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COMMITTEE FOR RESPONSIBLE SCHOOL EXPANSION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

COMMITTEE FOR RESPONSIBLE
SCHOOL EXPANSION,

Petitioner,

V.

HERMOSA BEACH CITY SCHOOL DISTRICT, and DOES I-X

Respondents.

BEACH CITIES HEALTH DISTRICT, and
DOES XI-XX.

Real Parties in Interest

CASE NO.: BS096014

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PRELIMINARY INJUNCTION**

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT; HERMOSA BEACH
MUNICIPAL CODE)

Hearing Date: July 21, 2005

Time: 9:30 a.m.

Department: 85

Presiding Judge: Honorable Dzintra Janavs

Petition Filed: April 8, 2005

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1 **I. INTRODUCTION**

2 On March 9, 2005, Respondent Hermosa Beach City School District ("School District")
3 approved a plan for development of a gymnasium ("Project") on the site of the Hermosa Valley
4 School ("School"). The gymnasium would be funded from Measure J, a bond measure that
5 listed certain projects for which the bond funds would be used. (Declaration of Douglas P.
6 Carstens ("Carstens Decl."), Exh. F.) The gymnasium project was not on that list, in violation
7 of a recent state constitutional amendment, Proposition 39, which amended article XIII A of the
8 California Constitution. (Carstens Decl., Exh. B [Historical notes] and Exh. I, p. 2.)

9 This action was filed on April 8, 2005, challenging the Project on numerous grounds:
10 violation of the California Environmental Quality Act, the City of Hermosa Beach's Municipal
11 Code, and the Brown Act. It was amended to allege violation of the California Constitution's
12 provisions for bonded indebtedness approval. Despite the pendency of this lawsuit, the School
13 District has announced its intent to approve a contract for school construction before a hearing
14 of this matter by the Court. Therefore, an injunction is necessary to prevent the expenditure of
15 taxpayer funds on the improperly approved Project until such time as this matter may be decided
16 by this Court.

17 In addition to the constitutional violation stemming from the fact that the bond measure
18 did not authorize construction of the Project, the gymnasium's use at nighttime by the Beach
19 Cities Health District ("Health District"), among other users, pursuant to an agreement with the
20 School District ("Joint Use Agreement") (Carstens Decl., Exh. M) would cause substantial
21 adverse traffic and noise impacts in surrounding neighborhoods that the District chose not to
22 mitigate in violation of the California Environmental Quality Act ("CEQA"). The approval of a
23 gym at this site also violates the Hermosa Beach Municipal Code's requirement to hold an
24 election before modification of open space such as the school site, its height limitation, and its
25 parking requirements.

26 A preliminary injunction to maintain the status quo is necessary so that the School
27 District's approval of a contract for gym construction will not lend momentum to a decision that
28 has been made without adequate environmental review and in violation of local ordinances, as

1 well as to prevent the unauthorized expenditure of school bond funds.

2 **II. STATEMENT OF FACTS**

3 **A. Description of the Project and the Site**

4 The proposed project site is located near central Hermosa Beach on the west side of
5 Valley Drive. (Carstens Decl., Exh. J, DEIR, p. 3-1.) The Hermosa Valley site is 8.8 acres.
6 (*Ibid.*) The area surrounding the project is bounded by single-family and multi-family
7 residential development to the north and west, multi-family residential and commercial
8 development to the east, and a mobile home park and commercial property to the south. (*Ibid.*)
9 The School site is designated Open Space in the City of Hermosa Beach's General Plan. (*Id.*, p.
10 4.8-2.)

11 **B. Gym Construction Proposal Process**

12 In 2002, the electorate of the City of Hermosa Beach voted to approve Measure J, a bond
13 measure that provided for upgrading school facilities. However, Measure J did not specifically
14 contemplate use of the funds for construction of a gymnasium, as the ballot stated it was "To
15 improve the quality of education . . . finance classroom modernization; upgrade electrical
16 systems. . . make health, safety, and security improvements; upgrade plumbing, heating,
17 ventilation, and air conditioning systems; construct classrooms and science labs [and] acquire
18 property ..." (Carstens Decl., Exh. F.)

