

INVESTIGATIONS

Decision-Making Processes & Brown Act Compliance of WOODLAND JOINT UNIFIED SCHOOL DISTRICT

EXECUTIVE SUMMARY

This report by the 2007/2008 Yolo County Grand Jury finds the Woodland Joint Unified School District (the District) violated the Ralph M. Brown Act (the Brown Act) in its decision making process concerning the purchase and lease of a new administrative office building in Woodland, California.

The Grand Jury also finds the District engaged consultants as part of that process in a manner that may have provided duplicate compensation for services; failed to monitor consulting contracts so that the District incurred expenses in excess of the limit authorized by the Board of Trustees and set forth in the consultant's contracts; undertook long term financial obligations regarding lease and purchase of a new administrative office building based upon incomplete or inaccurate data; failed to analyze alternatives for meeting the District's administrative office space needs; adopted a 30 year financing plan to pay for an eight year administrative office space requirement; and falsely reported on safety of the Cottonwood premises in which the District is currently housed. Some of the District's public announcements and communication concerning the adequacy of its existing administrative offices and plans for obtaining use of a new facility at 425 Sixth Street in Woodland were misleading.

This report recommends the District's Board of Trustees meet in closed session only for deliberations and actions legally permissible during non-public meetings; strengthen its administrative oversight of service vendor contracts to ensure there is no overlap; reasonably match length of financing term of property purchases with anticipated need; document its consideration of alternate financial strategies before undertaking material long term financial obligations; conduct due diligence of significant facts; review public announcements and communication to ensure they are not misleading; and embrace open deliberation of District policies and issues as elected servants of the community.

The effective date of this report is May 1, 2008.

BACKGROUND

Questions of policy and oversight of the District are the responsibility of the District's Board of Trustees. Only the Board of Trustees may decide whether the District should own or lease its central offices, how those offices should be financed, or where they should be located. The Grand Jury's interest is to ensure the business of the District is conducted free of conflict of interest and based upon the exercise of due diligence and with public discussion of the issues as required by law.

The 2007/2008 Yolo County Grand Jury investigated the process by which the District decided to purchase the commercial real property commonly referred to as the "Blue Shield" property at 425 Sixth Street, Woodland, California. Multiple citizen complaints filed with the Grand Jury suggested violation of the Brown Act and conflict of interest among District officials or consultants and Blue Shield property owners or their agents. This investigation was commenced to determine whether these concerns were justified.

Among other things, the investigation disclosed a failure of the District to abide by the requirements of the Brown Act in respect to the Blue Shield property transactions. As of the effective date of this report the District continues to be noncompliant with the Brown Act.

APPROACH

This investigation involved more than 24 interviews including all complainants, certain District officials and consultants, and other witnesses not affiliated with the District. The Grand Jury reviewed almost 4,000 pages of documents. Many of these were produced by the District (some voluntarily but most in response to judicial subpoenas). The Grand Jury also reviewed documents and correspondence of other witnesses and consultants not directly affiliated with the District, along with numerous legal documents and contracts, relevant state statutes, and other legal authorities. The Grand Jury's investigation was delayed and made more difficult by the District's destruction of relevant email files during the time of the investigation. In addition, the District's legal counsel resisted Grand Jury requests to interview District staff and to obtain relevant District records.

DISCUSSION

A. No Conflict of Interest or Use of Inside Information

In response to citizen complaints, the Grand Jury

looked into possible conflict of interest or use of inside information in the District's planned purchase of the Blue Shield building. At this time the Grand Jury has found no evidence of improper influence or conflict of interest on the part of any member of the Board, the Superintendent or any other District official and the current or former owner of the Blue Shield property.

B. Closed Meetings of Board of Trustees and the Brown Act

The purpose of the Brown Act is to ensure public discussion and decision making. Only limited actions of the Board may be taken in closed session meeting. In addition to an actual vote by a majority of the members of the Board, Section 54952.6 of the Brown Act defines Board action as any collective decision, commitment or promise by a majority of the members of the Board to make a positive or negative decision. For an overview of the relevant provisions of the Brown Act, see Attachment A: Brown Act Summary.

The District's Board meeting agendas and minutes as published on the District's website disclose the following:

- In 15 months, between January 2007 and April 2008, 31 closed session meetings were held; eight were reported as having to do with relocation of the District's central office and/or the Blue Shield building purchase.
- Of those eight closed session meetings, only three (September 27, 2007, January 24, 2008, and March 10, 2008) gave the address of or otherwise adequately identified the Blue Shield property as required by the Brown Act.
- The purchase of the Blue Shield building was discussed during public sessions only three times. There was no public announcement or discussion of plans to relocate the District's central office until December 13, 2007 (nearly 12 months after planning and negotiating for the acquisition of the Blue Shield property had begun). In that December 13, 2007 public session, the Board approved purchase, financing planning, and agreement with Brereton Architects for office plans. In addition, prior to the December 13, 2007 public session, no closed session action relating to the purchase of the Blue Shield Building had been reported or acted upon in public session as required by the Brown Act.
- The August 9, 2007 closed session meeting included a tour of the Blue Shield building (under the Brown Act, tours are not considered acceptable uses of closed session meetings).

