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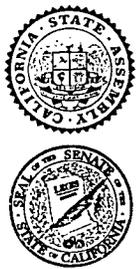
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ABSTRACT

The California Legislature's Joint Legislative Audit Committee investigated several "joint venture" partnerships between school districts and the private sector to develop school district-owned properties to determine the feasibility of such innovative school construction projects. This report presents findings from seven of these public/private joint ventures along with the activities of the consultants, attorneys, and district staff who promoted, planned, and attempted to execute them. The report reveals that in all seven cases, school districts encountered significant problems and complications that appear to far outweigh the benefits that these projects' proponents promised to the school districts. Evidence suggests that the Los Angeles Unified School District joint venture operation in particular, being largely unsupervised and virtually unaccountable, engaged in irresponsible, and possibly illegal, behavior by consistently misrepresenting basic facts in order to gamble public funds on highly speculative projects. The report indicates that these abuses have misdirected and squandered millions of taxpayers dollars intended for instructional programs and the rebuilding of the public education infrastructure. An appendix presents a timeline on the Brea Olinda High School and Belmont Learning Complex joint venture projects. (GR)

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Prepared by:  
JOINT LEGISLATIVE AUDIT COMMITTEE  
ASSEMBLYMAN SCOTT WILDMAN, CHAIR

# PARTNERSHIPS BETWEEN PUBLIC SCHOOLS AND PRIVATE DEVELOPERS

## *An Investigative Report*

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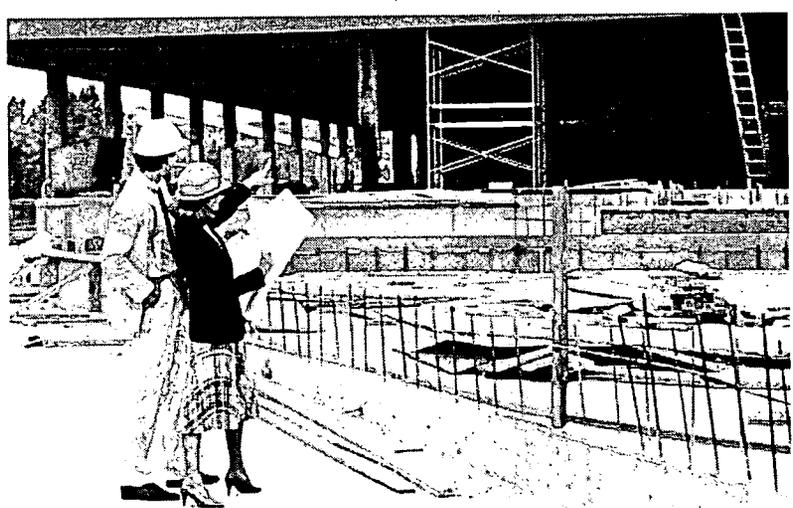
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Joint Legislative Audit Committee  
DECEMBER 1998

EF 005 599

# **Partnerships Between Public Schools and Private Developers**

**A Report of the Joint Legislative Audit Committee**

**Chairman, Assemblyman Scott Wildman**

**December 1, 1998**

**Prepared by Maria Armoudian, JLAC Project Director**

**Special Thanks to JLAC Staff**

**Artineh Havan, Jennifer Pierce, Alex Sardar**

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## EXECUTIVE SUMMARY

In recent years, school districts throughout California have faced a scarcity of the resources necessary to effectively deliver quality educational programs to the students that they serve. In order to generate discretionary revenues and defray locally funded school construction costs, some school districts have engaged in “joint venture” partnerships with the private sector to develop school district-owned properties.

The Joint Legislative Audit Committee (JLAC) staff examined and evaluated a number of joint venture development projects for the purpose of gauging both the benefits and the costs of utilizing this innovative school construction procedure. In each case, the school district either directly leased public property to development companies or attempted to establish mixed-use developments on public school land by sharing initial costs and agreeing to share potential profits with the developers.

Although development projects of this variety are not widely utilized by California school districts, at least two districts – the Brea Olinda Unified School District and the Los Angeles Unified School District (LAUSD) -- have attempted these types of development projects. Both districts relied on outside consultants and attorneys to advise and direct their joint venture partnership efforts. While the LAUSD has attempted a number of joint venture projects as a means of generating revenues for the district over the course of approximately twelve years, it has only completed one such project to date.

The JLAC examined seven of these public/private joint venture projects along with the activities of the consultants, attorneys, and district staff who promoted, planned, and attempted to execute them.

## Findings:

The JLAC found that in all seven case studies, school districts encountered significant problems and complications that appear to have far outweighed the benefits that the projects' proponents promised to the school districts. We found that:

- ◆ Districts rarely realized any return on their investment and even less frequently realized any additional revenues from the projects.
- ◆ Districts were left with new financial and legal obligations requiring increased expenditures and significant staff attention.
- ◆ One school district, the LAUSD, created an entire department, the Office of Planning and Development (OPD), just to address the complexities of joint venture arrangements and other "alternative" development projects. Salaries alone for the department exceeded a half million dollars annually. (The OPD was recently restructured).
- ◆ In addition to the District's regular expenditures, the LAUSD spent millions of additional public dollars on outside consultants and attorneys. While the reasons for these expenditures are often unclear and poorly documented, the District contends that the OPD's lack of expertise in development projects required these expenditures.
- ◆ It appears that some of the outside consultants and attorneys retained by the districts may have been plagued by conflicts of interest, which may violate

existing law, and which cast a shadow of suspicion on many of the districts' decisions.

- ◆ In one such LAUSD joint venture effort, the Ambassador Hotel Project, twelve years of time and energy and millions of public dollars have been expended, with the financial and legal controversies that developed yet to be resolved.
- ◆ Funds that were allocated for priority instructional programs and facility improvements were instead spent on speculative joint venture projects. For example, the LAUSD redirected over \$30 million allotted by the State Allocation Board (SAB) for air conditioning of existing district schools toward a risky joint venture land purchase (Belmont Learning Complex). The district also risked \$50 million from the district's worker's compensation fund and encumbered several of its real properties as collateral in pursuit of the Ambassador Hotel project.
- ◆ Both the Brea Olinda Unified School District and LAUSD risked the integrity of their general funds as collateral for Certificates of Participation (COPs) that were issued for speculative projects.
- ◆ In a possible attempt to cover mistakes and/or potential improprieties, one school district either destroyed, disposed of or lost public documents that were crucial for monitoring the progress of these projects and for analyzing the viability of joint venture strategies.

- ◆ Due in large part to an inordinate focus on joint ventures, one of the districts under study, the LAUSD, has failed to build a single complete full-service high school since 1971. It has built only one middle school since that date, Jefferson Middle School, a school which itself is now mired in controversy (see JLAC Report, Toxic School Sites: Weaknesses in the Site Acquisition Process, August 1998).
- ◆ In the only completed LAUSD joint venture, the Grand Avenue Garage, a project called "...the best agreement we have on anything..." by LAUSD former OPD head, the district has faced difficulties in collecting the guaranteed lease payments and may end up in litigation with the defaulting developer. Moreover, the building, a parking garage on 17<sup>th</sup> and Grand Avenue in downtown Los Angeles is currently being assessed for potential structural deficiencies.
- ◆ It appears that LAUSD staff, consultants and counsel may have engaged in a pattern of misrepresentation in order to pursue joint ventures. In one instance, evidence suggests that the district exaggerated the extent of earthquake damage to its Business Services Center (BSC) in order to justify moving administrative functions into expensive leased space in the IBM Towers and to facilitate redevelopment of the original BSC site.
- ◆ District staff and consultants, particularly those representing the LAUSD, appear to have systematically circumvented the traditional competitive

bidding process and have attempted to change state law to make such activities permissible.

- ◆ The inordinate amount of attention given to joint venture projects has clearly taken time, resources, and focus away from the educational needs of students in the LAUSD.

# INTRODUCTION

From the mid-1980s to date, the Los Angeles Unified School District (LAUSD) has increasingly pursued highly speculative, profit generating development projects, using the public purse and the public trust. Its activities have largely entailed purchasing land or using district-owned land for private interest uses such as office space, housing, parking and retail development. Some of these land uses have included a school as part of the overall development scheme, while others have not.

Many critics have opposed the school district's focus on non-educational activities and others have called the joint venture plans absurd, questioning both the appropriateness and feasibility of mixing school sites with business enterprises. For example, one local developer, Wayne Ratkovich, President of the Ratkovich Company, wrote in an April 2, 1990 letter to Barbara Res, Executive Vice President for the Trump Organization regarding the district's development plans for the Ambassador Hotel site:

*"I see [no] rational argument to suggest that a high school ... could be part of an urban, mixed-use development. There is no compatibility between the school and the non-school uses, and one could expect severe and fatal marketing limitations on the non-school uses... Given the dire needs of our educational institutions and the generally oversupplied character of our real estate markets, it seems to be a good time for LAUSD to concentrate its resources on the education process, not real estate development."*

**It has become clear that public funds, intended for the purpose of educating California's children and constructing schools, are being gambled on high-risk joint venture projects - projects which have consistently failed to produce the benefits promised to the school districts involved.**

## Background

One of the first major school district joint venture projects in California involved the Brea Olinda Unified School District and the City of Brea in Orange County.

During the late 1970s, under the leadership of Wayne Wedin, the Brea City Manager and Director of Redevelopment, the city embarked on an aggressive redevelopment effort. One of the designated redevelopment areas was the Brea Olinda High School site. A local developer, Robert Lowe, was interested in the project.

Wedin and Lowe approached the school district with plans to develop the area. Lowe proposed developing the existing high school site into a commercial marketplace and agreed to help the district relocate the existing school using an unconventional and complicated development strategy. Under the terms of the deal, Lowe would purchase a portion of the existing school site, lease another portion from the district, and develop the property commercially. He would then share a portion of the profits generated from the commercial development with the school district. The school district's share would "pass through" the local Community Redevelopment Agency (CRA).

Despite a series of obstacles, the district was eventually able to complete a new high school on a different site in 1989. Unfortunately, the project faced considerable cost overruns, a significant reduction in the originally projected scope of the school facility, risk to the district's general fund and a great deal of local controversy.

Nonetheless, the project was heralded as a success, and Wedin gained a reputation as a creative and effective asset management consultant. In fact, he was called the "*father of asset management*" by former LAUSD consultant and architect Rush Hill.

Over the past twelve years, Wedin has been paid over a million dollars in consulting fees by the LAUSD in pursuit of experimental public/private development projects.

In addition to working on the Brea Olinda High School project, Wedin has performed consulting work for other school districts as well. On several occasions, he proposed that school districts consider joint venture projects similar to the Brea-Olinda project. This was the case at the Modesto City School District (MCSD), where Deborah Bailey, the MCSD's Director of Planning and Research brought Wedin in to help negotiate the district's pass-through agreements with the local redevelopment agency. Shortly thereafter, MCSD became involved in a multi-use project with Stanislaus County and the City of Modesto.

The school district eventually withdrew from the project due to the concerns articulated by Superintendent James Enochs, who told JLAC staff,

*"There is no way I can put this district in that kind of risk. There was not sufficient evidence that redevelopment would generate the kind of money that we needed to participate. It was so convoluted, and I couldn't, in good conscience, put us into that situation using our general fund money to cover our losses. They're [joint ventures] all a mess."*

The situation was convoluted. Bailey explained:

*"Initially, the expectation was to build a joint education and administrative building for three educational agencies. Then the community college bailed. Then it was the county, Modesto City Schools and the City of Modesto . . . Wedin expanded the scope to include retail components. The developer also went through changes in partnerships."*

But while Modesto was unwilling to risk public dollars on such ventures, the LAUSD plunged into a number of joint venture projects despite the risks. *"It doesn't surprise me. LAUSD always thinks Sacramento will bail them out,"* Enochs said.

During one telephone interview, Dominic Shambra, Director of the LAUSD Office of Planning and Development (OPD), confirmed the district's attitude toward risk when he told JLAC staff,

**"... my job was to take risks."**

Shambra, in consultation with Wayne Wedin and O'Melveny & Myers attorney David Cartwright, appears to have put public money at risk in pursuit of speculative public/private joint ventures. Most of the projects failed, though proponents such as Cartwright, contend that LAUSD's first joint venture development project, the Grand Avenue Garage, was at least nominally successful. Other observers, including David Tokofsky, a member of the LAUSD Board of Education, have called even the Grand Avenue Garage Project a failure.

The 17<sup>th</sup> and Grand Avenue Peripheral Parking Project (Grand Avenue Garage), involved a parcel of district-owned property in downtown Los Angeles that was leased to Maguire Thomas Partners to build a parking facility, child care center, office space and a retail center. The project was intended to generate *"...substantial revenue from office*

*space rentals...*” for the school district and to provide additional LAUSD office and classroom space, according to a District press release.<sup>1</sup>

Eventually, however, every feature other than the parking garage was eliminated from the project. The garage was completed at the end of 1991 and has only generated a total of \$736,623 in revenues for the district since its inception, considerably less than was originally projected.

Meanwhile, the district faces potential litigation, as the developer has partially defaulted on two years of lease payments to the district, and questions about the structural integrity of the building have recently surfaced.

The Grand Avenue Garage may have been the initial impetus for the creation of a new department at the LAUSD. During the project’s early stages, Shambra and Wedin became acquainted, and Rush Hill, the architect who introduced Wedin to the LAUSD was “*shoved to the side*,” Hill told the JLAC. At that time, “*By [Byron Kimball, former LAUSD Facilities Director] introduced us to Dom [Shambra] because he was going to coordinate [the ventures]. Dom and Wayne were like two peas in a pod and we [Rush Hill] were knocked out by Dom,*” added Hill.

It appears that Wedin advised Shambra to initiate a district reorganization plan that would create an entire department under Shambra’s direction - the OPD - a department that was dedicated to joint ventures and alternative financing mechanisms.<sup>2</sup>

Wedin explained in an April 20, 1987 memo to Shambra:

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<sup>1</sup> LAUSD press release, Sept. 20, 1990

<sup>2</sup> April 20, 1987 memo from Wedin to Shambra

*“There has to be greater emphasis upon how the District organization will be changed by a large construction effort and how the real estate acquisition process can be conducted more positively than in the past ... Obviously, more attention will have to be paid to the integration of all District operations into a smoothly running property acquisition and development effort.”*

Three years later, a new department was born, first known as the Bond and Asset Management Department and later called the Office of Planning and Development (OPD). Shambra explained to JLAC investigators that although he had no relevant background or training, the department was placed under his direction. (Shambra admittedly had no experience with real estate transactions, law, urban planning, land use planning or demographics. His training was in elementary education and elementary school administration).<sup>3</sup> Salaries at OPD exceeded a half million dollars each year, according to LAUSD’s Chief Administrative Officer David Koch.<sup>4</sup>

Moreover, Shambra kept no thorough departmental records. When asked approximately how much revenue alternative source financing arrangements had generated for the district under his tenure, Shambra said under oath, *“I couldn’t tell you. I don’t know. Once I do the agreements, the money flows, and I don’t really pay much attention to it.”* He further stated that he had never seen any report or analysis.<sup>5</sup>

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<sup>3</sup> Dom Shambra testimony, February 20, 1997, Ambassador Associates vs. LAUSD

<sup>4</sup> JLAC telephone interview with David Koch, October 14, 1998

<sup>5</sup> February 20, 1997 Shambra deposition

Shambra and Wedin initiated at least four other joint venture projects during their tenure at the LAUSD – the Van Nuys Medical Magnet, the Brentwood Re-Use Project (a science magnet school), the Business Services Center/Cornfield project and the Ambassador Hotel High School Project -- that have failed to materialize to date. The District has, in fact, been working on the Ambassador Project since 1986 and has been embroiled in litigation over the land acquisition phase of the project for more than eight years. The outcome is still pending. And though the district may eventually obtain the property, it will likely have to pay all legal fees plus damages to the current owners, Ambassador Associates.

On the heels of this litany of failures, the LAUSD began a sixth, complex joint venture project, the Belmont Learning Complex (BLC), which is now being built as a school only project, while many of its initially proposed additional components – including retail, low-income housing and a joint use city/school district gymnasium -- remain uncertain.

Although the BLC project has been criticized by observers across the board – including developers, two independent oversight committees, LAUSD Board of Education members, community members and law makers – LAUSD staff and consultants have apparently disregarded these concerns and continued to guide the project toward completion even after the project's main proponent, Dominic Shambra, retired in early 1998.

Clearly, Shambra's supervisors never intervened to provide direct oversight or even to seriously question the BLC project. In part, this may be due to Shambra's aggressive approach of "*...browbeating people out of supervising him,*" according to

former OPD employee Porter Hall. Affirming this contention, Shambra himself told a JLAC investigator of his demeanor in dealing with his supervisors,

*"... I kicked his [former Superintendent Sid Thompson] ass in closed sessions. He was crapping in his pants. The new one [current Superintendent Ruben Zacarias] is crapping in his pants too."*<sup>6</sup>

Today the district has already agreed to pay to the BLC development team, Temple Beaudry Partners (TBP), a number of fees that appear to be without justification and which are normally associated only with complex development projects despite the elimination of many of the original project's components.

Additionally, according to evidence reviewed by JLAC staff, the BLC Project has been plagued by unaccounted for costs and by a lack of quantifiable work product from the numerous consultants and attorneys who have been retained for the project. Much like the other LAUSD joint venture projects that were reviewed by the JLAC, contract employees were regularly retained at a significant cost to the district for the BLC Project and worked on assignments that were ill-defined and which produced few if any measurable results and virtually no identifiable benefits for the district.

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<sup>6</sup> JLAC telephone interview with Shambra, August 18, 1998

## **JLAC Recommendations:**

The JLAC recommends the following:

1. Stricter guidelines and oversight in order to protect public funds from being squandered on high-risk ventures. The Office of Public School Construction (OPSC) should strengthen procedures and regulations to restrict local districts from entering into high-risk ventures using public funds.
2. Hold school districts accountable to State Law by withholding State funding from school districts that do not follow State guidelines.
3. Enforce State Laws that prohibit public officials, including consultants, from participating in public projects where conflicts of interest are present.
4. Require public approval for high-risk projects, such as public/private joint ventures, that utilize public money.
5. Clarify the process for the use of eminent domain.
6. Require complete project approval from the state prior to allocating any public funds.
7. Investigate the circumstances surrounding the loss or destruction of public documents at the LAUSD.
8. Institute effective “Whistle Blower” protections.
9. Investigate potential conflicts of interest, and allegations of fraud and obstruction of justice within the LAUSD.

# **JOINT VENTURE PROJECTS: Case Studies**

## **Brea Olinda High School**

In the 1970s, while Wayne Wedin was serving as both Brea City Manager and Director of the Brea Community Redevelopment Agency (BCRA), the city began an aggressive redevelopment effort. One area designated for redevelopment was located directly across the street from Brea's existing high school. That site later became the site of the Brea Mall.

In November 1976, one year prior to the Mall's opening, a portion of the existing high school site was also designated for redevelopment.

The following year a local development company, Lowe Development, proposed the construction of a new high school at a different location and indicated a desire to facilitate commercial development of the existing high school property. However, the Brea Olinda Unified School District (BUSD) was interested in building an elementary school, not a high school, and rejected Lowe's development offer. Still, development interest in the high school site persisted.

By the 1980s, due to the commercial success of the Brea Mall, the value of the high school property had appreciated significantly, making development of the property more attractive to the district. Discussions of building a new high school resurfaced and Lowe Development again approached the district with a proposal to commercially develop the old high school site.

The city also appeared eager to participate in developing the area as and struck a complicated agreement with the school district whereby the district would allow development of the existing high school property and proceed with building a new high school at another location. The plan called for the city to provide loans to the district for developing the existing school site into a commercial marketplace and city help to fund site acquisition and construction of a new high school. Additionally, the city agreed to allow tax dollars from the redevelopment project to “pass through” to the district, further supplementing district revenues from the sale and lease of its old property and helping to pay for the construction of a new facility. The developer was to guarantee timely repayment of Certificates of Participation (COPs) that were to be issued by the district to finance the project.

With the exception of school board member Dena Edmonson, the Brea Olinda School Board accepted the development proposal. Edmonson questioned both the need for a new high school and the plan, particularly the financing and construction aspects of the proposal. Other board members expressed misgivings about many of the joint venture’s elements but still approved each of the project’s phases.

### **The Site for the New High School**

The district considered 13 different sites for the new high school and finally purchased a 50-acre parcel from Union Oil at \$30,000 an acre. Because of the topography, the site required extensive and costly grading. And although the grading requirements were known from the outset, the site preparation price alone ballooned from

\$3.5 million to \$11 million, according to one newspaper account, making it *“the most expensive site [considered].”*<sup>7</sup>

The school site was problematic for other reasons as well. It was located less than a quarter mile from a major earthquake fault, adjacent to an active natural gas-processing plant (operational until 1997) and it contained a number of old oil wells with identified areas of gas and oil seepage.

### **Earthquake Dangers**

Although one seismic safety study reported that the threat of major earthquake damage was small, other environmental experts still considered the site dangerous.

According to Brea based Environmental Consultant Walton Wright,

*“the fault zone was right there. You’re not supposed to build within a quarter mile of a fault ... Looking at the bedding and hills and the steep drop-off, I thought that’s not the place to build a school. But no one was listening.”*

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<sup>7</sup> Interview with former Brea council member, p. 1, paragraph 4

## Methane Gas Processing Plant

The California Department of Conservation was concerned about the threat of methane gas migration and the potential for a resultant fire or explosion from a neighboring methane gas-processing plant. The draft Environmental Impact Report (EIR) reported concern about -

*“...the accessibility of the plant to students, as well as the use of the road adjacent to the school by trucks carrying petroleum products, including the highly explosive propane.”*

The EIR called the plant by itself a “*safe neighbor*” but noted concerns about possible accidents involving propane trucks and high school drivers.

## Oil Wells and Seepage

As part of the district’s environmental site remediation, the district was required to abandon (close down) two oil wells and to commission a study on the threat of methane gas migration into any newly constructed school building. The proposed mitigation measures did not satisfy the California Department of Conservation’s Division of Oil and Gas. In a letter to Project Manager Leonard MacKain, the agency stated,

*"The Department of Conservation's Division of Oil and Gas has reviewed the Draft EIR for the Brea-Olinda High School project and has determined that our comments . . . have been largely ignored."*<sup>8</sup>

### **Developer Selection - Original Brea Olinda High School Site**

Of the eight developers considered for the old high school site development, the school district selected Lowe Development, according to former Brea Superintendent Ed Seal.<sup>9</sup> The company had recently completed another project in which district land was sold in order to pay for the construction of a new elementary school.<sup>10</sup> However, the high school project was different. Instead of selling the district property on the open market, Lowe proposed that part of the old property be sold to him and that he would then lease the remainder of the property directly from the school district.

The plan ostensibly would allow the district to capture revenue from four distinct sources – the sale of the property, the ground lease, a percentage of revenues from the use of the old site, and sales tax dollars that would “pass-through” the Brea Community Redevelopment Agency. If the initial arrangement fell apart, the district would be allowed to keep a portion of the land in question and retain the existing high school.

The parties amended the agreement several times -- with one change lowering Lowe's annual payments to the district from \$2.1 million to \$1.8 million.<sup>11</sup>

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<sup>8</sup> Letter from Department of Conservation to Leonard MacKain, October 25, 1985, p. 1, paragraph 1

<sup>9</sup> JLAC Interview with Ed Seal, November 17, 1997

<sup>10</sup> Amendment No. 2 to Owner Participation Agreement No. 2 between Brea-Olinda Unified School District and various parties.

