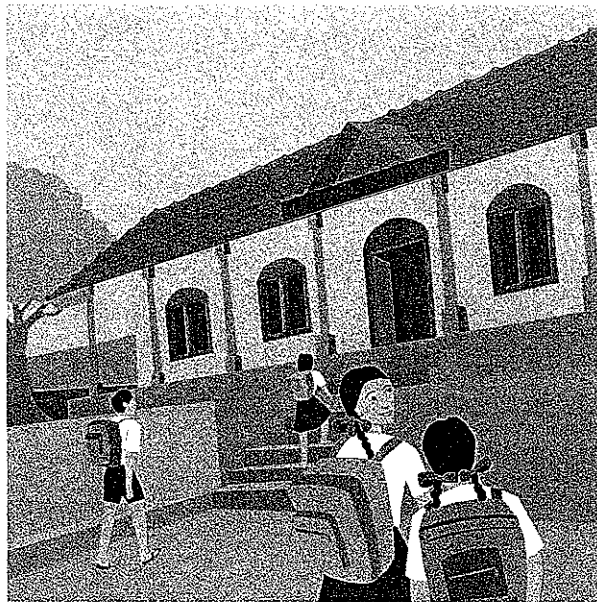


# San Marino Unified School District

*“A Legacy of Excellence”*

7-11 Committee  
2010



# *San Marino Unified School District*

*"Delivering a world-class education with recognized excellence in academics, arts, and athletics!"*

ADMINISTRATIVE OFFICES  
TELEPHONE: (626) 299-7000  
FAX: (626) 299-7010



1665 WEST DRIVE  
SAN MARINO, CALIFORNIA 91108-2594

## **Board of Education Advisory 7-11 Committee Meeting**

Wednesday, August 18, 2010

7:00 p.m. to 9:00 p.m.

**San Marino Unified School District  
Administrative Offices – Board Room**

## **AGENDA**

1. The Board Advisory 7-11 Committee will meet to review projected school enrollment and other data provided by the District to determine the amount of surplus space and real property, review issues and information specific to the Stoneman Property and establish a priority list of the use of surplus space and real property specific to the Stoneman Property.

**Posted: Friday, August 13, 2010**

San Marino Unified School District  
7-11 Committee Meeting  
August 18, 2010  
7pm - 9pm  
District Office Board Room

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1. Call to Order
2. Adoption of Agenda
3. Introductions
4. Committee Process/Meetings/Tasks
5. Strategic Plan
6. Budget Information
7. District/School Maps
8. Enrollment Trends
9. District Facilities
10. Adjournment

# **SAN MARINO UNIFIED SCHOOL DISTRICT**

## **7-11 COMMITTEE**

### **Committee Process/Tasks:**

- 1. Review data to determine the amount of surplus space or real property available**
- 2. Establish a priority list use of the surplus space and/or available real property**
- 3. Provide community input on acceptable uses**
- 4. Forward recommendations to the SMUSD Board of Education.**

### **Committee Meeting Descriptions:**

#### **Meeting #1: (Wednesday, August 18, 7:00 PM, SMUSD Board Room)**

At the first meeting, the 7-11 Committee will meet to review the projected school enrollment and other data provided by the District to determine the amount of surplus space and real property, review issues and information specific to the Stoneman Property and establish a priority list of the use of surplus space and real property specific to the Stoneman Property.

#### **Between Meeting #1 and #2:**

The Priority Use List must be circulated throughout the District's attendance area. The Priority Use List should also invite public comment at Meeting #2. An agenda for Meeting #2 should be circulated that lists a Public Hearing on this topic.

#### **Meeting #2: (Wednesday, September 1, 7:00 PM, SMUSD Board Room)**

A Public Hearing will be conducted to solicit final public comment on the Priority Use List. At the conclusion of the meeting, the 7-11 Committee should decide on its final recommendation to the SMUSD Board of Education. At this meeting, the 7-11 Committee must coordinate the preparation of a report to the Board of Education.

#### **Between Meeting #2 and #3:**

The 7-11 Committee will forward to the Board of Education a report on its findings and recommendations. The report need not be lengthy, but should explain how the 7-11 Committee arrived at its final recommendation.

#### **Meeting #3: (Tuesday, September 14, 7:30 PM, SMUSD Board Room)**

Final Recommendation given to SMUSD Board of Education by 7-11 Committee Chair.

**SAN MARINO UNIFIED SCHOOL DISTRICT  
7-11 COMMITTEE ROSTER**

***District Staff:***

Julie Boucher      [jboucher626@smusd.us](mailto:jboucher626@smusd.us)  
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***Members:***

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Greg Forgatch    [Forgatch@aol.com](mailto:Forgatch@aol.com)  
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Steve Talt         [Staltlaw@aol.com](mailto:Staltlaw@aol.com)  
Jerry Wang        [wangjerry@yahoo.com](mailto:wangjerry@yahoo.com)

***Board Representatives:***

Chris Norgaard    [cnorgaard@regentbc.com](mailto:cnorgaard@regentbc.com)

***Meeting Dates & Times:***

August 11, 2010    7:00 pm

September 1, 2010   7:00 pm

September 14, 2010   7:30 pm

Recommendation given to SMUSD Board of Education by 7-11 Committee Chair

# **San Marino Unified School District**

## **RESOLUTION NO. 1**

### **RESOLUTION OF THE BOARD OF EDUCATION OF THE SAN MARINO UNIFIED SCHOOL DISTRICT AUTHORIZING THE FORMATION OF A SURPLUS PROPERTY ADVISORY COMMITTEE (EDUCATION CODE SECTION 17388, ET SEQ.)**

WHEREAS, the San Marino Unified School District ("District") owns approximately 3 acres of land located at 1560 Pasqualito Dr. in San Marino, California, more commonly known as the District's "Stoneman Property;" and

WHEREAS, prior to disposing of excess real property, the District's governing board is required to form an advisory committee pursuant to Education Code section 17388, et seq., to advise the District's governing board in the development of district-wide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes; and

WHEREAS, Education Code section 17389 states that an advisory committee must consist of not less than seven (7) and not more than eleven (11) members, and must be represented by each of the following: (a) the ethnic, age group, and socioeconomic composition of the District; (b) the business community, such as store owners, managers, or supervisors; (c) landowners or renters, with preference to be given to representatives of neighborhood associations; (d) teachers; (e) administrators; (f) parents of students; and (g) persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to knowledge of the zoning and other land use restriction of the cities or cities and counties in which surplus space and real property is located; and

WHEREAS, pursuant to Education Code section 17390, an advisory committee must undertake the following duties: (a) review the projected school enrollment and other data as provided by the District to determine the amount of surplus space and real property; (b) establish a priority list of use of surplus space and real property that will be acceptable to the community; (c) cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings for community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Education Code section 17458; (d) make a final determination of limits of tolerance of use of space and real property; and (e) forward to the District's governing board a report recommending uses of surplus space and real property; and

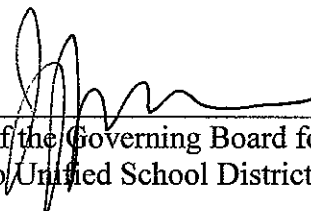
WHEREAS, the District desires to appoint an advisory committee pursuant to Education Code section 17388, et seq.

# San Marino Unified School District

NOW THEREFORE, be it resolved by the Board of Education of the San Marino School District as follows:

1. That the above recitals are true.
2. That the District authorizes the formation of a surplus property advisory committee pursuant to Education Code section 17388, et seq. ("Advisory Committee").
3. That the District's Governing Board hereby approves the delegation of authority and appoints the District Superintendent, or the designee of the District Superintendent, who is/are hereby authorized and directed, to appoint seven to eleven persons to said Advisory Committee, at a future date, to effectuate the purpose and intent of this Resolution.
4. That said delegation of authority shall be valid until otherwise rescinded by the Governing Board.
5. That the Advisory Committee is directed to complete its duties as set forth in Education Code section 17390, prepare the report referenced in such section, and present such report to the District's Governing Board as expeditiously as possible.
6. This Resolution shall take effect upon adoption

ADOPTED, SIGNED AND APPROVED this 13<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
President of the Governing Board for the  
San Marino Unified School District

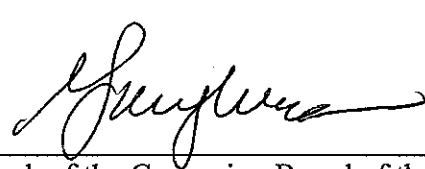
*Secretary*  
I, Gary W. Woods, ~~Clerk~~ of the Governing Board of San Marino Unified School District, do hereby certify that the foregoing Resolution was adopted by the Governing Board of said District at a meeting of said Board held on the 13<sup>th</sup> day of July, 2010, and that it was so adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

*Secretary*  
  
\_\_\_\_\_  
Clerk of the Governing Board of the  
San Marino Unified School District

**Sale, Lease, Rental of District-Owned Real Property**

The District advisory *Committee on Use or Disposition of Surplus School Buildings or Space* shall consist of seven to eleven members representative of the following: (Education Code 17389)

1. The District's ethnic, age group and socioeconomic composition
2. The business community, such as store owners, managers or supervisors
3. Landowners or renters, with preference to representatives of neighborhood associations
4. Teachers
5. Administrators
6. Parents of students
7. Persons with expertise in environmental impact, legal contracts, building codes, land use planning, local zoning, and other local land use restrictions

*This committee shall: (Education Code 17390)*

1. Review projected school enrollment and other data to determine the amount of surplus space and real property
2. Establish and circulate throughout the attendance area a priority list for use of surplus space and real property that will be acceptable to the community
3. Hold hearings, with community input, on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes
4. Make a final determination of limits of tolerance of use of space and real property
5. Send the Governing Board its recommendations regarding uses of surplus space and real property

1 *Sale, Lease Or Rental For Child Care Purposes*

2

3 Any surplus real property sold or leased to designated child care providers for  
4 child care and development purposes shall comply with legally specified outdoor  
5 activity space requirements for child care facilities. The provisions of Education  
6 Code 17458 shall apply to any such sale or lease. The use of District facilities or  
7 grounds for extended day care services shall be granted only in accordance with  
8 the provisions of Education Code 38134. (Education Code 8469.5) (cf. 1330 -  
9 Use of School Facilities)

10

11

12

13

14

15 CSBA Update: 9/90

# Atkinson, Andelson, Loya, Ruud & Romo

## MEMORANDUM

**TO:** Surplus Property Advisory Committee  
SAN MARINO UNIFIED SCHOOL DISTRICT

**FROM:** Lindsay A. Thorson

**DATE:** August 11, 2010

**RE:** Summary of Surplus Property Advisory Committee Duties

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This memorandum addresses both the formation and duties of an Advisory Committee to be convened for the purpose of making recommendations concerning the future use or disposition of property(ies).

### Summary of Advisory Committee

Education Code Section 17388 requires that prior to the sale, lease, or rental in excess of thirty (30) days of any excess real property, a governing board of a school district must appoint an Advisory Committee to advise the governing board in the development of District-wide policies and procedures governing the use or disposition of school buildings or space in school buildings which is not needed for school purposes.<sup>1</sup>

We recommend that the District comply with the following requirements for the convening of an Advisory Committee prior to selling or otherwise disposing of the property:

#### **1. Formation of Advisory Committee**

Education Code Section 17389 states that an Advisory Committee **must consist of not less than seven (7) and not more than eleven (11) members**, and must be represented by each of the following:

- (a) The ethnic, age group, and socioeconomic composition of the District.
- (b) The business community, such as store owners, managers, or supervisors.

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<sup>1</sup> While Education Code Section 17388 references "school buildings or space in school buildings," other sections refer generally to "real property." Accordingly, it is our opinion that school districts should comply with the "advisory committee" provisions for vacant property as well as school buildings.

- (c) Landowners or renters, with preference to be given to representatives of neighborhood associations.
- (d) Teachers.
- (e) Administrators.
- (f) Parents of students.
- (g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which the surplus space and real property is located.

## **2. Duties of an Advisory Committee**

Pursuant to Education Code Section 17390, an Advisory Committee must do all of the following:

- (a) Review the projected school enrollment and other data as provided by the District to determine the amount of surplus space and real property.
- (b) Establish a priority list of use of surplus space and real property that will be acceptable to the community.
- (c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings for community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Education Code Section 17458.
- (d) Make a final determination of limits of tolerance of use of space and real property.
- (e) Forward to the District's governing board a report recommending uses of surplus space and real property.

Please note that the provisions for an Advisory Committee do not set forth a minimum time period in which these duties must be completed.

Furthermore, as an extension of a legislative body (the District Governing Board), please note that the Advisory Committee must follow all Brown Act requirements.

# Atkinson, Andelson, Loya, Ruud & Romo

## MEMORANDUM

**TO:** Surplus Property Advisory Committee  
SAN MARINO UNIFIED SCHOOL DISTRICT

**FROM:** Lindsay A. Thorson

**DATE:** August 11, 2010

**RE:** Conflict of Interest Law: Real Property

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This memorandum provides an overview of the laws dealing with conflicts of interest and public officials. Specifically, we address the issue of board appointed advisory committee members who own property near land that is the subject of the advisory committee's actions.

