

Attorneys for Petitioner,  
COMMITTEE FOR RESPONSIBLE SCHOOL EXPANSION

## TABLE OF CONTENTS

|                                                                                                                                                                       | Page No. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| I. INTRODUCTION .....                                                                                                                                                 | 1        |
| II. STATEMENT OF FACTS .....                                                                                                                                          | 2        |
| A. Description of the Gymnasium and the Site .....                                                                                                                    | 2        |
| B. Gymnasium Construction Proposal Process .....                                                                                                                      | 2        |
| C. The School District Sought Gymnasium Funding From the State .....                                                                                                  | 3        |
| III. THE SCHOOL DISTRICT'S APPROVAL OF GYMNASIUM FUNDING FROM MEASURE J VIOLATED THE CALIFORNIA CONSTITUTION .....                                                    | 4        |
| A. The Constitution Requires That Voters Be Given a List of Specific Projects to Be Funded Before School Bond Funds May be Approved by Less than a 2/3 Majority ..... | 4        |
| B. The Only "List of Specific Projects" Given to Voters Was the Ballot Question That Did Not Include The Gymnasium .....                                              | 6        |
| C. The Listing of Some Projects In the Ballot Question Implies That Funds Would Not be Used for Any Other Unlisted Projects Such as the Gymnasium .....               | 6        |
| D. No Practical Considerations Prevented Listing the Gymnasium in Material Given to the Voters .....                                                                  | 8        |
| E. The School District Failed to Meet Constitutional Accountability Requirements .....                                                                                | 8        |
| IV. THE SCHOOL DISTRICT'S USE OF STATE SCHOOL FUNDS FOR THE GYMNASIUM PROJECT VIOLATES THE EDUCATION CODE .....                                                       | 10       |
| V. SCHOOL DISTRICT'S APPROVALS OF A JOINT USE AGREEMENT AND GYMNASIUM PROJECT VIOLATED CEQA .....                                                                     | 11       |
| A. The EIR Failed to Analyze a Reasonable Range of Alternatives .....                                                                                                 | 11       |
| B. The EIR Contained an Inadequate Analysis of Noise .....                                                                                                            | 12       |
| C. The EIR Failed to Respond to Comments Regarding Future Uses .....                                                                                                  | 13       |
| VI. THE SCHOOL'S APPROVAL OF THE GYMNASIUM VIOLATED THE OPEN SPACE VOTE OF THE PEOPLE REQUIREMENT AND OTHER PROVISIONS OF THE HERMOSA BEACH MUNICIPAL CODE .....      | 13       |
| VII. CONCLUSION .....                                                                                                                                                 | 15       |

|   |                                                   |               |
|---|---------------------------------------------------|---------------|
| 1 | Education Code section 16014 .....                | 14            |
|   | Education Code sections 17070.10 et seq .....     | 3             |
| 2 | Education Code section 17077.42 .....             | 10, 11        |
| 3 | Education Code section 17077.42 (c) .....         | 10            |
|   | Government Code section 53094 (b) .....           | 14            |
| 4 | Municipal Code section 17.30.011, section 1 ..... | 13            |
|   | Municipal Code section 17.30.011, section 2 ..... | 13            |
| 5 | Municipal Code section 17.30.040 .....            | 13            |
| 6 | Municipal Code section 17.44.030 (A) .....        | 14            |
|   | Municipal Code section 17.44.030 (E)(11) .....    | 13-14         |
| 7 | Proposition 39 .....                              | <i>passim</i> |

#### OTHER AUTHORITIES

|    |                                                                                         |       |
|----|-----------------------------------------------------------------------------------------|-------|
| 9  | Black's Law Dictionary, Fourth Edition, 1951, St. Paul, Minn., West Publishing Co. .... | 5     |
| 10 | Leroy F. Greene School Facilities Act of 1998 .....                                     | 3, 10 |

1 **I. INTRODUCTION**

2 The Respondent Hermosa Beach City School District ("School District") approved a plan for  
3 development of a \$5.87 million (Administrative Record, Volume 2, page 1029, hereinafter ".\_:")  
4 gymnasium ("Gymnasium") on the site of the Hermosa Valley School in violation of Constitutional and  
5 statutory requirements. The Gymnasium would be funded from Measure J, a \$13.6 million bond  
6 measure that listed certain projects for which the bond funds would be used. (Declaration of Douglas P.  
7 Carstens in Support of Preliminary Injunction filed June 29, 2005 ("Carstens Decl."), Exh. F; 1:89.)  
8 However, the School District did not ensure the Gymnasium was listed on the ballot or in ballot  
9 materials sent to voters, in violation the state constitution, which requires that voters be *given* a list of  
10 specific projects to be funded. (Carstens Decl., Exh. B [Proposition 39 Historical notes] and Exh. I, p.  
11 2.) This violation was all the more egregious because the Gymnasium will consume *approximately* 43%  
12 of Measure J funds as the single largest component of Measure J expenditures, and evidence shows the  
13 School District knew the public did not view the Gymnasium as important enough to spend scarce funds  
14 upon when new classrooms were needed more.