<sup>11</sup> Dean Edmonson's Midterm Report, p. 2, paragraph 2

At least one negotiator, former Brea Olinda School Board President Dan Turner, was unhappy with the deal. Turner, who brought experience as a Certified Public Accountant (CPA) and a government financial advisor to the Board of Education, told JLAC staff,

*"When we started [negotiating], we thought it was pretty set, but almost immediately it started deteriorating ... We thought we knew how much money they would generate and how to pay for the school. We were not only going to build a new school; we were going to do a lot of school renovations throughout the district. We were talking of (projected) revenues of maybe \$50 million. It wasn't long before the figures Lowe had were below those of the other developers."*<sup>12</sup>

Turner recommended that the district terminate exclusive negotiations with Lowe, but the majority of board members favored continuing the project.

When the final proposal was forwarded to the board, Turner's fears had still not been allayed. Though he knew the district staff recommendation enjoyed the support of the board majority, he told Wedin and Seal that he was going to vote against the agreement with Lowe. Turner recalled that, *"Seal and Wedin were calling me, saying that they had to have the school board president onboard."*<sup>13</sup> They finally went back to Lowe and extracted some major concessions, said Turner.<sup>14</sup>

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<sup>12</sup> JLAC interview with Dan Turner, p. 2, paragraph 10, December 12, 1996

<sup>13</sup> Dan Turner Interview, p. 2, paragraph 5

<sup>14</sup> Dan Turner Interview,

Turner then voted to approve the deal even though he ultimately believed that the district lost out.

*“Originally, there was to be \$50 million to build a new high school and refurbish other schools. The schools still haven’t been refurbished. Now the district is considering a bond issue to pay for it.”<sup>15</sup>*

In the end, Dena Edmonson was the only member of the school board who voted against the agreement with Lowe.

### **Financing the Project**

District officials expected that the redevelopment funds generated from the old high school property would eventually cover the costs of the new facility, but they still needed seed money to begin construction of the new high school. Based on an estimated construction cost of about \$25 million, the district issued \$22.6 million in Certificates of Participation (COPs) with the expectation that the city would provide the remaining \$2.4 million to complete the project.

*“While the district had hoped to secure the COPs with both Lowe’s guarantee and projections of anticipated revenues from the redevelopment of the old school site, the district couldn’t find a company to back the bonds ... On the East Coast they told us this is too complicated; we don’t understand it. One guy from one of*

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<sup>15</sup> Dan Turner Interview, p. 4, paragraph 3

*the most prestigious firms said, 'We haven't lost any money on anything we've insured, and we don't intend to lose anything on this one,'*" stated Seal.<sup>16</sup>

Consequently, the district staff asked the school board for permission to use the district's general fund to guarantee the COPs. Superintendent Seal wasn't worried about using the general fund to guarantee the COPs. *"I saw the numbers [for projected revenues]. . . We had eight different safeguards before the general fund would be at risk,"* said Seal.<sup>17</sup>

Mark Holmstedt, the district's chief investment banker on the high school project, agreed. Putting the general fund on the line was more of a formality. *"How do you go to a debt-holder and ask them to take a risk you won't take?"* said Holmstedt.<sup>18</sup>

Board member Edmonson, however, opposed the idea.

*"That was an area that the entire board had said that in the past was off-limits ... It was still off-limits to me. But when it came to a vote, the board voted for it. My bottom line here is that the school district's business is to educate, not to take business risks that have the potential for bankrupting the district."*<sup>19</sup>

The district subsequently used its general fund as collateral and issued COPs, which were guaranteed by New England Mutual Life. With a 'AAA' bond rating, it seemed that the district had secured the funds to complete the new school. Unfortunately,

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<sup>16</sup> JLAC interview with Ed Seal , p.3, paragraph 8, November 17, 1987

<sup>17</sup> Ed Seal Interview, p.3, paragraph 10

<sup>18</sup> Mark Holmstedt Interview, p. 2, paragraph 6, February 12, 1998

<sup>19</sup> Dena Edmonson Interview, p. 3, paragraph 5, February 4, 1998

the amount of debt to be issued was based on initial estimated costs for the project, costs that escalated significantly during construction.

Meanwhile, the anticipated redevelopment of the old high school property encountered its own difficulties and delays. First, no anchor tenant could be found and consequently no ground lease payments were immediately forthcoming to the district. A second attempt to locate an anchor tenant was also unsuccessful. In the end, Travelers Insurance agreed to locate on the property and other office and retail tenants followed.<sup>20</sup>

### **Construction Management**

Instead of the traditional method of school construction, design-bid-build, the school district chose to use a method of project delivery for the construction of the new high school known as Construction Management (CM). When using CM, a private entity generally acts as the owner's representative and manages both the design and construction of the given project (See Joint Legislative Audit Committee Post Hearing Briefing, Construction Management, issued July 1998).

The CM approach purported to provide the advantage of allowing greater district control of the project because the CM firm would act as an advocate for the district's interests throughout the construction process. In this case, CM promised cost savings and a guaranteed maximum price (GMP). In reality, however, few of the promised advantages ever materialized.

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<sup>20</sup> Board of Education Study Session Notes, 3/11/85, p.1

In July 1984, CRS Serrine, a national CM firm with school building experience, made an impressive presentation which incorporated cost savings strategies and a Guaranteed Maximum Price (GMP) to the Brea-Olinda Board of Education. But according to a March 20, 1986 statement by Edmonson, by the time the final proposal was submitted, the terms of the original proposal had changed drastically. Neither the cost savings strategies nor a GMP remained components of the project. In fact, Edmonson wrote in a letter to her constituents that while:

*"... CRS claimed that they could give a guaranteed price that would reflect an eight percent savings in anticipated construction costs . . . we have learned that legally, CRS cannot guarantee a price unless they bid for the project, which they do not desire to do. Also CRS' own cost estimates reflect no savings in construction costs."*<sup>21</sup>

Eventually, Edmonson proposed that the district competitively bid for a general contractor to build the school in order to regain district control and to ensure a higher level of accountability over the project. According to Edmonson, the district's legal counsel, Cox, Castle and Nicholson, were in agreement with her position. But once again, she was in the minority. *"Wedin, Seal and board member Lynn Daucher had strongly pushed for CM and they prevailed,"* said Edmonson.<sup>22</sup>

CRS Serrine won the award to both design the school and manage the construction. School board member Lynn Daucher justified the use of CM by citing the time pressures created by the complicated redevelopment deal stating, *"We didn't have*

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<sup>21</sup> Dena Edmonson Midterm Report, 5/1/86, p. 2, paragraph 4

*the luxury of putting the job out to competitive bid, . . . So we chose to go the construction-management fast-track route.*"<sup>23</sup>

Although CRS drastically underestimated the cost of the project, Seal believes the company represented the district's interests well.<sup>24</sup>

*"We didn't go out to bid and get exact quotes of what it would cost to buy everything we wanted ... We were going on estimates. We went out to bid and found halfway through the project that [\$26.5 million] wouldn't cover the costs. We wish we would have had them bid it out before they [gave us the estimate]. We would have known that instead of [the] \$21 million, [we would have] to have gone to the bond market for more."*<sup>25 26</sup>

### **Cost Overruns, Cutbacks, Delays**

The first estimate to complete the new high school project was \$20 million. In the end, the high school had a \$36 million price tag with fewer facilities than initially proposed.

According to Daucher, a second estimate, made by a consultant firm, raised the estimate to \$22 million.<sup>27</sup> Daucher later called the firm "completely inept" because it failed to account for factors like the hillside location.<sup>28</sup>

By the time negotiations were concluding with CRS in 1986, the firm predicted a \$23.5 million "discounted price" tag. CRS Vice President Sy Exter even assured district

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<sup>22</sup> Dena Edmonson Interview, p. 4, paragraph 8

<sup>23</sup> Lynn Daucher Interview, p. 1, paragraph 7, November 19, 1997

<sup>24</sup> Ed Seal Interview, p. 1, paragraph 4

<sup>25</sup> Ed Seal Interview, p.4, paragraph 7

<sup>26</sup> *ibid*, p.4, paragraph 4

<sup>27</sup> Lynn Daucher Interview, p. 1, paragraph 5

<sup>28</sup> *ibid*

officials that risk was minimal because the parties would all be working together, according to a memo written by Project Manager Leonard MacKain. The logic was that if the project came in over budget, a change of scope and subsequent redesign could be accomplished. But a second MacKain memo insisted that “...*detailed preparation and bid packs virtually eliminated*” the possibility of the project coming in over budget.

A few months later, cost reductions began. The school lockers were eliminated. The auditorium’s size was reduced. The swimming pool was downsized. The gym’s air conditioning was replaced by air blowers. (Other reductions may have also been made, but the district did not provide a complete list).

Material costs were scaled back through “*value engineering*” and the plans and specifications were modified to meet a 30-year rather than the original 40-year standard, according to Seal.<sup>29</sup> According to one newspaper account, the design changes amounted to a \$7.5 million reduction in the scope of the facilities.

Despite the cuts, the price tag still reached \$36 million, mostly due to site grading problems and costs incurred in extending a road to the school.

The completion date was also delayed by two years. Originally projected to open in the fall of 1987, the school opened in the fall of 1989.

### **Financing the Cost Overruns**

Due to the cost overruns, the school district returned to the bond market to issue more public debt, again using the district’s general fund as collateral. This time, an

additional \$18 million in COPs were issued.<sup>30</sup> The subordinate bonds received a “BBB” rating, which generally indicates less confidence in the repayment ability of the issuing agency.<sup>31</sup>

The second set of bonds contained fewer safeguards than the first set for the district’s general fund.<sup>32</sup> There were concerns that the district would encounter a debt payment shortfall around the year 2004, according to Seal. Referring to a controversial \$3 million redevelopment agency loan to the district, Seal stated,

*“We had the chance of being short in making our debt services, so we talked to the city, and they determined that they would loan us a sufficient amount in case we were short.”<sup>33</sup>*

#### **Revenue Stream from the Old School Site: Changing Forecasts**

In 1991, revenue projections of income to the district from the old school site commercial development project decreased, leading to a lowering of the bond ratings. The senior bonds sunk from “AAA” to “BBB+,” while the subordinate bonds fell from “BBB” to “BBB-.” A March 22, 1991 article in the PR Newswire noted that:

*“...projected cash flows indicate a \$3.8 million cumulative project revenue shortfall toward the end of the maturity schedule, . . . [reflecting] the likelihood that project revenue shortfalls will require the district to use general fund resources to meet lease rental payments.”<sup>34</sup>*

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<sup>29</sup> Ed Seal Interview, p. 5, paragraph 1

<sup>30</sup> Certificates of Participation New Issue Statement, 1/1/89, p. 1

<sup>31</sup> Certificates of Participation New Issue Statement, 1/1/89, p. 3

<sup>32</sup> Ed Seal Interview, p. 3, paragraph 11

<sup>33</sup> Ed Seal Interview, p. 4, paragraph 9

<sup>34</sup> PR Newswire, 3/22/91

By 1994, the bond ratings were increased as the economic outlook for the district improved but anticipated revenues were still far below original projections. Early estimates projected that the commercial development project would generate well over \$100 million during the expected 30-year period of bond repayment.<sup>35</sup> By 1989, projections had dropped to \$95.8 million.<sup>36</sup> Five years later, they had fallen even lower -- to between \$75.8 million and \$79.7 million.<sup>37</sup>

The latter drop reflected the delays and changes in the joint development project as well as California's economic downturn, which hit particularly hard in Orange County. Seal stated,

*"Our developer had to renegotiate many of the contracts with tenants or they would have left . . . He had to offer \$1.75 instead of \$2.50 a square foot. That's why our revenue went down."*<sup>38</sup>

Also, a portion of the old high school property remained undeveloped, thus producing no lease revenue or tax increment for the district. At this time, the District still has not made current revenue projections available to the JLAC.

The total debt service for the first set of bonds stands at \$51.1 million, according to 1994 refunding documents.<sup>39</sup> The cost overruns and the need to issue a second set of

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<sup>35</sup> Executive Summary, New High School Project, 9/17/85, p. 10

<sup>36</sup> Certificates of Participation New Issue Statement, 1/1/89, p.4

<sup>37</sup> Associated Realty Advisors Letter, 3/1/94, pp. 3-4

<sup>38</sup> Ed Seal Interview, p. 4, paragraph 2

<sup>39</sup> Certificates of Participation Refunding Statement, 8/1/94, p. 37

bonds will cost an additional \$41.7 million in debt service.<sup>40</sup> When considering the debt service, the difference between the developer's early projections of district revenues that would be generated by the commercial project, and actual district revenues realized from the project, the district will receive between \$56 and \$61 million less than was initially projected.

There also remains a debate over the amount of public funds actually spent for the project. While no direct state moneys were used to finance the project, and no local tax increase was levied, the City of Brea contributed significantly to the school. According to Seal, the city initially put \$5 million into the project.<sup>41</sup> This was followed by a \$3 million redevelopment agency loan. Some city officials also believe that the millions in redevelopment money that is going to the District is properly considered taxpayer money.

Nonetheless, despite the cost overruns on the new high school and the decrease in anticipated revenues from the old high school redevelopment project, most district officials consider the venture an unqualified success.

### **Confusion About the Consultant's Loyalty**

In the Brea High School project's early stages, Wayne Wedin was providing consulting services to both the City of Brea and the Brea Olinda Unified School District while receiving a commission on project financing dollars committed to a development project that simultaneously involved both public entities.

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<sup>40</sup> Certificates of Participation Refunding Statement, 8/1/94, p. 37

<sup>41</sup> Ed Seal Interview, p. 4

Until 1981, Wedin was Brea's longtime City Manager and the Executive Director of the Brea Community Redevelopment Agency (BCRA). In January 1981, he left his full-time positions but continued to work for these jurisdictions as a consultant through his private business, Wedin Enterprises. This arrangement allowed him to pursue his private business interests while ostensibly serving the public interest.

Wedin was still under contract with the City of Brea when he was retained by the Brea Olinda Unified School District. And because the school district owned property in areas designated for redevelopment, Wedin's duties as a district consultant required him to deal directly with the city, for which he was Chief Executive Officer, and the BCRA, which he also headed. Complicating matters further, Wedin's contract with the district stipulated that he would be paid a percentage of the funds he was able to procure - including redevelopment funds.<sup>42</sup>

When considering retaining Wedin as a consultant, school board Vice President Garrett Dittmar wrote to President John Rosell in June 1982:

*"I would, from a legal point of view, ask if it is permissible to assign responsibility to an individual who is, in fact, responsible to two separate public entities. Also, if, in fact, it is legal, would we then be operating as trustees in the literal and philosophical sense when we use the services of a consultant/employee who has responsibility and allegiance to two separate constitutional and legal entities?"<sup>43</sup>*

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<sup>42</sup> Wayne Wedin's Agreement for Consulting Services (undated), pp. 2, 9-14

<sup>43</sup> Letter from Garrett Dittmar to John Rosell, 6/18/82, p. 1, paragraph 8

The responding legal opinion obtained by the board stated that Wedin's relationship with the city, not the school district, would constitute the potential conflict.<sup>44</sup>

Wedin was retained by the school district soon thereafter.

Citing the potential conflict-of interest, Brea City Attorney Jim Markman sent a memo to Wedin stating that he could not continue to work on three of the four projects for which he had been hired by the school district. All three potentially involved raising funds from the redevelopment agency. Markman wrote,

*"Please be advised that it is my firm opinion that you cannot engage in Projects 1, 2, or 3A while employed to perform services for the Brea Redevelopment Agency or the City of Brea as well as the School District . . . Your contract [with the district] makes it clear that you would have a percentage financial interest in having the City and/or Agency advance or transfer funds to the School District under Projects 1, 2 and 3A. This renders you incapable of advising the City and Agency on those matters due to your financial interest in those advances occurring."*<sup>45</sup>

In response to this ruling, Seal informed board members that three of the four projects approved for Wedin to work on could not start until he left his city posts on January 31 of the following year. By waiting until February 1, Wedin would technically avoid the conflict of interest. Thus, after 15 years as Brea City Manager and 10 years as BCRA Executive Director, Wedin began lobbying the city and the redevelopment agency on behalf of the school district and on behalf his own financial interests.

Wedin's compensation was based on a fixed commission on the money raised for the particular project, including debt issued. This created a direct financial interest for

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<sup>44</sup> Wayne Wedin's Conflict of Interest Opinion, 8/23/82, Unidentified District, Statement, 10/6/82,

Wedin in advocating for the greatest amount of public funds to be expended. Arguably, this situation could conflict with Wedin's obligation to represent the school district's best interests.

### **The Consultant's Pay**

Wedin's earnings amounted to \$323,000 for his four years of part time consulting with the Brea Olinda Unified School District.

In his agreement, Wedin received two percent of the first \$3 million that he raised, then 1.5 percent of all additional monies.<sup>46</sup> His entire pay was deferred until 1986, when he received his first check. Thereafter he received an annual sum, which extended through 1990.<sup>47</sup>

### **Wedin and Lowe Development**

Lowe Development was Wedin's premiere choice for the commercial development of the old Brea Olinda High School site. While some saw the relationship as simply professional, others questioned the connection. Melvin LeBaron, former mayor of Brea whose term overlapped the early stages of the old high school redevelopment project stated,

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<sup>45</sup> Memo from James Markman to Wayne Wedin, 12/8/82

<sup>46</sup> Computation for Wayne Wedin's Final Fee Payment, 7/30/90

*"Lowe Development was always there and always won . . . It was the way in which they were presented by Wedin. He would say, 'There are four or five good developers, but Lowe Development has the whole concept here.' They knew too much and were too prepared."*<sup>48</sup>

The terms of Wedin's compensation from the Brea Olinda Unified School District deepened the confusion about his relationship with Lowe. His annual deferred payments were part of a three-way transaction. Wedin invoiced the district, which then requested an advance from Lowe.<sup>49</sup> This arrangement led Brea City Councilman Sam Cooper to express a "valid concern" -- how could Wedin (the point man for the district in its negotiations with Lowe) fairly represent his client if that same company was the agent through which he would later be paid?<sup>50</sup> In response, Seal wrote a letter to Cooper in January 1984 stating that, "*... the developer is merely a vehicle for the District to increase its immediate cash flow. This is in essence a short-term loan.*"<sup>51</sup> Seal told JLAC staff, "*We didn't have the money to pay him . . . Lowe decided that they would give us a loan to pay him.*"<sup>52</sup>

In a February 17, 1984, letter to Wedin, Turner wrote,

*"...After Lowe is fully taken care of with his expenses paid, debt service covered and he has received a 20% return on his investment, we hope there is enough left to cover Brea's shortfall. However, the proposal even then is that if anything is left, Lowe gets 85% and Brea gets 15%. Brea is gambling that 15% of the scraps Lowe leaves will be sufficient to cover our debt payment shortfalls...."*

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<sup>47</sup> Computation for Wayne Wedin's Final Fee Payment, 7/30/90

<sup>48</sup> Melvin LeBaron Interview, p. 9, paragraph 4, December 15, 1997

<sup>49</sup> Letter from Ed Seal to Robert Lowe, 8/7/89

<sup>50</sup> Letter from Ed Seal to Sam Cooper, 1/24/84, p. 3

<sup>51</sup> Letter from Ed Seal to Sam Cooper, 1/24/84, p. 3,

<sup>52</sup> Ed Seal Interview, p. 3, paragraph 2

Further questions arose in September 1988, when Robert Lowe of Lowe Development became a contributor to the successful “Committee to Elect Wayne Wedin (Brea City Council) and Lowe Development Vice President Robert MacLeod became Wedin’s business community liaison and a member of Wedin’s fundraising committee.<sup>53</sup>

### Wedin and CRS Sirrine (CRSS)

Wedin also advocated the choice of CRS Sirrine as the construction management (CM) firm responsible for the construction of the new Brea Olinda High School.

In 1986, the company was awarded the CM contract and began working on the new high school project. By 1987, Wedin was working on a “*leadership seminar in educational technology*” program in conjunction with the CRS Sirrine firm and its executives. Documents show that on February 5, 1987, Wedin and CRS Sirrine delivered at least one “Project COACH” seminar at the Newport-Mesa Unified School District.<sup>54</sup>

By this time, Wedin had begun consulting work with the LAUSD, and CRS Sirrine eventually became a finalist on a number of projects for the LAUSD, including the controversial Belmont Learning Complex.

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<sup>53</sup> Wayne Wedin’s Candidate and Officeholder Campaign Statement, 10/4/88, p. 5, Wayne Wedin’s Campaign Volunteer Directory, p. 4, section Q

<sup>54</sup> Promotional material for Project COACH

In January 1987, CRS Serrine also proposed building modular classroom additions for 87 sites in the LAUSD. The connection, if any, between Wedin's consulting role for the LAUSD and CRSS proposals to the district is unclear.

### Recommending Friends

During its investigation, JLAC examined copies of Wayne Wedin's handwritten notes, which were used by Wedin in developer and contractor selection. Wedin wrote:

*"...pre-advise major bidders re: RFP" and "recommend friends."*<sup>55</sup>

Because Wedin advises public entities, such as schools and cities, on issues such as developer selection and contract negotiations, while at the same time advising private corporations and developers on dealing with some of the same public entities, these notes are a cause for concern. Clearly, "pre-advising" major bidders may give an unfair advantage to certain entities, while "recommending friends" is an arguably inappropriate criteria to be used for awarding public contracts. In fact, Wedin's role with respect to the developer selection process at the Brea Olinda Unified School District, the City of Brea, and later at the LAUSD has raised serious questions.

In 1990, while Wayne Wedin was working as a consultant for the LAUSD and serving on the Brea City Council, he became the subject of a Fair Political Practices Commission conflict of interest investigation, which led to criminal charges against Wedin for which he was eventually acquitted.

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<sup>55</sup> Wedin's hand-written notes

In that case, the Keith Companies had paid Wedin a total of \$37,562 for work he had performed on a San Diego redevelopment project. Simultaneously, after the Brea city planning staff had rejected a Keith Company proposal for a development in Brea, “...with the active support of [Councilmember] Wedin, Keith and partner were eventually recommended for a \$320,000 contract,” according to the Los Angeles Times<sup>56</sup>.

On June 6, 1990, Wedin asked that the Keith Companies and Irvine-based Leason Pomeroy Associates, Inc. (LPA), Keith’s affiliate, be added to the list of consulting firms to be considered for a planning study on the development of Tonner Canyon in Brea. The lowest bid for the project came in at \$377,259. The Keith-LPA team bid at over \$1 million was characterized as “very excessive” in the City of Brea staff evaluation of the project prepared by Senior Planner Jay Trevino.

The staff recommended that the Council consider proposals of two other firms, but Wedin suggested that Keith-LPA be considered as a finalist. At the time he responded to questions from the LA Times by stating,

*“It’s not uncommon that the council doesn’t accept the staff recommendation. It occurs, and I think that’s what our responsibility is - to make independent judgments about things, firms, programs. That’s what we’re elected to do.”*

After several months of discussion, the Keith-LPA team agreed to perform the work for \$320,000 as a scaled down project. Nine days later, on December 27, the arrangements fell apart. On that day, an FPPC investigator called Brea City Attorney

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<sup>56</sup> Los Angeles Times, April 28, 1991

James Markman to inquire about an anonymous conflict of interest allegation that had been reported to the agency, according to records obtained from the FPPC. Following the call, Wedin told the *Times* that the city decided to prohibit Keith from receiving the planning contract or “*any business*” for one year out of a “*due measure of caution.*”

The FPPC turned its file over to the Orange County District Attorney for the purpose of conducting a criminal investigation. Wedin was indicted on two counts: conflict of interest and nondisclosure of income.