### 1. DISCUSSION

There are two sets of laws that address Conflict of Interest issues in general and may apply to board appointed advisory committee members and their ownership of property in particular. The Government Code addresses conflicts of interest generally in Sections 1090, et seq. The Political Reform Act, which can be found in Government Code (Section 87100, et seq.) and the California Code of Regulations (Title 2, Section 18700 et seq.) also addresses conflicts of interest and specifically discusses the issue of property ownership. This memo focuses on the Political Reform Act since it addresses the issue of property ownership specifically and we do not think the Section 1090 would be triggered here.

#### A. **Political Reform Act**

The Political Reform Act is found in the Government Code (Section 87100, et seq.) and the California Code of Regulations (Title II, Section 18700, et seq.). In general, the Act prohibits any public official from participating in a governmental decision that may affect his or her financial interest. Specifically, the Act lays out a six step analysis to determine if a conflict of interest exists in any given situation. Special instructions are given throughout this analysis when property ownership is at issue. Below, we discuss each step in the context of property ownership.

1. Elements

a. Public Official

As defined by Section 82048, public official includes any member of a state or local government agency, including members of advisory bodies.

b. Influencing a Government Decision

In order for a conflict of interest to exist, the public official must be attempting to use his or her official position to influence a governmental decision. According to Section 18702.1(a), this occurs when "the official votes on a matter, obligates his agency to a course of action, or enters into any contractual agreement on behalf of his or her agency." Any decision that relates to property will fall under this category.

c. Economic Interest

In order to be considered a conflict of interest, the official in question must have an economic interest that may be financially affected by the decision. (Section 87103(b).) In terms of property ownership, the public official in question will have an economic interest if he or she has some type of interest in a piece of property that is worth at least two thousand dollars. (Section 87103.)

d. Potential Effect on Economic Interest

Once it is established that the public official has a financial interest, it must be shown that the economic interest will be or possibly could be affected by the decision. According to Section 18704.2(a)(1), this step is satisfied if the member's property is within 500 feet of the boundary of the government's property.

e. Material Effect

The effect on the public official's property must be material. According to Regulation 18705.2(a), any "reasonably foreseeable" effect on the member's property is presumed to be material. If the public official can argue that the effect was not reasonably foreseeable, this presumption may be rebutted. The Regulation specifically states that a decision is not material if it does not foreseeably effect any of the following:

- (1) the termination date of the lease,
- (2) the amount of rent paid related to the property,
- (3) the value of the right to sublease the property,
- (4) the allowed use or actual use of the property, or
- (5) the use or enjoyment of the property.

f. Reasonably Foreseeable Effect

At the time the government decision was made, the financial effect on the member's property must be reasonably foreseeable. This standard depends on the facts of the case. However, according to relevant decisions, an effect is always considered reasonably foreseeable if the government's decision will alter the use or value of the property in any manner.

2. Consequences

Once it is determined the public official fits all the elements and has a conflict of interest, he or she must follow the following steps as outlined in Section 87105.

a. Public Identification

First, the member must make the conflict of interest known to the public. The code requires the public identification to be "in detail sufficient to be understood by the public" but it specifically states that "disclosure of the exact street address of a residence is not required." (Section 87105.)

b. Recuse

The member must then recuse himself from discussing and voting on the manner.

c. Absence

The member must leave the room during the vote as well as during any discussion of the matter and any disposition of the matter. The section allows the member to speak about the issue during the time that the general public is allowed to speak on the issue.

**B. Government Code Section 1090**

The Government Code Section 1090, et. seq. also deals with conflicts of interest. This section is boarder than the Political Reform Act but it does not specifically address the property ownership issue. It states that public officials cannot hold a financial interest in any contract made by them in their official capacity. As this advisory committee will not be contracting in their official capacity, we believe Section 1090 would not apply.

2. RELEVANT CASE LAW

Conflict of interest issues concerning real property owned by a public official was addressed by the California appellate court in Downey Cares v. Downey Community Development Commission (1987) 196 Cal.App.3d 983. In Downey Cares, the court considered whether the material financial effect on the value of a councilmember's real property and real estate business of amendment of a redevelopment plan was reasonably foreseeable. The

councilmember owned real property in both the old and amended redevelopment project areas and his real estate business was located in the amended area. The trial court based its decision in part on the fact that while amendment of the plan did not spend money on specific projects, it began the process of setting aside revenues for improvements in the plan area. The trial court also found that it had a reasonably foreseeable effect on the councilmember's income as a realtor because such income is based on percentage of property value sold and it was reasonably foreseeable that the amendment to the plan area would increase property values. (Downey Cares, *supra*, at 989-90.)

The councilmember argued that the conflict laws did not bar his participation in the action to amend the plan because the amendment of the plan did not specify or authorize any particular projects so it could not have a reasonably foreseeable financial affect on any specific property, including the councilmember's. The councilmember conceded that he might be barred from future votes on implementation of the redevelopment plan, but argued that he was not barred from voting on the amendment of the plan. (Id. at 990.)

The Court of Appeal rejected the councilmember's argument as too narrow an interpretation of the PRA. (Ibid.) According to the Court:

In determining the reasonably foreseeable effects of the adoption of the redevelopment plan, the court may justifiably consider that the very purpose of redevelopment is to improve the property conditions in the redevelopment area. [Citation and footnote omitted.] The fact that it might be possible to conceive of specific redevelopment projects which might fail to affect [the councilmember's] property and business does not show the trial court's decision was wrong. The test is whether it was reasonably foreseeable that the adoption of the plan would have a material financial effect on [the councilmember's] property and business, and we find the trial court's decision supported by reasonable inferences and the record.

\* \* \*

Footnote 4: Drawing reasonable inferences that redevelopment will foreseeably increase property values and realtor income, while taking care to decide each case on its individual circumstances, is a reasonable accommodation of conflicting considerations. Such interpretation does not paralyze redevelopment agencies from taking the first steps toward redevelopment. Government Code section 87101 provides: "Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section." This section represents a compromise which permits government agencies to act but minimizes conflicts of interest, reflecting a policy that the actions of a closely divided council or commission

should not be determined by a member who is financially interested in the decision.

(Downey Cares, *supra*, at 991.)

3. **CONCLUSION**

If an advisory committee member owns a piece of property that may be financially affected by an act of the committee, the Political Reform Act may require that the committee takes steps to ensure its decisions are not influenced by the advisory committee member in question.

# **OPEN PUBLIC MEETING REQUIREMENTS UNDER THE BROWN ACT AND CALIFORNIA EDUCATION CODE**

## **I. INTENT**

- A. Government Code Section 54950 clearly states the legislative intent underlying the Brown Act:

Public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

- B. It is in the light of this legislative policy that the Brown Act has been liberally interpreted.

- C. The courts have interpreted this statement of legislative intent in the following manner.

1. The purpose of the Brown Act is to facilitate public participation in local government and to curb misuse of democratic process by secret legislation by public bodies. [Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116 [83 Cal.Rptr.2d 164, 168].]

2. Under the Brown Act--"interested persons" entitled to sue to enforce its provisions are not confined to residents within the jurisdiction of the legislative body involved, nor to taxpayers therein. [McKee v. Orange Unified School Dist. (2003) 110 Cal.App.4th 1310, 1316 [2 Cal.Rptr.3d 774, 778].]

- D. At the November 2, 2004, election, the voters of California adopted Proposition 59, which adds Subdivision (b) to Section 3 of Article I of the California Constitution. Proposition 59 does the following:

1. Adds to the state Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to the public.
2. Provides that statutes and rules furthering public access be broadly construed, or narrowly construed, if they limit public access.
3. Requires that new statutes and rules limiting access contain findings justifying the necessity of the limitation.

4. Preserves the constitutional rights of privacy, due process, and equal protection; and expressly preserves existing constitutional and statutory limitations restricting access to certain meetings and records of government bodies.

## II. THE "RULE" - GOVERNMENT CODE SECTION 54953

- A. All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
- B. If a given entity fits within any definition of a legislative body, then it is subject to the various requirements of the Brown Act.

Government Code Section 54952 defines a "legislative body" to include the following:

1. The governing board of a school or community college district, ROP or JPA, etc. [Government Code Section 54952(a).]
2. Commissions, committees, boards, or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, created by resolution or some other formal action of a legislative body. [Government Code Section 54952(b).]
  - a. E.g., personnel commissions.
  - b. E.g., academic senates. [66 Ops.Atty.Gen. 252 (1983).]
  - c. E.g., Community college student body associations. Such organizations are advisory to district boards and are therefore a legislative body and subject to the Brown Act. [75 Ops.Atty.Gen. 145 (1992).]
3. "Legislative body" does not include advisory committees composed solely of the members of the legislative body which are less than a quorum of the legislative body. [Government Code Section 54952(b).]
  - a. Not all less-than-a-quorum committees are excluded from the definition of a "legislative body." To be excluded, the committee must:
    - 1) be "advisory" only;
    - 2) not be "decision-making"; and
    - 3) not be a standing committee.

E.g., an ad hoc committee comprised solely of less than a quorum of the board created for the purpose of advising the full board on the qualifications of candidates for appointment to a vacant position is not a legislative body. [Henderson v. Board of Education (1978) 78 Cal.App.3d 875 [144 Cal.Rptr. 568].]

- b. If the ad hoc committee includes members who are not members of the board, the Act will apply.
  - c. Committees appointed by the superintendent, without any formal action by the board, are not covered by the Act. However, the board must not in any way “instigate” the formation of the committee; the concept of “formal action” is broadly construed. [Joiner v. City of Sebastopol (1981) 125 Cal.App.3d 799, 805 [178 Cal.Rptr. 299]; and Frazer v. Dixon Unified School District (1993) 18 Cal.App.4th 781, 792-793 [26 Cal.Rptr.2d 641, 649-650].]
  - d. Where a school district’s board of trustees has formed a committee, known as the district liaison council, consisting of eight representatives from the community, seven employees of the district, and one student, to interview candidates for the position of district superintendent, the committee is subject to requirements of the Brown Act (e.g., the notice, agenda and public participation requirements.) However, where appropriate, the committee may also rely on the personnel exception in Section 54957 and meet in closed session when it is interviewing candidates, reviewing resumes, discussing qualifications, and arriving at a decision prior to the actual appointment. [80 Ops.Atty.Gen. 308 (1997).]
  - e. The Act applies to any “other body” a local agency creates unless the other body consists of (1) less than a quorum of the local agency’s members, and (2) is only advisory. [Taxpayers for Livable Communities v. City of Malibu (2005) 126 Cal.App.4th 1123.]
- 4. Standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution or other formal action of a legislative body, are legislative bodies for purposes of the Brown Act.
  - 5. A board, commission, committee, or other multi-member body that governs a private corporation, limited liability company, or entity is a “legislative body” if it:
    - a. is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected body to a private entity [Government Code Section 54952(c)(1)]; or

- b. receives funds from a local agency and the membership of the governing body includes a member of the legislative body of the local agency appointed by the legislative body of the local agency. [Government Code Section 54952(c)(2).]
  6. The governing board of a jointly-administered trust fund, whose members are appointed equally by a city and a labor union representing city employees and whose purpose is to address labor-management issues relating to the health, safety, and training of city employees, is not required to hold its meetings open to the public. [87 Ops.Cal.Atty.Gen. 19 (2004).]
  7. Other provisions of law may subject certain organizations to the Brown Act, e.g., community college district auxiliary organizations. [Education Code Section 72674.]
- C. "Member of a legislative body of a local agency" is defined to include any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. Such persons must conform their conduct to the requirements of the Act, and will be treated, for purposes of enforcing the Act, as if they had already assumed office. [Government Code Section 54952.1.]

A legislative body may require that each member be given a copy of the Act. Similarly, someone who has been elected to serve on the body, but has not yet assumed office, may be given a copy of the Act.

### III. WHAT IS A MEETING?

- A. The 1993 Amendments to the Act added a specific definition of a meeting. This definition codifies prior interpretations of the Act by the Attorney General and the state appellate courts.
  1. A meeting is a gathering of a quorum of the legislative body, no matter how informal, where business is discussed or transacted. [Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1978) 263 Cal.App.2d 41 [69 Cal.Rptr. 480]; and 61 Ops.Atty.Gen. 220 (1978).] (Luncheon meetings where public business is discussed are subject to the Brown Act.)
    - Deliberation in this context connotes not only collective decision-making, but also the collective acquisition and exchange of facts preliminary to the ultimate decision. [Frazer, 18 Cal.App.4th at 794 [22 Cal.Rptr. at 651].]
  2. Meeting includes "study," "discussion," "informational," "fact-finding," or "pre-meeting" gatherings of a quorum of the members of a board. Whether action is or is not taken is irrelevant. [42 Ops.Atty.Gen. 61 (1963).]