15 The voters of Hermosa Beach have a long history of preserving open space, as demonstrated by  
16 the Open Space Initiative which zoned school properties open space and mandated that the Municipal  
17 Code governing school sites could only be changed by another vote of the people. The School District  
18 included a provision to "acquire land" in the ballot question for the bond measure to assure the voters  
19 that open space would be preserved and increased on the already over-crowded Valley School campus.  
20 However, no land has been or will be acquired with Measure J funds if the Gymnasium is built. The  
21 School District did *not* include the Gymnasium or joint venture with the Beach Cities Health District  
22 ("Health District") because they were shown to be unpopular with voters in a voter survey conducted  
23 prior to writing the bond measure. Immediately following passage of the bond measure the architect for  
24 the Gymnasium project was instructed to design the Gymnasium on the existing site, indicating that  
25 there was never any intention to acquire property. The School District's Facilities Master Plan required  
26 for a bond measure under Proposition 39 includes the need for *eight* new classrooms and replacement of  
27 four portable classrooms. (4:1873.) However, the School District voted to build a high school regulation  
28 size Gymnasium on an elementary/middle school site for the Gymnasium's money-making capabilities

1 at the expense of building new classrooms as promised in the bond measure.

2       Petitioner<sup>1</sup> filed this lawsuit because the School Board (1) misled the voters to gain passage of  
3 the bond measure; (2) violated the Municipal Code's Open Space vote requirement; (3) violated  
4 provisions of the State Constitution added by Proposition 39; (4) violated the Education Code by  
5 entering into an unfunded joint use agreement with the Health District without the required notice to  
6 voters; and (5) failed to provide mitigation measures for the negative impacts of this Gymnasium in its  
7 proposed location. The School District's approval of the use of Measure J funds for the Gymnasium and  
8 approval of a joint use agreement with the Health District must be set aside.

## 9 **II. STATEMENT OF FACTS**

### 10 **A. Description of the Gymnasium and the Site**

11       The Gymnasium project site is located near central Hermosa Beach and is bounded by single-  
12 family and multi-family residential development, with a single commercial building to the south.  
13 (3:1099.) The school site was designated Open Space in the City's General Plan by a vote of the people,  
14 not by City Council action, and codified in the Municipal Code. (3:1176.)

### 15 **B. Gymnasium Construction Proposal Process**

16       In 2002, the electorate of the City of Hermosa Beach voted to approve Measure J, a bond measure  
17 that provided for upgrading school facilities. However, Measure J did not specifically designate use of  
18 the funds for construction of the Gymnasium, as the ballot stated it was

19       To improve the quality of education . . . finance classroom modernization; upgrade  
20 electrical systems. . . make health, safety, and security improvements; upgrade plumbing,  
21 heating, ventilation, and air conditioning systems; construct classrooms and science labs  
[and] acquire property ...

22 (Carstens Decl., Exh. F.)

23       In 2003, the School District examined plans for the proposed Gymnasium. It voted in favor of  
24 proceeding with the Gymnasium, subject to subsequent environmental review. In December 2004, a

---

25  
26       <sup>1</sup> Some of Petitioner's members send their children to Valley School, some members volunteer  
27 time with the school's programs, and some members live near the school and all are concerned about  
28 existing and future impacts of school growth and building sufficient classroom space for students rather  
than facilities for community use.

1 **III. THE SCHOOL DISTRICT'S APPROVAL OF GYMNASIUM FUNDING FROM**  
2 **MEASURE J VIOLATED THE CALIFORNIA CONSTITUTION**

3 **A. The Constitution Requires That Voters Be Given a List of Specific Projects to Be**  
4 **Funded Before School Bond Funds May be Approved by Less than a 2/3 Majority**

5 The School District's March 9, 2005 approval of the expenditure of Measure J funds for  
6 construction of the Gymnasium violates the constitutional requirement that projects for which funds are  
7 used must be included on a list of specific projects that is given to voters for approval. Normally, the  
8 California Constitution requires a 2/3 supermajority vote to approve bonded indebtedness. (Carstens  
9 Decl., Exh. I, p. 2, fn. 1; Cal. Const. Art. XIII A, § 1, subd. (b)(2), Cal. Const. Art. XVI, § 18, subd. (a).)  
10 However, on November 8, 2000, California voters had approved Proposition 39, known as the Smaller  
11 Classes, Safer Schools, and Financial Accountability Act, to amend article XIII A of the Constitution to  
12 lower the requirement to a 55 percent majority vote if certain strict conditions to ensure public  
13 accountability are met. (Carstens Decl., Exh. I, p. 2, and Exh. B). Proposition 39's 55 percent approval  
14 threshold can only be applied under strictly limited circumstances:

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

17 . . .