**The Trial:** The Keith Companies had paid Wedin with a check for \$37,562. Wedin was acquitted based on the testimony of an FPPC employee who stated that though Wedin was actually paid by Keith, he had “technically” been retained by the City of San Diego, due to the nature of the work.

San Diego officials, however, maintain that Wedin was not retained by the city but by the Keith Companies, according to the testimony of former San Diego redevelopment director, Sara Isgur.<sup>57</sup> “*Wedin was part of a package, part of the proposal,*” Isgur said in a telephone interview with a JLAC investigator.

**Sidenote:** While some consultants avoid advising both the private and the public sector simultaneously in order to avoid any appearance of conflicts of interest, Wedin frequently works as a consultant for both public and private sector clients. In some cases, he represents developers and corporations on transactions involving the same public entities

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<sup>57</sup> JLAC telephone interview with Isgur

for whom he serves or has served. While there may or may not be direct conflicts, sometimes this approach can cause suspicion regarding client loyalty.

For example, Wedin assisted the ICI Corporation "*in positioning*" a retail project "*for the purpose of presenting it for review before the Brea Planning Commission,*" he testified under oath.<sup>58</sup> He consulted the Lincoln Development Company on an apartment project and then gave the company's presentations to the City of Brea, where the project was to be constructed.

Wedin assisted the Mills Corporation by negotiating on its behalf with the City of Orange to secure entitlement and a finance mechanism when the company was interested in purchasing a city shopping center.<sup>59</sup>

For CPI Development (Corporate Property Investors), the company that developed the original Brea Mall, Wedin helped to secure entitlement approvals and financing. He made presentations on the company's behalf to the redevelopment agency in order to receive public assistance for expansion of the shopping center.

Wedin is also a member of the development team that is now constructing a controversial multi-million dollar project in the Republic of Panama that is intended to house the Panamanian Legislature and that even includes a commercial component. In the Panama project he is a development team partner with architect Ernesto Vasquez, HNTB, Design/Build, Pacific Genesis and Lewis, D'Amato, Brisbois & Bigard.<sup>60</sup> It should be noted that Vasquez is part of the development team that Wedin and the selection committee chose to build the Belmont Learning Complex for the LAUSD.

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<sup>58</sup> Wedin Testimony December 26, 1996 in Los Angeles, Ambassador Associates vs. LAUSD

<sup>59</sup> *ibid*

## Wedin and the LAUSD

The completion of the new Brea Olinda High School won Wedin an admirer in Orange County architect Rush Hill, who had been working with the Los Angeles Unified School District (LAUSD). Hill told JLAC staff in an interview, "*[The Brea Olinda High School Project] was a model used to establish asset management for the state . . . Wedin is the father of Asset Management.*"<sup>61</sup>

Hill had been providing architectural services for the LAUSD since the late 1970s, during which time, he began working with Facilities Division Director Byron Kimball on school construction efforts and in analyzing the capital outlay procedures then in use in the district, Hill told the JLAC. "*It took two years to convince [Kimball] to retain us [Hill and Wedin] on an asset management contract.*"

Kimball finally agreed to explore asset management strategies and, after Hill devised a series of potential development projects which included the Grand Avenue Garage, the Ambassador Project (Project X) and the West Bank Project (3<sup>rd</sup> Street Elementary School), he retained Wedin and his services, stating,

*"We knew that he had been through an RFQ/RFP process, and we [needed] the availability of that kind of document . . . [further] He had just finished, relatively, the developer selection process for Brea Olinda, so we could rapidly move into developer selection using his assistance."*

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<sup>60</sup> *ibid*

<sup>61</sup> JLAC interview with Rush Hill, February 11, 1998

## The Need for New Legislation To Proceed

Hill and Wedin realized that they needed to modify State law in order to pursue joint ventures and other methods of asset management and still maintain district eligibility for reimbursement from state bond funds. Soon, Hill and Wedin began “orchestrating” bills that would permit school districts to use asset utilization plans and would allow districts to avoid competitive bidding requirements while preserving district eligibility for state reimbursements, according to Hill.<sup>62</sup>

Wedin and Hill began their legislative endeavors with SB2489 in 1986, a bill carried by Senator John Seymour. If passed, the bill would have granted schools an exemption from the state lien that was placed on extra assets and allowed school districts to develop asset management programs to fund their local school projects.<sup>63</sup> Additionally, the legislation, which was based on the “*premise that the State cannot afford the entire tab for school construction,*” according to Seymour, required school districts to fund 25 percent of any new construction.<sup>64</sup>

Wedin corresponded with Seymour throughout 1986. In one letter, Wedin suggested a series of “creative,” “nontraditional” actions, including the following:

- ◆ Use “financial incentives” for local districts and redevelopment agencies to “more aggressively” use local resources.
- ◆ Have the State use its tax exempt financing authorizations to “encourage cooperative development” to generate “nontraditional revenue sources.”

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<sup>62</sup> *ibid*

<sup>63</sup> *ibid*

<sup>64</sup> Bill summary by Senator Seymour

- ◆ Use nonprofit corporation statutes to leverage funds
- ◆ Authorize use of private sector construction with “leaseback or sale.”
- ◆ Have the State work with “public interest groups” and “educational institutions” to train local authorities with education facility needs.
- ◆ Develop a state “credit enhancement system” for public borrowing.

He also proposed “*updating regulations*” on bidding public construction projects, “*use of surplus public land*” and “*wiping the school construction loans slate clean.*”<sup>65</sup>

Wedin called upon some of his private sector clients including Best, Best and Krieger of Riverside, California for support with the Seymour legislation. In an April 9, 1986 letter, Wedin asked Dallas Holmes of the firm Best, Best and Krieger to put ideas into “*legislative form.*”<sup>66</sup>

SB 2489 passed in the Senate but never became law.

On June 12, 1986, Hill asked Wedin to suggest a method for LAUSD to achieve their “*goals without the necessity of legislative approval*” for the prospective “Medical Magnet Joint Venture.”<sup>67</sup>

Wedin inquired about this in his June 20 note to John Francis, a specialist on non-profit organizations. In the note, he suggested the use of a “nonprofit mechanism” instead of using the “new legislation” route.<sup>68</sup> Three days later, Wedin received an unsigned memo (likely from Francis), suggesting means the district could use to avoid competitive bidding.<sup>69</sup> The memo stated that the board may, in a public meeting,

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<sup>65</sup> February 12, 1986 letter from Wedin to Senator Seymour

<sup>66</sup> April 9, 1986 letter from Wedin to Dallas Holmes

<sup>67</sup> June 12, 1986 letter from Rush Hill to Wayne Wedin

<sup>68</sup> June 20, 1986 memo from “Wayne” to “John”

*“...adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article with a nonprofit public benefit corporation organized under the Non profit Public Benefit Corporation Law.” (Government Code Section 39305)*

GC 39305 requires the non-profit's net earnings go only to the school district, according to the notes. The construction still must be done by the lowest responsible bidder. However, the memo added that more “flexibility” could be achieved if the district did not initially own the site. On the back of the memo, Wedin wrote:

*“If district owns and/or leases to the nonprofit, then the nonprofit doesn't need to bid the building. If nonprofit acquires the site, designs and builds the facility and then leases to the district, competitive bidding must be used.”*

On May 2, 1986, J.F. Halverson, LAUSD Associate Superintendent of Business and Personnel Services, sent an interoffice memo to Byron Kimball about a proposed piece of emergency legislation that would allow the district to *“enter into leases and agreements with private parties, firms and corporations to build onsite and offsite facilities and utilities and make improvements on district-owned land.”* Its provisions would also enable the district to lease and eventually purchase the structures.

Next, Hill and Wedin established a means to circumvent the state requirement to use the lowest responsible bidder and the traditional design-bid-build procedures by proposing a “criteria and scope” standard that would involve an RFQ/RFP process.<sup>70</sup> In this process, rather than awarding the job to the lowest responsible bidder, school districts

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<sup>69</sup> June 23, 1986 memo (author not identified)

<sup>70</sup> *ibid*

would screen the potential contractors and developers through a Request for Qualifications (RFQ) procedure that would establish criteria for “qualified” contractors. School districts would then issue a Request for Proposal (RFP) to those bidders that the district considered qualified. The chosen contractors or developers would then define in general terms the scope of the project. The favored proposal would win the contract, without being required to submit the completed plans and specifications that would clearly define the cost and the scope in a traditional design-bid-build project. Attempting to circumvent the low-bid process became a recurrent theme for Wedin, according to records obtained by the Committee.<sup>71</sup>

Senator Seymour introduced another bill, SB 1264, on March 5, 1987, which sought to amend existing law to allow public schools to use surplus land or buildings to generate revenue for the district. Under the provisions of this bill, school districts could enter into joint ventures to generate additional funds to meet their school facility and maintenance needs. The measure required that these funds be placed in a separate account by the district and spent only on designated school facilities. SB1264 passed.

Wedin and Dominic Shambra also worked together on AB 2814, authored by Assembly Member Gwen Moore. AB 2814 essentially exempted school districts from competitive bidding requirements in cases involving joint venture projects. While AB 2814 never became law, much of the language in AB 2814 was incorporated into AB 481, a bill that was enacted in 1996 but never implemented due to the fact that the State Allocation Board (SAB) failed to establish enabling regulations.

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<sup>71</sup> Wedin's hand-written notes

# Los Angeles Unified School District Projects

## Project #1: Grand Avenue Parking Garage

**Summary** -- The first LAUSD joint venture development project with private developers was called “...*the best agreement we have on anything...*” by Dominic Shambra, LAUSD’s head of the Office of Planning and Development.

The Grand Avenue Garage Project originally included the proposed construction of a 15-story building that would contain a parking garage, offices and retail space, a child care facility and a garden on the top of the structure, according to an official District press release and the initial project proposal.<sup>72</sup> Developers intended for the project to provide the LAUSD with administrative office space, classrooms, and to generate “*substantial*” revenues for the district from the other planned components. However, documentary evidence shows a discrepancy in the district’s own estimates of the potential revenues that the project could generate. Wayne Wedin, a district consultant for this project, estimated annual district revenues after completion of the project at \$648,661 in his hand-written notes. An earlier report written by Wedin in collaboration with architect Rush Hill projected a total annual income to the district of between \$160,000 and \$500,000. The project was to be completed and in full use within 51 months of initiation.

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<sup>72</sup> September 20, 1990 LAUSD press release

Had the project gone as Wedin predicted, the Grand Avenue Garage would now be generating lease revenues of \$648,661 per year to the district and would be providing office space, child care, retail space and profit sharing for the district.

The scope of the project, however, was considerably reduced to include only a parking garage, according to David Cartwright, and revenues to the district have reached a total of only \$736,623 to date.<sup>73</sup> This is in part due to the developer partially defaulting on two years of lease payments. The district is now considering legal action to collect from the developer.

While the project's proponents have called the Grand Avenue Garage a success, LAUSD board member David Tokofsky says the project has produced a net loss. "*The bottom line is negative,*" he said in a telephone interview. "*Mr. Maguire fell into default with payments and they let him continue defaulting.*"

**Details:** In August 1986, the Community Redevelopment Agency (CRA) of Los Angeles agreed to work with the LAUSD in order to cooperatively develop construction projects in Los Angeles, according to a November 1987 report prepared by Wedin and Hill.<sup>74</sup> One of these prospective projects was the Grand Avenue Garage located at 17th Street and Grand Avenue in downtown Los Angeles.

The property was a district-owned site, adjacent to the school district's Abram Friedman Occupational Center and was then being used as a parking lot for

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<sup>73</sup> September 16, 1998 letter from David Cartwright to Maria Armoudian

<sup>74</sup> November 1987 Report to LAUSD, prepared by Rush Hill and Wayne Wedin

approximately 200 vehicles, according to Shambra's testimony taken during litigation related to the Ambassador Project.<sup>75</sup>

Rush Hill, a district consultant and architect, had devised a plan for a project that was intended to provide the district with office space, an urban child care center, a peripheral parking facility and a transportation link serving the Central Business District (CBD).<sup>76</sup> The original concept called for eighty thousand square feet of office and instructional space to be used by the LAUSD, one hundred thousand square feet of private office space, six thousand square feet of child care space, twelve thousand square feet of retail space and 1184 parking stalls.<sup>77</sup>

In early January 1987, Wedin and Hill prepared preliminary evaluations and conceptual architectural options for two modified development plans on the site: a peripheral parking structure with retail and a peripheral parking structure with office space and retail.<sup>78</sup>

In the first scenario, the structure would provide a minimum of 820 parking spaces and 12 retail spaces. In the second scenario, recommended by Wedin and Hill, the development would include 179,000 square feet of office space, limited retail space and sufficient parking for the Abram Friedman Occupational Center staff. Because the district would be able to move certain LAUSD offices to the new location, the second option provided more joint venture "*opportunities*" at other district sites that could conceivably be vacated for new development projects, including the sites on which the

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<sup>75</sup> February 1997 Dom Shambra testimony, deposition taken in Los Angeles

<sup>76</sup> JLAC interview with Rush Hill, February 11, 1998

<sup>77</sup> Proposed schematics for parking garage joint venture

Senior High School Division and the Third Street Annex were located, according to the report.<sup>79</sup>

The report estimated hard construction costs for the Grand Avenue Garage at \$33.8 million with the district's phase one preliminary costs at \$350,000.<sup>80</sup> A second document reported a preliminary cost estimate at \$39.4 million without landscaping materials for a total estimated cost of \$47.2 million for the entire project.<sup>81</sup> The time allotted to complete the project was an estimated 51 months, making late 1991 the targeted date of completion.<sup>82</sup>

Documents that JLAC reviewed revealed discrepancies in projected revenues. Wedin's hand-written notes project the district's annual income from leases at \$648,661,<sup>83</sup> while the formal report Hill and Wedin produced projected district income to range between \$160,000 and \$500,000 each year.<sup>84</sup> Meanwhile, the plan called for the district to receive office space and, at the end of the 66-year lease period, to retake possession of the entire property including improvements.<sup>85</sup>

The project, according to the January 25, 1988 developer selection Request for Qualifications (RFQ) documents, was to contain much more than the simple parking garage that eventually materialized. The concept called for eight and a half levels dedicated to parking. But the structure was also to feature an open park and a garden

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<sup>78</sup> Preliminary proposal for parking garage joint venture

<sup>79</sup> November 1987 report prepared by Hill and Wedin

<sup>80</sup> *ibid*

<sup>81</sup> Wedin's hand-written notes

<sup>82</sup> November 1987 report prepared by Hill and Wedin

<sup>83</sup> Wedin's hand-written notes

<sup>84</sup> November 1987 report prepared by Hill and Wedin

<sup>85</sup> Lease agreement between LAUSD and Maguire (Thomas) Partners

office complex above the garage with five stories of office space “*rising from the park level.*” Office space was to be utilized by LAUSD staff to defray costs or to be leased out in order to generate additional revenue for the district.<sup>86</sup>

## Developer Selection

Of the developers that responded to the RFQ/RFP, Maguire Thomas Partners was selected to partner with LAUSD in the joint venture. The agreement called for a 66-year ground lease with lease payments of between \$36,663 and \$293,616 per year to the district, according to documents obtained from the district.<sup>87</sup> Additionally, the district was scheduled to receive an additional 20 percent of any profit generated by the development’s private uses if a profit was ever realized.

To date, LAUSD has received a total of \$736,623 from the following annual payments, according to a schedule of payments provided by Ray Rodriguez, LAUSD Administrative Coordinator:

- ◆ 1991 -- \$36,663.
- ◆ 1992 -- \$39,996.
- ◆ 1993 -- \$59,994.
- ◆ 1994 --\$79, 992
- ◆ 1995 --\$79,992

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<sup>86</sup> Request for Qualifications, January 25, 1988

<sup>87</sup> Schedule of payments provided by LAUSD

- ◆ 1996 -- \$119,994
- ◆ 1997 --\$159,996
- ◆ 1998 --\$159,996

The district had hoped to profit-share on the various components of the project, but the only remaining component, the parking garage, has yet to show a profit. In fact, the garage remains largely vacant, according to a spokesperson at Maguire, the developer that has partially defaulted on its payments to the district for the last two years and has paid only about half of what "*they were supposed to pay, because they're not getting the parking they anticipated,*" reports Rodriguez.<sup>88</sup> Though Rodriguez and other LAUSD administrators remain hopeful that the financial situation may turn around with the construction of a nearby sports arena complex, LAUSD's outside counsel Marty Burton reported possible structural deficiencies in the garage itself, which may raise new concerns about the project.<sup>89</sup>

It should be noted that the District has not provided the JLAC with an accounting of total project expenditures nor an appraisal of the property's current value.

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<sup>88</sup> Telephone interview with Ray Rodriguez, August 26, 1998

<sup>89</sup> JLAC telephone interview with Marty Burton

## **Project #2: Van Nuys High School Annex**

**Summary:** In 1991 Dominic Shambra and Wayne Wedin approached the LAUSD Board of Education with another proposal for a revenue generating joint venture project. At the time it was argued that such a local initiative was necessary due to the negative impact that the State's economic crisis was having on educational funding for the district. Wedin and Shambra presented a plan to develop a 4.4-acre LAUSD-owned agricultural site on Vanowen Street in Van Nuys into a multistory complex containing medical offices, a magnet school, and residential apartments. Wedin and Shambra had apparently reached an agreement with the development company, Pacific Alliance Realty (PAR), to begin a development project on the site. It appears, however, from documentary evidence reviewed by JLAC staff that, Shambra and Wedin had entered into exclusive negotiations for the project with Pacific Alliance Realty without using the required developer selection process – no competitive bidding - nor even an RFQ/RFP process.

Nonetheless, Wedin and Shambra worked diligently to pursue funding for a 50-50 state match with local funds - amounting to approximately \$5 million - for the project. But when the Community Redevelopment Agency (CRA) in Los Angeles fell short of funds available for the project, the scope of the project was drastically reduced and the project itself was never completed.

**Details:** On October 12, 1990, LAUSD New Facilities Division Administrator Bonnie James reported a projected growth in enrollment in the Van Nuys Attendance Area,

which indicated a need for the construction of a new elementary school. James completed a site utilization study on a district owned agricultural site located on Vanowen Boulevard in Van Nuys and, after considering five options, recommended constructing an elementary school. James reasoned that an elementary school would provide the best solution to the anticipated growth in enrollment after considering criteria such as relative cost effectiveness, timely project completion and the attendance needs of the area.<sup>90</sup>

On October 7, 1991, however, rather than moving forward on the construction of a new elementary school, Shambra's Office of Planning and Development (OPD) instead proposed expanding the district's magnet program to include a medical magnet high school on the Vanowen site.<sup>91</sup> In his report, Shambra cited the State's budget crisis as justification for embarking on another potentially revenue-generating joint venture. The cost of the additional land needed to implement this proposal was to be about \$2 million to the district.

On December 16, 1991, school board member Roberta Weintraub acknowledged that an agreement had been reached between the LAUSD and Valley Presbyterian Hospital to develop the Vanowen property, which was located across the street from the hospital and to jointly establish a medical magnet school.<sup>92</sup> The Chief Executive Officers of the hospital, Robert Bills and David Fleming, signed a Memorandum of Understanding (MOU) with the district on March 6, 1992 in order to move forward on the medical

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<sup>90</sup> October 12, 1990 Study and Report by Bonnie James

<sup>91</sup> October 7, 1991 report by Shambra

<sup>92</sup> Document by Roberta Weintraub, Board of Education

magnet school project. However, the MOU implementation was contingent upon the district successfully negotiating a long-term lease of the district owned Vanowen property to a developer for the purpose of constructing a 60,000 to 90,000 square foot medical office building that was needed by the Valley Presbyterian Hospital.

On April 28, 1992, Wedin sent a private development proposal to board member Roberta Weintraub, suggesting an “*innovation*” that would provide a magnet school to serve 83-109 students interested in pursuing careers in the medical field and that would be operated in conjunction with the adjacent Valley Presbyterian Hospital. According to the proposal, students would be bused to and from the nearby Van Nuys High School.<sup>93</sup>

In the conceptual document, Wedin proposed a four-level building, with one level dedicated to the medical magnet, one level dedicated to medical offices, and two levels dedicated to residential apartments. Wedin also proposed a child-care center, a school based health clinic and parking behind the building.<sup>94</sup>

Wedin’s proposal noted that the mixed use arrangement was already the subject of an existing Memorandum of Understanding (MOU) between LAUSD and the Valley Presbyterian Hospital and Medical Center (see above). The plans were already underway and private sector “firms” had already expressed an interest in participating in the RFQ/RFP process that would be used “*to competitively select the developer.*”<sup>95</sup>

The actual plans for the structure included medical offices on the ground level, educational offices on the second level and residential units on the top two levels,

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<sup>93</sup> April 28, 1992 proposal from Wedin to Weintraub

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*

according to drawings prepared by Rick Zimmer for Wedin Enterprises and the district.<sup>96</sup> The 392,000 square foot building was also intended to accommodate 840 parking spaces in the structure. Initially, the project was also to include retail space and a child-care facility, according to Wedin.<sup>97</sup> At the time the proposal was submitted, the land was appraised at \$2.4 million, according to a February 26, 1992 memo from LAUSD's Porter Hall to Wedin.<sup>98</sup>

On June 3, 1992, Pacific Building of San Diego wrote to the Valley Presbyterian Hospital's administration and expressed an interest in locating a new medical building on the hospital's own campus. In the letter, the company's president, Robert Rosenthal, offered to build a new medical building to house hospital offices at no cost to the hospital. Instead, the company's plan would involve leasing the land and constructing the building at its own expense, according to Rosenthal.<sup>99</sup>

Meanwhile, Wedin projected that the District's initial costs to proceed with the proposed joint venture would be \$500,000, of which \$100,000 was dedicated to his own fees. Wedin, however, wrote that the projected expenses on the project were "*very superficial and in a sense a bit optimistic since 18 months may be too short [to complete the project],*" in a letter to Shambra on June 29, 1992.<sup>100</sup> This initial District investment was expected to carry the project until a "*...developer puts up some funds for an exclusive to cover all or part of the carry-on expenses and maybe some offset to these*

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<sup>96</sup> Zimmer pro forma and sketch, faxed to Wedin

<sup>97</sup> JLAC interview with Wedin, August, 1998

<sup>98</sup> February 26, 1992 memo from Porter Hall to Wedin

<sup>99</sup> June 3, 1992 letter from Robert Rosenthal, President of Pacific Building

<sup>100</sup> June 29, 1992 letter from Wedin to Shambra

dollars,” wrote Wedin.<sup>101</sup> Negotiations would continue for approximately one year. Meanwhile, the hospital solicited grants from foundation programs to help fund the magnet program.

On July 16, 1992 Pacific Alliance Realty (PAR) submitted plans, prepared by Landau Architecture and Planning. On July 22, PAR followed with an “*unsolicited proposal*” to the district for the proposed development project - a proposal that exactly matched the parameters of Wedin’s earlier proposal.<sup>102</sup>

On July 27, the Los Angeles Community Redevelopment Agency Director of Housing, John McCoy sent a copy of required housing design standards along with a letter to the district that promised that the CRA would perform a financial analysis of needed agency assistance and conduct an appraisal of the site’s value based on a 99-year ground lease agreement.<sup>103</sup> “*I think that this is as far as you can go without CEQA review – and should put you in a position to issue an RFP or RFQ,*” said John McCoy, CRA Director of Housing.<sup>104</sup>

The district expected students to enter the medical magnet program at Valley Presbyterian Hospital in the fall of 1992 with opening ceremonies for the magnet school scheduled for August 19, 1992. The construction of the buildings was to begin after the opening date.