19 In 2003, the School Board examined plans for a proposed gym. It voted in favor of
20 proceeding with the Project, subject to subsequent environmental review. In December 2004, a
21 draft Environmental Impact Report ("EIR") was released. The draft EIR identified significant
22 parking impacts but claimed there were no feasible mitigation measures for those impacts.
23 (Carstens Decl., Exh. J, DEIR, p. 4.11-11.) The DEIR did not provide existing noise
24 environment baseline information, but claimed that no significant noise impacts would result,
25 based upon generalized analysis prepared for other locations. (Carstens Decl., Exh. J, DEIR, p.
26 4.9-10.)

27 The DEIR did not disclose the possibility of the subsequently executed joint use
28 agreement with the Health District. (Carstens Decl., Exh. J, DEIR, p. 3-6), though the issue was

1 clearly pending. The comment period for the DEIR closed on February 7, 2005. (Carstens
2 Decl., Exh. L, FEIR, p. 1.) Two days later, the School District considered the memorandum of
3 understanding for a joint use agreement ("Joint Use Agreement") with the Health District on
4 February 9, 2005. (Carstens Decl., Exh. K.)

5 On the evening of March 9, 2005, the School Board met regarding the Project. At the
6 meeting, the School Board approved the Joint Use Agreement (Carstens Decl., Exh. N, p. 5),
7 then later certified the EIR for the gym construction project, and approved it (Carstens Decl.,
8 Exh. N, p. 13).

9 **III. A PRELIMINARY INJUNCTION IS NECESSARY**

10 A preliminary injunction should issue if there is a substantial likelihood a petitioner will
11 prevail at trial and the balance of harms favor the petitioner. The California Supreme Court
12 stated:

13 This court has traditionally held that trial courts should evaluate two interrelated
14 factors when deciding whether or not to issue a preliminary injunction. The first is
15 the likelihood that the plaintiff will prevail on the merits at trial. The second is the
16 interim harm that the plaintiff is likely to sustain if the injunction were denied as
compared to the harm that the defendant is likely to suffer if the preliminary
injunction issued. [Citations omitted].

17 (*IT Corporation v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

18 As shown below, there is a substantial likelihood Petitioner will prevail at trial and the balance
19 of harms weigh in favor of issuance of the injunction.

20 **A. THERE IS A SUBSTANTIAL LIKELIHOOD PETITIONER WILL** 21 **PREVAIL AT TRIAL**

22 **1. The School Board's Approval Violated the California Constitution**

23 The School Board's March 9, 2005 approval of the expenditure of Measure J funds for
24 construction of a gymnasium violates constitutional requirements. Normally, the California
25 Constitution requires a 2/3 supermajority vote to approve bonded indebtedness. (Carstens Decl.,
26 Exh. I, p. 2, fn. 1; Cal. Const. Art. XIII A, section 1, subd. (b)(2), art. XVI, section 18, subd.
27 (a).). However, on November 8, 2000, California voters approved Proposition 39 to amend
28 article XIII A of the Constitution to lower that requirement to a 55 percent majority vote if

1 certain strict conditions to ensure public accountability are met. (Carstens Decl., Exh. I, p. 2,
2 and Exh. B). Proposition 39's 55 percent approval threshold applies:

3 . . . *only if* the proposition approved by the voters and resulting in the bonded
4 indebtedness includes all of the following accountability requirements:

5 . . .
(B) A list of the specific school facilities projects to be funded . . .

6 (Cal. Const. Art. 13A, section 1 (b)(3)(B), emphasis added.) Thus, disclosure of a list of
7 projects to be funded by a school bond measure is required by the California Constitution.
8 However, Measure J listed certain activities to be funded, such as classroom modernization and
9 electrical system upgrades, but it did not include gym construction in that list. The ballot text
10 for Measure J stated:

11 To improve the quality of education, shall the Hermosa Beach City School District
12 be authorized to finance classroom modernization; upgrade electrical systems to
13 improve access to technology; make health, safety, and security improvements;
14 upgrade plumbing, heating, ventilation, and air conditioning systems; construct
classrooms and science labs

15 (Carstens Decl., Exh F.) The fact that ballot arguments for and against Measure J mentioned a
16 gym does not meet the requirement that the "proposition approved by the voters" include a list
17 of "specific school facilities projects to be funded" as required by Constitution article 13A
18 section 1 (b)(3)(B).