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

18 (Cal. Const. Art. XIII A, § 1 (b)(3)(B), emphasis added.) Thus, disclosure of a list of projects to be  
19 funded by a school bond measure is required by the California Constitution. If school districts may  
20 obtain voter approval of bond funding without affirmatively disclosing to those voters the destination of  
21 those funds, the door would be opened to waste, fraud, and abuse.

22 One of the stated purposes of the electorate in enacting Proposition 39 was "To ensure that  
23 before they vote, *voters will be given a list of specific projects their bond money will be used for.*"  
24 (Carstens Decl., Exh. B, p. 3 [Historical Notes, Proposition 39 Initiative Measure Section Three Purpose  
25 and Intent, subdivision (c)], emphasis added.) This clearly expressed intent of the voters must be  
26 implemented. (Code Civ. Proc. § 1859 ["In the construction of a statute the intention of the Legislature .  
27 . . is to be pursued, if possible. . . ."].)

28 Although a list of projects was attached to the School District's resolution calling for an election,

1 voters were not “given” this list in an affirmative manner, as is the clear intention of the statewide  
2 electorate in enacting Proposition 39. There is no ambiguity in the electorate’s stated intention in  
3 Proposition 39 that voters “be given” a list of specific projects to be funded by the bond money the  
4 voters are asked to approve. For voters to be “given” a list requires a transfer of physical possession of a  
5 copy of the list to them. (Black’s Law Dictionary, Fourth Ed., 1951, St. Paul, Minn., West Publishing  
6 Co. [“Give: To transfer ownership or possession without compensation”].) It does not satisfy the  
7 legislative intention of Proposition 39 for the School District to merely have the list attached to a  
8 resolution filed away in a filing cabinet in the School District’s administrative office and make it  
9 available to voters if they ask for it. There is no way that situation, which occurred in this case, can  
10 reasonably be construed to satisfy the stated intention that voters be “given” a list of the specific  
11 projects. “When the Legislature has stated the purpose of its enactment in unmistakable terms, we must  
12 apply the enactment in accordance with the legislative direction, and all other rules of construction must  
13 fall by the wayside.” (*Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 831.)

14 It is essential that courts implement the legislative intent of Proposition 39. “As we have often  
15 noted, our role in interpreting or construing a statute is to ascertain and effectuate the legislative intent.”  
16 (*Laurel Heights Improvement Association v. Regents of the Univ. of Cal.* (1993) 6 Cal.4<sup>th</sup> 1112, 1127.)  
17 The case at bar, as one of the early interpretations of the meaning of Proposition 39’s requirement the  
18 bond measures approved by voters contain a “list of specific projects” could, as a practical matter, set a  
19 precedent for other school districts and other bond elections. The Constitutional provisions that allowed  
20 the School District to obtain approval of Measure J by less than a two thirds vote were only recently  
21 enacted by the electorate in 2000 through Proposition 39, so there is apparently no caselaw interpreting  
22 them yet. In January 2001, the Legislature’s specific authorization of a “School Bond Waste Prevention  
23 Action” became effective to restrain an expenditure that is “not in compliance with paragraph (3) of  
24 subdivision (b) of Section 1 of Article XIII A of the California Constitution.” (Education Code § 15284  
25 (a)(2).) The Legislature stated its intent that “Vigorous efforts are undertaken to ensure that the  
26 expenditure of bond measures ... are *in strict conformity with the law*.” (Education Code § 15264 (a)  
27 and (d), emphasis added.) The plain intent of Proposition 39 and the legislation implementing it is that  
28 accountability requirements be strictly observed, not evaded on purpose or through neglect, as the

1 School District has done in this case.

2 In this case the “list of specific projects” is a moving target. A gymnasium is proposed which  
3 did not appear on the only list “Given” to the voters. In addition, project components such as the new  
4 library, included in the plans (1:371), is not included on any list approved by voters. While petitioner  
5 does not oppose the library, as it poses no negative environmental issues, the addition of a library that  
6 was not disclosed as a project to be funded by Measure J is symptomatic of a public accountability  
7 process gone wrong. Allowing the voter communication procedure which was used in this case, i.e.,  
8 provision of a partial list and reliance upon an undisclosed list, to stand, would constitute a serious  
9 breach of the stated intentions of Proposition 39 and potentially open the door to widespread abuse as  
10 additional unlisted projects are funded by bonds approved for listed purposes and no others.