B. A meeting is defined to include:

1. Any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(a).]
2. Except as authorized by Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited. [Government Code Section 54952.2(b).]
  - “Action taken” means a collective decision by a majority of the members of the legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote of the body. [Government Code Section 54952.6.]
3. Wolfe v. City of Fremont (2006) 144 Cal.App.3d 533 provides important guidance as to when contacts between district staff and board members, and between board members will or will not violate the Brown Act.
  - a. While personal meetings permit an interchange of views, unlike the distribution of a written memorandum, the Brown Act does not preclude members of a local legislative body from engaging in one-on-one discussions of matters before the body.
  - b. Rather, Government Code Section 54952.2(c) expressly states that the Brown Act does not prohibit individual contacts or conversations between a member of a legislative body and any other person.
  - c. This is not to imply that serial meetings between a city official and individual members of the city council can never lead to a violation of the Brown Act, but more than mere policy-related informational exchanges are required before such a violation will occur.
  - d. Under Section 54952.2(b), the Brown Act is violated by such serial meetings only if (1) the city official acts as a personal intermediary for council members during the course of such meetings, and (2) the meetings are used by a majority of the legislative body to develop a collective concurrence regarding a matter of interest.
  - e. A "collective concurrence" would require not only that a majority of the council members share the same view, or "concur," but also that the members have reached that shared view after

interaction between or among themselves, whether directly or through an intermediary.

- f. By requiring collective action in addition to a concurrence, the definition promotes the policy behind the Brown Act, which is to ensure that the deliberations--that is, the discussion of matters leading to a decision--of public bodies are done in public.
- g. It is also consistent with the conclusion that the Brown Act's requirement of public meetings includes informal sessions at which a legislative body commits itself collectively to a particular future decision concerning the public business. Section 54952.2(c), must be read together with Section 54952.2(b), which holds that if such direct communication among members of a legislative body leads to a consensus about action to be taken on an item, a violation of the Brown Act has occurred.
- h. Wolfe's allegations about the activities of the city council allowed the inference that, prior to a city council meeting, the council members had improperly reached a collective concurrence that they would not challenge the policy at issue.
- i. Those allegations led directly to the inference that the council members had reached their consensus through the nonpublic discussions that occurred among them, thereby violating the Brown Act.
- j. Supporting that inference was the council members' decision to have the chief of police address them at the meeting in advance of the public comment period, an action that created the impression of a concerted effort to shape public perceptions of the new policy. Accordingly, although the allegations of the complaint were not wholly free from ambiguity, they were sufficient to state a claim for a violation of Section 54952.2(b).

C. The requirements of the Brown Act do not apply to the following:

- 1. Individual contacts or conversations between a member of a legislative body and any other person. [Government Code Section 54952.2(c)(1).]
- 2. The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general concern to the public or agencies of the type represented by the legislative body, provided a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local agency. This paragraph is not intended to allow members of the public free admission to a gathering where the

organizers have required the other participants to pay a fee as a condition of attendance. [Government Code Section 54952.2(c)(2).]

3. The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(3).]
4. The attendance of a majority of the members at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(4).]
5. The attendance of a majority of the members at a purely social or ceremonial occasion provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. [Government Code Section 54952.2(c)(5).]
6. The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers. [Government Code Section 54952.2(c)(6).]
  - a. Members of the legislative body of a local public agency may not ask questions or make statements while attending a meeting of a standing committee of the legislative body "as observers." [81 Ops.Atty.Gen. 156 (1998).]
  - b. Members of the legislative body of a local public agency may not sit in special chairs on the dais while attending a meeting of a standing committee of the legislative body "as observers." Id.

#### IV. PUBLIC MEETING PROCEDURES

- A. Certain boards must meet at least monthly and must, by rule, fix the time and place for their regular meetings.

[Education Code Sections 1011, 35140, 35144, and 72000(c)(4).] [Government Code Section 54954.]

B. Location of Meetings [Government Code Sections 54954(b) and (c).]

1. Regular and special meetings of school district boards must be held within the territory of the district, except in order to:
  - a. Comply with state or federal law or a court order, or attend a judicial or administrative proceeding to which the local agency is a party.
  - b. Inspect real or personal property which cannot conveniently be brought within the boundaries of the district provided that the topic of the meeting is limited to items directly related to the real or personal property.
  - c. Participate in meetings or discussions of multi-agency significance that are outside the jurisdictional boundaries of the district. However, the meeting must be held within the territory of one of the participating agencies and be noticed by all participating agencies as provided for in this chapter.
  - d. Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the district, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.
  - e. Meet with state or federal officials, where a local meeting would be impractical, solely to discuss legislative or regulatory matters affecting the district over which the state or federal officials have jurisdiction.
  - f. Meet at or near a facility owned by the agency located outside its territory, if the meeting is limited to items directly related to that facility.
  - g. Meet at the office of the agency's attorney for a closed session on pending litigation, when to do so would reduce fees or costs.
2. Additionally, school board meetings may be held outside the district for the following purposes:
  - a. Attend a conference on non-adversarial collective bargaining techniques, e.g., CFEIR.
  - b. Interview members of the public residing in another district regarding the potential employment of an applicant for the position of the superintendent of that district.
  - c. Interview a potential employee from another district.

3. Community college districts must hold their meetings within their own jurisdiction, except if certain, very limited exceptions apply:
    - a. Meeting with another local agency.
    - b. Meeting in closed session with counsel to discuss pending litigation. [Education Code Section 72000(d)(2)(A) and (B).]
  4. A JPA must meet within the territory of at least one of its member agencies, unless one of (a) through (g) above applies. [Government Code Section 54954(d).]
  5. If, by reason of a fire, flood, earthquake, or other emergency, it is unsafe to meet in the usual place, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer or his designee, in a notice to the local media that have requested notice, by the most rapid means available at the time. [Government Code Section 54954(e).]
- C. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in the Americans with Disabilities Act of 1990 ("ADA"). [Government Code Section 54953.2, citing 42 USC Section 12132.]
- D. Mailed notice of meetings.
1. Any person may request that a copy of the agenda or the documents constituting the agenda packet be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to person with a disability as required by the ADA, 42 USC Section 12132, and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body, or its designee, shall cause the requested materials to be mailed at the time the agenda is posted, or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. [Government Code Section 54954.1.]
  2. Any request to receive agenda materials shall be valid for the calendar year in which the request is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service.
  3. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

4. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability. The agenda shall include information regarding how, to whom, and when, a request for disability-related modification or accommodation, including auxiliary aids or services, may be made. [Government Code Sections 54954.1 and 54954.2.]
- E. Special Meetings - 24-Hour Notice [Government Code Section 54956.]
1. The board may only consider business specified in the notice. [Government Code Section 54956.]
  2. The board may hold a closed session as part of a special meeting.
  3. Notice of the special meeting must be mailed or delivered to the media and posted 24 hours in advance of the meeting.
  4. A special meeting may be called by either the president of the board or a majority of the board.
- F. Emergency Meetings in Emergency Situations [Government Code Section 54956.5, as amended in 2002.]
1. Where an emergency involves the potential for disruption, or threatened disruption, of public facilities, a board may hold an emergency meeting without providing normally-required notice and/or posting.
  2. An "emergency situation" is defined as either:
    - a. An "emergency," defined as:
      - 1) Work stoppage;
      - 2) Crippling activity; or
      - 3) Other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the Governing Board.
    - b. A "dire emergency," defined as:
      - 1) Crippling disaster;
      - 2) Mass destruction;
      - 3) Terrorist act; or
      - 4) Threatened terrorist activity that poses peril so immediate and significant that requiring the board to provide one-hour

notice may endanger public health, safety, or both, as determined by a majority of the board.

3. At least one-hour notice to media (those who previously requested notice of special meetings) is required. However, in a "dire emergency," notice need only be made at or near the time the presiding officer or designee notifies other board members. Notice must be made by telephone, unless telephone service is not functioning. In such case, notice shall be made of the meeting and any actions taken as soon as possible thereafter.
4. Board may meet in closed session following a 2/3 vote of the board or unanimous if less than 2/3 of members are present.
5. Special meeting requirements of Section 54956 are applicable except 24-hour notice.

G. Agendas

1. An agenda must be conspicuously posted at least 72 hours prior to the time of regular meetings in a location freely accessible to members of the public. [Government Code Section 54954.2(a).]
  - a. The location where the agenda is posted must be publicly accessible at all times during the required 72-hour period. For example, the agenda cannot be posted inside a building that is locked and inaccessible to the public during evening hours. [78 Ops.Atty.Gen. 327 (1995).]
  - b. The agenda of a meeting may be posted on a touch-screen electronic kiosk accessible without charge to the public 24 hours a day, 7 days a week, in lieu of posting a paper copy of the agenda on a bulletin board. [88 Ops.Atty.Gen. 218 (2005).]
2. A board may not change its posted agenda within the 72-hour period preceding a regular meeting unless one of the following exceptions applies:
  - a. A majority determines that an emergency exists pursuant to Government Code Section 54956.5;
  - b. A two-thirds vote of the board members present determines that there is a need to act immediately and the need to take action came to the district's attention after the posting of the agenda;
  - c. The item was previously posted for a meeting occurring not more than five days prior to the meeting when the action is taken, and at the prior meeting the item was continued to the meeting where action was taken. [Government Code Section 54954.2(b).]

*If no exception applies, the board must either postpone consideration of the item for at least 72 hours or call and notice a special meeting.*

3. The agenda must reasonably apprise the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting. [Carlson v. Paradise Unified School District (1971) 18 Cal.App.3d 196 [95 Cal.Rptr. 650].] (Action taken pursuant to a defective agenda may be void.)

The Act requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A "brief general description" of an item generally need not exceed 20 words.

4. In Moreno v. City of King (2005) 127 Cal.App.4th 17 [25 Cal.Rptr.3d 29], the agenda for a special meeting stated that the city council would only consider, in closed session, the employment contract of a public employee. Six days later, the city manager gave the employee a memorandum that contained the details of five alleged incidents of misconduct that had led the city manager to terminate his employment. The court held that the trial court's finding that the special meeting agenda violated Section 54954.2 was equivalent to a finding that it violated Section 54956 because the two statutes contained equivalent requirements. The trial court did not err in finding that the agenda was inadequate because its description provided no clue that the dismissal of a public employee would be discussed at the meeting.
  - a. The city did not cure its failure to agendaize the issue of the employee's dismissal when the only action reported after a later meeting was the denial of the employee's tort claim.
  - b. The employee was deprived of the opportunity to respond to specific accusations, in violation of Cal. Gov't Code § 54957, because the city failed to give him advance notice that it would be hearing the city manager's accusations at its closed meeting.
5. The Act imposes limitations on board members' responses to public comments. [Government Code Section 54954.2(a).] In response to public comments, board members and staff may only:
  - a. briefly respond to statements made or questions posed by persons making public comments;
  - b. ask questions for clarification or make a brief announcement;
  - c. provide a reference to staff or other resources for factual information;

- d. request staff to report back to the body at a later meeting; or
  - e. direct staff to place the matter on a future agenda.
6. Agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. This requirement does not apply to certain records made exempt from public disclosure by the Public Records Act. [Government Code Section 54957.5(a).]
- a. Effective July 1, 2008, if a writing that is a public record under subdivision (a) of Section 54957.5, and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to Section 54957.5(b)(2) at the time the writing is distributed to all, or a majority of all, of the members of the body. [Government Code Section 54957.5(b)(1).]
  - b. Effective July 1, 2008, a local agency shall make any writing described in Section 54957.5(b)(1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.
  - c. Documents prepared by the district must be made available for public inspection at the meeting; documents prepared by any other person must be made available after the meeting. [Government Code Section 54957.5(c).]
  - d. Nothing in the Act prevents the district from charging a fee or deposit for a copy of a public record as authorized by the Public Records Act. [Government Code Sections 54957.5(d) and 6253.]
  - e. No additional charge may be imposed on persons with disabilities in order to make these documents available in appropriate alternative formats. [Government Code Sections 54957.5(b)(2) and (d).]

H. Public Participation [Government Code Section 54954.3 and Education Code Sections 35145.5 and 72121.5.]

1. Members of the public must be allowed to place matters directly related to district business on the agenda.
2. Members of the public must be able to address the board regarding items on the agenda before or during the governing board's consideration of the item.
3. The subdivision does not, however, require the Board to allow members of the public to address it on whether to place an item on the agenda. [Coalition of Labor v. County of Santa Barbara Bd. of Supervisors (2005) 129 Cal.App.4th 205 [28 Cal.Rptr.3d 198].]
4. In Lindelli v. Town of San Anselmo (2003) 111 Cal.App.4th 1099, 1109 [4 Cal.Rptr.3d 453, 461], the court held that while Government Code Section 54954.3 permits members of the public to provide input, it does not mandate that they do so. Nothing in the plain language of Government Code Section 54954.3 supported the city's proposed construction--that members of the public must raise a given legal concern about a potential action before any course of action has been adopted, or be forever barred from raising that concern in court.
5. Every regular meeting agenda shall provide an opportunity for members of the public to address the board on any item of interest to the public, within the subject matter jurisdiction of the board.
  - a. No action shall be taken until the matter is properly noticed on an agenda or an exception to the 72-hour rule is established.
  - b. Every notice of a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item appearing on that agenda before or during consideration of that item. [Government Code Section 54954.3(a).]
  - c. In Chaffee v. San Francisco Library Commission (2004) 115 Cal.App.4th 461 [9 Cal.Rptr.3d 336], the Court of Appeal held that the Act contemplated only one public comment period per agenda, even when the agenda is covered at meetings occurring on different days. The decision also assumes that speakers wishing to address a topic on the agenda will be permitted to speak when that item is before the body, and not as a group in advance of reaching the item on the agenda. This statement is at odds with the practice of many bodies which require all speakers wishing to address an agenda item to speak at the beginning of meetings as a group and not at the time the agenda item is brought up.