An RFQ/RFP process was to be used to, “*competitively select the developer who will do the actual construction of the facility,*” the report said, but it appears that the

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<sup>101</sup> *ibid*

<sup>102</sup> Plans and “unsolicited proposal” dated July 22, 1992 by Pacific Alliance Realty

<sup>103</sup> July 27, 1992 letter from John McCoy to Shambra

<sup>104</sup> *ibid*

private sector firm, PAR, had already been selected without any formal selection process taking place.<sup>105</sup>

On September 8, 1992 a formal proposal was submitted to the Board of Education to authorize two contracts for professional services related to the project for a total of \$100,000 -- \$75,000 for Wedin and \$25,000 for attorney Timi Hallem of the firm Tuttle & Taylor. The report stated that the funds for these consultant contracts would come from the proceeds realized from the Grand Avenue Garage project. Unfortunately, the garage had generated less than \$75,000 by that time (see above).<sup>106</sup>

The initial estimated completion date for the entire Van Nuys project was between January 31, 1993 and February 28, 1993 including planning, design and construction, according to a memo from Wedin to Ron Krafka of PAR.<sup>107</sup>

On September 21, 1992 the Board of Education authorized staff to enter into exclusive negotiations for the project with Pacific Alliance Realty (PAR). The board also approved the contracts for Wedin and Hallem.<sup>108</sup> PAR requested \$20,000 reimbursement from LAUSD for initial work.

The next day, PAR told Wedin that a new site survey and soil report was needed, both of which were to be paid for by the LAUSD.<sup>109</sup>

A development management agreement was drafted between LAUSD and PAR, and final, exclusive negotiations began. Meanwhile, Rick Zimmer drafted a development

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<sup>105</sup> Bond and Asset Management Report, August, 1992

<sup>106</sup> Bond and Asset Management Proposal, September 8, 1992

<sup>107</sup> September 11, 1992 memo from Wedin to Krafka

<sup>108</sup> September 21, 1992 Board Report

<sup>109</sup> September 22, 1992 letter to Wedin from Pacific Alliance Realty Executive Vice President

pro forma that estimated total development costs at \$16.7 million, including property acquisition at \$2.5 million and financing costs at \$1.9 million.<sup>110</sup>

However, a problem arose on December 15, 1992. The Community Redevelopment Agency that Shambra was counting on for support, informed the district of a "*shortfall in resources available*" for the project.<sup>111</sup> Nevertheless, two weeks after the CRA notified the district of the shortfall, Wedin told the Valley Presbyterian Hospital administration that CRA support had been consolidated for construction to begin the following year. The project's scope had been reduced by this time, and the district was expecting 50 percent reimbursement for costs of about \$5 million from the State Allocation Board.<sup>112</sup>

Meanwhile, the hospital administrators refused to commit as guarantors on the medical office building portion of the project.<sup>113</sup> Wedin and Shambra then broke the construction project into two phases, delaying the construction of the medical office component until the second phase of the project, after the completion of the school.

Since the original proposal, the 98,000 square feet of office space had been cut in half, and the hospital was now concerned that the new district proposal, which now projected a high school student population of 700-800 students for the facility, was considerably more than the hospital could handle. By March 26, 1993, Wedin stated his intent to apply to the State Allocation Board for 100 percent funding for the expanded high school portion of the project, which he believed (with the CRA's participation)

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<sup>110</sup> Pro forma prepared by Rick Zimmer, faxed to Wedin

<sup>111</sup> December 15, 1992 letter from John McCoy to Shambra

<sup>112</sup> January 4, 1993 memo from Wedin to David Fleming, Bob Bills and Georgia Mercer

would make the other components of the project “*viable*.” By this time, PAR and LAUSD had been negotiating and evaluating proposals for at least a year.<sup>114</sup>

Additionally, PAR stated that it was willing to assume the development risk.<sup>115</sup> Clearly, the project had changed dramatically.

By June 8, 1993 LAUSD staff believed that 100% state funding was unlikely and that they would likely receive State funding for 40 percent of the project and federal funding for an additional 40 percent, covering 80% of the project costs and making the simultaneous construction of the medical office building “*no longer a precondition to the development*.”<sup>116</sup>

In June 1993, Shambra requested a “toxics report” from LAUSD’s Environmental Health and Safety Officer, Susie Wong, and underscored the urgency in completing the report immediately due to the progress of negotiations.<sup>117</sup> Shambra wrote that the LAUSD, PAR and the Los Angeles CRA were working together to secure funding for the project and were expecting partial State funding. Due to SAB reimbursement regulations the project needed to move forward that fall to preserve the option of state funding, Shambra reported.<sup>118</sup>

By this time, LAUSD expected the State to furnish \$6 million for the school component of the project. Federal funds of \$3.6 million were also anticipated, accounting for \$9.6 million of the \$15.1 million cost estimate for constructing the school portion of

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<sup>113</sup> February 25, 1992 memo from Krafka

<sup>114</sup> March 26, 1993 letter from Krafka to Wedin

<sup>115</sup> *ibid*

<sup>116</sup> Meeting minutes June 8, 1993

<sup>117</sup> June 17, 1993 memo from Shambra to Susie Wong

<sup>118</sup> September 3, 1993 memo from Shambra to Bob Bills

the project. The cost of the housing portion of the project was estimated at \$22.7 million with rental revenues from residential, office and retail components of the project projected to provide an annual income of \$1.2 million to the district.

LAUSD and PAR executed their agreement to enter into exclusive negotiations on October 13 and 22, 1993, respectively. Two months later, on December 14, 1993, it was determined that the CRA would *"have to fund \$16.5 million at 5.5 percent to have the project break even."*<sup>119</sup> On March 24, 1994, however, the CRA repeated its previous assertion that it didn't *"currently have any funds available for the project."*<sup>120</sup>

LAUSD and PAR formally extended their negotiation period by 180 days,<sup>121</sup> but a negotiated agreement was never finalized.

Wedin sent another RFQ proposal to Shambra on March 13, 1995,<sup>122</sup> and on April 20, 1995, Ron Krafka approached Shambra and proposed proceeding with the project without CRA support by dividing the project into different components and by assigning interest involving 1.5 acres of the site to the Menorah Housing Foundation (MHF). PAR proposed to jointly develop that portion of the district site with MHF and to independently apply to the federal Department of Housing and Urban Development (HUD) for dollars to build a senior housing project.<sup>123</sup>

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<sup>119</sup> December 14, 1993 income projections

<sup>120</sup> March 24, 1994 letter from John McCoy to Shambra

<sup>121</sup> April 12, 1994 letter from Krafka to Rich Mason

<sup>122</sup> March 13, 1995 memo from Wedin to Shambra

<sup>123</sup> April 20, 1995 letter from Krafka to Shambra

By May 1, 1995, LAUSD had issued a new RFQ for the project.<sup>124</sup> During the same month, Valley Presbyterian Hospital discontinued their participation in the magnet program, stating that they could no longer afford it.<sup>125</sup>

After eight years of effort and a significant level of public expense, the joint venture collapsed and the proposals for the use of the property have now come full circle with plans now underway to build an elementary school in the spirit of James' original proposal. The Medical Magnet has been moved to the Northridge Hospital.

According to Shambra's deposition, it was district staff that made the decision to drop negotiations on the joint venture medical magnet project.<sup>126</sup> Both Shambra and Wedin, however, blamed board member Julie Korenstein for the failure of the project. In a telephone interview Shambra told JLAC staff,

*"Van Nuys was stopped because Julie Korenstein didn't want to build it. Weinrab wanted it done . . . We had the developer selected. Roberta retired. They re-districted the area, and it became Korenstein's. She didn't understand and dropped it."*

Wedin and Shambra also blamed the hospital staff for the failed scheme. *"The hospital were being jack asses too. They were difficult in their portions,"* said Shambra.

*"Primarily, the hospital was so unsure of what would happen through the regulation of health care. They didn't know what conditions would apply to them, so it was difficult to work with us with our own role,"* added Wedin.

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<sup>124</sup> RFQ dated May 1, 1995

<sup>125</sup> Daily News article, June 24, 1995

<sup>126</sup> Shambra's testimony on February 20, 1997, deposition taken in Los Angeles

**Sidenote:** In September, 1992 Timi Hallem of the firm Tuttle & Taylor worked as LAUSD's attorney for its Van Nuys Medical Magnet project. Her contract was for \$25,000, according to newspaper accounts. The project continued into 1995, during which time, Hallem represented another company, S-P Realty, in its negotiations with the LAUSD for the purchase of the "Shimizu" property, the site that was acquired for the Belmont Learning Complex.

Hallem also represents Lowe Development, the developer who contracted with Brea Olinda School District through Wedin and the developer who submitted proposals to the LAUSD through Wedin for a number of projects, including a proposal for developing the Business Services Center/Cornfield projects in 1991.

Hallem was additionally used for other LAUSD "*land acquisitions*," according to District Counsel Richard Mason's sworn testimony.<sup>127</sup>

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<sup>127</sup> Rich Mason Testimony, Ambassador Associates vs. LAUSD

### **Project #3: Brentwood Re-Use Project**

**Summary:** The Brentwood Re-Use Project was intended to provide a “...*funding mechanism for District needs using a portion of the Brentwood Elementary School,*” according to a proposal written by Shambra. The project has been started and subsequently stopped on two separate occasions. In 1993, the District entered into negotiations with Ralph’s Grocery Company in order to build a supermarket on the district school site. But residents of the Brentwood community successfully fought against the development. In 1995, the District began discussions with Caruso Affiliated Holdings to develop boutique style retail stores on the property. Neither of the arrangements worked out. By 1997, at least one more RFQ was prepared for the property. It is unclear if it was ever issued.

**Details:** In 1993, the LAUSD entered into exclusive negotiations with Ralph’s Grocery Company to develop a parcel of district owned property in Brentwood. The project was to include a Ralph’s Supermarket, a multi-story parking structure, new classrooms, a youth counseling building, a kindergarten facility and a playing field.<sup>128</sup>

In exchange for the use of the district owned land on San Vicente Boulevard, Ralph’s was to have incorporated the site’s existing elementary school into the nearby hillside, according to LAUSD’s Elaine Danny. The 2.44-acre parcel of district property located at San Vicente Boulevard and Bundy Drive that was being considered for the

joint venture had an estimated value of \$2.75 million. (The entire property is 7.78 acres). But because of its prime location, the 2.44-acre parcel boasted an annual rental value estimated at between \$254,000 and \$275,000 per year, according to internal correspondence from Robert Olson of the LAUSD Real Estate Branch.<sup>129</sup>

Dom Shambra met with Board of Education Facilities and Operations Committee members Julie Korenstein and Victoria Castro on January 6, 1994 to discuss the joint development proposal for Brentwood.<sup>130</sup> The project eventually progressed to a point at which its initial drawings had been completed, according to Danny. Community residents, however, opposed the building of a supermarket on that location and successfully pressured the school board to stop the project, she said.<sup>131</sup>

After the Ralph's proposal was dropped, Shambra pursued other development plans for the Brentwood site. In 1995, he met with Rick Caruso of Caruso Affiliated Holdings to discuss potentially developing the property with a "*...retail component complimentary to the school and local community,*" according to an October 19, 1995 letter from Caruso.<sup>132</sup>

The redevelopment plan called for reconfiguring the physical layout of the existing school property and redesigning and improving the existing facilities with revenues that would be generated by a retail component that was to be built on the site. According to the plan, Caruso would finance the project and "*...manage the entitlement*

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<sup>128</sup> December 1993 Exclusive Right to Negotiate Agreement

<sup>129</sup> January 6, 1994 memo-from Robert Olson, LAUSD Realty Agent to J. Michael DeLuca

<sup>130</sup> January 6, 1994 agenda of the Board of Education Facilities and Operations Committee

<sup>131</sup> JLAC Telephone Interview with LAUSD's Elaine Danny, August 18, 1998

<sup>132</sup> October 19, 1995 letter from Caruso to Shambra

*process in a way that creates local support thereby eliminating political concerns for the District and City.*"<sup>133</sup>

Upon board member Mark Slavkin's request, Shambra met with the principal and the staff of the existing Brentwood Magnet School. He insisted that the faculty

*"...understand fully, that to move forward . . . a complete Request for Proposal process would be followed and support would need to be secured from the community and City Council Representative Marvin Braude's office."*<sup>134</sup>

By March of the following year, Slavkin had written a draft proposal on which Shambra would base his Board Report and project proposal to the Board. At the June 2, 1997 board meeting Shambra requested authorization to proceed with the RFQ/RFP process.<sup>135</sup>

Subsequently, the board authorized staff to release the RFQ, according to a December 1, 1997 memo.<sup>136</sup> By June 30, board member David Tokofsky received calls indicating that the *"...faculty knows next to nothing about the joint venture RFQ/RFP and continues to be held in the dark,"* Tokofsky wrote to Superintendent Ruben Zacarias.<sup>137</sup>

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<sup>133</sup> *ibid*

<sup>134</sup> May 13, 1996 from Shambra to Slavkin

<sup>135</sup> March 3, 1997 memo from Slavkin to Shambra

<sup>136</sup> December 1, 1997 memo from Shambra to Zacarias

<sup>137</sup> June 30, 1997 memo from Tokofsky to Zacarias

On July 10 Wedin delivered a draft RFQ/RFP proposal with a note regarding “items that we have previously discussed . . . Please pay special attention to those sections which deal with selection process and criteria for selection,” according to the note.<sup>138</sup> But when Valerie Fields joined the Board, the Board voted not to continue the project, said Danny.<sup>139</sup>

On October 17 Shambra acknowledged the cancellation of the “board approved” Brentwood Project.<sup>140</sup> “Fields killed it. The board members authorized it, then fired Wedin,” Shambra said during a JLAC phone interview.

However, on December 1, 1997, Shambra wrote that staff would be releasing another RFQ for the project during the week of December 8, 1997.<sup>141</sup> The RFQ/RFP dated December 8, 1997 was for development of the entire 7.4-acres of the Brentwood elementary school property.<sup>142</sup>

Apparently, the Brentwood site remains a potential joint venture in search of joint partners and a viable venture.

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<sup>138</sup> July 10, 1997 fax cover from Wedin to Shambra

<sup>139</sup> JLAC telephone interview with Elaine Danny, August 18, 1998

<sup>140</sup> October 18, 1997 memo from Wedin to Shambra

<sup>141</sup> December 1, 1997 memo from Shambra to Board of Education, Zacarias

<sup>142</sup> December 8, 1997 Request for Qualifications

## Project #4: The Ambassador Project (Project X)

*“This is, in the court’s view, one of the ‘rare instances in which the condemning agency has purposely and in bad faith pursued an unconscionably dilatory course of action in its conduct of the litigation”<sup>143</sup>*

**Summary:** In August 1986, LAUSD administrators set their sights on the historic Ambassador Hotel on Wilshire Boulevard for a potential joint venture development project. Although they initiated plans and held meetings in an effort to acquire the property, the district initially made no offer to purchase the property, despite the fact that it had been on the market for two years. In November 1989, another buyer, Wilshire Center Partners (WCP), purchased the hotel and initiated its own development plans. LAUSD then approached the new owners and offered to either purchase the property outright or to enter into a joint venture arrangement to develop the property. WCP declined both offers.

The district, utilizing its power of eminent domain, began condemnation proceedings to obtain the 17 acres located at the rear of the property through force of law and tendered a deposit toward the acquisition. But the LAUSD and WCP disagreed on the property’s value, and the two entities wound up in litigation.

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<sup>143</sup> Excerpt from Judge’s statement from Ambassador Associates vs. LAUSD

At this juncture, rather than taking possession of the property, the district strung out the eminent domain proceedings, while the owners continued to bear the cost of taxes and insurance on the property.

One of the new owner's partners declared bankruptcy (Brent-Walker) and another (Power Corporation) faced financial difficulties due in part to an inability to utilize the property while litigation was proceeding and because of mounting legal costs and carrying costs.

In 1992, Power's representative, Finbar Hill, and Bob Niccum, the LAUSD Director of Real Estate Services, reportedly met secretly at the suggestion of Hill to negotiate a purchase price for the property. At the meeting it was reported that both agreed to deny that Hill initiated the meeting that took place in order to expedite closing the deal (see details).

However, contrary to their agreement of confidentiality, Niccum disclosed the company's financial difficulties to LAUSD lawyers, who used the information to their advantage and prolonged negotiations for an additional four months before agreeing to draw up the acquisition documents.<sup>144</sup> On the eve of the closing, LAUSD backed out of the purchase of the entire site but continued condemnation proceedings against the 17-acre portion of the property.

During the negotiation period, Roger Rasmussen of the district's Independent Analysis Unit (IAU) advised the Board that it would be wise to purchase the entire

property. Despite Rasmussen's advice, LAUSD ultimately abandoned its condemnation proceedings and demanded its deposit back. WCP claimed that the school district had hoped to financially drain their company, demand the deposit back, then upon the company's inability to repay the deposit, the LAUSD would foreclose on the property, according to Court documents obtained from the District.

The two entities have been embroiled in litigation for more than eight years now without resolution.

**Details:**

***“What they ended up with was a project that was 100 percent burden on the state at multiples greater than it would have been,” - Rush Hill.***

In August 1986, LAUSD became interested in the historic Ambassador Hotel site on Wilshire Boulevard in order to build an urban high school and to enter into a public/private partnership to jointly develop a commercial business strip on a portion of the site, according to a memo from Shambra to Doug Brown, LAUSD Administrator. Architect Rush Hill and consultant Wayne Wedin were retained to create the concept and to execute the design for the project.<sup>145</sup>

In a personal interview, Rush Hill told JLAC staff that he had originally analyzed the site in an *“executive briefing”* and proposed that the northern portion be used for a mixed-use commercial development and the southern portion be used for strip

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<sup>144</sup> October 5, 1992 memo from Niccum to Mason; Plaintiff's contentions filed in Superior Court of California December 2, 1997, Ambassador Associates vs. LAUSD

<sup>145</sup> JLAC interview with Rush Hill, February 11, 1998

commercial use. The remainder of the site was slated to become the new Los Angeles High School. The project was so “*confidential, it was called Project X,*” said Hill.

According to the pro forma developed by Hill in 1986, total costs for Project X would be about \$207.3 million with annual anticipated revenues to the district from the commercial components of the project ranging from \$5.7 million to \$9 million.<sup>146</sup>

Wayne Wedin’s hand-written notes contain the following estimates:

- ◆ Land would cost \$55 million.
- ◆ Two thirds of the property would be for school use and one third for private development.
- ◆ The state would pay for the land (the 17-acres portion) and school (\$35 million + \$25 million = \$60 million).
- ◆ The developer would advance \$60 million and would be repaid by the state.
- ◆ The project would provide the district with \$5.7 million in additional annual revenue and up to \$9 million in year ten. The average revenue generated to the district would be \$7 million per year.
- ◆ The State would finance the construction of the building.<sup>147</sup>

But the LAUSD failed to make an offer on the property, ostensibly to avoid a bidding war, and chose instead to propose to the property owners a partnership with the district in developing a joint venture. This is indicated through a series of Wedin memos, including a memo written to Dr. Harry Handler, Superintendent of Schools on December 24, 1986. In that memo, Wedin itemized “*sensitive topics*” that needed to be “*considered in advance in order not to place any effort in a negative posture before it even gets started.*” The topics included land use entitlements and specific plans, which Wedin wrote “*need not be ‘telegraphed,’ because it will make property hard to acquire*

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<sup>146</sup> 1986 Pro Forma Assumptions and Income Statement

*and more expensive.*” He suggested that “*the players*” – the LA City Council, the Chamber of Commerce, the Central City Association, the Building Industry Association, “*appropriate*” state officials, and the financial community -- be kept “*privately*” informed in order to keep their support.<sup>148</sup>

Five months later, in May 1987, the hotel revealed its plan to close most of its guest rooms. The hotel had already been for sale for about a year at that time.<sup>149</sup>

A number of developers had apparently expressed interest in the entire 23.5-acre site,<sup>150</sup> but preservationists raised concerns about demolishing a landmark they considered of historic significance.<sup>151</sup>

Shambra listed the preservationist concerns as one of many disadvantages of purchasing or joint venturing on the site. Other concerns cited by Shambra included the negative public image for the district that the use of eminent domain proceedings might generate, the high cost of acquisition, and the possibility that the joint venture concept would be poorly received by political leaders.<sup>152</sup>

By August 5, 1987, the property became a “*community issue,*” according to a Wedin memo. The Los Angeles Conservancy, a preservationist organization, had finalized a voluntary moratorium agreement against development with the original owners, the Ambassador Hotel Properties.<sup>153</sup>

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<sup>147</sup> Wedin's hand-written notes

<sup>148</sup> December 24, 1996 memo from Wedin to Dr. Harry Handler

<sup>149</sup> Time Magazine Article, May 3, 1987

<sup>150</sup> Los Angeles Business Journal, undated photocopy

<sup>151</sup> Los Angeles Times, December 8, 1987

<sup>152</sup> Report about the Ambassador prepared by Shambra

<sup>153</sup> August 5, 1987 letter from Wedin to Shambra

Shambra recommended moving ahead cautiously on the project while discussing the issue with Mayor Tom Bradley, LA City Council Members, state lawmakers and influential business leaders. Because there was a “*buyer interested in acquiring,*” Shambra hoped to develop another joint venture agreement with the private sector and recommended contracting with Wedin and Hill as the “*Financial, Architectural and Packaging component of the team to present the first class conceptual plan.*”

While he admitted that this was a “*departure from the standard process,*” he justified the move because of the lack of existing standards for this type of acquisition.<sup>154</sup>

By December 1987, the owners of the hotel reported interest from three potential buyers who had made offers ranging from \$65 to \$70 million for the site.<sup>155</sup> The school district subsequently made their interest in the property public, with Shambra announcing his desire to develop the site with a mixed-use project – involving a school and a commercial strip along Wilshire Boulevard.<sup>156</sup> But the district still made no formal offer to purchase the property.

Because the property was in a commercial zone, many real estate experts thought that a school project was incompatible with community needs and expressed doubt as to whether any joint venture project would “*pencil out.*”<sup>157</sup>

Shambra set out to win the support of decision-makers at both the city and the state level. He organized “*Meet the Superintendent*” luncheons to generate support for the project. At these luncheons Shambra suggested establishing “*wider cooperative*

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<sup>154</sup> August 18, 1987 memo to Doug Brown from Shambra

<sup>155</sup> Los Angeles Business Journal, undated photocopy

<sup>156</sup> Los Angeles Times, December 8, 1987

partnerships” by presenting the “desperate need” for a high school, along with what he projected would be the

*“...benefits: fewer displaced families, commercial development on prime land, preservation of a ‘portion’ of Ambassador Hotel ‘where feasible,’ generating revenues for the district from the joint venture, and the overall ‘betterment of Los Angeles while providing for children.’”<sup>158</sup>*

By April 1988, a consortium of four companies called the Wilshire Center Partners (WCP) presented its offer to purchase the land from the current owners.

Nevertheless, Shambra and his team continued to plan the joint venture on the Ambassador site without making a formal offer for the site. And they still had to overcome a series of obstacles, including the property’s “toxics,” according to Wedin’s handwritten notes.<sup>159</sup> Indeed, the hotel was characterized as “an albatross because it was solid asbestos,” according to former LAUSD employee Porter Hall. “It would have cost \$2 million in removal before we could even tear the building down,” he said during an interview. “Abating it would have cost [more] money and time than it would to take [the building] down,” he said.

