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June 27, 2003

Hermosa Beach School Board
Hermosa Beach City School District
1645 Valley Drive
Hermosa Beach, CA 90254

Re: Hermosa Valley School Building Construction Proposal

Dear Boardmembers:

On behalf of the Committee for Responsible School Expansion (CRSE), we urge you to arrange for environmental review of proposals for constructing buildings at Hermosa Valley School before granting any approvals for architectural drawings or similar expenditures. If the School Board makes a commitment to expenditures of significant funds before conducting environmental review, that will inevitably undermine the legitimacy of the environmental review process as it has been established by the Legislature through the California Environmental Quality Act (CEQA). Additionally, Measure J funds may not be expended on the proposed administration buildings because expenditures on construction of school district administration buildings are not included in the authorized activities for which Measure J funds may be used.

The Committee for Responsible School Expansion is composed of friends and neighbors of the Hermosa Valley School. Some of its members send their children to Valley School, some members volunteer time with the school's programs, and some members live near the school and all are concerned about existing and future impacts of school growth. Also, the community use of the school facilities in addition to school hours is a major intensification of the use of the school facilities and will have significant impact on the school's neighbors. All of its members pay taxes that support the school and fund Measure J. The Committee is not opposed to expansion of Valley School if it is done in a responsible way that maximizes the green space for the children rather than reducing it; arranges planned new buildings and parking where they make the most sense rather than have the most severe impacts on the surrounding residential properties; and uses Measure J funds to acquire property for classroom and educational laboratory expansion and not to build a freestanding district administration building.

A. Environmental Review Must Be Conducted Now.

1. CEQA Reviewed is Required Before Approval of the School Expansion Project.

We have been informed that the School Board has not conducted environmental review of the proposed project pursuant to the California Environmental Quality Act (CEQA) as it is considering approving the project. Environmental review must be conducted for all projects approved by public agencies in California, unless those projects are exempt from CEQA. CEQA applies to discretionary actions taken by public agencies. (Pub. Resources Code § 21080(a).) Where an agency has discretion to deny or reject the project or to condition its approval to mitigate environmental impacts, the action is discretionary.

CEQA, as amended in 1994, defines "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code § 21065.) The School Board's choice of a design and location for the gymnasium and district administration offices is certainly a "project" within the meaning of this definition.

2. CEQA Review Should Be Conducted Before the School Board Commits to a Particular Design of the Project, Not After.

The School Board should avoid contracting with an architect for detailed plans or entering other similar irreversible arrangements, until CEQA review has been completed. Avoiding a commitment to a particular design of the project is important in order to allow the School Board to meaningfully respond to public input during the environmental review process. The importance of the interactive role between the public and decision-makers was recognized by the Supreme Court in *Concerned Citizens of Costa Mesa v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929. *Concerned Citizens* emphasized the critical role of public participation in the CEQA process:

> CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process. (*County of Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185, 207 Cal.Rptr. 425.) In short, *a project must be open for public discussion and subject to agency modification during the CEQA process.* (*Ibid.*) This

> process helps demonstrate to the public that the agency has in fact analyzed and considered the environmental implications of its action.

(*Id.* at 936, emphasis added.)

As is discussed at greater length below, the project's design should be coordinated with the Coastal Commission now, rather than deferring that coordination to some future point. In enacting CEQA, the Legislature found it is the policy of the state that "Local agencies integrate the requirements of this division [CEQA] with planning and environmental review procedures otherwise required by law...so that all those procedures, to the maximum feasible, run concurrently, rather than consecutively." Public Resources Code (Pub. Resources Code section 21003(a).) Delaying coordination with the Coastal Commission and other relevant agencies will only delay the project's implementation.

The CEQA Guidelines (Title 14 of the California Code of Regulations) are clearer as to timing the preparation of an Environmental Impact Report (EIR), stating EIRs:

> should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment. . . *With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning.* CEQA compliance should be completed prior to acquisition of a site for a public project.

(CEQA Guidelines, sections 15004(b) and (b)(1), emphasis added.)

Similarly, CEQA compliance should be completed prior to commitment to a contract to a specific site design. A public agency may enter into land acquisition agreements or designate a "preferred" site before CEQA review, but the agency's future choice of that site must be "conditioned . . . on CEQA compliance." (Guideline section 15004 (b)(2)(B).)

The Board must avoid committing to a particular project design, then submit that design to environmental review. The California Supreme Court has condemned using environmental review as a *post hoc* rationalization for decisions which had already been made:

> A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform

> them of the environmental effects of projects that they have already approved. If post-approval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken. We have expressly condemned this use of EIR's.

(*Laurel Heights Improvement Association v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d. 376, 394.) In a recent consideration of CEQA, the California Supreme Court rejected a post-approval response to comments by the Fish and Game Commission. The Court stated:

> The Commission's post-decisionmaking responses to significant environmental concerns do not satisfy the written response component of its certified regulatory program. Nor do they comply with the spirit of this requirement. The written response requirement ensures that members of the Commission will fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. (Citations ommited.) It also promotes the policy of citizen input underlying CEQA. (*People v. County of Kern* (1974) 39 Cal.App.3d. 830, 841, 115 Cal.Rptr. 67.) When the written responses are prepared and issued after a decision has been made, however, the purpose served by such a requirement cannot be achieved.