Absent of a valid Brown Act notice, both the No-

vember 20, 2007 and December 13, 2007 closed sessions were required to be public, since there was no basis for closed session meeting. The December 6, 2007 meeting—which included discussion of the Cottonwood Premises, alternate sites, and whether purchase was timely, affordable or advisable—was also required to be in public session. There is no exemption from the public meeting requirement of the Brown Act which permits these topics to be discussed in closed session meetings. With respect to conferring with its real property consultant¹ in closed session, only price and/or terms of payment may be discussed.

The Board agendas and minutes first mention relocation of the District's central office in connection with the Board's April 26, 2007 meeting. The following Board meetings were the only closed sessions for which public notice was given having to do with relocation of the District's central office:

- April 26, 2007 – Closed Session: “Conference with Real Property Negotiator, Mr. Scott Sheldon, Regarding Price and Terms of Payment of Properties, Pursuant to Govt. Code 54956.8: a. Potential Site for New Elementary School – Russell Ranch Property and b. Potential District Central Office Relocation Site.” No action was reported in the following public session.
- June 28, 2007 – Closed Session: “Conference with Real Property Negotiator, Mr. Scott Sheldon Pursuant to Govt. Code 54956.8: Regarding Price, Terms and/or Terms of Payment: Former Blue Shield Building.”
- August 9, 2007 – Closed Session: “Conference with Real Property Negotiator Mr. Scott Sheldon, Pursuant to Govt. Code 54956.8, Regarding Price and/or Terms of Payment: Former Blue Shield Building.” The Board also adjourned to the Blue Shield building for a closed session tour of that property.
- September 27, 2007 – Closed Session with real estate consultant: “Regarding Price and/or Terms of Payment of the Former Blue Shield/Yancey Building Located at 425 Sixth Street.”
- October 25, 2007 – Closed Session with real estate consultant: “Regarding Price and/or Terms of Payment for the Former Blue Shield Building

¹ Premier Commercial, Inc., a real estate services firm, was engaged by the District as its real estate consultant. One of the owners of that firm was designated by the District as its “Real Property Negotiator” for purposes of Sections 54956.7(b) and 54956.8 of the Brown Act.

(Parcel #006-122-07).” The District’s attorney also attended this closed session meeting but his attendance was not announced.

- November 20, 2007 – Closed Session: “Conference with Real Property Negotiator Scott Sheldon and Legal Counsel from Miller, Brown & Dannis, Pursuant to Govt Code 564956.8: Regarding Price and/or Terms of Payment for the Former Blue Shield building (Parcel #116-122-07).”
- December 13, 2007 – Closed Session: “Conference with Real Property Negotiator Scott Sheldon and Legal Counsel from Miller, Brown & Dannis, Pursuant to Govt Code 564956.8: Regarding Price and/or Terms of Payment for the Former Blue Shield Building (Parcel #116-122-07).”
- March 10, 2008 – Closed Session: “Conference with 1. Real Property Negotiator Scott Sheldon and Legal Counsel from Miller, Brown & Dannis pursuant to Govt Code 54956.8: Negotiations with Blue Ice, LLC Regarding Price or Terms of Payment for the Property Located at 435 Sixth Street, Woodland, CA (Parcel #006-122-07). 2. Conference with Legal counsel from Miller, Brown & Dannis. Anticipated Litigations: Significant Exposure to Litigation Pursuant to Govt Code Section 54956.9(b): one (1) case.”

The March 10, 2008 closed session meeting continued for more than two hours, while the following public session lasted only moments. As of May 1, 2008, no minutes of that lengthy March 10, 2008 closed session meeting—or of any public session which followed it—have been made available by the District. However, the day following the March 10, 2008 Board meeting, the District Superintendent gave a press release to a local newspaper indicating the Board had terminated the Blue Shield property acquisition transaction and sent a formal termination letter to the Blue Shield property owner. Several days later, during the regular March 13, 2008 public meeting of the Board and at the particular request of one of the Trustees, the Superintendent announced the March 10, 2008 closed session action of the Board terminating the Blue Shield property transaction.

On March 11, 2008, in an email to senior District employees concerning the March 10, 2008 closed session meeting of the Board, the Superintendent stated that the Board’s termination of the Blue Shield purchase transaction “...does not necessarily mean we won’t still occupy that building because the Board, in a 4 – 2 vote (with Trustee Glover absent) directed staff to develop a lease/purchase option for the same property.” Such vote action was not contained in the agenda for the March 10, 2008 meeting. During the brief public session meet-

ing immediately following the closed session, the Board announced they were not going to purchase the building because they could not obtain financing.

It is clear the Blue Shield purchase process did not involve the public prior to the Board’s public action on December 13, 2007.

See Attachment A: Summary of Relevant Provisions of the Brown Act.

C. Reasons for Purchase of Blue Shield Property: Owning v. Leasing and Safety

The investigation revealed two main reasons attributed for the purchase of the Blue Shield building: 1) owning is better than leasing and 2) the Cottonwood property is unsafe.