One preliminary cost estimate prepared by the LAUSD’s consulting firm DMJM read:<sup>160</sup>

- |                             |               |
|-----------------------------|---------------|
| ◆ Demolition & site grading | \$4.7 million |
| ◆ Site improvement          | \$1.6 million |

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<sup>157</sup> Los Angeles Business Journal, undated photocopy

<sup>158</sup> August 18, 1987 memo to Doug Brown from Shambra

<sup>159</sup> June 21, 1989 Meeting notes with the CRA, LAUSD staff and private sector companies

<sup>160</sup> July 1990 Ambassador Hotel Site Evaluation by DMJM

◆ Asbestos Abatement	\$1.0 million
◆ New buildings	\$51 million
◆ Utilities estimate	\$193,200

Additionally, the district team faced another problem – school districts weren't allowed to “...*acquire more than we need for a school,*” according to Wedin's notes. And “...*there can be no intent formed to acquire for anything other than a school.*”<sup>161</sup>

During a June 21, 1989 meeting, Wayne Wedin, Dom Shambra, LAUSD Counsel Richard Mason and two mortgage company executives discussed ways to circumvent state regulations and other legal and logistical problems associated with the Ambassador Project.<sup>162</sup>

Mortgage company representative, Marshall Krupp of CSA Mortgage, however, didn't “...*feel the site is right for a high school – economics, logistics...*” according to Wedin's notes.<sup>163</sup> City officials, including Council Member Nate Holden and Mayor Tom Bradley agreed that the site was inappropriate for the district's proposed joint venture.

But the district team seemed determined to find a way to develop a joint venture on the property and met with this purpose in mind. First, the group crafted language to help circumvent existing policy and to obtain Board of Education approval by referring to an unspecified business relationship with the developer rather than a joint venture.

Wedin's notes read: “...*to be included in the CSA's proposal,*” the language should read, “...*It's our intent to establish a relationship with the school district.*” The typed version

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<sup>161</sup> Wedin's hand-written notes from the June 21, 1989 meeting

<sup>162</sup> June 21, 1989 meeting notes

of the same meeting notes clarify that the developers would also utilize that language.<sup>164</sup>

At that meeting, the participants decided that the developers should submit the proposal to buy the land and state that they wished to develop a relationship with the school district. The meeting participants apparently agreed to tell the Board that they “...*offered no encouragement for them [the developers] to say anything one way or the other about the school district.*”<sup>165</sup>

In the meantime, the new owners of the Ambassador Hotel property, Wilshire Center Partners (WCP), had already hired an architect and announced plans to develop the property. This concerned LAUSD officials. In fact, Roger Rasmussen and Chuck Schepart of the district’s Independent Analysis Unit expressed their fear of escalating costs if the current owners and developers “...*move forward with their project...*” prior to LAUSD acquiring the property. Such a situation would ‘*create significant barriers to obtaining State monies through the SAB,*’ wrote Wedin.<sup>166</sup>

*“Knowing that the District is dependent on State funds, those who want to develop the site may try to delay the State approval process ... thereby giving a prospective developer enough time to develop the Ambassador property and put its value beyond the reach of the District.”*

The planners recommended moving quickly to finance the Ambassador site acquisition for the district as soon as the State approved the site. Additionally, they proposed that the district either issue debt in the form of COPs or establish joint venture

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<sup>163</sup> *ibid*

<sup>164</sup> Typed version of June 21, 1989 meeting notes noted above

<sup>165</sup> *ibid*

<sup>166</sup> August 24, 1989 memo from Rasmussen/Schepart to Mason

financing arrangement to expedite project initiation. The joint venture, however, “...might take too much time to conclude an agreement,” Rasmussen noted.<sup>167</sup>

Wedin, however, argued against Rasmussen’s skepticism and maintained that the best plan for the development of the property was the joint venture arrangement, submitting that the agreement could be done “*relatively quickly*” and could provide funding to secure control of the land and funds to construct the high school.<sup>168</sup> He further suggested that private investors and developers had already exhibited interest in pursuing a joint venture with the district on the land.<sup>169</sup>

On September 13, 1989, the Wilshire Center Partners (WCP) completed its purchase of the Ambassador Hotel site for \$64 million. During the following November, the school district attempted, unsuccessfully, to persuade WCP to jointly develop the property with the district.<sup>170</sup> WCP instead wished to move forward with their own development project but agreed to assist the LAUSD in finding alternative properties for its proposed high school. WCP suggested five alternative locations that it believed were better suited for constructing a high school.<sup>171</sup> LAUSD rejected each of the proposed sites for various reasons. However, in the Environmental Impact Report (EIR) prepared by the firm Environmental Perspectives, it noted:

*“The alternative sites meet this primary objective but do not include any commercial component. Because of this, the potential conflicts between*

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<sup>167</sup> *ibid*

<sup>168</sup> September 1, 1989 memo from Wedin to superintendent Bill Anton

<sup>169</sup> *ibid*

<sup>170</sup> Testimony of Brian Garrison, of Wilshire Center Partners, April 9, 1997, AA vs. LAUSD

<sup>171</sup> *ibid*

*potentially conflicting uses and extra traffic generated by the commercial uses are avoided. Conversely, the economic advantages available from the development and management . . . cannot be provided with these alternatives.*"<sup>172</sup>

Shortly thereafter, WCP joined with Trump West Realty to form Trump Wilshire Associates (TWA) (later renamed Ambassador Associates (TWA/AA) to independently develop the Ambassador property.

By February 28, 1990 the LAUSD had requested funding from the State Allocation Board to acquire the Ambassador site.<sup>173</sup> The SAB staff requested that the district, instead, continue to negotiate for a possible alternative site,<sup>174</sup> but eventually approved the \$50 million in state bond monies for the district to acquire the 17 acre portion of the site.<sup>175</sup> Rush Hill told a JLAC investigator,

*"By the time it got to the State Allocation Board, it was so contrived that everyone was cutting compromises . . . they eliminated taking down the land that would be used for asset management activity . . . and retained all the expense of the site plus the expense of building the high school."*<sup>176</sup>

Having rejected the proposed alternative sites, the district finally offered Ambassador Associates \$73 million for the purchase of the entire site on April 20, 1990.<sup>177</sup> As an alternative to the direct sale of the property, LAUSD offered to jointly develop the entire property with TWP/AA and threatened to split up and condemn the 17

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<sup>172</sup> July 1989 EIR prepared by Environmental Perspectives

<sup>173</sup> SAB minutes, February 28, 1990

<sup>174</sup> Report of the Executive Officer, SAB Meeting, May 23, 1990

<sup>175</sup> State Allocation Board Staff Recommendations, April 25, 1990

<sup>176</sup> JLAC interview with Rush Hill, February 11, 1998

<sup>177</sup> April 20, 1990 letter from Niccum to Daniel P. Garcia, Esq.

acre portion of the property by eminent domain if the company didn't accept the offer to participate in a joint venture with the district, according to the sworn testimony from Barbara Res, an executive with TWP/AA.<sup>178</sup> TWP/AA still refused the districts offers and the district returned to the SAB to ask for more state money to acquire the site.

Prior to the District's return to the SAB, LAUSD's outside counsel, Peter James of the law firm Baker and Hostetler, indicated to the SAB that the possibility existed of a lawsuit being filed against the State if it did not provide additional funding for the Ambassador acquisition.<sup>179</sup> He wrote:

*"We do not wish to involve the State in the Rodriguez case or to pursue litigation against the State to compel it to honor its constitutional obligations. The far better path is to recognize that the minority high school students living within nine blocks of the Ambassador site are in sore need of a new high school ... I urge the Board to approve the allocation ..."*

In May 1990, the District appeared again in front of the SAB to request additional funds to acquire the entire site. Yet, the SAB refused to allocate more than the \$50 million it had already approved for acquisition of the 17-acre portion of the site.<sup>180</sup>

Shortly thereafter, the LAUSD Board of Education adopted a resolution of necessity to invoke the laws of eminent domain and seize the 17-acre portion of the property from TWP/AA.<sup>181</sup>

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<sup>178</sup> Testimony of Barbara Res, April 9, 1997, AA vs. LAUSD

<sup>179</sup> May 1, 1990 letter from LAUSD counsel Peter James to the SAB's Jesse Huff

<sup>180</sup> Report of the Executive Officer, SAB, August 22, 1990/May 23, 1990 minutes

<sup>181</sup> LAUSD Board resolution

In the absence of any joint venture possibilities, the district proceeded to authorize a \$50 million transfer from its Workers' Compensation Self-Insurance Fund to the General Fund in order to rapidly assemble the deposit that was required for the district to begin condemnation proceedings.<sup>182</sup> Subsequently, the school district authorized the issuance of \$62 million in COPs to finance the acquisition of the Ambassador property.

On July 16, 1990, the district filed the required Complaint to condemn the 17-acre portion of the property it wanted and, on the following day, recorded its notice *of lis pendens*. Two weeks later, on August 2, 1990 LAUSD deposited \$47.9 million as a probable compensation deposit in order to lock in the value of the land.

Due to mounting mortgage costs, TBP/AA filed a request to withdraw the deposit in December 1990 and withdrew the deposit by the end of January 1991. The withdrawal effectively waived the TWP/AA's right to challenge LAUSD's condemnation actions.

But while the LAUSD maintained that the 17 acres were only worth \$47.25 million, TWP/AA's appraisals valued the entire property at \$124 million.<sup>183</sup> According to the testimony of Res, she attempted to negotiate the price with the district, but the district refused to budge.<sup>184</sup> While Mason denied discussing the sale price with Res, he confirmed that Res requested to meet in November 1991 for that purpose.<sup>185</sup> Mason claims that the district was willing to negotiate, however, the November meeting was the last time the parties had direct contact until September 2, 1992.

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<sup>182</sup> Sworn testimony from Olonzo Woodfin regarding the July 30, 1990 Board resolution

<sup>183</sup> Belmont Learning Complex EIR

<sup>184</sup> Sworn testimony of Barbara Res taken April 9, 1997, AA vs. LAUSD

<sup>185</sup> Sworn testimony of Mason taken February 25, 1997, AA vs. LAUSD

On that day, Finbar Hill, who represented the Power Corporation, one of TWP/AA's partners, contacted Robert Niccum to initiate an "...*informal and off the record discussion...*" intended to facilitate an agreement on price to be paid by the LAUSD for the entire site in a cordial environment, according to Hill's sworn testimony.<sup>186</sup> At that time, Power was on the verge of bankruptcy, and the sale of the Ambassador, Hill said, was essential to its survival (Power eventually went out of business).<sup>187</sup>

However, because Hill wasn't authorized to represent TWP/AA in negotiations nor to disclose financial details which could compromise TWP/AA's position, he and Niccum agreed to deny that Hill initiated the discussions. Instead, they agreed to say that Niccum initiated the conversation, and the parties came to an agreed purchase price of \$82 million for the entire site.<sup>188</sup>

Hill returned to Trump Wilshire Partners (TWP/AA) and explained the "*district offer (sic)*" including a proposed date of transaction, a date when the balance of the payment would be due, and an interest rate that would accumulate on the balance until that date.

Niccum, however, broke his side of the agreement and took information from the meeting with Hill directly to LAUSD Counsel, Richard Mason. The LAUSD then developed a strategy of delay to take advantage of the newfound information - that an

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<sup>186</sup> Sworn testimony of Finbar Hill in Los Angeles, AA vs. LAUSD

<sup>187</sup> *ibid*

<sup>188</sup> Testimonies of Finbar Hill and Robert Niccum taken in Los Angeles. January 14, 1993 letter from Niccum to Hill.

immediate resolution of the site acquisition price was essential to the financial solvency of the TWP/AA partners.<sup>189</sup>

The district indicated that it delayed the transaction's completion<sup>190</sup> for a number of reasons. Allegedly, the district was expecting to obtain the balance of funds due to TWP/AA from a proposed joint venture partnership with a Korean developer. Other reasons included a potential teachers' strike and serious budget difficulties.<sup>191</sup>

However, based on the belief that LAUSD had initiated discussions, TWP/AA agreed to delay litigation in favor of a settlement, according to the testimony of Res.<sup>192</sup> The two entities agreed on the \$82 million purchase price in November for the entire 23.5 acre site.<sup>193</sup> Still, the LAUSD stretched out the settlement process until March 1993.

Meanwhile, on January 28, 1993, Rasmussen and LAUSD controller Lonnie Woodfin analyzed the situation and recommended purchasing the Ambassador immediately and refinancing the expiring COPs. Purchasing the property outright would involve the "*...least borrowing, the best collateral for borrowing and the best justification for borrowing,*" they wrote.

Either way, they would have to take money from the General Fund -- the "buy" option would cost \$9 million from the General Fund in 1994-95. But the district hoped to obtain revenues from a joint venture development in that scenario. If they "*dropped*" the

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<sup>189</sup> October 5, 1992 memo from Niccum to Mason/AA Argument, AA vs. LAUSD

<sup>190</sup> Sworn testimony of Niccum

<sup>191</sup> Sworn testimony of Hill

<sup>192</sup> Sworn testimony of Res, April 9, 1997

<sup>193</sup> January 14, 1993 letter from Niccum to Hill.

Ambassador, it would cost the district \$10.4 million in the 94-95 budget plus \$3.7 million per year until 2003-2004, according to the memo.<sup>194</sup> Rasmussen and Woodfin wrote,

*“In every case, we expect additional revenue to repay our borrowing . . . If the district buys the property, the SAB gives them \$50 million. If it drops its claim, it pays for the owner’s legal expenses and possible damages but gets the remainder of the deposit back.”*<sup>195</sup>

Additionally, refinancing the COPs was estimated to cost the district between \$67 million and \$116 million, according to the January 28, 1993 memo.<sup>196</sup>

On March 16, 1993, the day prescribed to finalize and sign the purchase documents, LAUSD attorneys backed out of the \$82 million deal,<sup>197</sup> and the district continued with the condemnation proceedings on the 17-acre parcel. Meanwhile, the original COPs were coming due. Douglas Brown, LAUSD Deputy Business Manager, prepared documents to refinance the COPs that had been issued for acquisition of the Ambassador property.<sup>198</sup> In order to refinance the COPs, Brown prepared documents to encumber other district-owned property for collateral. Two new costs surfaced: \$23,000 for the supporting documents (structural analysis, plot and site plans) and \$26,000 for real estate appraisals on properties being used for collateral.<sup>199</sup>

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<sup>194</sup> January 28, 1993 memo from Rasmussen/Woodfin to Mason

<sup>195</sup> *ibid*

<sup>196</sup> *ibid*

<sup>197</sup> Testimony of Hill & Res

<sup>198</sup> May 6, 1993 memo to from Douglas Brown to Henry Jones

<sup>199</sup> *ibid*

Within a month, Niccum compiled a list of 17 district owned sites available for collateral on the COPs<sup>200</sup> He included the Administrative Offices, the Business Services Center, several school sites, occupational centers and garages.

On July 13, 1993, investment banker Arnold Mazorri of Prager, McCarthy & Sealy recommended using seven properties based on their land-only value to post collateral to cover the full \$67,990,000 of COPs. These properties included the district Administrative Offices, the Business Services Center, Evans Community Adult School, Old Ranch Road, West Valley Occupational Center, Friedman Occupational Center and Prairie Street School for a total value of \$63,331,000.<sup>201</sup>

During this time, however, LAUSD outside attorney, Timi Hallem (Tuttle & Taylor) contacted David Cartwright, LAUSD outside counsel (O'Melveny & Myers) to inform the district of the availability of another of her clients' properties. This client was S-P Realty (Shimizu), and the property later became the site of the Belmont Learning Complex.<sup>202</sup> Shortly thereafter, on July 20, 1993, Cartwright sent a letter to Hallem expressing LAUSD's possible interest in acquiring the Shimizu property.<sup>203</sup>

Three days later, in a memo to the Board of Education, Mason recommended that the district purchase the 11-acre Temple Beaudry site (originally planned as the site of the New Belmont Middle School) in downtown Los Angeles and that the district begin informal discussions with the Office of Local Assistance (OLA) to use the State funds that had been approved for the purchase of the Ambassador site to instead acquire the

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<sup>200</sup> June 11, 1993 memo from Niccum to Shambra

<sup>201</sup> July 13, 1993 memo to Gilbert Ray, O'Melveny & Myers, from Mazorri

<sup>202</sup> Deposition of Timi Hallem take in Los Angeles, AA vs. LAUSD

Shimizu site. It was thought that if the State funds could be shifted, then the district could abandon the Ambassador condemnation. If it

*“all worked out, the District would utilize the State’s money to purchase the entire 35 acre site at Temple Beaudry, abandon the Ambassador, and seek reimbursement from TWP for the \$48 million.”*<sup>204</sup>

By this time, a more recent appraisal that valued the 17-acre portion of the Ambassador site at only \$30 million was received by the district.

After confidential meetings with the OLA’s Lyle Smoot and Bill Van Gundy, Mason recommended the formal abandonment of the Ambassador condemnation proceedings.<sup>205</sup> He recommended waiting until after the September 22, 1993 meeting of the SAB to guarantee that the desired “action” was taken with regard to the fund transfer by the SAB. Mason wrote,

*“The real threat of abandonment is the only means of getting Trump to be realistic . . . [if] upon reaction to our abandonment, (TWP/AA) . . . offers to accept the \$47 million deposit as full and complete payment . . . a key issue here would be whether or not the six Wilshire frontage acres are included.”*<sup>206</sup>

At a subsequent mandatory settlement conference, the LAUSD announced its abandonment of condemnation proceedings.

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<sup>203</sup> July 20, 1993 letter from Cartwright to Hallem

<sup>204</sup> July 23, 1993 memo from Mason to Board of Education, Superintendent Sidney Thompson

<sup>205</sup> August 20, 1993 memo from Mason to Board of Education, Thompson

<sup>206</sup> *ibid*

The district then transferred the SAB funding for the Ambassador property to the Shimizu property in downtown Los Angeles where the Belmont Learning Complex is now being constructed,<sup>207</sup> and on November 10, 1993 filed its notice of abandonment of the eminent domain condemnation proceedings.<sup>208</sup>

Although TWP/AA filed an inverse condemnation action to try to force the district to retain 17 acres of the property, the Court ruled against them, stating that the school district could not be forced to proceed in a condemnation action. Consequently, the owners of the Ambassador site were ordered to return the \$47.9 million deposit.

On March 24, 1994, Dominic Shambra sent a letter to developer Bruce Jay, stating that the district was still interested in developing the Ambassador site and

*"...would be interested (as we have been all along) in a joint development," including "commercial development of the Wilshire frontage and Eighth Street. . . . Obviously this is a sensitive matter, and we would appreciate your treating it confidentially."*<sup>209</sup>

LAUSD and TWP/AA are still involved in litigation over the Ambassador project and have been for more than eight years. While the school district may receive its deposit back, the district will likely be forced to pay for damages, all of TWP/AA's attorney fees, its own attorney fees, and court costs. LAUSD has already paid for the countless hours staff has dedicated to the project over the past twelve years. TWP/AA attorney fees have exceeded \$5.5 million, and LAUSD legal fees have reached nearly \$1.7 million.<sup>210</sup>

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<sup>207</sup> March 8, 1994 memo from Sid Thompson to Lonnie Woodfin

<sup>208</sup> Court documents from Ambassador Associates vs. LAUSD

<sup>209</sup> March 24, 1994 letter from Shambra to Bruce Jay of Bruce Jay Associates Real Estate

<sup>210</sup> October 13, 1998 letter from Edward Szczepkowski to Richard Mason

*Note: The State of California reimbursed the LAUSD for approximately one-half million dollars in attorney fees and support costs for the Ambassador project during the 1989 through 1995 period. The amount includes \$455,859.00 in legal fees and \$18,154.00 in support costs, such as appraisals, escrow associated charges and surveys. The final amount of reimbursement from the state to the district, including reimbursements for any additional costs incurred between 1995 and 1998, have yet to be determined.*

But for the preoccupation with joint ventures on the site, the LAUSD could have legally acquired the Ambassador property eight years ago when the condemnation action began. By now, the LAUSD could have built the New Los Angeles High School and perhaps even graduated two classes.

## **Project #5: The Business Services Center**

*“It has become apparent that the identified seismic problems could provide the district with an income producing opportunity.”* -- Dom Shambra in a **December 12, 1994 memo to Rich Mason and Superintendent Sid Thompson.**

**Summary:** The Los Angeles Unified School District Business Services Center (BSC) is situated on 17.5 centrally located acres in downtown Los Angeles on property that Dom Shambra considered a prime redevelopment opportunity. He first solicited development proposals for this property in 1991 but was unable to complete any redevelopment plans. However, the 1994 Northridge Earthquake apparently provided Shambra with the opportunity to pursue another strategy in order to develop the site.

Ten months after the January 17, 1994 Northridge Earthquake, the LAUSD hired a structural engineering firm to evaluate the structural integrity of the Business Service Center (BSC) buildings. And though the report identified only “minor” damages, such as typical plaster cracks, it appears that Shambra and Cartwright decided to pronounce the situation an emergency, craft a plan to move the staff that was housed in the BSC complex into leased space in the downtown IBM Towers and to initiate new plans to redevelop the 17.5 acre BSC site. Shambra’s own memos indicate that no real emergency existed. Regardless, Shambra and Cartwright persuaded the Board of Education to declare an emergency and to authorize the transfer of funds from the

district's Reserve for Economic Uncertainties in order to finance a move from the BSC to the downtown Los Angeles IBM Towers, thereby freeing up the old site for a joint venture.<sup>211</sup>

Shambra then proceeded to retain consultant Betty Hanson of California Financial Services at the rate of \$125 per hour to pursue emergency funding from the Federal Emergency Management Authority (FEMA) to offset the cost of the move from the BSC and to help defray the IBM Tower lease costs at the new facility. This action would also facilitate a prospective joint venture development project at the vacated BSC site.

Throughout the effort, LAUSD staff denied what appeared to be their underlying intention – the development of the BSC site. However, in one internal memo,<sup>212</sup> current LAUSD Chief Administrative Officer David Koch wrote:

*“This possibility could be endangered by public discussion, at this time, of the District intent to demolish the BSC or trade/develop the site for some other purpose.”*

**Details:** LAUSD first pursued the development of the Business Services Center (BSC) site in 1991. An RFQ was issued on May 30, 1991 for the development of the 17.5-acre parcel on 15<sup>th</sup> and San Pedro Streets, with plans to lease the land for commercial development.<sup>213</sup>

The district simultaneously released a second RFQ for a joint venture development on the Southern Pacific Transportation Company's 45-acre site known as

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<sup>211</sup> LAUSD Amendment to Board Report, #12

<sup>212</sup> November 30, 1995 memo from Koch to Thompson

<sup>213</sup> May 30, 1991 Request for Qualifications

the "*Cornfield*," to build a new Business Services Center and thus free up the old BSC site for development.

The Cornfield site plans called for the district to build a new office complex, a warehouse, a high school and a commercial development on the property.<sup>214</sup> Though Southern Pacific initially had wanted to sell the land directly to the district, it was also willing to participate as a joint venture partner, the Los Angeles-based *Downtown News* reported.

Three development companies -- Lowe Development, Koll Company and Goldrich Kest & Associates -- were interviewed for the project prior to August 13, 1991.