6. The board may adopt reasonable rules and regulations in order to ensure the proper functioning of the meeting. [75 Ops.Atty.Gen. 89 (1992); White v. City of Norwalk 900 F.2d 1421 (9th Cir. 1990); and Kindt v. Santa Monica Rent Control Board 67 F.3d 266 (9th Cir., 1995).] (Regulations governing when the public may address the board are reasonable, content-neutral time, place, and manner restrictions.)
7. In Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109, the Plaintiff asserted that state law and a San Francisco “sunshine” ordinance required the commission to provide each speaker with up to three minutes to make comments at a meeting of the commission. At the meeting in question, the commission's president announced that public comment on each agenda item would be limited to two minutes per speaker, instead of the three minutes normally allotted to each speaker.
  - a. The court held that defendants did not violate the Brown Act or the sunshine ordinance in shortening the time allotted to each speaker.
  - b. The president stated in his declaration that before the meeting, he anticipated four agenda items would be lengthy. Based on his judgment of the time required for the commission to consider those four items and the other items on the agenda, he concluded the commission would not be able to complete its meeting in a reasonable period unless public comment was somewhat shortened. The minutes indicated that the meeting lasted more than four hours. Chaffee presented no evidence that the president did not reasonably expect the four items he enumerated to be lengthy or that the commission did not reasonably apply its bylaws in the circumstances.
  - c. The Brown Act does not specify a three-minute time period for comments, and does not prohibit public entities from limiting the comment period in the reasonable exercise of their discretion. *Id.* at 116.
8. Dumping gallons of garbage on the floor of a schoolroom during a school board meeting was sufficient to support an arrest for disturbing a public meeting and was not speech protected by the First Amendment. [McMahon v. Albany Unified School Dist. (2002) 104 Cal.App.4th 1275 [129 Cal.Rptr.2d 184].]
9. “The legislative body . . . shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.” [Government Code Section 54954.3(c).]

- a. This provision, and the Baca case discussed below, make it clear that an action for defamation will not lie for statements made at a public meeting.
  - b. This provision raises concerns relating to privacy and reputation issues for public employees.
10. In Baca v. Moreno Valley Unified School District, 936 F.Supp. 719 (C.D. Cal. 1996), the court held the board's policy prohibiting the airing of charges or complaints against identifiable district employees to be unconstitutional.
- a. The district's policy was similar to many found throughout the state:

“No oral or written presentation in open session shall include charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee . . . . All charges or complaints against employees must be submitted to the board under provisions of board policy . . . .

Any individual who violates this policy will be warned to discontinue his/her comments immediately. If the individual willfully interrupts the meeting by refusing to comply with the warning, the board President may authorize the removal of the individual pursuant to Government Code section 54957.9.”
  - b. Ms. Baca, who is active in the Mexican Political Association (MPA), accused a school principal and the district's superintendent of ignoring numerous complaints brought to them by parents and for acting in a discriminatory manner. Ms. Baca was warned and removed by Riverside County Sheriffs, who were present.
  - c. The court held that speech criticizing district employees, even if later proved to be defamatory, is protected by both the California and federal Constitutions from government censorship and prior restraint.
    - 1) The public sessions of a board meeting are designated limited public forums. As a result, government may limit speech to certain subjects but may not engage in viewpoint discrimination within a given subject matter area.

- 2) The court found the following concerns not to be sufficiently compelling to justify limiting Ms. Baca's speech:
    - (a) The employee's privacy rights;
    - (b) The employee's liberty interests;
    - (c) The district's interest in regulating its own meetings.
  - 3) The presence of alternate means of communication between plaintiff and the board, or between plaintiff and other members of the public, was found not to justify or validate the otherwise unconstitutional policy. Specifically, since California law establishes as privileged, statements made in board meetings, requiring persons to bring complaints against district employees outside of such meetings does not provide an adequate alternate location.
11. In Holbrook v. City of Santa Monica (2006) 144 Cal.App.4th 1242, the plaintiff city councilmember sued arguing that the fact that city council meetings frequently ran late into the night and included public comment as the final order of business, violated the constitution and the Brown Act. Plaintiffs sought to compel the city council to end its meetings by 11:00 p.m.
- a. The court concluded that, with respect to plaintiffs' constitutional claims and asserted violations of the Brown Act, the causes of action arose from protected activity. Plaintiffs failed to show that preventing the city council from conducting legislative business after 11:00 p.m. benefited the public.
  - b. The court also concluded that, when plaintiffs accepted their seats on the city council, they forfeited Brown Act standing that they would otherwise have had as California citizens to sue the city council.
    - 1) Not only did plaintiffs assert no interest that differed from that of the general public, they claimed no personal damages or consequences distinct from those of the populace that could create a beneficial interest in them.
    - 2) As no beneficial interest in the workings of the city council was conferred by serving on that entity, plaintiffs did not establish any beneficial interest sufficient to confer standing.

12. Minutes shall be taken recording all actions taken by the governing board. The minutes are public records. [Education Code Sections 35145(a) and 72121(a).]
13. No action may be taken by secret ballot. [Government Code Section 54953(c).]
14. Government Code Section 54953(b) permits teleconferencing, not just "video teleconferencing," for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. "Teleconferencing" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through audio or video, or both.
  - a. Teleconference means a meeting of individuals in different locations, connected by electronic means, through either audio or video, or both.
  - b. Teleconference meetings must comply with all requirements of the Brown Act and all other applicable provisions of law relating to the specific type of meeting or proceeding.
  - c. All votes taken during a teleconferenced meeting shall be by roll call.
  - d. Agendas must be posted at each teleconferencing location, agendas must identify each teleconferencing location, and each location must be accessible to the public.
  - e. Teleconferenced meetings must be conducted in a "manner that protects the statutory and constitutional rights of the parties or the public." [Government Code Section 54953(b)(3).]
  - f. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.
  - g. The agenda shall provide an opportunity for members of the public to address the legislative body directly, pursuant to Section 54954.3, at each teleconference location.
15. Any person attending a public meeting has the right to record the meeting by still or motion picture camera, or by video or audio tape, absent a finding by the board of persistent disruption of the proceedings. [Government Code Section 54953.5(a).]

16. A board may not prohibit or restrict the broadcast of its proceedings. [Government Code Section 54953.6.]
17. Any tape or film recording made by or at the direction of the board shall be subject to inspection pursuant to the Public Records Act, but may be destroyed or erased 30 days after the taping or recording. Any inspection of a video or audio tape recording shall be provided without charge on a tape recorder made available by the district. [Government Code Section 54953.5(b).]

## V. CLOSED SESSION

### A. Government Code Section 54957 authorizes a board to meet in closed session for the following purposes:

1. The legislative body of a local agency may hold closed session with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or facilities. [Government Code Section 54957(a).]
2. Subject to the conditions in paragraph (b)(2) of Section 54957, consideration of the appointment, employment, evaluation of performance, discipline, or dismissal of an employee. [Government Code Section 54957(b)(1).]

- a. This exception permits boards to meet in closed session to discuss and act upon the hiring, firing, intermediate discipline, and evaluation of particular employees, even though, on its face, the statute authorizes only a closed session to "consider" such personnel matters. [Lucas v. Board of Trustees (1971) 18 Cal.App.3d 988 [96 Cal.Rptr. 431]; see also, Southern California Edison Co. v. Peevey (2003) 31Cal.4th 781, 799 [3 Cal.Rptr.3d 703, 715].]

When the legislative body of a local agency meets in closed session to consider the proposed dismissal of a public employee but ultimately rejects that proposal and retains the employee, the legislative body is not thereafter required to publicly report its decision and the vote or abstention of each member. [89 Ops.Cal.AttyGen. 110 (2006).]

- b. A county board of education may not meet in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of certificated or classified employees

because the county board is not the employer. [85 Ops.Atty.Gen. 77 (2002).]

- c. Discussion must relate to a particular individual.
- d. However, in Duval v. Board of Trustees of the Coalinga-Huron Unified School District (2001) 93 Cal.App.4th 902 [113 Cal.Rptr.2d 517], the Court of Appeal held that evaluation extends to all employer consideration of an employee's discharge of her job duties after appointment or employment and before dismissal. Section 54957 is not limited to the consideration of formal evaluations. "We conclude the phrase 'evaluation of performance' encompasses a review of an employee's job performance even if that review involves particular instances of job performance rather than a comprehensive review of such performance."

The court also concluded that evaluation may properly include such preliminary matters as the selection of evaluation criteria, the establishment of a fact-gathering mechanism, designation of particular areas of emphasis in the evaluation, and the setting of goals, since each might reflect the board's initial perception of the employee's performance since the last evaluation. All of these considerations must still relate to the employer's exercise of discretion with respect to the evaluation of a particular employee.

Finally, under evaluation of performance, a governing board may take action as to its final findings with respect to evaluation of a particular employee, and may meet with the employee to give him or her input regarding performance.

- e. Personal performance goals are an integral part of the confidential evaluation process and may be discussed in closed session. [Versaci v. Superior Court (2005) 127 Cal.App.4th 805, 822.]
  - f. Appointment includes the process of reviewing resumes, interviewing, discussing qualifications, and arriving at a decision prior to the actual appointment. [80 Ops.Atty.Gen. 308 (1997).]
  - g. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.
3. Consideration of charges brought against a public employee by another person or employee unless such employee requests a public hearing. [Government Code Section 54957(b)(2).]

- a. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee must be given written notice of his or her right to have the complaints or charges heard in open session. The notice must be delivered to the employee personally or by mail 24 hours before the time for holding the session. If notice is not given, any action against the employee based on the specific complaints or charges shall be null and void.
- b. In Furtado v. Sierra Community College District (1998) 68 Cal.App.4th 876 [80 Cal.Rptr.2d 589], the Court of Appeal made clear that when a district is considering performance evaluations in connection with a decision to nonreelect a probationary faculty member, it is not considering "specific complaints or charges" within the meaning of Section 54957. The court reasoned that the Legislature's use of the word "or" to separate the phrase "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee" from the phrase "to hear complaints or charges brought against an employee by another person or employee unless the employee requests a public session" indicated an intent that a public employee's right to a public hearing should apply only when a board is hearing "complaints or charges."
- c. In Fischer v. Los Angeles Unified School District (1999) 70 Cal.App.4th 87 [82 Cal.Rptr.2d 452], the court found that the mere consideration of reasons for nonreelection did not constitute the hearing of specific complaints or charges brought against an employee by another person or employee.
- d. In Bollinger v. San Diego Civil Service Commission (1999) 71 Cal.App.4th 568 [84 Cal.Rptr.2d 27], a case admittedly involving specific complaints or charges brought by fellow officers, the court found that the 24-hour notice requirement was not violated where the Commission met in closed session only to deliberate on whether to accept the findings and recommendation of a hearing officer. The consideration of the recommended decision did not constitute the hearing of specific complaints or charges. By analogy, this case supports the conclusion that a governing board need not provide the 24-hour notice when merely deliberating and acting upon the recommended decision of a hearing officer in a classified employee dismissal.
- e. In Morrison v. Housing Authority of the City of Los Angeles (2003) 107 Cal.App.4th 860 [132 Cal.Rptr.2d 453], the Court of Appeal held that where the governing body of a public entity, in a case involving employee discipline, rejects its hearing officer's

findings of fact and engages in its own fact-finding, it is conducting a "hearing" on the charges against the employee for purposes of Section 54957 and the employee must be given notice of the right to have the hearing conducted in open session.

- f. However, in Bell v. Vista Unified School District (2000) 82 Cal.App.4th 672 [98 Cal.Rptr.2d 263], the Court of Appeal concluded that the governing board's consideration of the findings of a CIF commissioner constituted the hearing of specific complaints or charges brought by another person or employee when the board's consideration of the CIF's findings led to the termination of a coaching assignment for an otherwise tenured teacher.
- g. "Although § 54957 allows public employees to demand that a governing body air complaints about the employee in public, it does not grant the employees the right to force the conflict behind closed doors." [Leventhal v. Vista Unified Sch. Dist. 973 F. Supp. 951, 958 (S.D. Cal., 1997); and Morrow v. Los Angeles Unified School Dist. (2007) 149 Cal.App.4th 1424, 1439.]
- h. The Attorney General has concluded that absent special circumstances, when members of a school district governing board discuss whether to employ a probationary certificated employee for a third consecutive school year, the board is not hearing specific complaints or charges, and the employee may not require that the discussion be held in public. [78 Ops.Atty.Gen. 218 (1995).]
- i. The term "employee" is defined to include an officer or independent contractor who functions as an officer or an employee.