11 **B. The Only “List of Specific Projects” Given to Voters Was the Ballot Question That**  
12 **Did Not Include The Gymnasium**

13 Measure J’s ballot question listed certain activities to be funded, such as constructing  
14 “classrooms and science labs” and electrical system upgrades, but it did not include Gymnasium  
15 construction in that list. The complete text of the ballot question for Measure J stated:

16 To improve the quality of education, shall the Hermosa Beach City School District be  
17 authorized to finance classroom modernization; upgrade electrical systems to improve  
18 access to technology; make health, safety, and security improvements; upgrade plumbing,  
19 heating, ventilation, and air conditioning systems; construct classrooms and science labs;  
20 acquire property, and qualify for State funds up to \$1,700,000 in bonds, within maximum  
21 legal interest rates, with annual audits, a citizens’ oversight committee and no money for  
22 administrators’ salaries?

23 (Carstens Decl., Exh F; 1:89.)

24 **C. The Listing of Some Projects In the Ballot Question Implies That Funds Would Not**  
25 **be Used for Any Other Unlisted Projects Such as the Gymnasium**

26 The fact that the School District listed certain activities to be funded in the ballot question, but  
27 did not list the Gymnasium makes the ballot question misleading to the voters who might assume no  
28 gymnasium would be funded from Measure J proceeds because no gymnasium is listed among the ballot  
question’s list of projects to be funded.<sup>2</sup> It is a settled principle that “*Expressio unius est exclusio*

---

<sup>2</sup> The School District argued in opposition to Petitioner’s preliminary injunction motion that not  
*Footnote continued on the following page ...*

1 *alterius*: The mention of one thing implies the exclusion of another.” (*Platzer v. Mammoth Mountain*  
2 *Ski Area* (2002) 104 Cal.App.4th 1253, 1257.) The listing of certain activities to be funded implies that  
3 others are excluded from funding. Therefore, when a voter reads a list of certain projects such as  
4 electrical system and plumbing upgrades, but does not see the Gymnasium listed, a reasonable  
5 conclusion is that no gymnasium would be funded. This is especially true since the ballot question does  
6 not imply an open-ended list of projects to be funded since it does not say something open ended such as  
7 “and other activities.” Rather, the implication of the specific listing in the ballot question is that the list  
8 is complete. The ballot question’s omission of the Gymnasium when the School District intended to use  
9 bond funds for it was misleading to voters. The omission is especially pertinent since one of the  
10 promises the School District made in the ballot question, to “acquire land,” has not been fulfilled, and  
11 will not be fulfilled in the future, since the Gymnasium would exhaust all remaining Measure J funds.

12 The inclusion of mention of a gymnasium in ballot arguments does not remedy the omission of  
13 the Gymnasium from the ballot question or other portions of ballot materials, since many voters would  
14 read no other material than the ballot question before they vote. In the absence of any other listing of  
15 specific projects to be funded, voters are entitled to rely upon the disclosure set forth in the ballot  
16 question, without having to hunt through ballot arguments to find out what else might be funded by the  
17 bond measure. Reference to the ballot arguments to supply what is missing in the proposition is  
18 improper: “no case or statutory authority supports the proposed incorporation into the ‘bond contract’ of  
19 the ballot argument submitted to the voters prior to the election. At least one California decision implies  
20 that this may not be done.” (*Associated Students of North Peralta Community College v. Board of*  
21 *Trustees* (1979) 92 Cal.App.3d 672, 678 -679.)

22 The School District misled voters by listing attractive projects such as classroom upgrades in the  
23 ballot question, but omitting any mention of the Gymnasium. To some voters, the fact that the ballot  
24 arguments identified a gymnasium as a controversial project but the ballot question did not list a  
25 gymnasium among the projects to be funded would indicate that the School District intentionally revised

26 every project could be included in a ballot because of space limitations, but listing “a gymnasium”  
27 would have required very little space on the ballot and would have avoided misleading voters since over  
28 *Footnote continued on the following page ...*

1 the list of proposed projects in order to avoid including the controversial Gymnasium. During the  
2 discussion of the ballot measure on June 26, 2002, a consultant for the School District had suggested  
3 two ballot measures: one for the Gymnasium, and one for modernization and classroom additions.  
4 (1:80.) The consultant made this suggestion because survey results indicated the Gymnasium was “not  
5 viewed as very important” by the public (1:80), and “possible opposition to a gymnasium could cause  
6 problems with the passage of the bond measure.” (*Ibid.*) Therefore, in directing the County to print the  
7 ballot question (that did not mention the Gymnasium), but not the list of specific projects that included  
8 the Gymnasium (1:86), the School District intentionally concealed from the voters the fact that the  
9 Gymnasium project would be funded, despite the fact that the Gymnasium would consume more than  
10 40% of Measure J funds.