One developer, Emanuel Afergut of Goldrich Kest was hesitant to become involved and requested the background of "*previous negotiations between LAUSD and Southern Pacific*" before participating further.<sup>215</sup>

Koll Company was also skeptical of LAUSD's vision for the joint venture project. The company believed that neither the office nor the residential components were feasible. Goldrich Kest questioned the housing and warehouse components of the project as well but thought that involving the garment industry and a possible manufacturing component might make a project viable. Goldrich Kest also anticipated problems with financing the project.

Lowe Development, however, appeared comfortable with a proposed mix of retail, office and residential development.<sup>216</sup>

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<sup>214</sup> *Downtown News*, July 8, 1991

<sup>215</sup> August 13, 1991 RFQ interview notes

<sup>216</sup> *ibid*

LAUSD never completed the project, possibly because the developers lacked confidence in the Shambra/Wedin development plans and possibly because the district was unable to acquire the Cornfield property.

In a personal interview, however, Shambra claimed that revenue projections for the project were “*inflated*,” and that the real estate market was “*at that time beginning to take a dive*.”

Rich Mason, LAUSD general counsel, had another answer. In a letter to JLAC, Mason wrote,

*“The asking price for the Cornfield property was too high . . . Had this project gone forward, it might have led to the relocation of the Business Services Center offices, leading to the re-use or development of the site at 1425 South San Pedro.”*<sup>217</sup>

Regardless, Shambra still wanted to develop the 17.5-acre Business Services Center site, and the January 17, 1994 Northridge earthquake apparently presented the opportunity to abandon the BSC and create another development project on the site. In a December 12, 1994 memo to Mason and Superintendent Sid Thompson, Shambra wrote,

*“It has become apparent that the identified seismic problems could provide the district with an income producing opportunity. That opportunity could become reality if we create a long term plan to leverage certain district property assets while recognizing the short term needs to mitigate the seismic problems.”*

Just prior to Shambra’s memo, the district had ordered a structural evaluation by the firm of Johnson & Nielson Associates (JNA) to assess any damage to the facility that had been caused by the quake. In its report, the company noted only “*minor*” damage,

mainly “*typical cracking of the drywall in non-structural partitions*” in one building. Another building appeared to have even less damage with “*non-structural plaster damage,*” with repairs and upgrades totaling \$1.1 million for Building One, \$1.69 million for Building Two and \$1.6 million for Building Three.<sup>218</sup>

Shambra confirmed in his December 12, 1994 memo to Thompson and Mason, that there was no “*imminent danger or immediate need*” to relocate district staff.<sup>219</sup> He wrote,

*“It does not appear that the facilities need to be abandoned immediately because of imminent danger, but they are in serious need of seismic code improvements.”*

The examining engineer and the site’s administrator also confirmed for JLAC staff that no real emergency existed. “*There’s no official condemn on the building, and it’s not ready to collapse,*” said the engineer who prepared the report in a telephone interview with the JLAC. However, he emphasized the importance of owner comfort and added that the “*building was in need of repair.*”

In a written declaration to the JLAC, Site Administrator Hamid Arabzadeh stated, “*Even though the old business service building was ‘condemned,’ there was much traffic in and out of the building.*”

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<sup>217</sup> September 11, 1998 letter from Mason to Maria Armoudian

<sup>218</sup> Johnson & Nielson Associates Evaluation on the BSC

<sup>219</sup> December 12, 1994 memo from Shambra to Thompson and Mason

Despite evidence to the contrary and the seemingly safe assessment by both Shambra and the JNA, district staff and attorney David Cartwright recommended that the Board of Education declare an emergency *“for the purposes of expediting the relocation,”* and most likely in order to empty the site and facilitate Shambra’s redevelopment plans for the BSC property.<sup>220</sup> They further recommended that the Board authorize staff to,

*“...enter into appropriate contracts without the necessity of competitive bidding and transfer necessary funds from the Reserve for Economic Uncertainties” to implement the recommendations.*”<sup>221</sup>

According to one newspaper report, Facilities Division staff had already *“...determined that the district’s board would agree that an emergency situation exists.”*<sup>222</sup>

Despite the alleged emergency, plans called for some branches of the district administration, including the Design, Construction, Maintenance and Operations Branches, to remain at the “old site,” according to a February 27, 1995 memo to Ruben Zacarias, current Superintendent of Schools from Facilities Asset Management Division Branch Directors.

In that memo, the Facilities Asset Management Division Branch Directors argued against leaving the Design, Construction, and the Maintenance and Operations Branches at the “old site,” as was planned, at the same time that the Real Estate, Asset

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<sup>220</sup> Amendment to Board Report #12

<sup>221</sup> *ibid*

Management, and the Facilities Planning and Analysis Branches were moved to the IBM tower.<sup>223</sup>

Specifically, the Directors argued against the plans for fear of harming “credibility... given the original purpose for the move.” The memo reads,

*“To the extent that ... the IBM Tower is used to house employees currently in structurally safe facilities rather than those in unsafe facilities at the BSC, it harms the credibility of District Staff and the Board given the original purpose for the move.”*

Nevertheless, both Cartwright and Mason continued to argue that an emergency dictated the move. In a 1995 letter to real estate agents James Kinetz and David Louie, Cartwright wrote, “*The District’s seismic reports on the BSC building dictated the timing of the search. The Kobe quake left no avenue for retreat,*”<sup>224</sup> and during a personal interview with the JLAC, Cartwright said that the buildings would “*...literally knock each other down . . . in a 6.0 quake.*”

Mason wrote to JLAC that the district’s intent to develop the BSC was “entirely separate” from the post 1994 earthquake issues.<sup>225</sup>

The emergency “spin” was important to Shambra so that his plan would not be viewed as,

*“unnecessary, but also as an ‘extravagant’ use of District funds at a time*

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<sup>222</sup> Newspaper article photocopy obtained from LAUSD files, date and source unclear

<sup>223</sup> February 27, 1995 memo to Ruben Zacarias, Superintendent of Schools, from Facilities Asset Management Division Branch Directors

<sup>224</sup> March 9, 1995 letter from Cartwright to Messrs. James Kinetz and David Louie

<sup>225</sup> September 11, 1998 letter from Mason to Maria Armoudian

*when such funds are critically needed for new construction and improvement of schools.*"<sup>222A</sup>

He wrote, "...To approach this problem with a simple goal to relocate and/or refurbish administrative offices will . . . be self-defeating."

The District took possession of the new leased offices at 355 South Grand Avenue in March 1995. The IBM Tower owner, Maguire Thomas Partners, wrote to Robert Abundis of the City of Los Angeles for help in expediting the District's move.<sup>226</sup> The total cost to lease offices in the IBM Towers for displaced district staff will reach \$38.7 million, according to LAUSD documents.

### **The Pursuit of Federal Emergency Funds**

*"While it was clear ... that complete replacement of these facilities never would be eligible for funding, I still believe there is a possibility of obtaining some funding for retrofitting or relocation costs, (Note: This possibility could be endangered by public discussion, at this time, of the District intent to demolish the BSC or trade/develop the site for some other purpose.)"*<sup>227</sup>

--- David Koch, LAUSD Chief Administrative Officer

On March 16, 1995, Dom Shambra redirected consultant Betty Hanson from her assignment in securing waivers of SAB requirements for the Belmont Learning Complex to the job of obtaining FEMA (Federal Emergency Management Authority) Hazard

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<sup>222A</sup> December 12, 1994 memo from Shambra to Mason and Thompson

<sup>226</sup> March 15, 1995 letter from Maguire Thomas Partners to Robert Abundis, City of Los Angeles

<sup>227</sup> November 30, 1995 Memo from Koch to former LAUSD Superintendent Thompson

Mitigation Grant funds to “relocate the BSC”<sup>228</sup> and offset IBM Tower lease costs and costs related to “long term development projects.”<sup>229</sup>

Shambra’s and Hanson’s efforts, however, were at odds with the Director of the Earthquake Disaster Program at the LAUSD, Margaret Scholl. Scholl, along with Independent Analysis Unit head Roger Rasmussen, stated that Hanson’s services were not needed and were a “duplication of activities and responsibilities” already being performed, according to a November 30, 1995 memo from current LAUSD Chief Administrative Officer Koch to former superintendent Thompson. The department has not “requested the use of her services,” Koch wrote.

Shambra, however, was determined to retain Hanson and to pursue federal emergency funding for his project and contracted directly with her but “made her services available.... at no cost to them.”

But while Hanson and Shambra attempted to prioritize FEMA funding for the BSC move and Shambra’s development plans, Scholl considered the project a low priority.<sup>230</sup>

In an August 28, 1995 letter to Scholl, Hanson expressed her

“...concern over the ability to obtain funding from the Hazard Mitigation Grant Program ... since it has been placed as the ninth and last priority . . . Being the last priority makes it easier for FEMA to prioritize it lastly and deny it based on limited resources.”

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<sup>229</sup> November 8, 1995 memo from Shambra to Koch

<sup>230</sup> August 28, 1995 memo from Hanson to Scholl

Hanson tried to move the BSC up to seventh place, "*above the two priorities that included schools. . . .*"

On September 1, 1995 FEMA awarded a \$200 million allotment from the Hazard Mitigation Grant Program to be used only for the District's "*first priority projects,*" notably the retrofit/replacement of lighting and suspended ceilings.<sup>231</sup>

By November 6, 1995, Hanson had requested that Shambra reassign her from the FEMA projects back to the Belmont Project because,

*"...due to our lack of cooperation on the part of the [Earthquake Recovery] Unit, it has impeded my ability to perform the functions . . . has not in turn made their strategies available to me nor have my services been utilized as per agreement."*<sup>232</sup>

After Hanson failed to secure FEMA funds for the BSC Project, Shambra moved her back to the Belmont Learning Complex project and asked the Earthquake Recovery Office to pay for her hours.<sup>233</sup> Scholl declined to pay Hanson's fees because her offices "*did not contract Hanson nor keep track of her,*" she wrote on September 19, 1995.<sup>234</sup>

**Side note: Hanson's Conflict of Interest:** It appears that Betty Hanson may have been simultaneously working for both the private consulting firm, California Financial Services, and the California Department of Education (CDE). In fact, six months prior to

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<sup>231</sup> September 3, 1995 letter from Hanson to Scholl

<sup>232</sup> November 6, 1996 memo from Hanson to Shambra

<sup>233</sup> November 8, 1995 memo from Shambra to Koch

<sup>234</sup> September 19, 1995 letter from Scholl to Deloris Loughridge

her leaving her post at the CDE, Hanson was working with Shambra to write the language of her future contract with the LAUSD.<sup>235</sup>

Hanson, in her capacity as a CDE employee, was responsible for approving the acquisition of property by the LAUSD for new school sites. In fact, Hanson approved nine sites for LAUSD that were later found to be contaminated with harmful toxins, the ninth of which she approved during this period while she was working for California Financial Services and working collaboratively with Shambra in developing the terms of her consulting contract with the LAUSD.<sup>236</sup>

The conflict is evidenced in a fax that Hanson sent to OPD employee Deloris Loughridge on February 2, 1994, six months prior to her September 2, 1994 departure from the Department of Education. This fax playfully discussed the terms of her future LAUSD contract with Dominic Shambra. The page was headed, "*Activities To Be Rendered by Betty Hanson*" and noted on its cover page, "*Pls have Mr. Shambra check this out for political correctness since he's such an xpert. Tanks.*"

The first document that details the terms of Hanson's contract with the LAUSD is apparently Hanson's own production, while the second is identical to the first with Shambra's hand-written adjustments.

Within two weeks of her resignation from the CDE on September 2, 1994, Hanson had joined the consulting ranks of LAUSD at a rate of \$125 per hour. Hanson has been paid a total of \$199,700 by the LAUSD over the past four years, according to LAUSD documents.

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<sup>235</sup> February 2, 1994 fax from Betty Hanson to Loughridge

<sup>236</sup> February 2, 1994 fax from Hanson to Loughridge

## Project #6: Belmont Learning Complex

### Summary:

*“Responsible persons (not litigants) . . . objected to the site acquisition because of the toxics issues, . . . had concerns about the mixed use . . . were concerned about the bidding process, and . . . had concerns about this new school site (originally acquired for a middle school) being expanded to a high school with higher student population than is considered desirable,*

*. . . Yet every concern, every price escalation, and every doubt was set aside, and the project has proceeded,”*<sup>237</sup>

---- Timothy Lynch, Vice Chairman of BB  
Oversight Committee that reviewed the BLC

After years of delays and complications failed to secure the Ambassador Hotel property for a downtown high school and joint venture project, LAUSD staff looked for other site options. The district opted for a 24-acre, highly problematic location in downtown Los Angeles called the “Shimizu” site for its next joint venture project. Immediately prior to purchasing the 24 acre site, the district had spent approximately \$31 million that was intended for installing school air conditioning to purchase an 11-acre parcel adjacent to the Shimizu property in order to construct a junior high school - a school which was never built.<sup>238</sup>

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<sup>237</sup> May 19, 1997 letter from Timothy Lynch to Members of the BB Oversight Committee

<sup>238</sup> Shambra Deposition taken February 20, 1997 in Los Angeles

Assisted by a coterie of consultants, LAUSD staff devised a complicated mixed-use academy school venture that was to include a retail component, housing and a shared city/district gymnasium and pool. Concurrently, the district sponsored legislation in Sacramento to relax state reimbursement eligibility requirements and allow state funding for such speculative joint venture projects.

Instead of competitively bidding the project, as is normally required by state law, LAUSD staff assembled a developer selection team that proceeded to choose the most costly development proposal. Kajima International, a primary team member of the chosen developer, Temple Beaudry Partners/Kajima (TBP/Kajima), was a client of the law firm that employed two of the five developer selection committee members. Moreover, one of TBP/Kajima's development team partners was the LAUSD architect and consultant who designed the project, collaborated in crafting the developer selection criteria, and participated in the selection of the first group of competing developers (see details).

The developer selection process, that appeared to be based on questionable criteria, created an uproar in the community and triggered a number of lawsuits that were filed against the District (see details).

It was also revealed that LAUSD's key negotiator was a business partner with a member of the BLC development team on a project in the Republic of Panama (see details).

After the most expensive development plan had been selected, two separate independent oversight committees were assembled. Both committees were highly critical of the entire project, particularly the proposed retail scheme and the exorbitant and

seemingly unjustifiable fees being paid to the developer. Both committees enumerated a litany of concerns and recommendations that were virtually ignored by LAUSD staff.

According to Roger Rasmussen, the project's main proponent, Dominic Shambra, "*railroaded*" the project through and insisted that the development team be paid its full fee even if it only built a high school without the other components that had originally been included in the project proposals<sup>239</sup> -- even though without those other components the project would no longer be a complicated development project.

As oversight committee members and other observers predicted, by the time district officials approached the State Allocation Board (SAB) for funding, the project was stripped down to a very expensive but basic high school, while it retained the price of a complex development project.

Already, the so-called Guaranteed Maximum Price (GMP) for the construction of the high school portion of the project has risen from its original estimate of \$72 million to over \$99 million including soft costs, with more increases anticipated. The controlling agreement, the Disposition and Development Agreement (DDA) has been highly controversial and some observers and participants assert that it was written largely to benefit the developer to the detriment of taxpayers and the district.<sup>240</sup>

Total costs for the Belmont Learning Complex are now estimated at approximately \$235 million but, according to Oversight Committee Vice Chair Timothy Lynch, these costs are expected to increase because the GMP is subject to revision.<sup>241</sup>

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<sup>239</sup> February 6, 1997 memo to Mason, Board Members from Roger Rasmussen

<sup>240</sup> JLAC interviews with developers, oversight committee members and correspondence from oversight committee members (see detail section)

<sup>241</sup> JLAC telephone interview with Timothy Lynch, November 13, 1998

Project costs include approximately \$5.7 million in development fees, \$7 million for a retail podium that may never be used and millions for outside consultant and lawyer fees. These fees include: O'Melveny & Myers Attorney David Cartwright at \$807,754.90, Asset Management Consultant Wayne Wedin at \$667,000, other consultants at \$886,000 and the costs associated with the abandoned architectural plans for the New Belmont Junior High School at \$730,000. Additionally, the State has already paid \$61 million to acquire the property and environmental remediation costs for the cleanup of toxic contamination at the site have yet to be determined.

Currently, the district is attempting to reinstate the retail component of the joint venture, as the "school only" project has nevertheless been built to accommodate retail tenants.

#### **Details:**

#### **Site Acquisition**

*"They paid \$60 million. Hello! In the middle of a recession! Somebody's laughing all the way to the bank. I don't know who handled it, but somebody got ripped off. You put the land cost on top of the school cost, and you have a debt service that your grandchildren will be paying off,"*

**-- Oswaldo Lopez, President of Sierra Pacific Land  
Member of the TBA/Obayashi development team.<sup>242</sup>**

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<sup>242</sup> JLAC Interview with Oswaldo Lopez, January 5, 1997

In November 1990, the Los Angeles Unified School District officially approved the acquisition of the 11-acre Temple Beaudry site for the construction of the Belmont Middle School. The district retained architects Villanueva/Arnoni to design the much-needed new downtown junior high, according to Robert Niccum, LAUSD Director of Real Estate. And on April 22, 1992, Niccum submitted a summary of estimated costs for the project to the State's Office of Local Assistance (OLA) of the Department of General Services (DGS) for approval.<sup>243</sup> The cost to the district for the partial construction documents was approximately \$730,000.

In March 1993, Dom Shambra, Director of the Office of Planning and Development (OPD) was able to redirect \$31.8 million from monies allocated for school air conditioning toward the purchase of the 11-acre site that was intended for the proposed new Belmont Middle School.<sup>244</sup> Shambra justified the switch because under *"...state guidelines, unless the schools went year round, they couldn't have the funds. Those schools voted not to go year round."*<sup>245</sup>

While the district was still engaged in lengthy negotiations and litigation with the Ambassador Hotel property owners over the value of the Ambassador site, a LAUSD contract attorney, Timi Hallem, contacted David Cartwright about the availability of a 24-acre property adjacent to the 11-acre site. Hallem, who represented the property owner, S-P Realty (Shimizu), had indicated that the company was in trouble and that it intended

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<sup>243</sup> SAB application form 506B, April 22, 1992

<sup>244</sup> Shambra Deposition taken February 20, 1997

<sup>245</sup> *ibid*

to dispose of the property and “*withdraw from North America,*” according to Cartwright.<sup>246</sup>

Even in a tight urban real estate market it would be hard to imagine a site less appropriate for constructing a school. The “Shimizu” site was atop an active oil field. The soil was contaminated with hazardous toxins, and the topography was dominated by a steep hillside. The property was adjacent to a major freeway and in the immediate vicinity of the existing Belmont High School, thus failing to address the real enrollment needs of the local community where middle school students were being bused long distances from home. These were some of the very problems that caused the district to reject other sites in the general downtown area.<sup>247</sup>

But, to sweeten the deal, S-P Realty gave the district \$150,000, specifically for Shambra to hire an independent consulting team to work on the project.<sup>248</sup> In a March 25, 1994 memo, Attorney Richard Mason wrote to LAUSD Controller Lonnie Woodfin, “*Given the express purposes of the donor, and the authorization of the Board Report, would you please deposit [the \$150,000] in Dom Shambra’s .. account...*”

Despite the site’s drawbacks and without a completed Environmental Impact Report (EIR), LAUSD agreed to purchase the property. The Board authorized the land assignment on September 7, 1993.

Less than two weeks later, on September 22, 1993 LAUSD staff persuaded the State Allocation Board (SAB) to redirect \$30 million from the money that had been

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<sup>246</sup> JLAC telephone interview with Cartwright

<sup>247</sup> May 21, 1990 letter from Bonnie James, LAUSD Division Administrator, to Brent Korff of the OLA (Office of Local Assistance)

<sup>248</sup> March 25, 1994 memo from Mason to Woodfin

approved for the LAUSD purchase of the Ambassador site to purchase the Shimizu site instead.<sup>249</sup> Within a few days, the SAB granted the transfer. By December, the district entered into escrow for the Shimizu property.

Once the Shimizu site was acquired, plans for the much-needed Belmont Junior High School on the adjacent 11-acre site were scrapped. The joint venture strategy that had repeatedly failed to deliver for the LAUSD was back in business, this time as the Belmont Learning Complex.<sup>250</sup>

### **Avoiding Competitive Bidding**

Nearly one month before the Grant Deed for the Shimizu property was recorded on March 15, 1994, Dom Shambra requested approval from the school board to use the RFQ/RFP process instead of utilizing the traditional design-bid-build construction delivery system which would have required competitive bidding for the Belmont Learning Complex (BLC) project. He justified circumventing the traditional competitive bidding process *"because of the nature of the proposal, the complexities in accomplishing the task and the need to vary from the standard course for creating a new school facility."*<sup>251</sup> In his request, he included letters of interest from four developers.<sup>252</sup>

Shambra then prepared a memo to the LAUSD Board of Education under the signature of the Superintendent of Schools which read, *"in order to effectively*

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<sup>249</sup> Transcript of September 22, 1993 SAB Meeting

<sup>250</sup> Sworn testimony of LAUSD's Mike Scinto, December 17, 1996, AA vs. LAUSD

<sup>251</sup> February 24, 1994 letter from Shambra

<sup>252</sup> *ibid*

*accomplish . . . as envisioned, some changes in attitude, procedures and processes must be secured.*"<sup>253</sup>

The State Allocation Board (SAB) and the Office of Local Assistance (OLA) procedures would have to be modified to allow the use of a design - build construction delivery system and "*the district's interest in utilizing the expertise of the private sector in creating and implementing the total project must be enhanced,*" he wrote.

Simultaneously, Shambra pushed to hire "*negotiation consultants, legal counsel, financial resource personnel and an architectural firm,*" to begin marketing efforts and to gain support for the project from the community, the redevelopment agency, and political entities. The team would also lobby the legislature and the SAB for changes in state laws relating to public school construction. The consultants' costs were projected at \$150,000, and consultant Wayne Wedin was to serve as the coordinator of the exclusive negotiation phase, the liaison with the private sector team, the advisor on relations with other governmental agencies, and as the primary assistant to Dominic Shambra.<sup>254</sup>

### **The RFQ**

The Request for Qualifications (RFQ) was circulated in April 1994 and six developers responded. But rather than qualifying developers based on school

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<sup>253</sup> Memo from Superintendent of Schools to Board of Education

<sup>254</sup> *ibid*

construction criteria, the 19 point “*suggested matrix for RFQ screening*,” instead focused on mixed use and design-build experience.<sup>255</sup>

Developers were informed at an April 12 bidders meeting that district architect, Ernesto Vasquez, “...*will answer questions during the RFP period re: his work but will not be a part of competitive teams.*”<sup>256</sup> But, contrary to this assertion, Vasquez did become a partner in the winning development team, TBP/Kajima, by the time the RFP phase began.<sup>257</sup>

By July 6, 1994, the three consultants – Wedin, Vasquez of MacLarand, Vasquez & Partners (MV&P) and Martin Croxton of Coopers & Lybrand -- had interviewed the six development teams.<sup>258</sup>

Two teams were rejected -- Smith and Hricik Development, and CRSS/Telacu – Four development teams – Temple Beaudry Associates (Obayashi Corporation), Temple Beaudry Partners (Kajima International), Goldrich Kest & Associates, and Mount Street Properties – were invited to submit first phase proposals.<sup>259</sup>

It was reported that the two rejected teams had been unwilling to share financial responsibility or share any potential profits that would be generated by the project with the District.<sup>260</sup>

In the end, however, one of the rejected teams, CRSS/Telacu, became a finalist, and one of the selected teams, Mount Street Partners, was excluded.<sup>261</sup>

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<sup>255</sup> Suggested matrix for RFQ screening

<sup>256</sup> April 12 Bidders Meeting notes

<sup>257</sup> Proposal submitted from TBP for Phase I of the RFP

<sup>258</sup> July 6, 1994 draft letter from Wedin to Shambra

<sup>259</sup> *ibid*

## The RFP: Phase I

The Request for Proposals (RFP) was divided into two phases. The first phase, the “*non-school elements*,” was circulated among the four development team finalists.