19 A resolution of the School Board on July 24, 2002 included a list of specific school
20 facility projects to be funded. (Carstens Decl., Exh. E, Resolution No. 3:02/03, p. B-1.)
21 However, this list did not appear on the Measure J ballot statement itself. (Carstens Decl., Exh.
22 G.) Therefore, the ballot did not include the gymnasium in a list of specific school facilities
23 projects on the proposition approved by voters, as required by the Constitution. The omission is
24 perhaps explained by the School District's realization that the gymnasium would be potentially
25 unpopular with voters. During the discussion of the ballot measure on June 26, 2002, a
26 consultant for the School Board suggested two ballot measures: one for the gym, and one for
27 modernization and classroom additions. (Carstens Decl., Exh. D, p.5.) The consultant made this
28 suggestion because survey results indicated the gym was not favored by the public (Carstens

Decl., Exh. D, p.5), and “possible opposition to a gymnasium could cause problems with the passage of the bond measure.” (Carstens Decl, Exh.O; and Carstens Decl., Exh. D, p. 5.) The reason for the omission of the gym from the listed projects on the ballot is immaterial. The fact of the omission remains. In contrast with the School District’s failure to include a specific list of authorized projects on the ballot, the El Camino Community College District, on the very same ballot, included a full list of projects for which it proposed that bonded indebtedness would be incurred. (Carstens Decl., Exh. H, pp. 4-5.)

Measure J was approved by 65.17 percent of the vote, less than a 2/3 majority. (Los Angeles County Registrar Recorder Election Results for November 5, 2002 General Election, <http://rrcc.co.la.ca.us/elect/02110022/rr0022pr.html-ssi#HER>.) Thus, expenditure of any of the funds derived from Measure J on a gymnasium project would be unauthorized and in violation of the California Constitution because the bond approval did not meet the Constitution’s strict accountability requirements for measures passed by 55 percent of the electorate. The School Board’s March 9, 2005 authorization of the expenditure of Measure J funds on a gymnasium project that was not disclosed to voters on the ballot violates the requirements of the California Constitution. Therefore, any expenditure of Measure J funds on a gymnasium is unauthorized and must be restrained.

2. The School Board’s Approvals of a Joint Use Agreement and Gymnasium Project Violated CEQA

The Environmental Impact Report (“EIR”) certified by the School District neither acknowledged important noise impacts that would occur, nor mentioned the Joint Use Agreement with the Health District that would allow its intense usage of the School District’s facilities at any and all times school activities were not occurring. The EIR for the proposal to construct a gymnasium at Hermosa Valley School does not provide a sufficient analysis of parking impacts, noise, or the future use of the gymnasium. Nor does the EIR appropriately analyze alternatives and mitigation measures for these impacts.

a. The EIR Failed to Analyze a Reasonable Range of Alternatives

Respondents had a duty under CEQA to evaluate a reasonable range of alternatives to the

1 environmentally damaging construction of a gymnasium adjacent to residential neighborhoods.
2 (*Laurel Heights Improvement Assc. v. Regents of the University of California* (1988) 47 Cal.3d
3 376, 400 (“*Laurel Heights I*”).) In a later case, also addressing the requirement for consideration
4 of a reasonable range of alternatives, the California Supreme Court concluded that:

5 Under CEQA, the public agency bears the burden of *affirmatively demonstrating* that . . .
6 the agency=s approval of the proposed project *followed meaningful consideration of*
7 *alternatives* and mitigation measures.

8 (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134,
9 emphasis added; accord *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134
10 Cal.App.3d 1022, 1035.) As the Court has said, while an EIR is “the heart of CEQA”, the “core
11 of an EIR is the mitigation and alternatives sections.” (*Citizens of Goleta Valley v. Bd. Of*
12 *Supervisors* (1990) 52 Cal.3d 553, 564 (“*Goleta II*”).) Preparation of an adequate EIR with
13 analysis of a reasonable range of alternatives is crucial to CEQA=s substantive mandate to
14 prevent significant avoidable damage to the environment@ when alternatives or mitigation
15 measures are feasible. (CEQA Guidelines (“Guidelines”) § 15002(a)(3).)