11 **D. No Practical Considerations Prevented Listing the Gymnasium in Material Given to**  
12 **the Voters**

13 The School District argued in opposition to the preliminary injunction that, as a policy matter, it  
14 would be infeasible to reprint measures with hundreds of projects in material for the voters. However,  
15 this argument is irrelevant and untrue. First, not to include a list of projects in the material officially  
16 available to the voters contravenes the explicit requirement that the proposition “approved by the voters”  
17 contain a list of specific projects and defeat the intent of the voters enacting Proposition 39 that voters be  
18 “given” such a specific list. (Carstens Decl., Exh. B, p. 3 [Historical Notes, Proposition 39 Initiative  
19 Measure Section Three Purpose and Intent, subdivision (c)], emphasis added.) Second, in this case, the  
20 list of projects to be funded is no more than two pages long and does not include hundreds of projects.  
21 Third, merely adding the word “gymnasium” to the list of projects set forth in the ballot question would  
22 not have significantly expanded the ballot material or caused any word limits to be exceeded. Finally,  
23 there is no evidence that there would be any difficulty including a list of projects in the ballot material  
24 given to voters. Respondent’s argument in opposition to Petitioner’s motion for a preliminary injunction  
25 that relied on the alleged practical difficulty of including a list of projects in the ballot pamphlet is  
26 completely undermined by the fact that El Camino College District, an entity proposing a school bond

27  
28 40% of Measure J funding would be destined for the Gymnasium project.

1 measure under circumstances similar to the School District's included such a list in the ballot material  
2 without overly burdening the voters or violating ballot material space limitations. (Carstens Decl., Exh.  
3 H, pp. 4-5.) The only evidence available shows there is no practical difficulty in including the list of  
4 specific project in the ballot materials or otherwise providing it to the voters.

5 **E. The School District Failed to Meet Constitutional Accountability Requirements**

6 The School District conceded that Proposition 39, which added Constitution Article 13A section  
7 1(b)(3) among other sections, was "to force local school districts to disclose the potential school  
8 facilities projects so that voters can make an informed decision." ((Opposition to Motion For  
9 Preliminary Injunction, p. 6.) California Constitution Article XIII A section 1 (b)(3) speaks of a  
10 "proposition approved by the voters" and requires, as an "accountability requirement", that it must  
11 include a list of "specific" projects to be funded. (Cal. Const. Art. XIII A, § 1(b)(3).) Therefore, it  
12 follows that, to be approved by the voters, the list of specific projects must be submitted to the voters in  
13 official voter material. The most obvious fashion is in the ballot pamphlet.

14 The School District failed in its obligation to make such a disclosure that a gymnasium would be  
15 included on the list of potential school facilities projects. Instead, the School District left it to Measure J  
16 proponents to bring up the Gymnasium in ballot arguments. The School District evaded the  
17 accountability function imposed by the California Constitution by its failure to ensure the full text of  
18 Measure J, including a list of specific projects, was included in the voter pamphlet. The School District  
19 knew the Gymnasium was not viewed as important by the public (1:80), and that "possible opposition to  
20 a gymnasium could cause problems with the passage of the bond measure." (1:80.) Therefore, the  
21 School District's purposeful omission of the Gymnasium from the information the School District  
22 directed the County to include in the ballot material deprived the public of the opportunity to understand  
23 what exactly the School District proposed.

24 Although other types of bonds may be submitted to the voters in "broad and general terms" (*East*  
25 *Bay Mun. Util. Dist. v. Sindelar* (1971) 16 Cal.App.3d 910, 919), because of the specific directives for  
26 accountability contained in Article XIII A section 1(b)(3) of the Constitution, school bond construction  
27 measures submitted to voters must disclose a "specific" list of projects proposed for funding in official  
28 materials that voters will receive and understand. One of the reasons to have a specific list of projects to

1 be funded is so voters can compare the projects on that list to each of the others, to evaluate their relative  
2 importance for funding. Without a complete list, the voters are deprived of the important accountability  
3 function served by the list.

4 Expenditure of any of the funds derived from Measure J on a gymnasium project would be  
5 unauthorized and in violation of the California Constitution because the bond approval did not meet the  
6 Constitution's strict accountability requirements for measures passed by 55 percent of the electorate.  
7 The School District's March 9, 2005 authorization of the expenditure of Measure J funds on a  
8 Gymnasium project that was not disclosed to voters on the ballot violates the requirements of the  
9 California Constitution. Therefore, any expenditure of Measure J funds on the Gymnasium is  
10 unauthorized and must be permanently enjoined.