By December 1994, when each developer submitted final proposals, Ernesto Vasquez, the consultant who both created the design concept and helped select the first round of developers to be considered, had already joined TBP/Kajima, the development team that ultimately was awarded the contract.<sup>262</sup>

While the RFP had required the winning team to use Vasquez in some advisory capacity, the TBP/Kajima team was the only team that brought him on as a full partner and as the project’s architect.

After Vasquez joined the TBP development team, he left his consultant position at LAUSD because of the “*change in directions for the project and the needs associated with its development*,” according to a letter from Shambra.<sup>263</sup> They “*mutually agreed*” on the termination of Vasquez’s contract with the district.<sup>264</sup>

On December 12, 1994, James McCoy of the financial consulting firm, Coopers & Lybrand, questioned the feasibility of the project proposals for the retail component of the project because “*none of the teams presented current market research to support*

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<sup>260</sup> *ibid*

<sup>261</sup> Proposals and score sheets

<sup>262</sup> December 28, 1994 phase I proposal to Shambra

<sup>263</sup> January 25, 1995 letter from Shambra to Vasquez

<sup>264</sup> *ibid*

*their positions.” McCoy was “concerned about the degree of optimism expressed . . . pertaining to the attractiveness of the market for retail development.”<sup>265</sup>*

Shortly thereafter, Wedin specifically instructed the firm not to assess the validity of cash flow projections and assumptions in the developer’s retail proposals.

Accordingly, on December 28, 1994, Coopers & Lybrand completed the analysis based solely on the developer’s statements.<sup>266</sup> The analysis still purported to show the “financial feasibility” of the project proposals despite the absence of any real analysis of the project’s commercial viability.

The Coopers & Lybrand analyst stated that he also focused on the financial capabilities and current status of the respective development teams. Factors examined included proposed financing for the project, financial strength of the team, project economics, business terms, experience on other projects, and performance at the presentation sessions.<sup>267</sup>

But even though the developer teams were reportedly evaluated based on the extent of their involvement in litigation as well as their financial strength, the winning team had been mired in the most litigation and had numerous financial liabilities.<sup>268</sup>

One excluded developer, TBA (Obayashi) had the highest rated financial strength of any of the teams and proposed a development fee of half that of the CRSS/Telacu

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<sup>265</sup> December 12, 1994 letter from James McCoy to Shambra

<sup>266</sup> December 28, 1994 letter Coopers & Lybrand to Shambra

<sup>267</sup> *ibid*

<sup>268</sup> *ibid*

Team.<sup>269</sup> In fact, during a personal interview with a JLAC investigator, one of TBA's four partners, Oswaldo Lopez, the President of Sierra Pacific Land, stated,

*"We had the strongest commercial team of all of them. . . . the strongest credit rating on Wall Street ... Our financials, because of Obayashi, had a stronger financial ranking on Wall Street than Kajima."*

But there was one substantial difference between TBA and the three teams that were chosen to continue in the selection process -- TBA saw an "*insufficient market*" for a retail development and, as a result, omitted retail cash flow projections from their proposal. The TBA team stated that any retail development near the school may be an "*unattractive nuisance*," due to the potential for the loitering of high school students.<sup>270</sup>

Additionally, TBA/Obayashi told the LAUSD it could only expect to break even on another prospective joint venture component, the residential development. Lopez explained,

*"We had essentially challenged the premise of a mixed-use development in the Pico-Belmont area that had no visible means of traffic, be it pedestrian and/or residential, or vehicular. The premise and notion of the mixed use concept to me looked like nothing more than an academic exercise, with . . . the architectural firm that was . . . paid a lot of money."*

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<sup>269</sup> *ibid*

<sup>270</sup> Response to RFP by Obayashi Team

Instead of an extensive retail component, TBA/Obayashi made allowances for the future possibility of twenty thousand square feet of service/utility retail related only to any subsequent residential development.<sup>271</sup>

**Note:** It appears that after they expressed their concerns with the RFP process Coopers & Lybrand was replaced by the company with Robert Starkman and Steve Valenzuela of E&Y Kenneth Leventhal,<sup>272</sup> who later made a \$20 million computation error, which seemingly benefited the winning development team. While Coopers & Lybrand had been providing evaluation services on the RFP, Kenneth Leventhal & Company was apparently retained, prior to the expiration of the Coopers & Lybrand contract, to provide the same service, according to the March 23, 1995 letter from Robert Starkman to Dom Shambra.<sup>273</sup>

### **The Evaluation Team for Phase II of the RFP**

In Phase II of the RFP process, the evaluation team consisted of five members – Lisa Gooden, David Cartwright, Wayne Wedin, Dominic Shambra, and Steve Valenzuela. Committee members were charged with evaluating development proposals, but only two of the members -- the controversial O'Melveny and Myers attorneys Lisa Gooden and David Cartwright -- submitted written score sheets and accompanying

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<sup>271</sup> *ibid*

<sup>272</sup> March 15, 1995 contract between LAUSD and Kenneth Leventhal; March 23, 1995 letter from Starkman to Shambra;

<sup>273</sup> *ibid*

narrative reports of their findings.<sup>274</sup> The BLC's Request For Qualifications (RFQ) were issued in early 1994, with qualification statements due on May 2, 1994. Requests for Phase II proposals were released on December 23, 1994 and due on March 15, 1995.<sup>275</sup>

Both Gooden and Cartwright were attorneys retained as outside counsel for the LAUSD from the law firm of O'Melveny & Myers (Lisa Gooden was later hired by the LAUSD as an employee) - the same law firm that represented and still represents Kajima International, a member of the winning TBP/Kajima development team. In fact, David Cartwright is a partner in the O'Melveny & Myers firm. These apparent conflicts of interest were not disclosed, even to the LAUSD Board of Education, until after final developer selection was completed and TBP/Kajima was chosen to complete the BLC Project.

In 1995, a year after the process began, LAUSD in-house counsel Richard Mason informed the Board of Education that David Cartwright had earlier disclosed to him two potential conflicts of interest: He and Lisa Gooden both worked for the TBP team member Kajima's legal counsel, O'Melveny & Myers.<sup>276</sup>

Mason maintained that he had unilaterally waived the conflict of interest, and that he had the authority to do so, according to a February 14, 1997 memo to Shambra.

Six months after waiving the conflict of interest, in October 1995, after the developer had been selected, Mason advised the Board of Education of the potential

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<sup>274</sup> April 2, 1997 memo from Thompson to Julie Korenstein, Board of Education member

<sup>275</sup> Request for Proposals

<sup>276</sup> February 14 memo from Mason to Shambra

conflicts. The board retroactively approved Mason's decision to waive conflicts of interest by a 5-2 vote, he claimed in his memo.<sup>277</sup>

The potential conflict of interest is further magnified by the fact that Gooden and Cartwright were the only two members of the selection committee who submitted written score sheets ranking the development candidates and thus may have been the only committee members to actually evaluate the finalists.

Other members of the evaluation team, notably Wayne Wedin and Ernesto Vasquez, also brought possible conflicts of interest to the table. While Wedin was conducting exclusive negotiations with the selected developer, TBP/Kajima, on behalf of the LAUSD, he was concurrently a business partner of Ernesto Vasquez, a member of the winning BLC development team (TBP/Kajima) in a major development project in the Republic of Panama.<sup>278</sup>

This put Wedin and Vasquez on opposite sides of the negotiating table in the Belmont Project, while sharing substantial business interests in another complex and risky development deal worth millions of dollars.<sup>279</sup>

In the Panama project, Wedin and Vasquez have partnered with three firms – HNTB Design/Build, Pacific Genesis and Lewis, D'Amato, Brisbois & Bigaard – to form the development team to construct a building complex that that would include a mixed use retail component similar to the BLC, and that would house the Republic of Panama's legislature.<sup>280</sup>

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<sup>277</sup> *ibid*

<sup>278</sup> December 16, 1997 press release from the Orange County District Expert Assistance Center

<sup>279</sup> December 26, 1996 deposition of Wedin taken in Los Angeles

<sup>280</sup> *ibid*

Vasquez himself was the subject of other possible conflicts of interest related to his involvement with the BLC project. In 1994, Ernesto Vasquez was one of three members of the first selection committee during the Belmont Learning Complex RFQ screening process. It was stated in the RFQ that any selected developer was required to retain Vasquez to “oversee” the project architecture and planning. The winning developer team TBP/Kajima, however, took it one step further and made Vasquez part of the team - a business partner.<sup>281</sup>

Vasquez continued as a consultant to LAUSD while his name appeared as part of the winning TBP/Kajima team in December 1994. It appears that he was still consulting for LAUSD at the same time he was part of the TBP winning development team.<sup>282</sup>

This is particularly problematic for two reasons: First, LAUSD’s relationship with architect Vasquez remains unclear, as does Vasquez role as a member of the TBP/Kajima team. The relationship appears to create a potential conflict with the terms of Article 24 of the California Code of Regulations (Field Act) that expressly defines the requisite nature of the relationship between the architect and the district in any school construction project. Secondly, the involvement of Vasquez in the developer selection process appears to present a conflict of interest.

In addition, during the Phase II developer selection process, it was financial analysts Steve Valenzuela (evaluation team member) and Robert Starkman of E&Y Kenneth Leventhal, (retained by Shambra to replace Coopers & Lybrand), who were responsible for a \$20 million “computation error” in the projected revenue stream to the

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<sup>281</sup> BLC Request for Qualifications/Proposal submitted by TBP

district for the non-school components of the project that benefited the winning developer.<sup>283</sup>

Dom Shambra was also part of the evaluation team and served as the LAUSD staff representative. But there is no documentary evidence that he actually participated in the selection process.

Finally, not a single member of the evaluation team had any technical expertise in the field of school construction.

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<sup>282</sup> Proposal submitted by TBP

<sup>283</sup> June 7, 1995 letter from Valenzuela to Wedin

## The Selection Criteria

During the developer selection process for the BLC, developer proposals were evaluated according to criteria in three basic categories, none of which included the school as a focal point. In fact, language included in the evaluation matrix indicated that the “project” was not a school and in fact, the RFP gives only peripheral value to the school component. Categories B and C of the RFP do not mention the school at all.

### *Category A:*

- 1. Project Understanding*
- 2. Project Approach*
- 3. Work relationship with both district and city*
- 4. Compliance with identified goals/community services*
- 5. Project integration with school*

### *Category B:*

- 1. Achievement of District Goals*
- 2. Minority participation*
- 3. Community involvement*
- 4. Jobs created*
- 5. Compliance with general RFP requirements*

### *Category C*

- 1. Project economics*
- 2. Market research*
- 3. Feasibility*
- 4. Project financing*

Rather than evaluating proposals based on the customary combination of subjective and objective elements, the RFP totally omitted objective criteria (such as design plans and specifications and price), making the evaluation process entirely subjective. This shortcoming became most apparent in the evaluators' contradictory and varied evaluation scores -- the numbers didn't match up.<sup>284</sup> *"They were evaluated based on intangibles -- an excuse for favoritism,"* stated Lynch.<sup>285</sup>

The RFP also omitted specific cost proposals. Competing teams were told that the screening would *"not be based either on detailed costs or complex architecture."*

Developer teams were allowed and even encouraged to propose unrealistic plans that were based on innovation rather than pragmatism. It is evident that developers whose proposals were realistic and practical, especially with regard to the viability of joint venture arrangements - such as that of the TBA/Obayashi team proposal - were eliminated due to *"philosophical differences."*<sup>286</sup>

Since there was no binding effect on the cost estimates submitted by the development teams, the process allowed developers to present impractical and undeliverable plans in order to win selection without any mechanism to ensure that the selected development team would be accountable for implementing the plans that they had proposed.

If this were not the case, it is difficult to understand why LAUSD officials have allowed the selected developer TBP/Kajima to disregard many of the components of their original proposal.

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<sup>284</sup> Belmont Project Evaluation matrices

<sup>285</sup> JLAC telephone interview with Lynch, November 13, 1998

## TBP/Kajima's Original Proposal

The TBP/Kajima proposal included the following:

- ◆ A 27-acre high school on a 35-acre lot with 4 acres dedicated to housing.
- ◆ Project costs of \$113,818,574 and \$14,825,000 retail
- ◆ 80 to 100 thousand square feet of commercial retail that would generate \$1,355,000 net income/year to the district.
- ◆ 205 units of low to moderate income housing in three buildings in conjunction with Toluca Street Partners and funding from Los Angeles Housing Development with no district obligations.
- ◆ 100% financing of pre-development and construction costs by TBP/Kajima avoiding any dependency on the availability of state funding prior to construction.
- ◆ District option to buy—while paying rent within 2 years of completion, and, if the district did not exercise this option, the district would be required to purchase the completed project site at \$113,355,000 x 105%. If the District defaulted, the developer could sell the lease to an institutional buyer.

Various professionals, including developers and later, members of an independent oversight committee, questioned the viability of TBP's proposal. In August 1995, Robert Hirsch of the development company Goldrich Kest asked how TBP/Kajima could possibly propose greater retail/commercial revenues to the District from a project with a smaller component than what his company had offered. He further questioned the viability of the proposal's 205 units of affordable housing without first securing public sector support and the TBP/Kajima "guarantee" of a \$1.36 million annual revenue stream to the District.<sup>287</sup> Hirsch asked, "*If the State Allocation Board's authorization for this*

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<sup>286</sup> JLAC interview with Lopez

<sup>287</sup> October 3, 1995 letter from Hirsch to Julie Korenstein

*project is less than \$45 million, how can a cost, which is more than double this amount, be amortized or guaranteed? ”<sup>288</sup>*

These concerns became some of the same issues that were raised by the Independent Oversight Committee that was formed in the District to review the project. As Hirsch and others predicted, TBP/Kajima has failed to deliver any of the components included in their proposal, aside from the basic high school that is nearing completion on the Temple Beaudry site.

### **The \$20 Million Advantage**

On June 7, 1995 Steve Valenzuela of the firm E&Y Kenneth Leventhal, acting as a financial consultant to the LAUSD, overestimated the anticipated revenue stream that the TBP/Kajima proposal would generate for the district by \$20 million. Valenzuela reported to the district that the TBP/Kajima proposal would generate a \$48 million revenue stream to the district from the non-school components of the project.<sup>289</sup> In fact, the TBP/Kajima proposal only projected a revenue stream of \$28 million.<sup>290</sup> This mistake placed the projected profits from the TBP/Kajima development proposal higher than those of other finalists. But for the error, it was actually the CRSS/Telacu proposal that promised the highest rate of return.<sup>291</sup> Unfortunately, the mistake was discovered only after TBP/Kajima was selected by the district as the project's development team. The

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<sup>288</sup> *ibid*

<sup>289</sup> June 7, 1995 letter from Valenzuela to Wedin

<sup>290</sup> January 29, 1997 letter from Valenzuela to Shambra

<sup>291</sup> *ibid*

overestimation has been characterized as a “*clerical error*” and a “*computation error*” even though evaluation team member Valenzuela signed the analysis that included the \$20 million error.<sup>292293</sup>

The CRSS/Telacu proposal projected revenues of \$35 million, while the proposal of Goldrich & Kest projected \$11.6 million.

After the error was discovered, Shambra and Valenzuela argued that the potential revenue stream was not a factor in developer selection, contradicting Shambra’s previous statements made during the RFP/RFQ process and inconsistent with the assertions that were being used to justify the district’s lobbying efforts for the passage of AB481 (legislation that was aimed at legalizing design-build and facilitating joint ventures such as the BLC).<sup>294295</sup>

Still, Shambra later denied that the \$20 million mistake had any impact on developer selection in a December 2, 1997 letter to Lyle Smoot of the SAB (Smoot is now a LAUSD employee). At that time, Shambra claimed the proposals merely provided a “*framework*” and were not the basis of further discussions regarding the specifics of the project.

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<sup>292</sup> January 29, 1997 letter from Valenzuela to Shambra

<sup>293</sup> January 29, 1997 letter to Shambra from Valenzuela

<sup>294</sup> Valenzuela statements made during LAUSD board meeting, August 21, 1995

<sup>295</sup> 1994 Request for Qualifications for “Shimizu” site

## Litigation

Due to the fact that the District did not disclose potential conflicts of interest involving evaluation and selection team members to the competing developers prior to awarding the BLC contract to TBP/Kajima, one of the non-selected team members, California Partners of the Goldrich Kest development team, is now pursuing legal action against the District.

## Additional Concerns

On August 31, 1995, LAUSD Administrator Roger Rasmussen raised a series of additional concerns with the project, which included the following:

- ◆ State funding eligibility.
- ◆ The excessive size of the proposed school, which exceeded the 3000 student “maximum enrollment,” dictated by the Rodriguez v. LAUSD lawsuit.
- ◆ The potential price escalation caused by the use of a development team instead of the district controlling the competitive bidding process.
- ◆ The viability of the commercial and housing development.<sup>296</sup>

Despite these concerns, on September 18, 1995, the LAUSD entered into exclusive negotiations with TBP/Kajima to build the Belmont Learning Complex.<sup>297</sup>

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<sup>296</sup> August 29, 1995 memo from Rasmussen to Board Members

<sup>297</sup> LAUSD Board of Education Minutes

## Oversight Committee #1

Questions and concerns about the Belmont Learning Complex project finally led LAUSD Board of Education Member David Tokofsky to request the formation of an Independent Oversight Committee. The committee convened its first meeting on November 17, 1995.<sup>298</sup>

It was clear that some of the members of the committee were troubled by the questionable viability of the project, particularly that of the retail component.<sup>299</sup>

Committee members raised the following points and concerns regarding the project proposal:

- ◆ Zero land value was used to calculate the projected cost.
- ◆ “Is it necessary and desirable for the retail component to be physically integrated with the school structure?”
- ◆ The district should consider designing the space below the school for alternate uses.
- ◆ The retail store entrance and parking relationship is awkward.

Oversight Committee member Malcom Riley from the Riley/Pearlman Company wrote in a letter to Roger Rasmussen on November 11, 1996,

*“I cannot personally see how this project can be successful. The site plan does not seem acceptable . . . I am always suspect when a project needs special financing from non-traditional sources in order to pencil. Marginal projects are best left undone.”*<sup>300</sup>

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<sup>298</sup> November 22, 1995 memo from Rasmussen to Board Members

<sup>299</sup> *ibid*

<sup>300</sup> November 11, 1996 from Malcolm Riley to Rasmussen

Riley, who boasts 35 years of retail expertise, indicated that he had spoken to a number of supermarket and drugstore chains, and all believed that the site would not support a supermarket or drugstore because the area was "*chopped up with freeways, which are geographic barriers to shoppers.*"<sup>301</sup>

He further doubted the calculations and projections used to justify elements of the proposal. Toward the end of December, the Oversight Committee became even more skeptical about the project and raised a second series of concerns and considerations, including the following:<sup>302</sup>

- ◆ The retail is in the critical development path – “the design and construction of the school depends on the retail component being settled.”
- ◆ The pro forma submitted by TBP/Kajima didn’t include lease payments.
- ◆ The pro forma omitted or understated costs of structural maintenance, leasing, new tenant improvements, marketing expenses, legal expenses and security;
- ◆ The proposed rents were unrealistic.
- ◆ No firm tenant commitments had been made.
- ◆ Smaller tenants would likely require additional financial backing.
- ◆ Jose Legaspi’s experience was as a broker, not a developer (Legaspi was the retail development partner of the TBP/Kajima team).

The Oversight Committee then recommended that the District either eliminate the retail component altogether or relocate it from its proposed location in the actual high school structure so as to move it out of the "*critical development path.*"

Committee members were also concerned about a provision in the agreement by which the District would "*...lease land for the retail component for \$1 per year ... not fair compensation for ... the District’s property*" and additionally voiced concern about

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<sup>301</sup> *ibid*

<sup>302</sup> January 22, 1996 memo from Rasmussen to Board Members

the District paying for the architectural drawings “*if the project falls through.*” The committee believed, “*the District should obtain an immediate clear agreement with TBP/Kajima or another financing source that would make annual lease payments.*”<sup>303</sup>

None of the recommendations were taken.

By January 22, 1996, the oversight committee’s concerns were still not resolved and additional difficulties arose.<sup>304</sup> For example, the timetable proposed by LAUSD staff for completing the final agreement with TBP/Kajima did not allow the district enough time to consider changes in the school design. Oversight Committee member Thomas Wierdsma (Area Manager for Hensel Phelps Construction) became extremely “*troubled.*” On September 9, 1996, in a letter to Rasmussen, he wrote,

*“The MOU has gotten totally out of hand. It is truly ridiculous. I am embarrassed. The project would be completed more quickly with millions of dollars in savings if it would be bid as a normal public works project.”*<sup>305</sup>

Wierdsma raised the following issues:

- ◆ The project was a construction project with the price tag of a development –millions of unjustified development costs.
- ◆ The Developer adds no value and performs no service.
- ◆ Despite the “design-build” label, the developer hadn’t even directed the architect (to date) and had not participated in the design process.
- ◆ The retail component was “ill conceived.”
- ◆ Shambra was “railroading” the project without proper diligence.
- ◆ Kajima was both the developer (TBP/Kajima) and the general contractor, even though Shambra had said, “Kajima would not be involved in the construction.”

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<sup>303</sup> *ibid*

<sup>304</sup> *ibid*

<sup>305</sup> September 9, 1996 letter from Wierdsma to Rasmussen

- ◆ In addition to millions of dollars in undeserved developer fees, Kajima will also pay themselves millions of dollars in construction fees buried in the Fixed Development Price.
- ◆ While TBP's original proposal called for the Memorandum of Understanding (MOU) to be executed prior to the start of any real work, including architectural drawings, Shambra pushed the project forward to the point where LAUSD is in a "compromised position" in negotiations with the developer.
- ◆ While the industry standard is to have all costs auditable, the development price in the MOU was "fixed."
- ◆ LAUSD was paying \$1.6 million for a completion guarantee that would have no value in five years, whereas "a project specific error and omissions insurance policy and a performance bond from an "A" rated US Treasury listed surety would only cost \$1.2 million for this project."
- ◆ In addition to the costly \$3.75 million developer fee, there was another \$400,000 financing fee for TBP "doing what a normal developer does."
- ◆ The contract had several unjustified elements that tilted the contract to TBP's benefit, including "Incentives, Cost savings sharing during construction, Early Completion Incentive, Value Engineering Fees, Pre- construction Costs, Project Retainer and Completion Guarantees."
- ◆ Committee members were not properly informed, except for Edward Blakely. "I have not talked with Mr. Blakely for three months. Dr. Blakely may be the sole member . . . that Shambra has elected to communicate with." Rasmussen had been "taken out of the loop, as has the rest of the committee."
- ◆ Management of the negotiating process was "at best poor." "We continually have been forwarded reams of documents only days before our comments are requested. There has been little or no time for quality review."
- ◆ The project was "ill-conceived" and without "sound business principles."