16 The EIR failed to analyze a reasonable range of alternatives. Only one on-site design
17 alternative involving construction of classrooms and a laboratory, but no gymnasium, was
18 analyzed in addition to the no project alternative. (Carstens Decl., Exh. J, DEIR, p. 5-7.) Off-
19 site alternatives were all rejected with brief explanations of their rejection, mostly related to
20 cost. (Carstens Decl., Exh. J, DEIR, p. 3-5.) Members of the public suggested other on-site
21 design alternatives such as siting the new gymnasium at a different location on campus along
22 Valley Drive at a distance away from adjacent residences. (Carstens Decl., Exh. L, FEIR, p.
23 58). The EIR rejected this alternative as infeasible. (Carstens Decl., Exh., L, FEIR, p. 60.)

24 **b. The EIR Contained an Inadequate Analysis of Noise**

25 Title 14 California Code of Regulations Section 15151 provides that an EIR must contain
26 a “sufficient degree of analysis to provide decision makers with information which allows them
27 to make a decision which intelligently takes account of environmental consequences.” The
28 Final EIR did not provide decisionmakers with critical information about noise impacts.

1 Existing ambient noise levels were misstated. The EIR recognized that sensitive noise
2 receptors include residential development 15 feet from the project boundary to the north.
3 (Carstens Decl., Exh. J, DEIR, p. 4.9-3.) It asserted without evidentiary support that “Under
4 nighttime urban conditions, ambient noise levels are typically 50-55 dBA.” (Carstens Decl.,
5 Exh. J, DEIR, p. 4.9-10.) However, the EIR did not address the existing nighttime conditions
6 surrounding the property or provide any specific measurements to document its assertions.
7 Noise consultants engaged by local residents noted that no actual measurements were taken and
8 estimated night time noise actual conditions to be 20-25 dBA, much lower than the 50-55 dBA
9 estimates used by the EIR. (Carstens Decl., Exh. L, FEIR, p. 65.) The Court criticized the EIR
10 in *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344
11 (“*Berkeley Jets*”) for failing to provide information regarding the existing ambient noise levels.
12 (*Berkeley Jets, supra*, 91 Cal.App.4th at 1381.) Like the air cargo activity considered in
13 *Berkeley Jets* that “generally takes place during the noise-sensitive nighttime hours” (*Berkeley*
14 *Jets, supra*, 91 Cal.App.4th at 1372), non-school recreational activities by the Beach Cities
15 Health District and others would take place during nighttime hours.

16 Noise *increases* from nighttime gym recreational activities were not sufficiently
17 evaluated. The EIR states “a 3 dBA increase in long-term noise levels is used as a threshold of
18 significant change in this noise analysis.” However, the EIR failed to apply this threshold with
19 respect to recreational activities inside the new gym. Instead, the EIR estimated noise would be
20 reduced by the gym walls and the fact that the gym windows were at a higher elevation than
21 some nearby houses, but it does not address the baseline noise levels before such noise
22 reductions were applied. A noise consultant for nearby residents stated 82 dBA could be
23 generated from cheering and bouncing balls inside the gym. (Carstens Decl., Exh. L, FEIR, p.
24 65.) The EIR responded noise reductions would lower such levels “to 62 dBA Lmax at the
25 nearest residences,” thus below the 70 dBA Lmax it uses as a standard of significance. (Carstens
26 Decl., Exh. L, FEIR, p. 67.) However, the EIR failed to consider the *increase* in nighttime noise
27 levels from approximately 20-25 dBA (by residents’ estimates) or 50-55 dBA (by the EIR’s
28 estimate) to 62 dBA, an increase that far exceeds 3 dBA standard of significance by either

1 measurement. The Court in *Berkeley Jets* criticized the EIR in that case for failing to provide
2 information regarding the degree a single aircraft overflight would increase noise over ambient
3 levels. (*Id.* at 1381.) Similarly, the EIR in this case failed to analyze the noise increase over
4 ambient levels caused by nighttime recreational activities.

5 The Supreme Court has cautioned that a reviewing court is not to decide “whether the
6 studies are irrefutable or whether they could have been better.” (*Laurel Heights I, supra*, 47
7 Cal.3d at 409.) However, the reviewing court is not to “uncritically rely on every study or
8 analysis presented by a project proponent in support of its position. A clearly inadequate or
9 unsupported study is entitled to no judicial deference.” (*Id.* at p. 409, fn. 12; *Berkeley Jets*,
10 *supra*, 91 Cal.App.4th at 1355.) The Final EIR claims that the impact of noise will be mitigated
11 below the level of significance but it relies upon noise analysis that fails to consider a site
12 specific baseline or treat the impact as significant when it exceeded the 3 dBA standard of
13 significance. Thus, the EIR is legally inadequate because it fails to inform decisionmakers that
14 the Project would have an unavoidable significant noise impacts.

