

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

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

The Gymnasium violates the Hermosa Beach Municipal Code in several ways. The Municipal Code requires a vote of the electorate before open space such as the Hermosa Valley School site may be modified or eliminated by a project such as the Gymnasium. (Carstens Decl., Exh. A, Municipal Code § 17.30.011, sections 1 and 2.) Contrary to this provision, the Gymnasium will modify and eliminate open space without a vote of the electorate to approve it. The Municipal Code also limits buildings to "a height of two stories or twenty-five (25) feet . . . , 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. (3:1114.) The proposed use of the Gymnasium would also violate Municipal Code parking requirements. The Municipal Code requires one space per 100 square feet of floor area for a gymnasium. (Carstens Decl., Exh. R, Municipal Code § 17.44.030 (E)(11).) Additionally, if the Gymnasium 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 gymnasium purposes (3:1110) 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. (4:1798.) 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. (4:1797.) This 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. (3:1175.) Government Code section 53094 does not exempt the Gymnasium because it prohibits an exemption "*when the proposed use of the property by the school district is for nonclassroom facilities, . . .*" (Govt. Code § 53094 (b), *emph. added.*) The Gymnasium is a "nonclassroom" facility so the exemption provided by section 53094 does not apply to it. At least one section of the Educational Code distinguishes between a "classroom" and a "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.

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Respectfully Submitted,
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