4. Consideration of matters concerning national or public security.

B. Other Authority for Closed Sessions

- 1. A board may hold a closed session, based on the advice of counsel, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the district in the litigation. [Government Code Section 54956.9.]
  - a. Litigation is pending when any of the following circumstances exist:
    - 1) Proceedings before a court, administrative body, hearing officer, or arbitrator to which the district is a party, have been formally initiated.

- 2) A point has been reached where, in the opinion of the board on the advice of legal counsel, and based on existing facts and circumstances, there is a significant exposure to litigation.
  - 3) Deciding whether to litigate or whether closed session is proper based on existing facts and circumstances.
- b. The "significant exposure" to litigation determination must be made from the "existing facts or circumstances." "Existing facts or circumstances" consist of only one of the following:
- 1) Facts and circumstances that might result in litigation but which the district believes are not known to the potential plaintiff.
  - 2) Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the district and that are known to the plaintiff. These facts shall be publicly stated on the agenda or announced.
  - 3) Receipt of a tort claim or other written communication threatening litigation, which claim or communication shall be made available for public inspection.
  - 4) A statement made by a person in a public meeting threatening litigation on a specific matter within the agency's area of responsibility.
  - 5) A statement threatening litigation outside of a public meeting on a specific matter within the responsibility of the agency so long as the official or employee of the agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting and the record is made available for public inspection.
- c. The board must either state on the agenda or publicly announce the authority for the closed session and, when known, the title of the case.
- d. In Southern California Edison Co. v. Peevey (2003) 31 Cal.4th 781, 801 [3 Cal.Rptr. 703, 716], the Supreme Court interpreted corresponding provisions of the Bagley-Keene Act not to require a state body to announce its proposed decision relating to settlement of a case in public session--*identifying the litigation involved*--and accept public comment on the proposed settlement before voting

on it. In Peevey, the PUC had recessed to closed session pursuant to the counterpart to Government Code Section 54956.9(c), which does not require the identification of the case by name prior to holding the closed session, if to do so would jeopardize pending settlement negotiations.

Although Section 54956.9 does not expressly so provide, it has been construed, generally, also to permit a local legislative body to approve settlements in closed session. [See Southern California Edison Co. v. Peevey, supra., 31 Cal.4th at 798-799 [discussing 75 Ops.Cal.Atty.Gen. 14 (1992), which so opined]; Trancas Property Owners Assn. v. City of Malibu (2006) 138 Cal.App.4th 172, 185.]

As "emphasized" in the Attorney General's manual on the Brown Act, "the purpose of [section 54956.9] is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions." [Cal. Atty. Gen. Office, The Brown Act (2003), p. 40.]

Thus, Section 54956.9's implied allowance for adoption of settlements in closed session is subject to limits. "And whatever else it may permit, the exemption cannot be construed to empower a city council to take or agree to take, as part of a nonpublicly ratified litigation settlement, action that by substantive law may not be taken without a public hearing and an opportunity for the public to be heard. As a matter of legislative intention and policy, a statute that is part of a law enacted to assure public decision making, except in narrow circumstances, may not be read to authorize circumvention and indeed violation of other laws requiring that decisions be preceded by public hearings, simply because the means and object of the violation are settlement of a lawsuit. [Trancas Property Owners Assn., supra., 138 Cal.App.4th at 187.]

e. In County of Los Angeles v. Superior Court (2005) 130 Cal.App.4th 1099, the superior court had granted the county's motion to compel production of documents listed in a union's deposition subpoena directed to the district attorney, who had conducted an investigation into whether the board violated the Brown Act during two closed sessions.

1) The court of appeal held that the superior court erred when it granted the county's discovery motion. The documents sought by the union were not discoverable because closed session minutes were specifically exempt from disclosure under Section 54957.2. The closed sessions were properly convened under Section 54956.9 to discuss anticipated

litigation related to a federal agency's decision to terminate Medicare funding to a medical center under investigation. The minutes of the closed sessions were confidential and were not subject to discovery.

- 2) Under Section 6254.5(e) of the Public Records Act, the board did not waive any privilege by disclosing the minutes to the district attorney. The letters in the district attorney's investigation file were exempt from disclosure under Sections 6254(f) and 6254.5(e).

- f. A board member may not publicly disclose information that has been received and discussed in closed session concerning pending litigation unless the information is authorized by law to be disclosed. [80 Ops.Atty.Gen. 231 (1997).] (NB: Much of the reasoning of this opinion is equally applicable to the improper disclosure of other closed session discussions.) [See Government Code Section 54963. Kleitman v. Superior Court (1999) 74 Cal.App.4th 324, 334.] ("We agree with the Attorney General. Disclosure of closed session proceedings by the members of a legislative body necessarily destroys the closed session confidentiality which is inherent in the Brown Act.")
- g. In 86 Ops.Atty.Gen. 210 (2003), the Attorney General concluded that where a member of a city council or county board of supervisors is appointed to sit as that body's representative on the board of another local agency, the appointee may not disclose to his or her appointing authority or its counsel information received in a closed session of the board.
- h. However, Section 54956.96 was added to the Act to permit joint power agencies to adopt policies or bylaws, or include in their joint powers agreement, provisions that authorize a member of a legislative body of a member local agency to disclose information obtained in closed sessions of the JPA that has direct financial or liability implications for that local agency to legal counsel for the member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency, or to other members of the legislative body of the local agency present in a closed session of that member local agency. [Government Code Section 54956.96.]
- i. The general rule is that closed session access is permitted only to people who have "an official or essential role to play" in the closed meeting. [83 Ops.Atty.Gen. 221, 225 (2000); see also 82 Ops.Atty.Gen. 29, 33 (1999); 46 Ops.Atty.Gen. 34, 35 (1965).]

2. Consideration of student disciplinary action, unless a public hearing is requested in writing [see the specific provisions of Education Code Sections 35146 and 72122], and challenges to a student's records. [Education Code Sections 49070(c) and 76232(c).]
3. A board may hold closed session, pursuant to Government Code Section 54957.6, with its designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to represented and unrepresented employees, and for represented employees, any other matter within the scope of representation. [Government Code Sections 3549.1 and 54957.6; see also, San Diego Union v. City Council (1983) 146 Cal.App.3d 947 [196 Cal.Rptr. 45].]

The Attorney General has concluded that, since the county board is not the employer, it may not meet in closed session pursuant to the labor negotiations exception. [85 Ops.Atty.Gen. 77 (2002).]

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed session held pursuant to Section 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees.

4. Consideration of real property transactions. This exception permits a board to meet with its negotiator prior to purchase, sale, exchange, or lease of real property to grant authority to its negotiator regarding the price and terms of the transaction. Before discussing the transaction in closed session, the board must identify the real property at issue and the person with whom its negotiator may negotiate. [Government Code Section 54956.8. See, Shapiro v. San Diego City Council (2002) 96 Cal.App.4th 904.]
5. Nothing contained in the Brown Act be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases. [Government Code Section 54957.8.]
  - a. "Multijurisdictional law enforcement agency" means a joint powers entity formed pursuant Government Code Section 6500 that provides law enforcement services for the parties to the joint

powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft. [Government Code Section 54957.8(a).]

- b. The addition of this provision occurred after the passage of Proposition 59, and provides an example of the legislative findings now required to justify a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies. [See Statutes of 2006, Chapter 427, Section 2.]
- 6. Districts which are members of a joint powers agency formed for the purpose of insurance pooling may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability. [Government Code Section 54956.95.]
- 7. Consideration of honorary degrees or gifts from a donor who wants to remain anonymous. [Education Code Section 72122.]
- 8. Discussion by the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits of its response to that report. [Government Code Section 54956.75.]
- C. The right to consider the above matters in closed session includes the ability to take action in closed session. [75 Ops.Atty.Gen. 14 (1992).]
- D. The Act requires a brief, general description of each item of business to be transacted, including items to be discussed in closed session. What this means with respect to closed sessions is somewhat ambiguous. However, Section 54954.5 provides a "safe harbor" provision, such that substantial compliance with its suggested language will prevent a finding of a violation of the Act's closed session notice requirements. Examples of the suggested language include the following:
  - 1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
    - a. **Property:** (specify the street address, or if no street address, the parcel number or other unique reference to the property under negotiations.)
    - b. **Agency Negotiator:** (specify the name of the negotiators attending the closed session.) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

- c. **Negotiating parties:** (specify name of party - not agent.)
  - d. **Under negotiation:** (specify whether the instructions to the negotiator will concern price, terms of payment, or both.)
- 2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(*Subdivision (a) of Section 54956.9*)
  - a. **Name of case:** (specify by reference to claimant's name, names or parties, case or claim numbers.)  
  
or
  - b. **Case name unspecified:** (specify whether disclosure would jeopardize service of process or existing settlement negotiations.)
- 3. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
  - a. **Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:** (*specify the number of potential cases.*)  
  
(*In addition to the information noticed above, the district may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), of paragraph (3) of subdivision (b) of Section 54956.9.) This may mean stating the existing facts and circumstances giving rise to a significant exposure to litigation against the district.*)
  - b. **Initiation of litigation pursuant to subdivision (c) of Section 54956.9:** (*specify the number of potential cases.*)
- 4. LIABILITY CLAIMS [GOVERNMENT CODE SECTION 54956.95]
  - a. **Claimant:** (*specify name unless unspecified pursuant to Section 54961.*)
  - b. **Agency claimed against:** (*Specify name.*)
- 5. THREAT TO PUBLIC SERVICES OR FACILITIES  
  
**Consultation with:** (*specify name of law enforcement agency and title of officer.*)
- 6. PUBLIC EMPLOYEE APPOINTMENT  
  
**Title:** (*specify description of position to be filled.*)

7. PUBLIC EMPLOYMENT

**Title:** *(specify description of position to be filled.)*

8. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

**Title:** *(specify position title of employee being reviewed.)*

9. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

*No additional information is required to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.*

10. CONFERENCE WITH LABOR NEGOTIATORS

a. **Agency designated representatives:** (specify names of designated representatives attending the closed session.) (If circumstances necessitate the absence of a specified representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

b. **Employee organization:** (specify name of organization representing employee or employees in question.)

or

c. **Unrepresented employee:** (specify position title of unrepresented employee who is the subject of the negotiations.)

11. CONFERENCE INVOLVING JOINT POWERS AGENCY

a. **Discussion will concern:** *(specify closed session description used by the joint powers agency.)*

b. **Name of local agency representative on joint powers agency board:** *(specify name)*

12. AUDIT BY BUREAU OF STATE AUDITS

- E. Prior to holding a closed session, the board must disclose, in an open meeting, the items to be discussed in closed session. The announcement can either repeat all of the information already stated on the agenda, or it may simply refer to the items as they are listed on the agenda by number or letter. [Government Code Section 54957.7.]

Nothing in Section 54957.7 shall require or authorize a disclosure of information prohibited by state or federal law.

- F. After any closed session, the board must reconvene in open session prior to adjournment and make the disclosures required by Government Code Section 54957.1. The board must report any action taken in closed session and the vote or abstention of every member present thereon as follows:
1. Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported as follows:
    - a. If the board's approval renders the agreement final then it must report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held;
    - b. If final approval rests with the other party, the board shall disclose the fact of approval and the substance of the agreement upon inquiry by any person as soon as the other party approves the agreement.
  2. Approval given to legal counsel to defend, or seek or refrain from seeking appellate review or relief, or enter as amicus curiae in any form of litigation as a result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify the adverse party, and the substance of the litigation.
  3. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the particulars will be disclosed upon request once the litigation is formally commenced, unless to do so would jeopardize the agency's ability to complete service of process, or jeopardize the ability to conclude existing negotiations.
  4. Approval given to a settlement of pending litigation shall be reported after the settlement is final as specified below:
    - a. If the board accepts a settlement offer signed by the opposing party, the board shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.
    - b. If final approval rests with the other party or the court, the board shall disclose the fact of approval and the substance of the agreement upon inquiry by any person as soon as the settlement becomes final.
  5. Disposition of claims discussed in closed session pursuant to Section 54956.95 must be reported as soon as reached. The board must identify

the name of the claimant, the local agency claimed against, the substance of the claim, and the amount of any settlement.

6. Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee shall be reported at the public meeting at which the closed session is held. The report must identify the title of the position.

However, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

If none of these specified types of "actions" is "taken" during the closed session, there is no duty to report the body's deliberations or the members' votes or abstentions with respect thereto. When the legislative body of a local agency meets in closed session to consider the proposed dismissal of a public employee but ultimately rejects that proposal and retains the employee, the legislative body is not thereafter required to publicly report its decision and the vote or abstention of each member. 89 Ops.Atty.Gen. 110 (2006).

7. Approval of an agreement concluding labor negotiations pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other parties to the negotiation.

G. Making the required reports.

1. The reports may be made either orally or in writing. [Government Code Section 54957.1(b).]
2. The board must provide to any person who has submitted a written request to the board within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. [Government Code Section 54957.1(b).]

If the action taken results in one or more substantive amendments to the related documents requiring retyping during normal business hours, the documents need not be released until the retyping is completed, provided that the presiding officer of the legislative body or his designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

3. In addition, the documents referred to above shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete. [Government Code Section 54957.1(c).]
4. No action for injury to a reputation, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section. [Government Code Section 54957.1(e).]