15 **c. The EIR Contained an Inadequate Analysis of Parking Impacts or**
16 **Mitigation**

17 As members of the public identified, the Draft EIR contained conflicting statements about
18 parking issues, which prevented informed public comment. One portion of the EIR denied there
19 would be any conflict with existing adjacent land uses, as it stated parking impacts would be
20 mitigated because “The location of the project within the existing campus away from residences
21 and the capacity/parking/activity restrictions placed upon the facilities will function to avoid
22 potential conflicts.” (Carstens Decl., Exh. J, DEIR, p. 4.8-6.) However, another portion of the
23 EIR conflicted with this statement by finding such a measure infeasible. (Carstens Decl., Exh. J,
24 DEIR, p. 4.11-11.) The response to comments confirmed the first statement should have been
25 deleted after “legal review.” (Carstens Decl., Exh. L, FEIR, p. 5.) The FEIR stated this
26 mitigation measure was rejected as infeasible. (*Ibid.*)

27 The parking impacts should not have been overridden as significant, unavoidable impacts
28 because they are avoidable by restricting the uses and hours of the proposed gym so it may not

1 be used for assembly purposes. The DEIR considers parking mitigation measures that are
2 erroneously predicated on the assumption that large events will take place, then incorrectly
3 rejects such restrictions as “infeasible and unworkable.” (Carstens Decl., Exh. J, DEIR, p. 4.11-
4 11.) However, this assertion is not supported by substantial evidence, since the School District
5 is able to restrict usage of the gym to limit the hours of usage and the number of special events.
6 (Carstens Decl., Exh. J, DEIR, pp. 3-6 [“District allows use . . . after school hours. . .”] and 3-16
7 [gym would be available “consistent with Board policies”]; Carstens Decl., Exh. N, p. 11 [legal
8 counsel for School, Mr. Brust, states the Civic Center Act “allows the school district to define
9 how and when and the limitations for use of the facilities, i.e. maximum hours of use, etc.”])
10 The DEIR fails to explore additional mitigation measures, including alternatives to the project,
11 as it must. The single alternative the EIR does analyze, the classrooms and library only
12 alternative, would reduce parking impacts to insignificant levels. (Carstens Decl., Exh. J,
13 DEIR, p. 5-10.) However, this alternative was rejected as failing to provide a gymnasium to
14 “meet the intent of the voter-passed local construction bond.” (Carstens Decl., Exh. J, DEIR, p.
15 5-10.) As shown above, the construction bond ballot question did not include a gymnasium.
16 (Carstens Decl., Exh. F.) To adopt a statement of overriding considerations without sufficiently
17 analyzing the admittedly significant impacts is impermissible. In *Berkeley Jets*, the court stated
18 that to assume a significant impact and then adopt a statement of overriding considerations “has
19 the process exactly backward and allows the lead agency to travel the legally impermissible easy
20 road to CEQA compliance.” (*Berkeley Jets*, *supra*, 91 Cal.App.4th at 1371.)

21 **d. The EIR Failed to Respond to Comments**

22 Title 14 of the California Code of Regulations (“CEQA Guidelines”) section 15088(c)
23 provides that agencies must provide a “good faith, reasoned analysis in response” to comments
24 received on the Draft EIR and “conclusory statements unsupported by factual information will
25 not suffice.” The Final EIR (“FEIR”) failed to do so.

26 **(1) Lack of Good Faith Response Regarding Future Uses**

27 While the EIR was being prepared, the School District was in negotiations with the Health
28 District to enter a Joint Use Agreement for the gym. (Carstens Decl., Exh. K.) When the public

1 raised questions about the Health District's involvement arose during comments on the draft
2 EIR (Carstens Decl., Exh. L, FEIR, p. 29), the FEIR responded such a joint use "may or may not
3 occur." (Carstens Decl., Exh. L, FEIR, p. 31, Response J-6). Yet two days after the closing of
4 the public comment period on February 7, 2005 (Carstens Decl., Exh. L, FEIR, p. 1), the School
5 District considered a memorandum of understanding for a joint use agreement with the Health
6 District on February 9, 2005. (Carstens Decl. , Exh. K.) The School Board then approved the
7 Joint Use Agreement with the Health District on the same day it certified the EIR and approved
8 the construction of the gym. (Carstens Decl., Exh. N, p. 5.) However, the EIR did not disclose
9 the parameters of the Joint Use Agreement's increase in usage of the gymnasium.