Owning v. Leasing – Faulty Facts Lead to Doubtful Conclusions

Based upon the Grand Jury’s investigation, objective factors in addition to individual intuition appear never to have been duly considered or the subject of any serious analysis. Such factors might have included current tightness of the long term debt market, the actual cost of the Blue Shield property and of comparative cost of the financing proposed for the Blue Shield purchase compared to alternative sites and financing methods or consideration of an analysis of the cost of leasing compared to the cost of owning a central office facility.

Potential cost savings were a major factor in the Board’s decision to purchase the Blue Shield property. The statements made by a trustee at a January 16, 2008 Key Communicators meeting (a monthly meeting held with the administrative personnel, Board of Trustee members and any public citizen), public comments made by other trustees, and recommendations of Premier Commercial, Inc. (the District’s real property consultant), consistently identified the cost of future annual rent for the Cottonwood Premises to be between \$414,000 and \$450,000—almost twice the current annual rent of approximately \$230,000. This increase in rental cost was claimed to be comparable to the expected initial annual loan payment for the planned purchase of the Blue Shield property.

While the assumed \$414,000 to \$450,000 rental cost of the Cottonwood Premises seemed to serve as justification for purchase of the Blue Shield site, the Superintendent and the District’s real estate consultant knew the owner of the Cottonwood premises had made a written offer to extend the lease of the Cottonwood Premises for up to 10 years at an annual rental cost of approximately \$276,000. The owner also offered to work with the District with respect to this proposed lease amount as well as the length of an extended lease term. Investigation revealed that only some of the Trustees were informed the

Cottonwood Premises could be leased for an annual rent of approximately half the first year's interest-only payment required for purchase of the Blue Shield property.

Before privately committing to purchase the Blue Shield property, neither the District's real property consultant, Premier Commercial, Inc., nor any District official negotiated with the owner of the Cottonwood Premises for renewal of the lease, nor made any analysis of the benefits and risks of continuing as a tenant there compared to the benefits and risks of purchasing the Blue Shield property. Analysis of alternative central office sites was not done by the District's real estate consultant until after the District had engaged in extensive negotiation for the purchase of the Blue Shield property, and the Board had privately determined to purchase the Blue Shield property.

The financing approach adopted by the District involved the issuance of Certificates of Participation Participation (COP).² The annual Blue Shield COP payments were to increase by three percent per year calculated on a compounded basis. The precise annual mortgage payment amounts would only be known after the Blue Shield COPs were sold to investors. The Blue Shield financing plan was expected to require a first year payment of approximately \$479,000, increasing every subsequent year on a 3% compounded basis, throughout the 30 year financing term. Under this arrangement, the annual Blue Shield purchase payment was estimated to reach more than \$1,000,000 per year during the last years of the 30 year mortgage.

For a summary of the financing and transactional costs of the Blue Shield purchase see Attachment B: Financial Commitments for Blue Shield Building Purchase.

Safety Issues – Public Relations or Public Health?

The second reason given for moving from the Cottonwood Premises was that the Cottonwood property is unsafe due to the existence of perchloroethylene (PCE) in the ground water and ambient air within the District's central office. The existence of PCE in the groundwater at the Cottonwood facility has been public knowledge since 1992.³ Regular ground water monitoring was underway by the beginning of 1997, a year and a half be-

fore the District leased the building. At any rate, water supply to the Cottonwood Center is from municipal water treatment facilities, not ground water wells.

Shallow PCE ground water contamination often results in evaporative PCE vapors above its underground presence. On November 20, 1998, shortly after the District moved into the Cottonwood Premises, the County Health Department made tests and reported that PCE was not detectable in the ambient air at the premises. During June 2000 and February 2001 testing indicated unsafe PCE levels at certain locations in the Cottonwood Premises. During 2001 and 2002 precautions were taken to ensure a safe environment within the Cottonwood Premises. The Cottonwood Premises heating, ventilating and air conditioning systems were upgraded to ensure positive inside air pressure and thorough filtering and circulation of inside air. In addition, supplementary charcoal air filters were installed, and substantial District employee training and education programs implemented. Also, in 2001 the owner of the Cottonwood Center installed and began operation of subsurface PCE vapor extraction equipment at the Cottonwood Center.

During 2001 and 2002, sampling and testing of air quality at the Cottonwood Premises was carried out by several independent environmental experts. These experts included Atlantic Pacific Environmental, Western Geo-Engineers, and Bio-Max Environmental. After implementing a soil vapor extraction system, analysis of these test results concluded that ambient air quality was satisfactory, and that measured levels of PCE were at levels lower than regulatory limits. These sampling and testing reports confirmed a decrease in PCE concentrations in ambient air within the Cottonwood Premises.

Since 2001, the California Regional Water Quality Control Board (RWQCB) has overseen and monitored the Cottonwood Center owner's PCE remediation activities. To the effective date of this report, the RWQCB and the Environmental Health Division of the Yolo County Health Department have received no health complaints concerning the Cottonwood Center since April 2001. Since this time, the District neither received nor filed any health complaints as of the effective date of this report.

The investigation revealed that despite the environmental history of the Cottonwood Premises, the District remains determined to move its administrative offices to the Blue Shield property. At a January 16, 2008 meeting of Key Communicators of the District, a trustee told parent representatives that the Cottonwood Premises "has environmental hazards that cannot be eliminated" and emphasized the role of the Key Communicators in "informing the public."