On October 4, 1996, Roger Rasmussen reported that the Committee had agreed to soften its position on developer fees in an apparent attempt to move the project forward and resolve the Committee's outstanding disagreements with Shambra. While some members of the Committee had initially stated that the developer should only receive a full fee if all four of the proposed components were built, they agreed to a compromise that would allow the development project to proceed with only three of the four original

components –the retail, the joint public use component with the city (JPA), and the school.<sup>306</sup>

Shambra categorically rejected the Committee recommendation and stated that TBP/Kajima would receive the entire development fee even if they only built a high school because TBP would have “*provided what they promised.*”<sup>307</sup>

Shambra justified all of the fees in an interview with JLAC investigators.

*“They’re taking the risk, so you pay them a fee . . . It’s to make the project work. They supervise and make it go through . . . It was to do a school, not a development. There was an opportunity to do some joint venturing. If it didn’t work, the district would do it themselves, or build a retaining wall, but nobody wants to look at that.”*

Many believe, however, that the District, not the developer, wound up bearing most of the risk. “*It wasn’t clear to me what risk the contractor was taking,*” declared Timothy Lynch to a JLAC investigator.

On January 17, 1997, Shambra reaffirmed his intentions to move forward on the school portion of the project because he was “*confident that the [Guaranteed Maximum Price] GMP will not exceed our . . . goal.*”<sup>308</sup> In order to expedite his plans, he suggested placing a \$78 million cap on the basic school costs and providing TBP/Kajima with an additional \$2 million contingent fee for “*technology purposes.*” At that time, the

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<sup>306</sup> October 4, 1996 memo from Rasmussen to Mason, Board members

<sup>307</sup> February 6, 1997 memo from Rasmussen to Mason, Board members

<sup>308</sup> January 17, 1997 memo from Shambra to Oversight Committee

Legaspi Company had provided information to “*support the inclusion of a retail market, auto parts store and fast-food restaurant operation.*”<sup>309</sup>

Nevertheless, Shambra delayed negotiations on the retail component of the project while he recommended continuing school construction, explaining the decision to move forward without committing to all of the original components as due to “concerns” about employee wages and benefits issues. The retail component of the project has yet to materialize.

At about the same time, difficulties arose concerning the proposed Joint Powers Authority (JPA) involving the City of Los Angeles, the Community Redevelopment Agency (CRA) and the LAUSD that led Shambra to “*forego the finalization of the plans for the aquatic and community centers.*”<sup>310</sup> The JPA, originally intended to establish joint uses of the new facility for City Recreation programs also has not been consolidated.

### **Guaranteed Maximum Price**

On February 4, 1997, Turner/Kajima submitted a Guaranteed Maximum Price (GMP) for the BLC project to the district, which was then reviewed by the district’s fiscal consultants, E&Y Kenneth Leventhal.

The consultants recommended waiting until after the plans and specifications for the project were completed before establishing the GMP and requested that all savings or overruns that occurred when the specific bids were received go 100 percent to LAUSD.

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<sup>309</sup> *ibid*

<sup>310</sup> *ibid*

The firm further noted that the LAUSD could reduce the proposed GMP by \$4 million with three minor changes. Among the conclusions and recommendations were the following:

- ◆ LAUSD should deduct the costs of subcontractor bonds from the \$1.6 million Completion Guarantee.
- ◆ JPA allocation hard costs should go up.
- ◆ Risk builders insurance is expected to be LAUSD's responsibility.
- ◆ Articulate specific examples of "contingencies" in the GMP qualifications
- ◆ Have the project architect (MV&P)'s services include construction administration services.
- ◆ Reduce caissons from 7,395 to 6,045 linear feet.
- ◆ Change the allowance for Technology to \$2.24 million from \$2.5 million and reflect the change in the Electrical GMP's increase.
- ◆ Reduce the General Liability Insurance from \$950,000 to \$850,000.
- ◆ Reduce the security cost by using a security camera in place of the \$400,700-salaried security guards.
- ◆ Reduce General Conditions budget from \$4.7 million to \$3.6 million, mostly by reducing staffing. Within this item, the analyst said that Turner/Kajima (T/K) supplied incomplete information – indeterminate rates for staff and an apparent "doubled" accountant rate.

Thomas Wierdsma reviewed the analyst's recommendations and, although he agreed with many of them, he raised additional issues:

- ◆ The developer or general contractor, not the owner, pays for its own builder's risk insurance.
- ◆ The \$950,000 General Liability Insurance, he believed, was an attempt to hide profit. The industry standard for General Liability Insurance would be in the \$200,000 range. In the original Kajima proposal, the company estimated its General Liability Insurance cost at \$250,000.
- ◆ Construction companies try to hide profit in staff billing rates; hence, billing rates need careful examination.<sup>311</sup>

In large part, E&Y Kenneth Leventhal analyst, David Bentley, agreed with Wierdsma. He also recommended deferring the finalizing of the GMP until the development team had received the major trade bids and until attempts were made to reduce certain costs.<sup>312</sup> Once again, the District ignored the recommendations.

By February 21, 1997, the Oversight Committee calculated that the BLC school component cost would be \$89.2 million (including fees).<sup>313</sup> By this time, it appears that the \$78 million construction cost “cap” that Shambra proposed just one month earlier had risen to \$83 million for basic school construction costs. In order to maintain the \$83 million construction cap and preserve its fees, TBP/Kajima would have to reduce their present “*proposed GMP from \$83.5 million to \$78.1 million.*”<sup>314</sup>

On April 1, 1997, the Oversight Committee asked additional questions regarding the Disposition and Development Agreement (DDA), including the following:

- ◆ Why does TBP/Kajima get more fees beyond its development compensation and guaranty?
- ◆ Why is there an early completion incentive in the DDA?

A document responding to these questions that was provided by the LAUSD indicated that the extra fees were justified as “*incentives*” for the developer to bring the cost down. The document (author unknown) then made a serious threat. It read:

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<sup>311</sup> February 18, 1997 memo from Chuck Schepart to Rasmussen

<sup>312</sup> February 20, 1997 memo from David Bentley, E&Y Kenneth Leventhal, to Shambra

<sup>313</sup> February 21 1997 memo from Rasmussen to Mason, Board Members

<sup>314</sup> *ibid*

*“If the LAUSD does not approve and execute the DDA with TBP, the school project will be dropped indefinitely. .... There can be no commitment that a school will ever be built...large numbers of kids will have to be bused to distant locations indefinitely. ... continued growth in student populations . . . Old Belmont cannot be converted into a junior high. Virtually all age levels will suffer.”<sup>315</sup>*

By the end of April, two oversight committee members, including Wierdsma, had resigned from the Oversight Committee.

### **The DDA – No Guarantee**

*“The Guarantee is a misnomer,”* stated BB Oversight Committee Vice Chair Timothy Lynch, who studied the Disposition and Development Agreement (DDA) between the district and the TBP/Kajima team for the BLC project.

There is considerable debate regarding the DDA and whether it constitutes a design-build contract or a cost plus contract. A number of professionals believe it to be more characteristic of a cost plus contract. *“It’s closer to a cost plus contract than Design/Build,”* Lynch asserted.

In cost plus contracts, the owner pays for the builder’s costs plus a defined level of profit. In many design-build projects, the owner is guaranteed that the cost of the project will not exceed a predetermined maximum price.

In the Belmont project DDA, the school district bears responsibility for any additional costs that are related to weather delays, site remediation, permitting problems

and a litany of other contingencies. *"The DDA does not appear to achieve one of the key goals that has been used to 'sell' it, which is to establish a maximum price,"* Lynch wrote in a May 19, 1997 letter to the members of the Proposition BB Oversight Committee and to the LAUSD Board of Education.

*"I reach this conclusion in part due to the volume of legal memorandums which have flowed to the BB Oversight committee, where at least three sets of attorneys have different positions about whether change orders are now allowed. I have reasonably satisfied myself that there is considerable financial risk to this project substantially exceeding the 'Overall Fixed Development Price.'"*

### Oversight Committee #2

A second Oversight Committee was formed to oversee the use of Proposition BB bond money that had recently been approved by voters in Los Angeles to fund school repairs.

On May 13, 1997, David Barulich, a member of the Blue Ribbon Citizens' Oversight Committee opposed the use of BB dollars for funding the BLC for the following reasons:

- ◆ TBP's proposal was \$40 million more expensive than Goldrich Kest's and \$30 million over CRSS/Telacu's.
- ◆ Lynwood High School was built for \$62 million, while BLC was being built for \$82 million plus a litany of extraneous fees.

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<sup>315</sup> Document obtained from LAUSD Belmont files, "DDA Common Questions," author and date unknown

- ◆ Attorneys Cartwright and Gooden were never asked to resign for conflicts of interest, but Wierdsma was.
- ◆ It took two years from the time of selection to begin construction.
- ◆ The project should be re-bid as a straight design-bid-build project with a 60-day RFP and free up the extra money for additional classrooms.

During one BB Oversight meeting, committee members were less than enthusiastic about BB funds going to the Belmont project. Some of the issues raised were:

- ◆ The site was a difficult one.
- ◆ If there is a toxic soil problem, the “construction guarantees are off.”
- ◆ Retail and housing components are “pie in the sky” and “we are being stampeded.”

One member didn't think the state would participate in funding such a speculative and ill-defined project, but Lyle Smoot, then Director of the Office of Public School Construction (OPSC - formerly OLA) who has since been hired by the LAUSD, said he would be “shocked” if the state didn't fund the project.<sup>316</sup> (At the November 1998 meeting of the SAB, state funding for the Belmont Learning Complex was rejected).

On May 19, 1997, Timothy Lynch, Vice Chairman of the BB Oversight Committee sent a memo to the other committee members. Lynch voted against using BB funds for BLC and would not endorse the DDA. He made the following observations.

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<sup>316</sup> Oversight meeting notes

- ◆ The DDA does not establish a maximum price. The project will likely exceed the “overall fixed development price.”
- ◆ The LAUSD must pay for all site related cost overruns, including toxins, undiscovered oil wells, contamination.
- ◆ The DDA is complex with a number of novel items that may lead to litigation and cost overruns.
- ◆ The committee only saw the DDA after it was signed.
- ◆ Despite objections by non-litigants regarding the site toxins, mixed use, developer selection, undesirable level of student population, price escalations, the project continued.
- ◆ The project was more “costly” than it should be – with no way to reduce those sunk costs.
- ◆ The project does not meet the price standard to receive BB funds.

Lynch was further troubled by the fact that LAUSD staff ,

*“... weren’t giving us straight answers . . . I realized that I would never get straight answers. They misrepresented [much of the information], and Shambra kept changing the answers. I was dealing with something I couldn’t get the facts on ...”*

### **More Skirted Oversight**

On September 2, 1997, Eric Berman, Vice President of Construction Management services for Hanscomb, Inc. submitted a proposal to provide oversight for the Belmont Learning Complex project. As part of the proposal, Wong Hobach Lau (WHL), a minority-owned company, would provide a specified amount of oversight activity during the construction phase of the project. Shortly thereafter Berman left the Hanscomb firm to join the minority engineering firm, WHL.

On November 3, 1997, the LAUSD responded to Berman’s proposal, and contracted with Hanscomb to provide *“the on-going project oversight services”* for the

BLC project. In the contract, it was specified that Wong Hobach Lau (WHL) would provide 18 hours of oversight services per month during the construction phase of the project. WHL, however, was never permitted to perform these duties.<sup>317</sup>

From November 1997 through the end of January 1998, WHL project manager, Eric Berman repeatedly contacted Hanscomb executives in order to begin performing the contracted oversight services on the project. But Berman was told that Hanscomb was not yet providing services and that they would call him to begin work after the first of the year. As articulated by Berman in a letter to Board President Julie Korenstein, failing to start as soon as possible meant that LAUSD wasn't receiving the services it had contracted for and that the public trust was not being well-served.

BB Oversight Committee members invited Berman to attend their upcoming February 4, 1998 meeting. But Hanscomb Executive Vice President Tony Vallance stated that he and LAUSD facilities director were both "*highly concerned and uncomfortable*" with Berman's appearance before the committee.<sup>318</sup>

At that meeting, Hanscomb Vice President David Chua announced that the oversight services had already begun by Hanscomb. Upon hearing this, Berman called Chua, who again postponed WHL participation.<sup>319</sup> To date, WHL has still not been allowed to perform its assigned oversight services.

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<sup>317</sup> February 16, 1998 letter written by Berman to Korenstein

<sup>318</sup> *ibid*

<sup>319</sup> *ibid*

## Recent Developments

In July 1998, the LAUSD approached the SAB for funding of the Belmont Learning Complex under the Leroy Greene Lease Purchase Act. At that time, the district stated that the project was not a joint venture project, that it was simply a high school construction project. It now appears, however, that the District may again be trying to reinstate the joint venture portion of the project,<sup>320</sup> though state funding approval for this latest iteration of the project was denied by the SAB in November 1998.

### Side Note: Wayne Wedin, the “Father of Asset Management”

Wayne Wedin has served as a consultant for the LAUSD for the past twelve years. Evidence provided to JLAC investigators demonstrated that he produced little in the way of measurable results for the District. During that time, he has earned approximately \$1.5 million (JLAC approximated this figure based on contracts and invoices provided by the LAUSD. The District was unable to provide comprehensive documentation).

While he worked primarily for Dom Shambra, advising him on asset management projects, particularly joint venturing with the private sector, Wedin charged the district for a number of activities, including an investigation of a local hotel union.<sup>321</sup> His invoices in most case are vague in terms of his actual assignments.

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<sup>320</sup> Minutes from the SAB meeting, July 22, 1998

<sup>321</sup> Wayne Wedin invoice #100296, October 3, 1996, submitted to LAUSD

Of the joint venture projects that Wedin worked on during his twelve years advising the LAUSD, none have come to full fruition, and only one has been completed to date.

Some of Wedin's charges to the district include the following: (Note: This is only a sampling of fees paid to Wedin by the LAUSD, as only some of the requested invoices were provided to the JLAC).

- ◆ \$2,562.50 to investigate a local hotel and restaurant union (20.5 hours)
- ◆ \$61,500.00 to lobby for a bill that was never implemented (AB481)
- ◆ \$32,812.50 for generic "legislative work"
- ◆ \$1,812.50 for meetings with Senator Seymour and staff
- ◆ \$11,500.00 for "travel time" back and forth to Sacramento
- ◆ \$135,687.50 for meetings with LAUSD staff and Board of Education.
- ◆ \$48,687.50 for unspecified "pre" and "follow-up" work
- ◆ \$46,187.50 for meetings with housing, retail and financial developers
- ◆ \$47,025.00 for asset management utilization and development
- ◆ \$23,125.00 on the Belmont Learning Complex's RFQ/RFP
- ◆ \$140,125.00 on other unspecified Belmont work.
- ◆ \$8,000 on a Brentwood (unfinished) RFQ/RFP
- ◆ \$1,187.50 on a Brentwood "proposal."
- ◆ \$8,437.50 on other (unspecified) Brentwood work (project never completed)
- ◆ \$3,375.00 for a Van Nuys Medical Magnet RFQ/RFP (project never completed)
- ◆ \$56,500 for other Van Nuys Medical magnet work (project never completed)
- ◆ \$9,562.50 for Ambassador Hotel site work (project never completed)
- ◆ \$8,500.00 for unspecified Crown Coach/Cornfield project (project never completed)<sup>322</sup>

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<sup>322</sup> JLAC calculations from Wedin's invoices submitted to LAUSD

## **Inadequate Information: Failure to Provide Public Documents**

The Los Angeles Unified School District has failed to maintain adequate public records concerning its joint venture projects, thus creating difficulties in monitoring these joint venture projects.

In fact, former Office of Planning and Development Director Dominic Shambra routinely threw away documents, according to his deposition taken on February 20, 1997 (AA vs. LAUSD). He later told a JLAC investigator that he threw out all of his correspondence with key consultants and attorneys such as Wayne Wedin, Ernesto Vasquez and David Cartwright.<sup>323</sup>

After Shambra retired in early 1998, LAUSD staff was unable to answer numerous questions about joint venture projects attempted by the district. After repeated requests from the Joint Legislative Audit Committee, the district has been unable to provide comprehensive information regarding many of the district's expenditures on consultants, legal fees, or the projects themselves.

In fact, after an August 18, 1998 JLAC request for an accounting of such expenditures, Richard Mason, LAUSD General Counsel responded:

*"This would be an enormous task which I do not believe we could reasonably compile (for it would require not only gathering of documents, but compilation herefrom) within the short time frame that you have indicated."*

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<sup>323</sup> JLAC interview with Shambra, January 1998

To date the JLAC has not received any adequate accounting of district expenditures.

When JLAC staff requested public documents regarding the Van Nuys Medical Magnet joint venture, Mason wrote, "*I cannot at this time confirm or deny the existence of any public documents*" on the project. JLAC eventually received a small number of relevant documents.

JLAC staff was troubled that Dominic Shambra admitted that even he didn't know the "*financials*" on the projects. In his February 20, 1997 deposition, he stated that he had never seen any kind of report or analysis of actual revenues generated by LAUSD joint venture schemes.

Other departments in the LAUSD also seem to disregard their obligation to maintain public documents, pursuant to Government Code, Section 6200-6203. In a June 12, 1997 report, consultant Arthur Anderson noted that the district appeared unable to maintain documents - an observation shared by JLAC - affecting its Information Technologies Division. He wrote,

*"We were more alarmed by the indifference of senior management to the scarcity of this information, ... it was quickly evident that effective project documentation . . . were not being utilized as critical project management tools. . . . It was apparent that documentation was a tool used primarily to protect positions instead of a tool to successfully manage and complete a given project."*

Witnesses told JLAC that C.A.O. David Koch regularly removed documents prior to releasing files to the JLAC. In a written statement, former LAUSD Director of Environment Health and Safety for the LAUSD, Hamid Arabzadeh declared,

*“Dave Koch ordered and approved destruction of LAUSD and other files present at the old building. On multiple occasions I observed new boxes of files being brought to the old building.”<sup>324</sup>*

Further, Arabzadeh stated,

*“On two occasions, I took boxes of files that JLAC had requested to Dave Koch. He proceeded to inspect them and started taking folders out of the box. I asked him what he was doing and he stated that no file will go to JLAC or anybody unless he looked at them and took out what would be ‘damaging to people here.’”<sup>325</sup>*

Arabzadeh further noted that Koch *“laughed about Shambra destroying documents.”* When Arabzadeh asked about evidence of document destruction after a meeting, Koch reportedly dismissed the question and said, *“That’s Shambra; You need to focus on your own work.”<sup>326</sup>*

*“On another occasion, JLAC requested documents regarding several companies that might have been involved in illegal activity. LAUSD staff intentionally withheld incriminating documents from me and provided me with cleansed documents. I only discovered after the documents were delivered, that staff had intentionally removed the files that were incriminating. I later found out that the ‘dirty’ files had been given to the District General Counsel.”<sup>327</sup>*

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<sup>324</sup> Written and signed declaration sent to JLAC by Hamid Arabzadeh

<sup>325</sup> *ibid*

<sup>326</sup> August 28, 1998 telephone interview with Arabzadeh

<sup>327</sup> Written and signed declaration sent to JLAC by Hamid Arabzadeh

Others who have worked with the District report similar findings. Julio Nuno, Project Director at Sterns, Conrad and Schmidt Engineers, who worked with the City of Southgate on an LAUSD project experienced a similar disregard for proper documentation. In a phone interview with JLAC staff Nuno stated,

*"I went to their offices and was surprised at how disorganized they were. [They] couldn't find all the documents that I needed. We had asked for specific documentation and gave them a deadline, which came prior to their producing some of it."*<sup>328</sup>

Martha Romero, a former attorney for the City of South Gate agreed:

*"I've never encountered this amount of disorganization and inability to find records. One of the things we wanted to find was the surveys for the daily logs – the material surveys – how many tons [of soil] were removed. You would think the project engineer would have these things. [LAUSD] said these were unavailable."*<sup>329</sup>

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<sup>328</sup> JLAC telephone interview with Julio Nuno, June 24, 1998

<sup>329</sup> JLAC telephone interview with Romero, June 24, 1998

## Conclusion

The case studies contained in this report speak for themselves. The joint ventures between public school districts and private developers, that were examined by the Joint Legislative Audit Committee staff, appear to have consistently failed to achieve the goals and the objectives that they promised. More disturbing than the apparent failures, however, is that these strategies and experiments, without comprehensive guidelines and oversight, may have allowed some private interests to methodically take advantage of administrative weaknesses within public school jurisdictions for their own financial gain. Moreover, evidence suggests that the Los Angeles Unified School District staff and consultants may have formed operations that were essentially unsupervised and virtually unaccountable. Evidence demonstrated that these operations systematically engaged in irresponsible, and possibly illegal behavior, consistently misrepresenting basic facts in order to gamble public funds on highly speculative projects. Evidence further indicates that these abuses have misdirected and squandered millions of taxpayer dollars that were intended to support instructional programs for our children and rebuild our public education infrastructure.

**“LAUSD is doing the wrong thing. Its business is to educate kids, not to develop property. I wish they would concentrate on that,”**

**-- Wayne Ratkovich, a Los Angeles-based developer who refused to participate in any joint venture with the District.”**

**Ultimately, “I hope people learn lessons from this – about site selection, about these closed door special deals that have nothing to do with the mission of education and about making sure that proper controls are in place,”**

**-- BB Oversight Committee Vice Chair Timothy Lynch.**

## Appendix A: Timeline

- 1976 Brea CRA Designates High School Site for Redevelopment
- 1981 Wedin, then Brea City Manager, begins consulting the Brea Olinda School District.
- 1986 CRS Serrine begins managing construction for the new Brea Olinda High School Project
- Rush Hill brings Wedin to the LAUSD
- Hill and Wedin begin lobbying efforts on asset management/school construction issues
- Hill and Wedin propose Grand Avenue Garage
- Ambassador Hotel site identified for possible joint venture
- 1987 Wedin participates in Project COACH, a seminar, with CRS Serrine
- 1988 Wedin runs for Brea City Council. He wins the seat.
- LAUSD/Wedin/Hill issue RFQ for Grand Ave. Garage (Maguire Thomas selected)
- 1989 Wilshire Center Partners purchases Ambassador Hotel.
- 1990 Wedin is investigated for Conflict of Interest by the FPPC. He is later tried for criminal charges and acquitted.

An elementary school is proposed on the Van Nuys Agricultural site.

LAUSD offers \$73 million for Ambassador site and upon offer's rejection, District begins condemnation proceedings.

1991

Shambra proposes a joint venture on Van Nuys Agricultural site instead of an elementary school

Shambra and Wedin issue RFQs on the Business Services Center Site and the Cornfield. Neither comes to fruition

Grand Avenue Garage completed

1992

LAUSD and owners of the Ambassador agree to a new purchase price

1993

LAUSD enters into negotiations with Ralph's Grocery Company for a Joint Venture on its Brentwood site.

LAUSD enters into exclusive negotiations with Pacific Alliance Realty for Van Nuys Medical Magnet Joint Venture.

LAUSD backs out of Ambassador purchase deal.

LAUSD purchases Temple Beaudry and Shimizu sites for Belmont Learning Complex

1994

Northridge Earthquake, Business Services Center damage assessment. Despite minor damage, LAUSD declares an emergency.

Shimizu Grant Deed recorded. Belmont RFQ issued.

1995

Wedin prepares a new RFQ for Van Nuys Medical Magnet Joint Venture

Caruso Holding Affiliates and LAUSD begin joint venture discussions on Brentwood site.

LAUSD moves BSC staff into the IBM Towers in Downtown LA to vacate the Business Services Center for development

TBP/Kajima selected for Belmont Learning Complex Joint Venture

1997

Construction begins on Belmont Learning Complex

1998

SAB rejects state funding for BLC



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