## VI. ENFORCEMENT OF THE BROWN ACT

- A. Each member of a board who attends a meeting of the board where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor. [Government Code Section 54959.]
  1. Action taken is defined to include "collective commitment." Mere deliberation of some action will not trigger the criminal penalty. [Government Code Section 54952.6.]
  2. Good faith reliance on an opinion of counsel that a closed meeting is proper, normally would preclude a finding of "wrongful intent to deprive the public of information." [See, Attorney General Index letter 76-173 interpreting pre-amendment language.]
- B. Civil Remedies - actions in the form of injunction, mandamus or declaratory relief.
  1. Remedies are available to prevent future or further violations of the Brown Act; or to determine the applicability of the Act to actions or threatened future action of the board; or to determine the validity under the laws of the state or the United States of any rule or action of the board to penalize or otherwise discourage the expression of one or more of its members; or to compel the board to tape record its closed sessions. [Government Code Section 54960.]
    - a. A court may impose the requirement that closed sessions be taped if it finds that the board has violated the statutes authorizing closed sessions.
    - b. Tape recordings of closed sessions will be discoverable under very limited circumstances.
  2. Violations of the meeting notice and agenda provisions may result in having action taken adjudged null and void. Such actions may be

commenced by the district attorney or by any interested person. [Government Code Section 54960.1.]

- a. Prior to commencing such an action, the interested person or the district attorney must demand in writing that the board cure or correct the alleged violation.
  - b. The written demand shall be made within 90 days unless the action was taken in an open session but in violation of the agenda requirements, in which case the demand must be made within 30 days from the date the action was taken.
  - c. Suit must be brought within 15 days of the board's decision as to whether it will cure or correct or within 15 days after the expiration of the 30-day period to cure or correct demand, whichever is earlier. Even after a lawsuit is filed, the board may cure and correct and have the lawsuit dismissed.
  - d. Successful plaintiffs are entitled to their attorney's fees. Boards may recover attorney's fees only where the lawsuit is frivolous and without merit. [Government Code Section 54960.5.]
  - e. "Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Brown Act violations will not necessarily invalidate a decision. Appellants must show prejudice." [Cohan v. City of Thousand Oaks (1994) 30 Cal.App.4th 547, 555-556 (no prejudice shown from violation of Gov. Code, § 54954.2, subd. (a), which "requires that an agenda be posted at least 72 hours before a regular meeting and forbids action on any item not on that agenda").] [San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist. (2006) 139 Cal.App.4th 1356.]
3. To state a cause of action under Section 54960.1, the complaint must allege: (1) that a legislative body violated one or more enumerated Brown Act statutes; (2) that there was "action taken" by the local legislative body in connection with the violation; and (3) that before commencing the action plaintiff made a timely demand of the legislative body to cure or correct the action alleged to have been taken in violation of the enumerated statutes, and the legislative body did not correct the challenged action. [Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116-1117 [83 Cal.Rptr.2d 164, 168.]] (Mere conference with legal counsel and the giving of direction to staff did not constitute "an action taken" within the meaning of Section 54952.6. Further, the council's rescission of all action relating to the improperly-agendized litigation, even though there was no action taken, constituted the cure and correction of the alleged violation.)

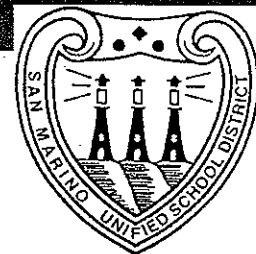
# SAN MARINO UNIFIED SCHOOL DISTRICT

*A Legacy of Excellence*

Strategic Plan

*Summary*

*2008*



## *Vision*

Delivering a world-class education with recognized excellence in academics, arts and athletics.

## *Mission*

The SMUSD delivers supportive environments and innovative opportunities for student learning, promotes individual student excellence, invites collaboration and discovery, and challenges students to take responsibility as members of a diverse, global community.

## *Initiatives*

- Communication as a vital tool
- Use of advanced technology
- Model District
- Financial stability
- State-of-the-art facilities
- Premiere employer
- World-class programs through depth and innovation
- Multi-lingual opportunities

**SMUSD** graduates are life long learners who will be:

- Astute critical thinkers
- Passionate, self-directed learners
- Effective communicators
- Collaborative, adaptable professionals
- Producers of excellence
- Innovative technology users
- Community and global contributors
- Personally responsible
- Compassionate
- Persons who embrace challenging opportunities through prudent risk-taking
- Persons of strong moral character and integrity

## *Cornerstones*

- Each individual has dignity and worth.
- Education is for all, and learning never stops.
- All students are unique, and all students can learn.
- High expectations and challenging curricula lead to greater achievement.
- Cultural literacy is important, and diversity enriches our lives.
- Technology must be embraced and used to enhance education.
- Community involvement is essential for successful schools.
- Outstanding, highly trained, and dedicated personnel are critical.
- Students are responsible and accountable for their own actions.
- Service to others is a moral imperative.
- A focus on continuous improvement is critical to success.



**ACADEMICS \* ARTS \* ATHLETICS**

# 2010-11 Proposed District Budget San Marino USD

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Presentation to the Board of Education  
June 22, 2010

Julie Boucher, Assistant Superintendent, Business Services

1

## Economic Outlook for California

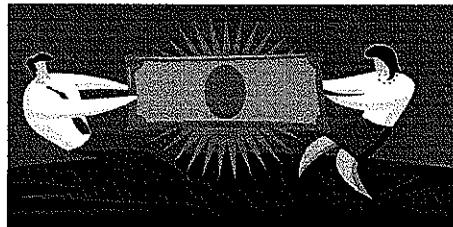
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- ☐ Unemployment to remain at double-digit (10%-12%) through 2012-13.
- ☐ Housing market remains weak however, the average sales price recently increased over last year.
- ☐ State revenues are above projection but not yet at a level that will alter its projected deficit of \$19B.
- ☐ State and local government budget deficits.
- ☐ State faces a "structural deficit" problem with increased demand for services, funding, without a mechanism to increase revenues.

2

## State Budget Information

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3

## State Budget Update

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- ❑ Budget Conference Committee meetings continuing
- ❑ Constitutional deadline to enact a State Budget is June 30th
- ❑ Governor's Proposed Budget includes cuts to welfare, health services, state government, and education with no new taxes
- ❑ Senate and Assembly alternative solutions/proposals reject most of the Governor's proposed spending reductions, adjust June/July payment deferral, jobs bill, suspend corporate tax credits, increase borrowing from oil severance tax, securitize beverage container recycling fund, extend temporary income tax increase, increase vehicle license fees and raise taxes on alcoholic beverages.

4

## State Budget Update (cont'd)

- ❑ The Legislative Analyst's Office states that all proposals leave the State with multi-billion dollar budget problems in the "out" years.
- ❑ Proposition 98 could be suspended – which may or may not be a bad idea – due to the formula adjustments made over time. Ideally, Education funding would not be tied to State revenues but rather based on need and investment in educating our future leaders (and taxpayers) of California.
- ❑ The State's fiscal problems are structural, lacking a mechanism for stable and increasing revenues to fund education, and governmental programs and services.
- ❑ CSBA experts predict that it will most likely be a long, drawn-out summer without a budget.
- ❑ It could be another placeholder budget until the new administration is in place in 2011.

5

## Potential Mid-Year Funding Cuts

- ❑ The Legislative Analyst's Office and the Governor's Department of Finance forecast a weak but improving economy.
- ❑ The risk of mid-year cuts remain
  - Revenues could fall short due to a "double dip" recession
  - Budgeted savings may not materialize
  - Caseloads could be higher than projected
  - Federal or other special fund revenues could fall short, or any combination of these factors.
- ❑ There are many reasons that the State Budget could fall out of balance and force mid-year cuts to K-12 Education funding.

6

## Other State Proposals to Watch

- ☐ Adjustment of age requirement for kindergarten.
- ☐ Restructuring the State categorical funding formula.
- ☐ State pension reform proposals.
- ☐ Suspension of AB 3632 – transferring the responsibility and cost of providing mental health care for special needs students to school districts without additional funding.

7

## District Budget Assumptions and Outlook



8

## 2010-11 Student Enrollment and ADA

- ❑ 2010-11 student enrollment 3,084 (as of June 18<sup>th</sup>).
- ❑ Current year 2009-10 student enrollment 3,230.
- ❑ It is anticipated that student enrollment will grow over the summer months.
- ❑ Student enrollment drives staffing needs, particularly at the elementary grade levels.
- ❑ 2010-11 Revenue Limit ADA 3,161 – based on prior year P2 ADA.



## 2010-11 State and Federal Revenues

- ❑ Projected revenue limit per student (net) = \$4,635
  - -0.39% Negative COLA
  - 18.355% Revenue Limit Deficit
  - 3.85% Base Funding Reduction
  - 5.47% Additional Funding Reduction
- ❑ 15% less in other state revenues
- ❑ No K-3 CSR funding
- ❑ Elimination of “Safe and Drug Free Schools” funding and no addt’l federal stimulus funding

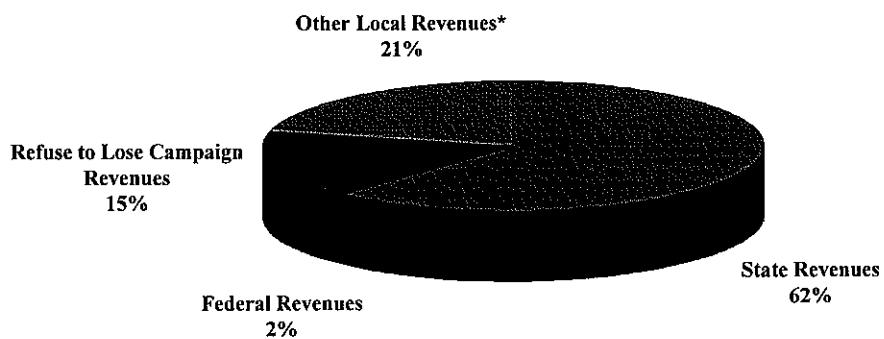
} = 28.065%  
Reduction

## Local Revenue Budget Assumptions

- ☐ Parcel Tax Revenues
- ☐ San Marino Schools Foundation Annual Contribution \$1m
- ☐ "Refuse to Lose Campaign" \$4.2m
- ☐ PTA/ASB Reimbursements

11

## 2010-11 Projected Revenues



\*Includes Parcel Taxes, San Marino Schools Foundation Annual Contribution, and PTA/ASB/SMSF Reimbursements.

12

## 2010-11 District Expenditure Assumptions

- ❑ Restoration of Tier 1 and Tier 2 Budget Reductions as a result of the 2010-11 Refuse to Lose Campaign \$4.2m.
- ❑ Budget savings due to “right-sizing”, reductions, and retirements.
- ❑ Required/mandated budget increases.
- ❑ Categorical flexibility continues through 2012.
  - ❑ 2010-11 School Improvement, Summer School, Instructional Materials for Realignment Program funding swept to offset reductions in State funding (part of Tier III categorical funding)



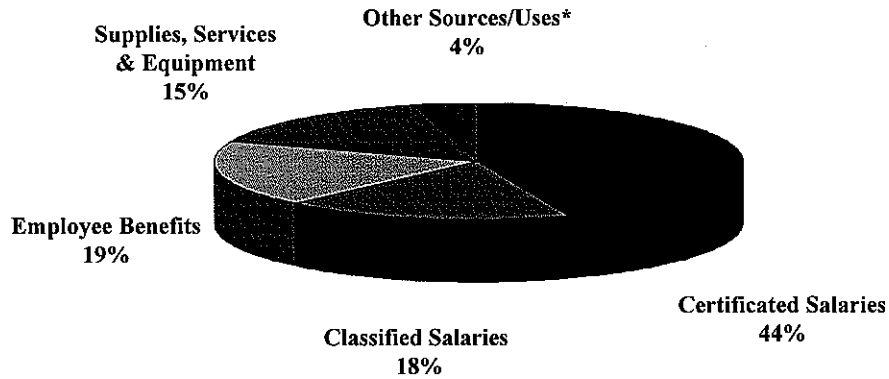
13

## Right-Sizing & Budget Savings

- ❑ Aligning actual student enrollment and student course requests with teaching positions, sections, and class sizes.
- ❑ Reducing staffing positions based on “right-sizing” alignment.
- ❑ Salary savings based on not rehiring positions and/or replacing critical positions with part-time employees.