10 **(2) Failure to Respond Regarding Noise Impacts**

11 Members of the public commented that the existing neighborhood is presently very quiet
12 and that the project would thus have a significant impact on this quiet. The EIR recognized that
13 sensitive noise receptors include residential development 15 feet from the project boundary to
14 the north. (Carstens Decl., Exh. J, DEIR p. 4.9-3.) It claimed generally that "Under nighttime
15 urban conditions, ambient noise levels are typically 50-55 dBA." (Carstens Decl., Exh. J, DEIR,
16 p. 4.9-10.) However, the EIR did not address the existing nighttime conditions surrounding the
17 property. A noise consultant for residents stated existing night time noise levels was
18 substantially below 50 dBA. (Carstens Decl., Exh. L, FEIR, p. 65.)

19 **e. The School District Failed to Certify an EIR Prior to Project Approval** 20 **for the Joint Use Agreement Component of the Gym Project**

21 Although the Joint Use Agreement with the Health District would significantly intensify
22 usage of the proposed gym (Carstens Decl., Exh. L, FEIR, p. 63) since it will be used "to the
23 maximum extent possible" (Carstens Decl. Exh. M, ¶ 7A), no environmental review was
24 prepared as CEQA required for the School Board's approval of it. The School Board approved
25 the Joint Use Agreement with the Health District on the same evening that it certified the EIR,
26 but it approved the agreement several agenda items prior to considering the sufficiency of, or
27 certifying, the EIR for the gym project. (Carstens Decl., Exh. N, p. 5.) The EIR was certified as
28 part of approval of gym construction later in the same evening. (Carstens Decl, Exh. N, p. 13.)

3. The School's Approval of the Gym Violated the Municipal Code

The Hermosa Beach Municipal Code requires a vote of the electorate before open space may be modified or eliminated by a project such as the gym. A municipal initiative measure adopted in 1986 added the following election requirement provision to the Municipal Code: "Any modification, amendment, or elimination of Open Space designated areas of the General Plan ... shall be prohibited without a vote of the electorate." (Carstens Decl., Exh. A, Municipal Code § 17.30.011, section 1.) The Hermosa Valley School site is one of the General Plan designated areas for which such a vote is required. (Carstens Decl., Exh. A, Municipal Code § 17.30.011, section 2, no. 14.) Contrary to this provision, the gym will modify and eliminate open space without a vote of the electorate to approve it.

The Municipal Code also provides "No building shall exceed a height of two stories or twenty-five (25) feet above the existing or finished grade, whichever is less." (Carstens Decl., Exh. A, Municipal Code § 17.30.040.) In violation of this requirement, the gymnasium is proposed to be 34 feet, which exceeds the maximum of 25 feet. (Carstens Decl., Exh. J, DEIR, p. 3-16.)

The proposed use of the gym would violate Municipal Code parking requirements. The Municipal Code requires one space per 100 square feet of floor area for a gym. (Carstens Decl., Exh. R, Municipal Code § 17.44.030 (E)(11).) Additionally, if the gym is used for a non-school assembly purposes, one space is required for every 50 square feet. (Carstens Decl., Exh. R, Municipal Code § 17.44.030 (A).) Therefore, the 12,000 square feet or more used for gym purposes (Carstens Decl., Exh. J, DEIR, p. 3-12) would require at least 120 parking spaces, and possibly as many as 310 spaces if various areas of the new building are used for assembly purposes. (Carstens Decl., Exh. L, FEIR, p. 63.) The School currently only provides 69 parking spaces, resulting in a shortfall of at least 52 spaces, and possibly as many as 200 parking spaces. (Carstens Decl., Exh. L, FEIR, p. 63.) This enormous parking shortfall violates the Municipal Code.

The EIR incorrectly claimed that the proposed gymnasium is exempted from the requirements of the Municipal Code by Government Code section 53094. (Carstens Decl., Exh.