11 **IV. THE SCHOOL DISTRICT'S USE OF STATE SCHOOL FUNDS FOR THE**  
12 **GYMNASIUM PROJECT VIOLATES THE EDUCATION CODE**

13 The School District seeks to obtain state funds that are made available for joint-use projects.  
14 (Carstens Decl. in Support of Motion to Amend Petition, Exh. B.) The School District does seeks this  
15 funding without complying with the public disclosure requirements that are a prerequisite to obtaining  
16 those funds. (Ed. Code § 17077.42 (c).) Instead of advising voters that the Beach Cities Health District  
17 would be joint user of the Gymnasium facility, the school district chose to keep this fact as hidden as  
18 possible by omitting it from both the ballot measure seeking approval of Measure J and omitting it from  
19 the EIR supporting approval of the project despite specific questions asking about it. Such non-  
20 disclosure of the Health District's involvement means the School District cannot correctly certify it  
21 complied with the prerequisites for state funds it recently obtained preliminary approval for.

22 Under the Leroy F. Greene School Facilities Act of 1998, school districts may apply for state  
23 funds for school facility construction projects and must certify their eligibility for such funding.  
24 Education Code section 17077.42 provides that in order to qualify for a state funding grant for a joint-  
25 use facility, an applicant school district must demonstrate it has complied with, among other  
26 requirements, the following requirement:

27 The joint-use agreement specifies the amount of the contribution to be made by the school  
28 district and the joint-use partner toward the 50 percent local share of eligible project costs.  
The contribution *by the joint-use partner shall be no less than 25 percent of eligible*

1 *project costs, unless the school district has passed a local bond which specifies that such*  
2 *funds are to used for the joint-use project, in which case the school district may opt to*  
3 *provide up to the full 50 percent local share of eligible costs.*

4 (Ed. Code § 17077.42 (c), emphasis added.)

5 In this case, the Joint Use Agreement between the School District and the Health District does not  
6 specify the amount of the contribution to be made by the Health District, and it certainly does not  
7 specify that the Health District would contribute more than 25 percent of eligible project costs, as  
8 required by section 17077.42 (c). Therefore, the only way the School District could properly qualify for  
9 state funds is if it had passed “a local bond which specifies that such funds are to be used for the joint-  
10 use project.” (Ed. Code § 17077.42 (c).) The voters passed Measure J, but Measure J does not specify  
11 that funds are to be used for the joint-use project. Even if Measure J is construed to disclose  
12 construction of the Gymnasium, Measure J does not satisfy section 17077.42’s requirement that the local  
13 bond specify funds are to be used for a joint-use project. The School District may not properly certify  
14 that it meets the requirements that make it eligible to use state funds for the Gymnasium project since it  
15 failed to disclose to voters it would be a joint use project. Therefore, an injunction against such use of  
16 funds by the School District is required unless and until the Joint Use Agreement is revised to require  
17 the Health District to contribute 25% or more of Gymnasium construction costs.

18 **V. THE SCHOOL DISTRICT’S APPROVALS OF A JOINT USE AGREEMENT AND**  
19 **GYMNASIUM PROJECT VIOLATED CEQA**

20 **A. The EIR Failed to Analyze a Reasonable Range of Alternatives**

21 The Gymnasium project will have unmitigated parking impacts and adverse, albeit not  
22 acknowledged, noise impacts on the environment. Respondents had a duty under CEQA to evaluate a  
23 reasonable range of alternatives to the environmentally damaging construction of the Gymnasium  
24 adjacent to residential neighborhoods. (*Laurel Heights Improvement Assc. v. Regents of the University*  
25 *of California* (1988) 47 Cal.3d 376, 400; Title 14 Cal. Code Regs. (“Guidelines”) § 15002(a)(3).) The  
26 public requested such analysis many times, both prior to the Draft EIR, and during the EIR comment  
27 period, but the EIR failed to analyze a reasonable range of alternatives. Only one on-site design  
28 alternative involving construction of classrooms and a laboratory, but no gymnasium, was analyzed in  
addition to the no project alternative. (3:1225.) Off-site alternatives were all rejected with cursory

1 explanations of their rejection. (3:1103.) Such cursory rejection after an internal review process is  
2 insufficient because it fails to keep the public informed. (*Laurel Heights, supra*, 47 Cal.3d at 404.)

3 **B. The EIR Contained an Inadequate Analysis of Noise**

4 Guidelines section 15151 provides that an EIR must contain a “sufficient degree of analysis to  
5 provide decision makers with information which allows them to make a decision which intelligently  
6 takes account of environmental consequences.” The Final EIR did not provide decisionmakers with  
7 critical information about noise impacts.