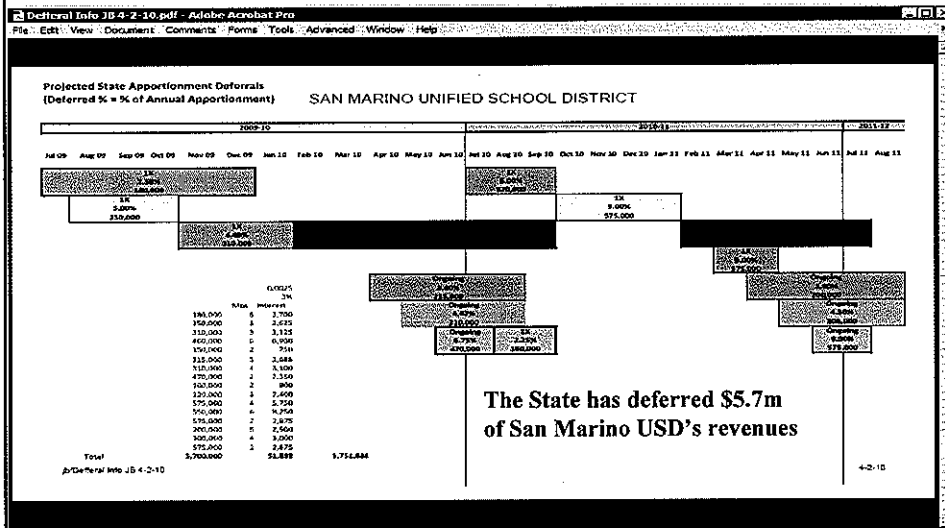
# 2010-11 Projected Expenditures



\*Includes other outgo, such as the transfer of funding for deferred maintenance.

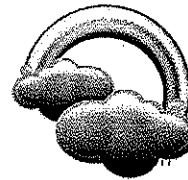
15

# Cash Flow Requirements



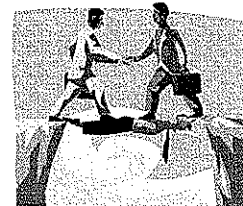
## Looking Ahead – Future Year Budget Projections 2011 - 2013

- ☐ No additional State or Federal funding – zero net COLA's.
- ☐ Additional payment deferrals, funding cuts or a combination of both.
- ☐ The Budget gap/deficit level/amount for the future is contingent upon:
  - Actual student enrollment and average daily attendance (ADA)
  - Containment of program expansion and cost increases
  - Required/mandated increases (e.g. PERS/STRS contr.)
  - Budget reductions/right-sizing/retirement savings
  - Continuation of local funding
    - ☐ (i.e. Refuse to Lose Campaign, parcel taxes, etc.)



## 2010-11 Budget- Next Steps

- ☐ June 30<sup>th</sup> – Adoption of the 2010-11 District Budget
- ☐ July 1<sup>st</sup> – Submittal of 2010-11 District Budget to the Los Angeles County Office of Education
- ☐ ????? – Adoption of State Budget
- ☐ ???? – Revisions of State Budget



STAY TUNED

## Questions & Comments

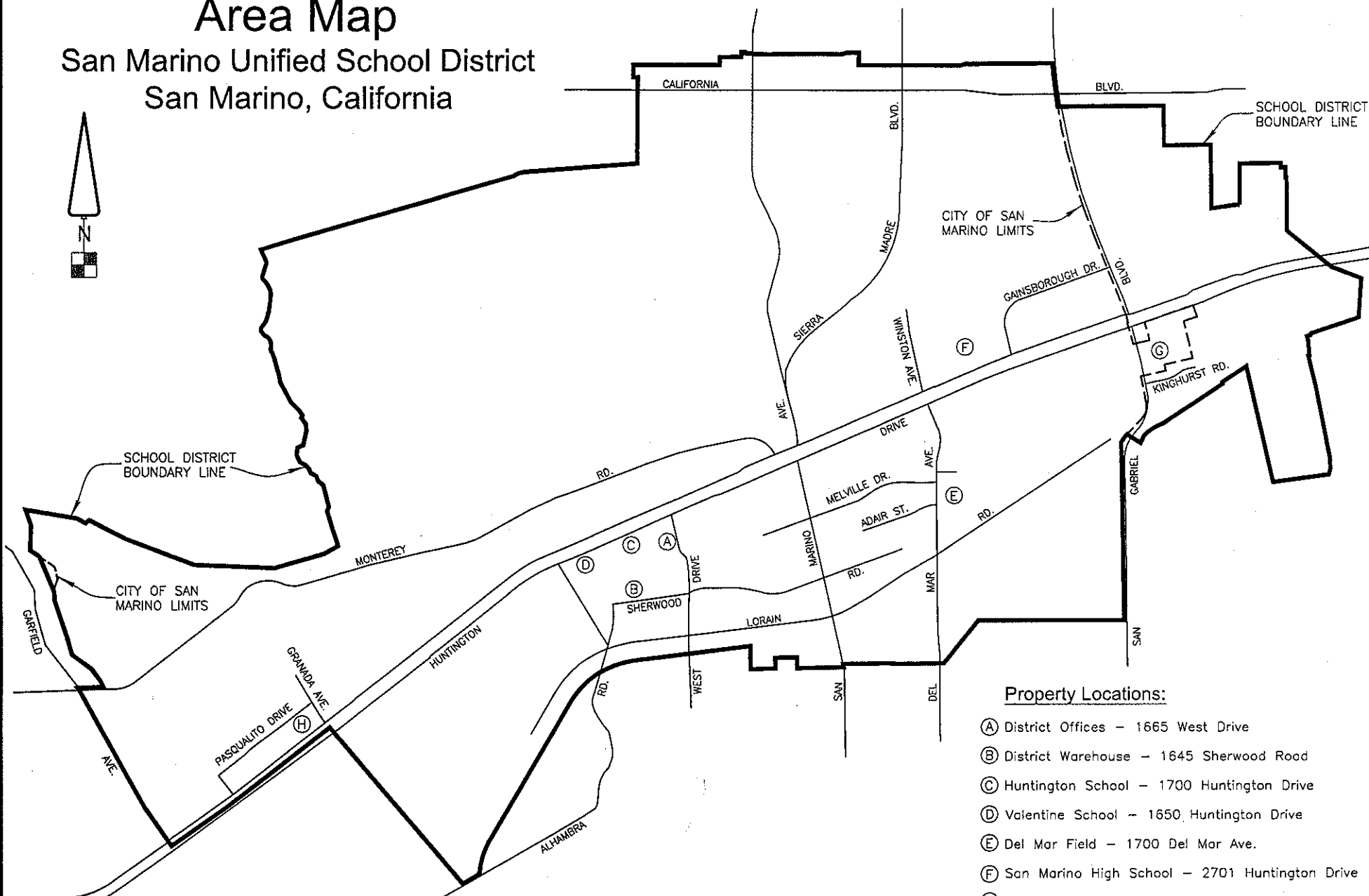
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**Our Children – Our Students - Our Future**

# Area Map

San Marino Unified School District  
San Marino, California



## Property Locations:

- (A) District Offices - 1665 West Drive
- (B) District Warehouse - 1645 Sherwood Road
- (C) Huntington School - 1700 Huntington Drive
- (D) Valentine School - 1650 Huntington Drive
- (E) Del Mar Field - 1700 Del Mar Ave.
- (F) San Marino High School - 2701 Huntington Drive
- (G) Carver School - 3100 Huntington Drive
- (H) Stoneman - 1560 Pasqualito Drive