Shortly after a January 24, 2008 public presentation

² For a summary description of Certificates of Participation, see Attachment C: Certificates of Participation.

³ The presence of PCE resulted from a retail dry cleaning operation within the Cottonwood Center. PCE has historically been used in commercial dry cleaning. If not properly handled, PCE may become a ground water and soils contaminant which migrates underground much the same as ground water.

of some background details of the decision to purchase the Blue Shield property, and encountering public opposition to the purchase, the District engaged a new environmental consulting firm (Schutze & Associates) to analyze air samples from the Cottonwood Premises. The resulting report, dated March 9, 2008, (the Schutze Report) is consistent with earlier rounds of sampling and analysis; namely, that some PCE is present but remains well below concentrations that would be expected to present health risks to District employees or to visitors at the Cottonwood Premises.⁴

The District has characterized the Cottonwood Facility as being unsafe, based upon the Schutze Report, even though the Schutze Report does not make any such assertion. No written health complaints from employees or visitors to the Cottonwood Facility were received. The School District relied upon the real property consultant as the basis for the opinion that ambient air PCE concentrations at the Cottonwood Facility are unsafe.

Despite the lack of any evidence of material health risk due to PCE contamination, following the March 10, 2008 special closed session meeting of the Board, the District evacuated and closed off a portion of the Cottonwood Premises and posted signs on the doors to those spaces advising persons not to enter due to possible contamination. The District also began moving some central office employees to temporary premises elsewhere.

D. Inadequate Monitoring of Consultant Contracts and Duplicate Services

The District engaged several consultants in connection with relocation of the District's central office and purchase of the Blue Shield property. Fairfield-based Premier Commercial, Inc. was engaged to supply both real estate consulting services and real estate brokerage services. The two individuals performing these services are both shareholder principals of Premier Commercial,

Inc. During fiscal year 2006/2007, and the current fiscal year to the effective date of this report, the District incurred hourly real estate consulting fees payable to Premier Consulting, Inc. in excess of \$150,000. Upon closing of the District's acquisition of the Blue Shield property, the other shareholder principal of Premier Commercial, Inc. will receive a commission for acting as the District's real estate broker in the approximate amount of \$135,000.

Other consultants include San Francisco-based Breton Architects (assessment of space needs and design of tenant improvements at the Blue Shield property), and Miller, Brown and Dannis (attorneys with offices in San Francisco, Long Beach and San Diego).

Typically a real estate broker provides his buyer-client services including identification and evaluation of potential properties, negotiation of price and payment terms, advice on title and insurance matters, and facilitation of the closing of the purchase transaction. In this case, the shareholder principal of Premier Commercial, Inc. was engaged as real estate consultant and compensated at a rate of \$150 per hour for some of these services which the other shareholder principal of Premier Commercial, Inc., acting as the District's broker, will receive real estate commission of approximately \$135,000 upon the closing of the purchase.

The real estate consulting fees and the real estate brokerage fees paid to Premier Commercial, Inc. would be applied by Premier Commercial, Inc. first to its operating overhead (such as rent, advertising, staff wages and salaries, utilities, equipment, insurance, office supplies, etc.) then allocated and distributed to the two shareholder principals. Because such fees and commissions are first applied to the operating expenses of Premier Commercial, Inc., and because of the obvious and understandable tendency of principals of the same firm to refer business from one to another, the potential for conflict of interest detrimental to the District plainly exists.

The District is required to obtain Board approval for purchase orders exceeding \$15,000. The District has no policy in place preventing incremental contract expenditures by the Superintendent in excess of the total contract amount approved by the Board. In the case of the District's real estate consultant contract, only \$100,000 was authorized in advance by the Board. An additional approximate sum of \$50,000 was paid without Board approval on the basis that no single incremental payment exceeded \$15,000.

The District's real estate consultant had no contract with the District from October 2006 to August 23, 2007. During this time the real estate consultant continued to perform services on behalf of the District.

⁴ The Office of Environmental Health and Hazard Assessment sets the following standards for evaluating health risk due to PCE exposure in the work place, based upon exposure to levels of PCE 8 hours/day, 5 days/week, over 30 years:

- 1) Immediate Health Effect Level (acute, as in a dry cleaner operation): more than 200,000 micrograms per cubic meter of PCE: variety of symptoms possible;
- 2) Chronic Reference Exposure Level: 35 micrograms per cubic meter of PCE: possible kidney or liver damage;
- 3) California Human Health Screening Level: 0.693 micrograms per cubic meter of PCE: 1 in a million risk level for cancer.

The most recent sampling of the District's Cottonwood Premises indicated PCE levels were satisfactory. Those State and County regulatory authorities knowledgeable of the situation and consulted by the Grand Jury confirmed no special or immediate health hazard to workers or visitors exists at the Cottonwood Premises due to PCE contamination.

E. A Question of Due Diligence

Due diligence is generally defined as reasonable good faith efforts in performance of duty, including the process of examining relevant facts, accomplished without conflict of interest.