(*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal. 4th 105, 133.) Therefore, the School Board must undertake environmental review before it makes any final decisions with regard to site design. The Board may choose a "preferred" design for purposes of analysis, but that analysis must be undertaken in good faith. The stated "preference" for a particular design should not be mistaken for a final decision to choose that design.

B. The Coastal Commission Must be Involved in the Design Review and Approval Process.

California's Coastal Act provides "Except as provided in subdivision (e) [for emergency projects], . . . any person, as defined in Section 21066 [including the School Board], wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." (Pub. Resources Code section 30600 (a).) Thus, the Board must obtain a coastal development permit from the Coastal Commission. Rather than procrastinating, the Board should coordinate with the Coastal Commission immediately.

The Board must consult with the Coastal Commission before deciding whether an

EIR or MND will be prepared: "Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies." (Pub. Resources code section 21080.3(a).) Since the Coastal Commission must grant a coastal development permit, it is a responsible agency which must be consulted. (Pub. Resources Code section 21069; CEQA Guidelines sections 15096, 15381; *Citizens Association for Sensible Development of the Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173-175.)

C. Bond Funds May Not be Expended On Construction of District Offices Because Those Offices Are Not Included in the Measure J's Authorizations.

The Board appears to be considering approving a project that includes construction of school district administration offices in addition to classrooms and other educational uses. CRSE does not object to the expenditure of funds on classrooms and other uses approved by the voters in Measure J, but it does object to the use of those funds for administration buildings. Bond funds may only be used for the specific, designated purposes for which they were approved. (*Board of Supervisors of Merced County v. Cothran* (1948) 84 Cal.App.2d 679, 685; *City of Long Beach v. Boynton* (1911) 17 Cal.App.290, 296.) Measure J funds may be used to "Construct new computer and/or science labs" and to "Construct new, permanent classrooms" but there is no provision for constructing administration offices. Therefore, the construction of these separate buildings should not be included as part of the expenditures of Measure J funds.

D. The School Board Must Thoroughly Assess Alternative Project Designs in a CEQA Review Process.

CRSE realizes that the Board may have reviewed a number of different alternatives and selected a particular one as its preferred alternative for analysis. However, this course of action is not legally sufficient because it does not involve the public in the manner required by CEQA. Although public meetings were held, these meetings did not proceed on the basis of the information required by CEQA or in the manner CEQA requires.

Among other requirements, CEQA requires that an EIR discuss alternatives to the proposed project. (Pub. Resources Code §§ 21001, subd. (g); 21002.1, subd. (a); 21061; 21100, subd. (d).) Guidelines, section 15126, subdivision (d), mandates that an EIR must "[d]escribe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and [must] evaluate the comparative merits of the alternatives." "In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility.' ' [I]t is the policy of the state that public agencies should not approve projects as proposed if there are *feasible alternatives* ... available which would substantially lessen the significant environmental effects of such projects ....'"(*Goleta Valley, supra,* 52 Cal.3d 553, 565 italics in original.) "[T]he government's power of eminent domain and access to public lands suggest that alternative sites may be more feasible, more often, when the developer is a public rather than a private agency. [Citations.]" (*Id.* at p. 574.) Information must be provided sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. (*Laurel Heights, supra,* 47 Cal.3d at p. 406; see also Guidelines, § 15126, subd. (d)(5).) " 'The key issue is whether the selection and discussion of alternatives fosters informed decision-making and *informed public participation.*' " (*Laurel Heights, supra,* 47 Cal.3d at p. 404, quoting Guidelines, § 15126, subd. (d)(5), italics added in *Laurel Heights.*) Alternatives must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public. (*Id.* at p. 405.) If various alternatives were considered and found infeasible, those alternatives and the reasons they were rejected must be discussed in the EIR in sufficient detail to enable this public participation and criticism as well. (*Ibid.*) Informed public participation "is especially important when, as in this case, the agency approving the proposed project is also its proponent or closely related to its proponent." (*Id.* at p. 406.)

At community meetings, the Board has not disclosed and discussed the responses to parking, traffic, noise impacts and other environmental concerns. Community meetings that are not part of the CEQA process do not adequately address all of the requirements of CEQA and the Coastal Act. All available alternative plans need to be evaluated related to these concerns before a decision is made on which plan will move forward. While each alternative design has strengths and weaknesses compared to other designs, the Board's duty is to evaluate a range of alternatives, compare their strengths and weaknesses in a process that is open to the public, and then arrive at a fully informed and adequately-substantiated decision. At this point, full information about environmental impact issues has not been provided to the public and the decisions made so far are flawed.

Conclusion.

CRSE urges the Board to take the time that is required to do a complete environmental review before proceeding. If the Board chooses to proceed with the proposed project at some point in the future, we suggest that the administration buildings be funded from sources other than Measure J funds. CRSE feels that a win-win situation for all parties could be achieved.

Conclusion.

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Thank you for your consideration.

Sincerely,

Douglas P. Carstens

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