8 Existing ambient noise levels were misstated. The EIR recognized that sensitive noise receptors  
9 include residential development 15 feet from the project boundary to the north. (3:1185.) It asserted  
10 without evidentiary support that “Under nighttime urban conditions, ambient noise levels are typically  
11 50-55 dBA.” (3:1192.) However, the EIR did not address the existing nighttime conditions surrounding  
12 the property or provide any specific measurements to document its assertions. Noise consultants  
13 engaged by local residents noted that no actual measurements were taken and estimated night time noise  
14 actual conditions to be 20-25 dBA<sup>3</sup>, much lower than the 50-55 dBA estimates used by the EIR.  
15 (4:1799.) The Court criticized the EIR in *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*  
16 (2001) 91 Cal.App.4th 1344 (“*Berkeley Jets*”) for failing to provide information regarding the existing  
17 ambient noise levels. (*Berkeley Jets, supra*, 91 Cal.App.4<sup>th</sup> at 1381.) Like the air cargo activity  
18 considered in *Berkeley Jets* that “generally takes place during the noise-sensitive nighttime hours” (*Id.*,  
19 at 1372), non-school recreational activities by the Beach Cities Health District and others would take  
20 place during nighttime hours.

21 Noise *increases* from nighttime Gymnasium recreational activities were not sufficiently  
22 evaluated. The EIR states “a 3 dBA increase in long-term noise levels is used as a threshold of  
23 significant change in this noise analysis.” However, the EIR failed to apply this threshold with respect to  
24 recreational activities inside the new Gymnasium. Instead, the EIR estimated noise would be reduced  
25 by the Gymnasium walls and the fact that the Gymnasium windows were at a higher elevation than  
26

---

27 <sup>3</sup> The location is not a typical urban area. It is approximately ¼ mile from the beach (3:1100),  
28 yet residents are able to hear the waves breaking there at night.

1 some nearby houses, but it does not address the existing noise levels before such noise reductions were  
2 applied. A noise consultant for nearby residents stated 82 dBA could be generated from cheering and  
3 bouncing balls inside the Gymnasium. (4:1799.) The EIR responded noise reductions would lower such  
4 levels “to 62 dBA Lmax at the nearest residences,” thus below the 70 dBA Lmax it uses as a standard of  
5 significance. (4:1801.) However, the EIR failed to consider the *increase* in nighttime noise levels from  
6 approximately 20-25 dBA (by residents’ estimates) or 50-55 dBA (by the EIR’s estimate) to 62 dBA, an  
7 increase that far exceeds 3 dBA standard of significance by either measurement. The Court in *Berkeley*  
8 *Jets* criticized the EIR in that case for failing to provide information regarding the degree a single  
9 aircraft overflight would increase noise over ambient levels. (*Id.*, at 1381.) Similarly, the EIR in this  
10 case failed to analyze the noise increase over ambient levels caused by nighttime recreational activities.

### 11 **C. The EIR Failed to Respond to Comments Regarding Future Uses**

12 Guidelines section 15088(c) provides that agencies must provide a “good faith, reasoned analysis  
13 in response” to comments received on the Draft EIR and “conclusory statements unsupported by factual  
14 information will not suffice.” The Final EIR failed to do so. While the EIR was being prepared, the  
15 School District was in negotiations with the Health District to enter a Joint Use Agreement for the  
16 Gymnasium. (2:763-770.) When the public raised questions about the Health District’s involvement  
17 arose during comments on the draft EIR (4:1763, comment J-6), the FEIR coyly responded such a joint  
18 use “may or may not occur.” (4:1765). Yet just two days after the closing of the public comment period  
19 on February 7, 2005 (4:1735), the School District considered a memorandum of understanding for a  
20 joint use agreement with the Health District on February 9, 2005. (2:763.) The School District then  
21 approved the Joint Use Agreement with the Health District on the same day it certified the EIR and  
22 approved the construction of the Gymnasium. (2:978.) However, the EIR did not disclose the  
23 parameters of the Joint Use Agreement’s increase in usage of the Gymnasium. Indeed, the consultants  
24 preparing the EIR had asked for specific information about the parameters of Gymnasium usage (1:417),  
25 but no parameters were given to them or set forth in the EIR. During public deliberations on this project  
26 the School District voted to allow uses well beyond those required by the Civic Center Act. The School  
27 District also chose to override recommendations by their EIR consultant related to setting parameters for  
28 uses, maximum number of participants, limitations on parking, and hours of operation. (1:401.) These

1 mitigation measures, promised earlier as a Good Neighbor policy, could easily have mitigated many of  
2 the negative impacts associated with this Project.