1. A space needs assessment study, conducted by Breton Architects, considered District central office needs for the next eight years. The District authorized financing for purchase of the Blue Shield property and related tenant improvements over 30 years. The furniture, fixtures and equipment were also to be purchased by the 30 year COP financing plan. Such property has a useful life of much less than 30 years.

Financing of furniture, fixtures and equipment over 30 years would add interest expense more than twice the cost of such property; i.e., property costing \$565,000 after 30 years of interest expense would require total repayment of almost \$1,200,000. Property of this sort wears out and becomes obsolete within six to ten years and would need to be replaced notwithstanding that payment for it would continue over the full 30 year repayment period of the COPs.

The District's central office space needs assessment was for only eight years. After eight years tenant improvements would need to be redone and updated to meet District space needs at that time. Still, payment for the original tenant improvements would continue during the entire 30 year term of the COPs. This would add interest costs to the actual \$1,600,000 of tenant improvements requiring total payments of approximately \$3,300,000 notwithstanding that some portion of these tenant improvements would need to be replaced or redone as soon as eight years. (See Attachment B.)

The Grand Jury found a remarkable lack of understanding about what Certificates of Participation (the financial instrument for funding the Blue Shield building purchase, tenant improvements, and furnishings) are and how they work.

2. The investigation included a review of a provision in the purchase contract for an eminent domain concession. Later in the investigation, at the Board's public session meeting of January 24, 2008, public comments were reviewed which disclosed a closed session vote not to use eminent domain. In response, the real estate consultant described the eminent domain concession to the seller as a "negotiating tool."
3. Consistently, investigators found a lack of knowledge of the Blue Shield purchase process, including, but not limited to, critical event dates: (a) when the purchase agreement was signed; (b) when the Blue Shield building came to the attention of the Dis-

trict; (c) when the District first met with architects; (d) when the District's real property consultant first looked at the Blue Shield building; (e) when space needs analysis was done in relation to when the District made the offer to purchase the Blue Shield property; or (f) when the Blue Shield acquisition was first put on the Board's agenda. In addition, the investigation revealed very limited knowledge of the contract provisions and lease agreement, as well as to why some minutes concerning the Blue Shield matter were not published on the District's web site.

4. As of the effective date of this report, the Board has taken closed session action to acquire the Blue Shield property through a lease arrangement which includes an option to purchase. No public meetings have been held regarding this plan.

As of the effective date of this report, no minutes of the very brief public session of March 10, 2008 (or report of any action following the lengthy closed session) have been made available by the District. However, the day following the March 10th Board meeting, the District's Superintendent gave a press release to a local newspaper indicating the Board had terminated the Blue Shield property acquisition transaction and sent a formal termination letter to the Blue Shield property owner. Several days later, investigators attended the regular March 13, 2008 public meeting of the Board when, at the request of one of the Board Trustees, the Superintendent announced the March 10th closed session action of the Board terminating the Blue Shield property transaction.

At the March 19, 2008 Key Communicators meeting, the District Superintendent told the parent representatives and others at the meeting that during its March 10, 2008 special closed session meeting the Board terminated the purchase transaction for the Blue Shield property because "...a citizen made allegations to the Grand Jury and there is an on-going investigation." In an email to senior District administrators on March 11, 2008, the Superintendent stated that the Board at its March 10, 2008 meeting had taken action in closed session "...to develop a lease/purchase option for the same [Blue Shield] property" and that after June 30, 2008 the Board still intended to move forward with the same Blue Shield property purchase transaction it had abandoned at its March 10th meeting. The environmental status or condition of the Cottonwood Premises was not mentioned.

FINDINGS

Conflict of Interest

F1. To date, the Grand Jury has discovered no evidence

of conflict of interest on the part of members of the District's Board of Trustees, any District officer, or any owner or former owner of the Blue Shield property in connection with purchase or lease of the Blue Shield property.

Brown Act

- F2. Closed Session meeting agendas did not contain required information, in violation of the Brown Act.
- F3. Action was taken during closed session meetings of the District's Board of Trustees in violation of the Brown Act.
- F4. The District did not report in a public session on the plan to purchase the Blue Shield building until at least 12 months after planning and negotiations had begun. The purchase of the Blue Shield building was discussed in public sessions only three times.
- F5. The Board failed to comply with the open meeting requirements of the Brown Act during its consideration and discussion of questions relating to relocation of the District's central administrative offices and acquisition of the Blue Shield property. Consideration and discussion of these matters could have been the subject of open and public meetings of the Board. Even if these matters were appropriate for closed confidential meetings, the determinations made, direction given, and/or concurrence reached among a majority of the Trustees of the Board during these closed meetings constituted action which should have been promptly announced in public session.
- F6. Only negotiation of price and terms of payment are permitted to be discussed in closed Board meetings relating to a real property purchase. The Brown Act requires all other issues concerning real property transactions be taken up in open, public meetings. The Board failed to adequately inform and educate the District's constituency about the nature of Certificates of Participation financing compared to traditional bond financing and the reasons for the Board's determination to use Certificates of Participation financing to acquire new central administrative offices.
- F7. Timely open and public discussion of the Board's program for new central administrative office facilities may have minimized or prevented the controversy which greeted the Board's eventual public disclosure of the Blue Shield property acquisition and financing transactions.