1 J, DEIR, p. 4.8-1.) Government Code section 53094 does not exempt the gym because it states:
2 the governing board of a school district. . . may render a city or county zoning
3 ordinance inapplicable to a proposed use of property by the school district. The
4 governing board of the school district *may not take this action when the proposed*
5 *use of the property by the school district is for nonclassroom facilities*, including,
6 but not limited to, warehouses, administrative buildings, and automotive storage
7 and repair buildings.

8 (Govt. Code section 53094 (b), *emph. added.*)

9 The gymnasium is a “nonclassroom” facility so the exemption provided by section 53094
10 does not apply to it. At least one section of the Educational Code distinguishes between a
11 “classroom” and a “gymnasium.” (Ed. Code § 16014 [“This section does not prohibit the State
12 Department of Education from approving multipurpose rooms which are rooms designed to be
13 used for two or more of the following purposes: [¶] (1) Classroom. [¶] (2) Auditorium. [¶] (3)
14 Gymnasium. [¶] (4) Cafeteria. . . .”]) Furthermore, the Joint Use Agreement that contemplates
15 non-instructional use of the gym by the Health District and the community “to the maximum
16 extent possible” (Carstens Decl., Exh. M, ¶ 7A) renders the gym a “nonclassroom facility”. In
17 the case of *People ex rel. Cooper v. Rancho Santiago College* (1990) 226 Cal.App.3d 1281, a
18 “swap meet” operated by unaffiliated organization on community college's parking lot was a use
19 of property for “nonclassroom facilities” that could not be exempted from the city zoning
20 ordinance under section 53094. (*Id.* at 1286.) Similarly, the Beach Cities Health District’s
21 proposed use of the planned gymnasium is a non-instructional use of school property that does
22 not fit within the exemption provided by section 53094.

23 **B. PETITIONER IS LIKELY TO BE IRREPARABLY HARMED IF AN**
24 **INJUNCTION IS NOT ISSUED**

25 The second factor in evaluating the propriety of a preliminary injunction “is the interim
26 harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm
27 that the defendant is likely to suffer if the preliminary injunction issued. [Citations omitted].”
28 (*IT Corporation v. County of Imperial, supra*, 35 Cal.3d at 69-70.) This factor also weighs in
favor of issuing the injunction.

1 **1. Potential Harm to Petitioner from the School's Commitment of Funds**
2 **to Unauthorized Expenditures is Irreparable**

3 Petitioner will be irreversibly harmed if an injunction is not issued because, absent an
4 injunction, gymnasium construction contracts are likely to be awarded and gym construction
5 commenced before a hearing of this matter. In passing the Strict Accountability in Local School
6 Construction Bonds Act of 2000 (Ed. Code § 15264-15288) to implement the provisions of
7 Proposition 39 (Carstens Decl., Exh. I, p. 3), the Legislature stated its intent that "Vigorous
8 efforts are undertaken to ensure that the expenditure of bond measures ... are in strict conformity
9 with the law" and that "unauthorized expenditures of school construction bond revenues are
10 vigorously investigated, prosecuted and that *the courts act swiftly to restrain any improper*
11 *expenditures.*" (Ed. Code § 15264 (a) and (d), emphasis added; see Carstens Decl., Exh. C, p.
12 1.) To effectuate this legislative policy, an injunction should issue here. (Ed. Code § 15284
13 [authorizing "An action to obtain an order restraining and preventing any expenditure of funds
14 received by a school district or community college district through the sale of bonds authorized
15 by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the
16 California Constitution ... if ... (2) The expenditure is not in compliance with paragraph (3) of
17 subdivision (b) of Section 1 of Article XIII A of the California Constitution"].)

18 The School District intends to approve construction contracts and proceed with
19 construction of the gymnasium at issue before a hearing of this matter by the Court, as
20 evidenced by various statements of School officials. On May 12, 2005, Mr. Lance Widman, the
21 School Board President, was quoted as stating "the lawsuit does not ask for a temporary halt to
22 the project while those issues are thrashed out in court ... There's nothing in there that says we
23 can't pass go. . . We are proceeding with what we've got to do." (Carstens Decl., Exh. O, p.2.)
24 In response to requests for a voluntary agreement to refrain from awarding contracts, counsel for
25 the School District refused. (Carstens Decl., ¶ 19.) On April 6, 2005, Dr. Sharon McClain, the
26 District Superintendent proposed a schedule for obtaining bids for construction of a gymnasium
27 that anticipated awarding contracts on June 2, 2005 and starting the project three weeks later on
28 June 27, 2005. (Carstens Decl., Exh P, p. 2.) On April 14, 2005, The Beach Reporter, a local
 newspaper, reported that "The School District hopes to award the contract in early June and