3 **VI. THE SCHOOL'S APPROVAL OF THE GYMNASIUM VIOLATED THE OPEN SPACE**  
4 **VOTE OF THE PEOPLE REQUIREMENT AND OTHER PROVISIONS OF THE**  
5 **HERMOSA BEACH MUNICIPAL CODE**

6 The Gymnasium violates the Hermosa Beach Municipal Code in several ways. The Municipal  
7 Code requires a vote of the electorate before open space such as the Hermosa Valley School site may be  
8 modified or eliminated by a project such as the Gymnasium. (Carstens Decl., Exh. A, Municipal Code §  
9 17.30.011, sections 1 and 2.) Contrary to this provision, the Gymnasium will modify and eliminate open  
10 space without a vote of the electorate to approve it. The Municipal Code also limits buildings to "a  
11 height of two stories or twenty-five (25) feet . . . , whichever is less." (Carstens Decl., Exh. A,  
12 Municipal Code § 17.30.040.) In violation of this requirement, the Gymnasium is proposed to be 34  
13 feet. (3:1114.) The proposed use of the Gymnasium would also violate Municipal Code parking  
14 requirements. The Municipal Code requires one space per 100 square feet of floor area for a  
15 gymnasium. (Carstens Decl., Exh. R, Municipal Code § 17.44.030 (E)(11).) Additionally, if the  
16 Gymnasium is used for a non-school assembly purposes, one space is required for every 50 square feet.  
17 (Carstens Decl., Exh. R, Municipal Code § 17.44.030 (A).) Therefore, the 12,000 square feet or more  
18 used for gymnasium purposes (3:1110) would require at least 120 parking spaces, and possibly as many  
19 as 310 spaces if various areas of the new building are used for assembly purposes. (4:1798.) The  
20 School currently only provides 69 parking spaces, resulting in a shortfall of at least 52 spaces, and  
21 possibly as many as 200 parking spaces. (4:1797.) This parking shortfall violates the Municipal Code.

22 The EIR incorrectly claimed that the proposed Gymnasium is exempted from the requirements of  
23 the Municipal Code by Government Code section 53094. (3:1175.) Government Code section 53094  
24 does not exempt the Gymnasium because it prohibits an exemption "*when the proposed use of the*  
25 *property by the school district is for nonclassroom facilities, . . .*" (Govt. Code § 53094 (b), *emph.*  
26 *added.*) The Gymnasium is a "nonclassroom" facility so the exemption provided by section 53094 does  
27 not apply to it. At least one section of the Educational Code distinguishes between a "classroom" and a  
28 "gymnasium." (Ed. Code § 16014.) Furthermore, the Joint Use Agreement that provides for non-  
instructional use of the Gymnasium by the Health District and the community "to the maximum extent

possible” (2:766, ¶ 7B) and the statement by the School Board’s President that the Gymnasium needs to be a “Money Center” to be rented out as much as possible renders the Gymnasium a “nonclassroom facility.” In the case of *People ex rel. Cooper v. Rancho Santiago College* (1990) 226 Cal.App.3d 1281, a “swap meet” operated by unaffiliated organization on community college’s parking lot was a use of property for “nonclassroom facilities” that could not be exempted from the city zoning ordinance under section 53094. (*Id.*, at 1286.) Similarly, the Beach Cities Health District’s proposed use of the planned Gymnasium is a non-instructional use of school property that does not fit within the exemption provided by section 53094. There are no limitations that would prevent use of the Gymnasium for swap meets, weddings, computer shows, or any other revenue generating activity. *City of Santa Cruz v. Santa Cruz Schools Bd. Of Education* (1989) 210 Cal.App.3d 1 does not change this result, since the School District in this case specifically contemplates use of the Gymnasium to the maximum extent possible for non-school uses and perceives it as a source of revenue generation. Also, *City of Santa Cruz* was decided in 1989, before Education Code section 16014 distinguished between a gymnasium and a classroom.

## VII. CONCLUSION

The School District’s attempt to fund the Gymnasium with revenues from the Measure J school bond and from state bond funds without giving voters a list of projects to be funded that specifically included the Gymnasium and without making the required disclosure of the joint use nature the proposed project violates Constitutional and Education Code requirements. Such misallocation of public funds must be enjoined. The School District should also be restrained from proceeding with construction of the Gymnasium unless and until it complies with CEQA by the preparation and certification of legally sufficient EIR and it complies with the City of Hermosa Beach Municipal Code’s limitation on the height of buildings in open space areas, its requirements for an election before the conversion of open space, and its requirements for the provision of sufficient parking.

DATED: September 30, 2005

Respectfully Submitted,  
CHATTEN-BROWN & CARSTENS

By: \_\_\_\_\_

Jan Chatten-Brown  
Douglas Carstens,  
Attorneys for Petitioner

F:\Hermosa Valley School\Pleadings\Finals\Opening Brief and Second Motion Amend\Opening Brief FINAL.doc