Justification for Purchase

- F8. The Board determined to purchase the Blue Shield property based in significant part upon a philosophical view that "owning is better than renting" without undertaking any analysis to verify that purchasing would actually be more advantageous to the District than leasing the Blue Shield property or purchasing or leasing other property.
- F9. One main reason given to justify the purchase of the Blue Shield building—owning is better than leasing—indicated a flawed decision-making process, based on faulty assumptions and without verification of actual costs. It did not take into account the market, State deficits, cost of Certificates of Participation, space needs, and the cost of financing furniture and equipment for 30 years.
- F10. In closed session the Board of Trustees affirmatively rejected the notion of legal action to acquire the Blue Shield property by eminent domain proceedings. Yet the Trustees entered into a final and binding purchase agreement which stated that the purchase was made under actual threat of condemnation by the District.
- F11. The other reason given for the purchase of the Blue Shield building—that the Cottonwood Premises are unsafe—is misleading in light of evidence provided by the monitoring and remediation of the Cottonwood Center carried out over many years and the assessment of expert Yolo County and State of California agencies of the current environmental status of the Cottonwood Center.
- F12. In the face of increasingly critical public sentiment and the continued resistance of a strong minority of the members of the Board to the Blue Shield acquisition, the District distorted the environmental status of their existing central administrative offices by sensationalizing environmental health risks associated with ground water contamination and air quality at that location. These actions appear to be calculated public relations efforts and do not appear to be warranted by any special health risk associated with working in or visiting the District's existing central administrative offices. The District has had no record of employee health complaints at the Cottonwood Premises since 2001.

Consultants and Purchasing

- F13. The District's real property consultant was paid at rates up to \$150 per hour for work that should have been done by the District's commission real estate broker, costing District tax payers unnecessary real estate consultant fees.

- F14. There is a conflict of interest created in hiring a real property consultant and a real estate broker from the same real estate services firm, a conflict which may result in direct monetary benefit to the consultant and/or the broker.
- F15. There is no District policy in place regarding purchase order addenda for sums in excess of the maximum amount of the original purchase order approved by the Board of Trustees.

Due Diligence and Decision-Making Process

- F16. The authorized financing of the Blue Shield property amortizes the full cost of purchasing, upgrading and equipping the Blue Shield property over 30 years notwithstanding that the future space needs assessment study only estimated the District's central office space needs for the next eight years.
- F17. The Board authorized purchase price for the Blue Shield property of \$5.67 million, plus planned tenant improvements and upgrades of \$1,600,000 and \$565,000 for furnishings and equipment. After adding financing transactional expenses and interest costs associated with the Certificates of Participation financing plan, the District's financial advisor estimates total Blue Shield property cost amounts to more than \$21 million. This amount does not include \$233,568 in other consulting and attorneys' fees already incurred through April 9, 2008, nor does it include any fees to be incurred after April 9th.
- F18. Material changes in financial and credit markets since the Board's execution of the Blue Shield purchase contract have made long term mortgage borrowing, especially financing plans using mortgage payment guarantees, more difficult and more expensive. Yet the District still plans to proceed with purchase of the Blue Shield property on July 1, 2008. According to an email written by the Superintendent, the District plans "...to lease the building and then purchase it when the cloud of the investigation has been lifted."
- F19. The District's plan for payment of furniture and equipment required in the Blue Shield property in addition to extensive tenant improvements and upgrades is based upon a 30 year payment plan notwithstanding that the useful life of such furniture and equipment is typically many years fewer.
- F20. The Board failed to perform and failed to require senior staff to perform adequate due diligence in its consideration of alternative central office sites.
- F21. The District withheld from the Board the actual, negotiable lease renewal offer of the Cottonwood

Premise owner, leaving the Board with incomplete information upon which to make their decision to lease or purchase the Blue Shield property or to remain at the Cottonwood premises.

- F22. The Superintendent demonstrated over-reliance upon the District's real estate consultant, at the expense of her own knowledge.
- F23. Decision makers, with a few note-worthy exceptions, did not appear to be informed in areas critical to their role in the decision making process in connection with relocation of District administrative offices or acquisition of the Blue Shield property.
- F24. The District's legal counsel worked to frustrate and limit the Grand Jury's requests to the District for information concerning the subject matter of this report and interviews of District officers.
- F25. The Board of Trustees based the cost of alternatives to the purchase of the Blue Shield property upon faulty assumptions and without verification of actual or most likely costs, resulting in a seriously flawed decision making process.
- F26. The determination that owning the Blue Shield property was better than leasing the Cottonwood Premises, to the extent it is based upon comparable annual cost, was misinformed because the actual lease cost available to the District was approximately 60% of the first year COP expense.
- F27. If the uninformed assumption that annual rental would be approximately \$450,000 a year - or even \$414,000 a year - was correct, the annual cost of owning the Blue Shield property would very materially exceed the Cottonwood Premises lease payments because the COP payments are intended to escalate by 3% per year on a compounded basis.
- F28. The District undertook detailed negotiations and entered a letter of mutual intent fixing upon purchase of the Blue Shield property before the District's own study of future administrative office space needs was presented to the Board of Trustees. The price and terms of payment were agreed upon before any valuation study of the Blue Shield property was commenced.
- F29. The Board failed to conduct timely due diligence in that they considered alternative central office locations after they had already decided upon and engaged in extensive negotiation for the purchase of the Blue Shield property.

