Mechanisms designed to reduce costs by incorporating efficiencies in school site design.
 - e. Recommendations regarding the use of cost-effective and efficient reusable facility plan.

iii. Master Plan

The Board of Education approved the Draft Facility Master Plan in August, 2008. This document is a general outline of the projects to be funded by Measure E. To date, the Board of Education has not adopted a final master plan to determine the size, scope and nature of the projects to be funded by the Measure E bond proceeds. The COC is concerned that architectural firms have been engaged to perform work and paid over \$4 million to design buildings without a clear vision and plan put forth to the citizens of the community.

iv. Moratorium on Spending Measure E Funds

By placing a moratorium on the progress of the Measure E Program, the COC is concerned that there will be a protracted delay in the completion of the Master Plan and execution of the Measure E program and a lost opportunity to reap any cost advantages during a down turn in the construction marketplace. In addition, any lingering delay could place our projects behind other Schools Districts with DSA (California Division of the State Architect) delaying the projects ever further.

v. Arbitrage

As explained earlier in the report, the District is required by law to spend at least 85% of the initial bond sale, approximately \$61.2 million (\$72,044.664.00 x 85%) by February 12, 2012 or pay an IRS penalty. Given the long lead time for design, implementation and approval of construction documents coupled with the additional time for DSA approval, the COC is concerned that the District will incur arbitrage penalties. Furthermore, the District chose to sell the first tranche of the bonds without a clear plan for implementation placing the District in a quandary between implementing a plan to avoid arbitrage while rushing to approve projects without a clear delineated overall plan for the entire Measure E program.

vi. Strategic Concepts, LLC

The Citizens' Oversight Committee has concerns that whether or not Karen Christiansen and Strategic Concepts prevail in this litigation, it is the belief of the Committee that Measure E funds should not be used for current litigation or to pay any and all settlements, legal fees and costs associated with it.

vii. Assistant Superintendent Business Operations and Support Staff

It is the opinion of this Committee that the District immediately hires the necessary permanent administrative staff in the Business Services Department to effectively monitor the Measure E Program and help ensure that a system of adequate internal controls is in place. Without a sufficient number of trained personnel available to administer this Program, the Citizens' Oversight Committee, the District and the Board of Education will not be able to successfully implement the Measure E program.

viii. Depth of Management at Dougherty and Dougherty as it relates to the Program

To date, the District has paid Dougherty and Dougherty, architects for the K-8 projects and the Alternative Education Building, close to \$2.5 million of Measure E funds. The Committee is concerned regarding the depth of management at this firm. The COC held a meeting at Hawthorne School to discuss possible projects at this location. Because a knowledgeable representative from Dougherty and Dougherty was not available the presentation had to be cancelled.

VII. CONCLUSION

The Oversight of this Committee relies exclusively on the information received from the District, Board of Education and the independent performance and financial audits. Therefore, the scope of our oversight is limited to our reliance on these information sources. This Committee does not have any staff of its own, and relies entirely on the information provided by these sources. Despite this limitation and based on the information the Citizens' Oversight Committee has received from District Staff and others from the Committees inception through December 31, 2009, the Citizens' Oversight Committee believes that, except as noted, the actual expenditures and commitments of Measure E bond funds appear to fall within the parameters of the bond measure, with the possible exception of legal fees as they relate to the Strategic Concepts litigation and were expended and/or committed solely for construction, reconstruction, rehabilitation or replacement of school facilities. This would also include the expenditures for the two Measure K Projects that were completed using Measure E funds.

The current officers and members are as follows:

Les Bronte, Chair
Rudy Cole, First Vice-Chair
Woodrow Clark, Second Vice-Chair
Ana LaDou, Secretary
Steve Hendry
Linda Lewis
Todd Okum
Martin Perlberger
Joe Safier
Julie Steinberg
Shirley Zaragoza