1 expects to begin the project in late June with a completion date of July 28, 2006. (Carstens
2 Decl., Exh Q.) Once such contracts are approved, public funds would be obligated for
3 unauthorized expenditures. Therefore, the approval of such contracts should be enjoined. "It
4 has been expressly held in this state that expediency cannot justify the denial of an injunction
5 against the expenditure of public funds in violation of the constitutional guarantees here
6 involved. *Wirin v. Horrall, supra*, 85 Cal.App.2d 497, 504-506." (*Los Angeles County v.*
7 *Superior Court for Los Angeles County* (1967) 253 Cal.App.2d 670, 679.) As shown above,
8 the Constitutional guarantees of Proposition 39 on school board accountability would be
9 violated by the proposed expenditure of Measure J funds on construction of a gymnasium, since
10 such a project was not disclosed on a list of specific projects to be funded on the proposition
11 approved by the electorate as required by Proposition 39.

12 **2. The Harm to the School of an Injunction Until the Time of Hearing**
13 **Would Be Mild**

14 Respondent and Real Party in Interest are not likely to suffer harm if an injunction is
15 issued because the School has operated since 1952 without a gymnasium (Carstens Decl., Exh.
16 J, DEIR, p. 3-4) and can continue to do so during the pendency of this matter. Additionally, as
17 discussed below, the School does not have a required Coastal Development Permit necessary for
18 construction and likely does not have sufficient funding assembled. If the School is allowed to
19 proceed with approval and execution of construction contracts, even if Petitioner eventually
20 prevails on the merits, once funds are committed and a building is substantially constructed in
21 violation of constitutional limitations on bond expenditures, CEQA, and the Municipal Code,
22 the case may be mooted and it will be impossible to grant appropriate relief.

23 **a. The School Does Not Have the Necessary Permits for Gym**
24 **Construction**

25 Since the School does not have a Coastal Development Permit consistency determination,
26 it may not commence construction of the gymnasium. The proposed gym construction site is
27 entirely within the coastal zone (Carstens Decl., Exh. J, DEIR, p. 4.8-2) so the School District
28 must obtain a Coastal Development permit. (Carstens Decl., Exh. L, FEIR, p. 6 ["... the

1 proposed project will require a Coastal Development Permit”). The EIR states that “a [Coastal
2 Act] consistency decision must be made by the CCC [California Coastal Commission].”
3 (Carstens Decl., Exh. J, DEIR, p. 4.8-2.) Although the School has applied for a coastal
4 development permit it has not received one yet. (Carstens Decl., Exh. ¶ 19.) Until it does, it
5 may not undertake construction of the gymnasium.

6 **b. Petitioner is Willing to Expedite Briefing**

7 Petitioner has requested a hearing for October 25, 2005. (Carstens Decl., ¶21.) Early
8 after filing the case on April 8, 2005, Petitioner sought to obtain documents from the School
9 District in order to prepare the administrative record in accordance with Local Court Rule 9.24.
10 (Carstens Decl., ¶ 18.) However, the School District did not make documents available until
11 June 20, 2005. (Carstens Decl., ¶ 20.) Petitioner anticipates the administrative record will be
12 complete on or before July 30. (Carstens Decl., ¶ 21). Rather than taking the 30 days
13 contemplated by statute and Local Rule 9.24 to file an opening brief, Petitioner is willing to file
14 its opening brief twenty days after certification of the administrative record. (Carstens Decl., ¶
15 19.)

16 **IV. CONCLUSION**

17 An injunction should issue to maintain the status quo until the hearing of this matter by
18 preventing the School District from committing school bond funds to an unauthorized
19 expenditure that would violate California constitutional requirements. The School District
20 should also be restrained from proceeding with construction unless and until it complies with
21 CEQA by the preparation and certification of legally sufficient EIR and it complies with the
22 City of Hermosa Beach Municipal Code’s limitation on the height of buildings in open space
23 areas, its requirements for an election before the conversion of open space, and its requirements
24 for the provision of sufficient parking.

25 DATED: June 28, 2005

Respectfully Submitted,
CHATTEN-BROWN & ASSOCIATES

By: _____

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