RECOMMENDATIONS

- 08-01** The District should engage a policy and practice

of openness and cooperation toward the public with regard to major financial decisions. The Board of Trustees should engage in deliberation and decision making in public sessions in full compliance with the requirements of the Brown Act.

- 08-02** The Board should strengthen public confidence in its competence and authority by conducting its business and discussions in public session and utilize closed confidential session meetings only where expressly authorized by the Brown Act.
- 08-03** The Board and District administrators should share the public spirit of service to the community by organizing and conducting business in a way that increases public interest in District affairs, encourages public attendance and informs the public in open, shared deliberations and discussion.
- 08-04** The Board should take seriously its obligation to educate itself and its senior administrative staff about the open meeting requirements of the Brown Act and institute an annual continuing mandatory educational program about the Brown Act for Board members and senior staff.
- 08-05** Pursuant to Govt C 54957.2, the Board should designate an officer or employee of the District to attend each closed session meeting of the Board to keep a record of topics discussed, directions given, decisions made, and actions taken by the Board in closed session.
- 08-06** The Yolo County District Attorney should consider commencement of an action pursuant to Govt C 54960 to compel the District to comply with public meeting laws.
- 08-07** The District should approach the expenditure of its monetary resources with a commitment to frugality, careful research, and open communication and disclosure of the Board's decision making processes.
- 08-08** The Board should minimize use of long term consultants and, when possible, utilize qualified District personnel to their full advantage, both to reduce expenses and to increase accountability of individuals acting on behalf of the District.
- 08-09** The District should establish policy requiring that all District consultants act on behalf of the District only pursuant to a written contract which details the services to be provided to the District, the reporting relationship between the

consultant and a specified District officer or the Board, identify the District officer or officers authorized to direct the work of the consultant and establish the maximum amount of compensation payable to the consultant without further specific Board authorization.

- 08-10** The Board of Trustees should establish a policy regarding Board authorization and payment of addenda to purchase orders which aggregate to more than the \$15,000 maximum expenditure authority delegated by the Board to the Superintendent.
- 08-11** The Board of Trustees and School District should avoid even the slightest conflict of interest between or among vendors.
- 08-12** The Board and District administrators should exercise due diligence techniques and research, documenting its analyses underpinning important financial decisions and actions such as purchase or lease of capital assets. They should carefully consider alternatives, financial arrangements, and the economy when considering purchase of real property. They should also ensure understanding of important financial and contractual arrangements presented by District administrators and consultants.
- 08-13** The District Superintendent should read and have first-hand knowledge of all reports germane to her position.
- 08-14** The 2007/2008 Yolo County Grand Jury recommends the 2008/2009 Yolo County Grand Jury continue investigation of the Woodland Joint Unified School District including, but not limited to, compliance with the Brown Act.

REQUESTS FOR RESPONSES

Pursuant to Penal Code section 933.05, the Yolo County Grand Jury requests responses as follows:

From the following individuals:

- Superintendent, Woodland Joint Unified School District (Findings F2 through F29; Recommendations 08-01, 08-03, and 08-07 through 08-13)
- Yolo County District Attorney (Recommendation 08-06)

From the following governing bodies:

- Woodland Joint Unified School District Board of Trustees (Findings F2 through F29; Recommendations 08-01 through 08-05 and 08-07 through 08-12)

APPENDICES (Woodland Joint Unified School District)

ATTACHMENT A: Brown Act Summary of Relevant Provisions – Closed Meetings of Board of Trustees

1. Meetings of the Board of Trustees are subject to the Ralph M. Brown Act, sometimes referred to as California’s “open meeting” law. The intent of the Act is that the public’s business be conducted in public and that members of governing boards of local agencies vote and be accountable to constituents for their official actions.
2. The Act requires all meetings of the Board be open and public and that all persons be permitted to attend any meeting of the Board unless a specific exception is provided in the Act. An agenda for regular meetings of the Board must be published at least 72 hours prior to the meeting. The agenda must contain a brief description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. Members of the public must be given an opportunity to address the Board at each general and special meeting of the Board, including matters indicated on the agenda to be discussed during closed sessions. Except in certain specified emergency situations, the Act prohibits the Board from taking action or discussing any matter not appearing on the posted agenda. Once a closed session has been completed, the Board must reconvene in public session where, with few exceptions, it must report the actions taken in closed session.
3. The Board may act on and discuss only certain specified matters in closed sessions. When describing closed session agenda items, the Board must comply with descriptive requirements of the Act. A closed session agenda item description does not authorize any business be done in closed session except the specific limited matters authorized by the Act. Three examples of exceptions from the public meeting mandate are relevant to this report.
 - a. To confer with Real Property Negotiator. When invoking this exception the Act requires the closed session agenda must specify the street address to the property in question, the name of the negotiator attending, the name of the negotiating parties, and whether negotiation will concern price, terms of payment or both.
 - b. To confer with Legal Counsel – Existing Litigation. This exception may apply when the District is a party to formally initiated litigation. This exception requires the closed session agenda specify either the name of the pending litigation case or, in lieu of the case name, specify whether disclosure of the case name would jeopardize service of process or existing settlement negotiations.
 - c. To confer with Legal Counsel – Anticipated Litigation. This exception involves exposure to litigation or initiation of litigation. In either situation the number of cases must be specified. Based on circumstances of each case, the closed session agenda item for conferring with legal counsel as to anticipated litigation may require additional details on the closed session agenda.
4. The Act expressly repeals the attorney-client communication privilege as to local legislative bodies and provides for very limited attorney client communication confidentiality for purposes of conducting closed-session meetings. The Act is the exclusive expression of the Board’s attorney-client communication privilege which may justify a closed session meeting with its counsel. If the Board expects to engage in communication with its counsel other than in an open and public session, the agenda must state the specific subdivision of Section 54956.9 of the Act that authorizes the closed session.
5. The Act requires closed session actions taken by the Board concluding real estate negotiations or directing the Board’s counsel regarding legal action be publicly reported and the vote or abstention of every Board member present disclosed.

ATTACHMENT B: Financial Commitments for Blue Shield Building Purchase⁵

The total purchase price and related expenses to be financed by the Certificates of Participation were:

Purchase Price	\$5,670,000
Design Architect	151,445
Insurance	5,625
Property Taxes	20,250
Tenant Improvements	1,600,000
Furniture, Fixtures and Equipment	565,000
Other soft costs	10,000
Closing costs	15,000
Contingency	193,280
Other (e.g. moving costs)	<u>250,000</u>
Subtotal	\$8,480,600
Owner financing @8.5%	117,938
Total Property Cost	<u>\$8,811,000</u> (sic)

Additional transactional financing expenses (i.e., exclusive of interest) were anticipated to amount to \$1,351,144, nearly two-thirds of this amount was to establish a debt service reserve in accordance with the Certificates of Participation financing. These transactional financing expenses consisted of:

Cost of issuance of the COPs	\$125,000
Payment guaranty premiums	212,677
Debt service reserve	886,154
Underwriting discount	127,313
Funds remaining	<u>22,856</u>

Total Transaction Financing Costs \$1,374,000

Grand Total of Funds Needed from Certificates of Participation:

Total Property Cost	\$8,811,000
Total Transaction Financing Cost	<u>1,374,000</u>
Proceeds Needed From Sale of COPs	<u>\$10,185,000</u>

The District's financial advisor calculated total interest cost of the COPs financing over 30 years at a weighted average interest rate of 4.71%⁶ would require total repayment of principal and interest in excess of \$21,250,000. In addition, the following expenses were incurred by the District concerning the Blue Shield acquisition transaction:

Legal fees (July 25, 2007 – March 14, 2008)	\$90,129
Real Estate Consulting fees (October 31 – April 9, 2008)	<u>143,439</u>
Total Consulting fees to April 9, 2008 (not including Brereton Architects for \$151,455, listed above)	<u>\$233,568</u>

⁵ These figures are taken directly from materials presented to the Board of Trustees in closed session prior to its December 13, 2007, public meeting by Premier Commercial, Inc., the District's real estate consultant, and by Government Financial Services, Inc., the District's financial advisor. The \$8,811,000 figure for "Total Property Cost" appears in the source documents; the correct total of the amounts shown as included in "Total Property Cost" is \$8,598,538.

⁶ Actual interest rate would vary according to the maturity date of certificates. Longer term maturity certificates typically bear higher interest rates than short term maturity certificates. The District's financial advisor assumed interest rates would range from 3.44% up to 4.85% during the thirty year term of the borrowing. Since the time the District's financial advisor estimated the interest cost for this COP financing, a major mortgage banking crisis developed in which many mortgage insurers and bond sureties ceased or dramatically curtailed operations. This has adversely affected both the availability and the cost of long term borrowing by both private and by public borrowers. For the time being interest rates remain relatively low even while lenders have generally restricted new long term debt investment. These general economic developments may operate to make the District's plan to issue COPs to buy or build a major new capital facility unaffordable.

ATTACHMENT C: Certificates of Participation

Certificates of Participation, often referred to as “COPs,” are a standard form of financing agreement whereby a buyer acquires the immediate title and use of an asset and the seller retains a security interest in the asset and the buyer agrees to pay the seller a series of payments equal to the cost of the asset plus interest. Therefore, the transfer of title is conditionally subject to future payments. This is distinguished from an installment sale where the seller retains title until all installment payments are made. In both forms of sale, for federal tax purposes, the Internal Revenue Code treats the asset as owned by the purchaser with payments to

the seller constituting principle and interest; for a governmental purchaser, interest usually is tax-exempt. This term is sometimes used interchangeably with the term tax-exempt lease; however, in California, there is an important distinction between the two (e.g., a lease is constitutionally legal and a conditional sale is not unless it is secured by a special fund.) The District must obtain a supermajority approval of voters to issue bonds. Certificates of Participation may be issued without voter approval. (“Guidelines for Certificates of Participation,” California Debt Advisory Commission, 1993.)