Hahn & Associates

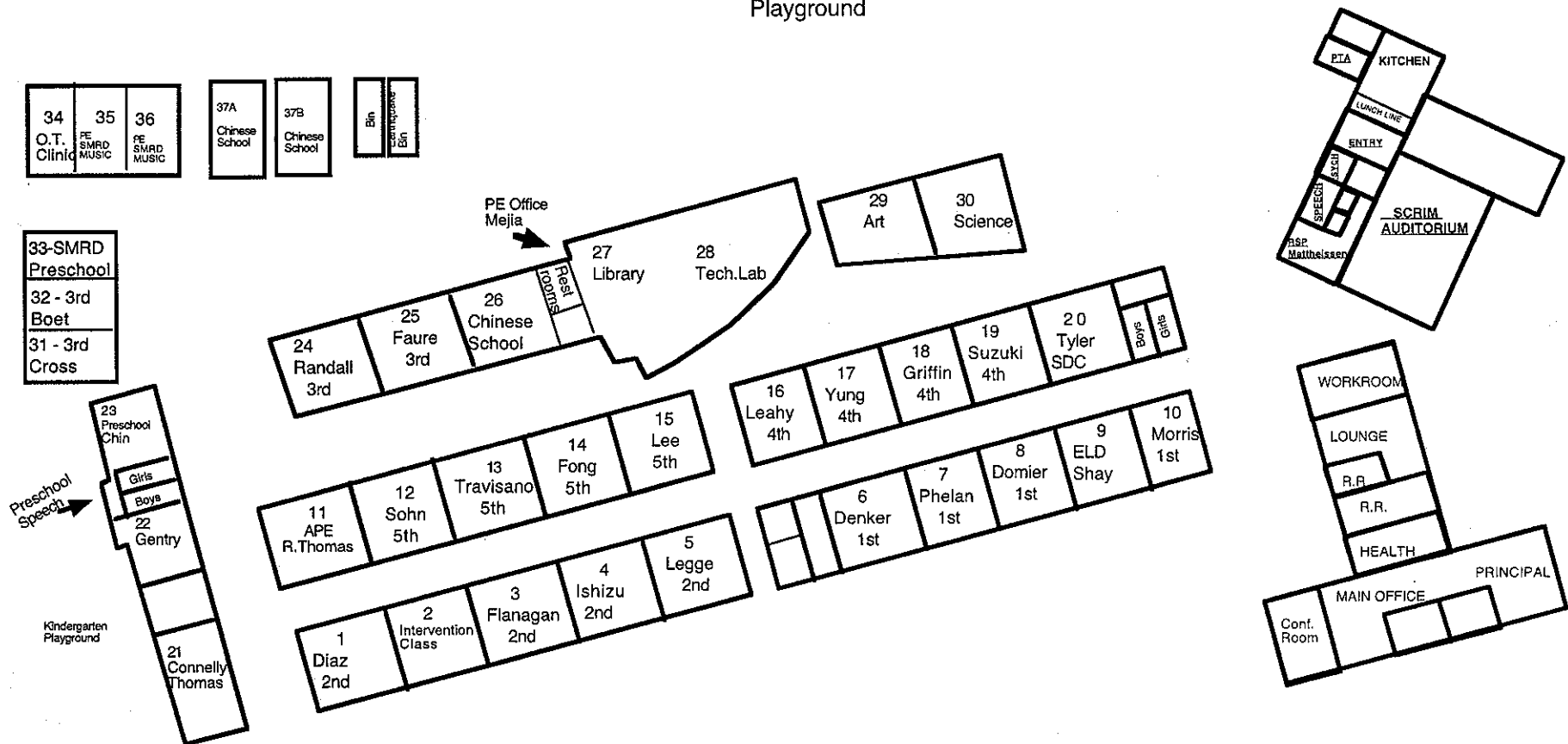
08-10-10

# K. L. Carver School 2010 - 2011

Athletic Field

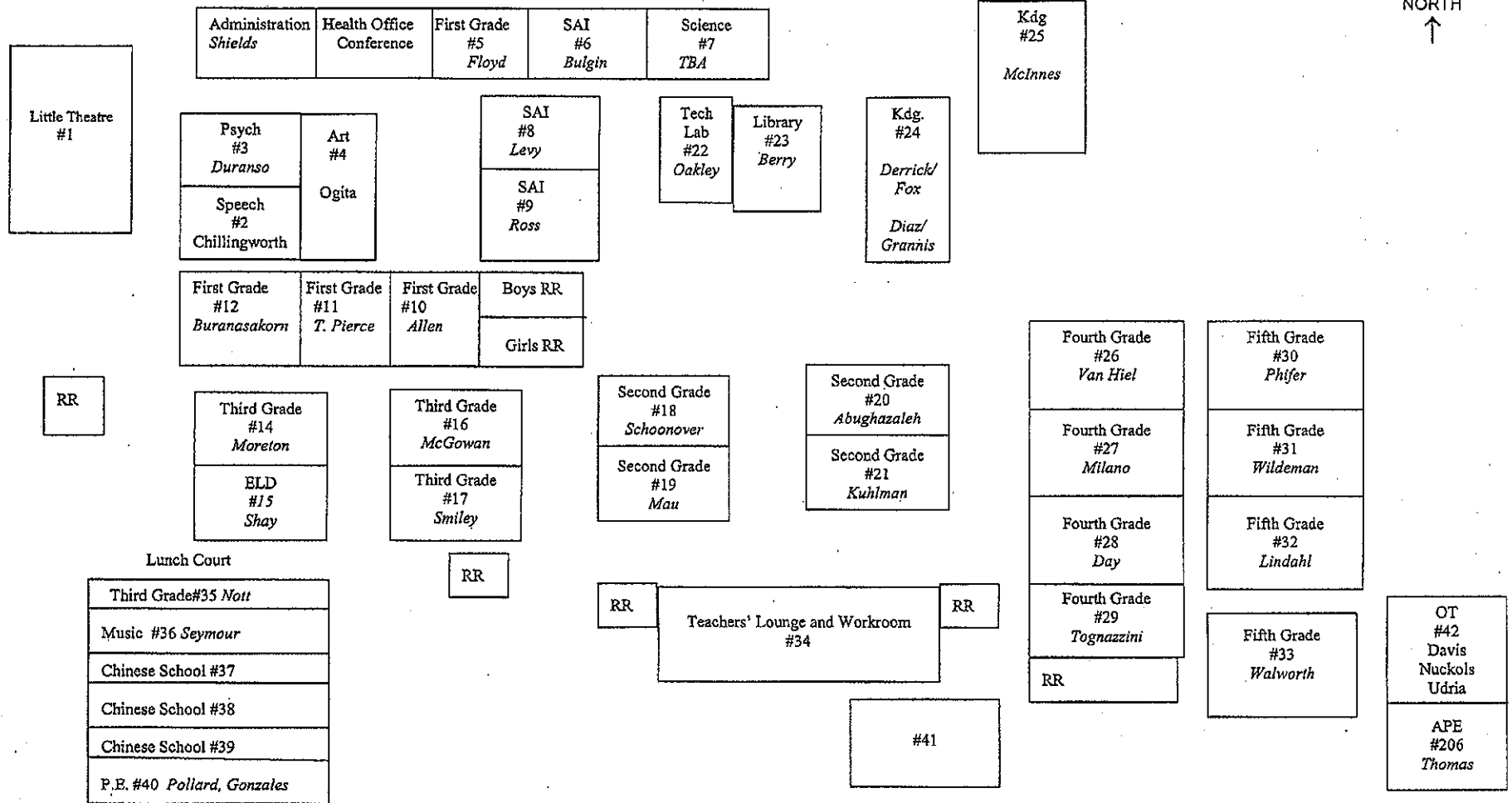
Tennis Courts

Playground



# Valentine Elementary School 2010-11 ~ revised 8/4/2010

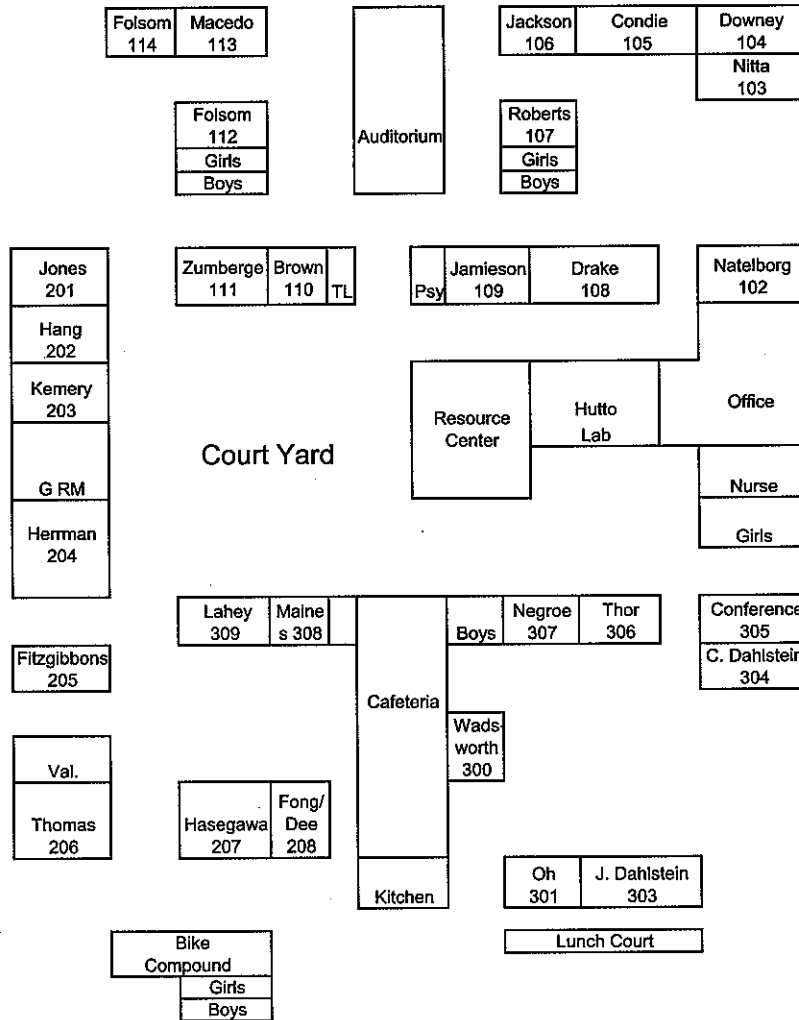
NORTH  
↑



# Henry E. Huntington Middle School

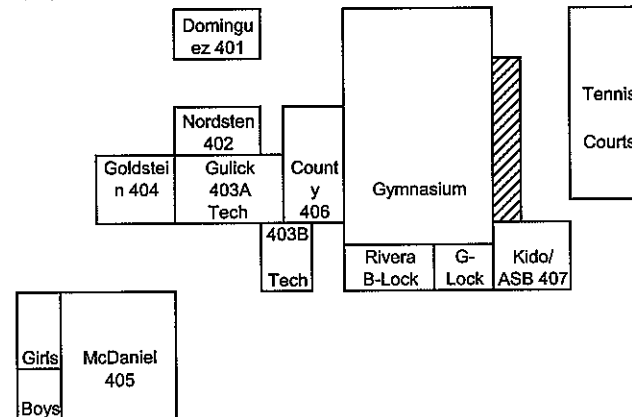
1700 Huntington Drive  
San Marino CA 91108  
(626) 299-7060

2010-11

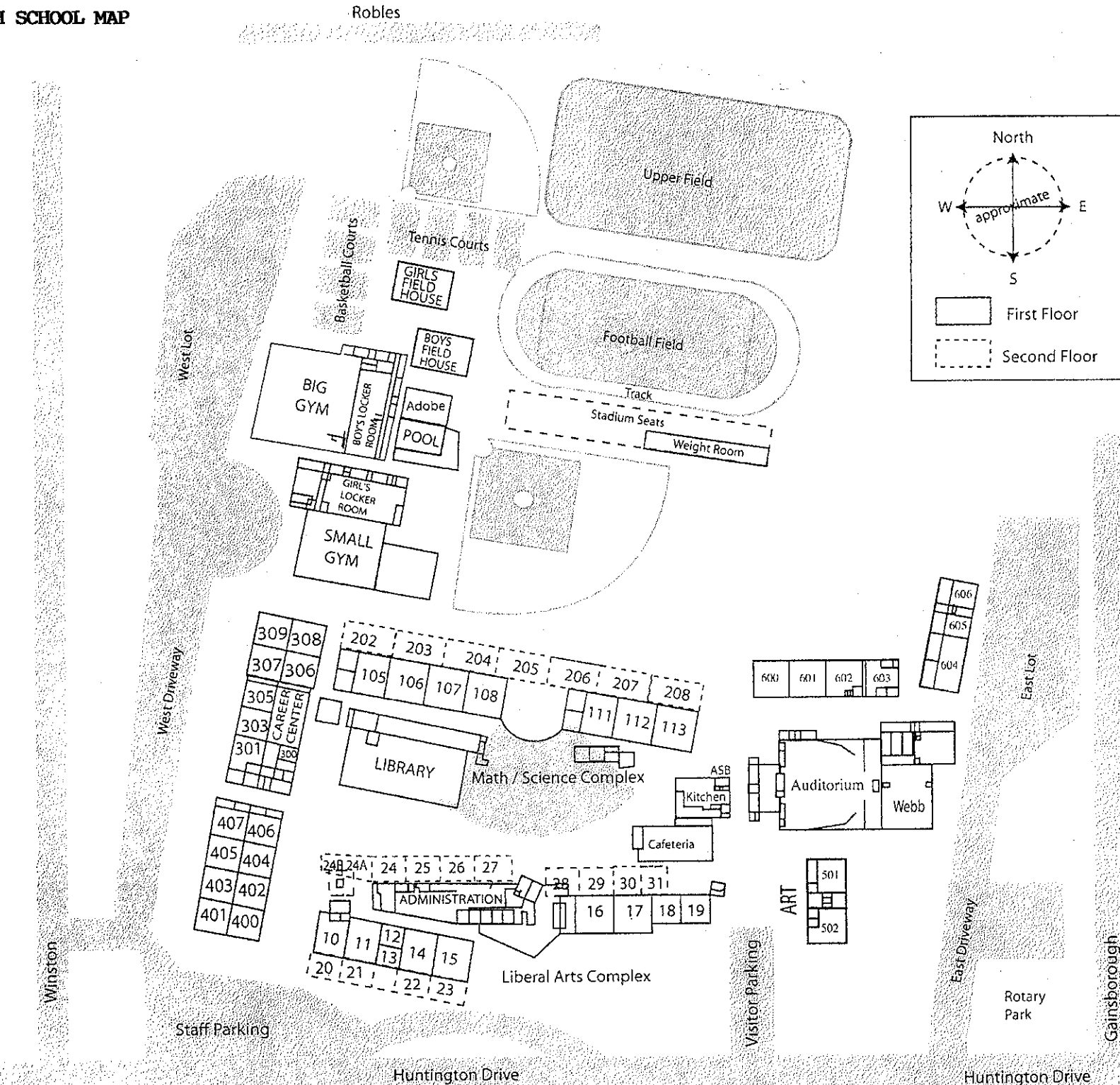


Parking Lot  
North ↑

Plaza



**SAN MARINO HIGH SCHOOL MAP**  
**2010-11**



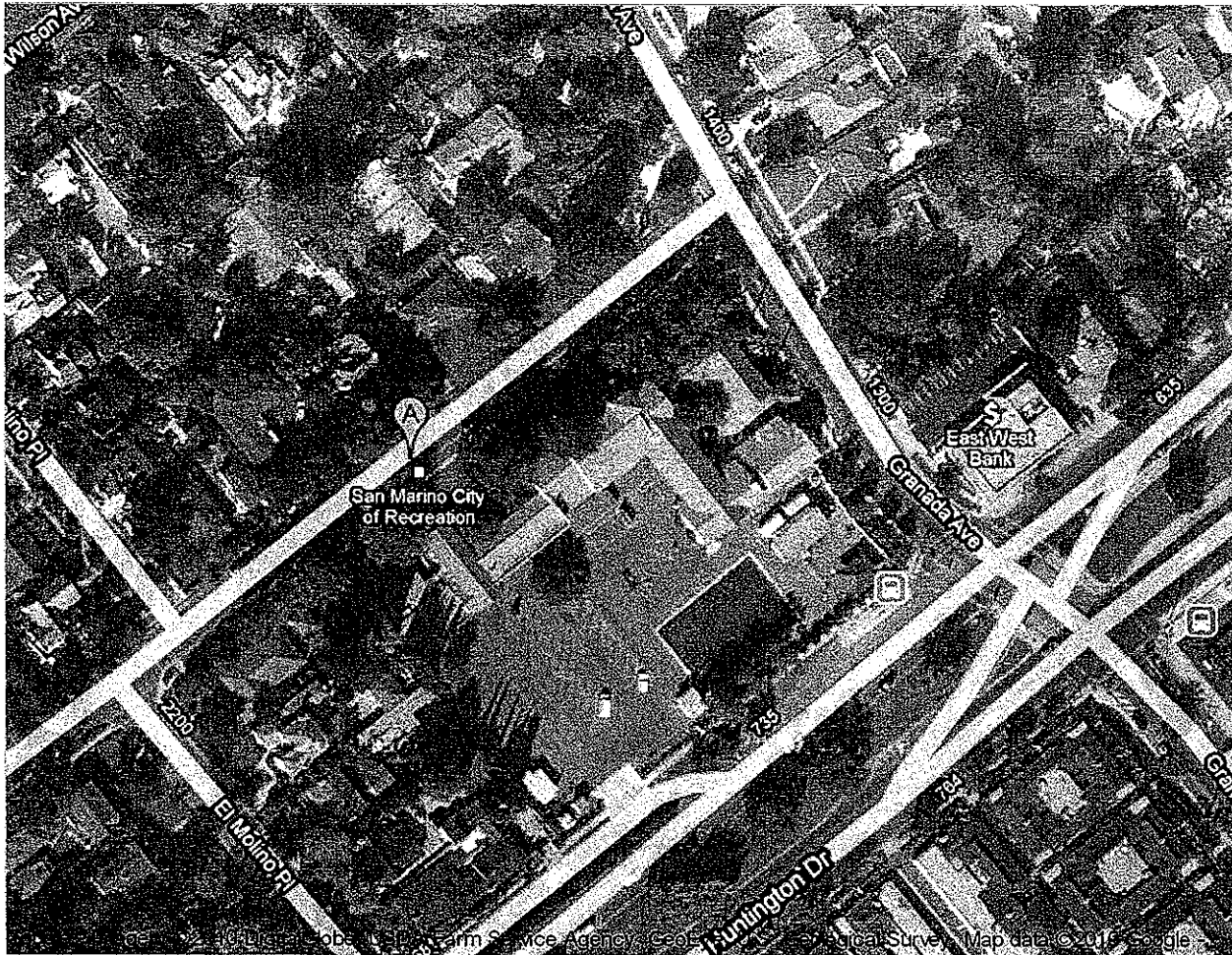


Google maps Address

To see all the details that are visible on the screen, use the "Print" link next to the map.

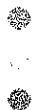
[Get Directions](#) [My Maps](#)

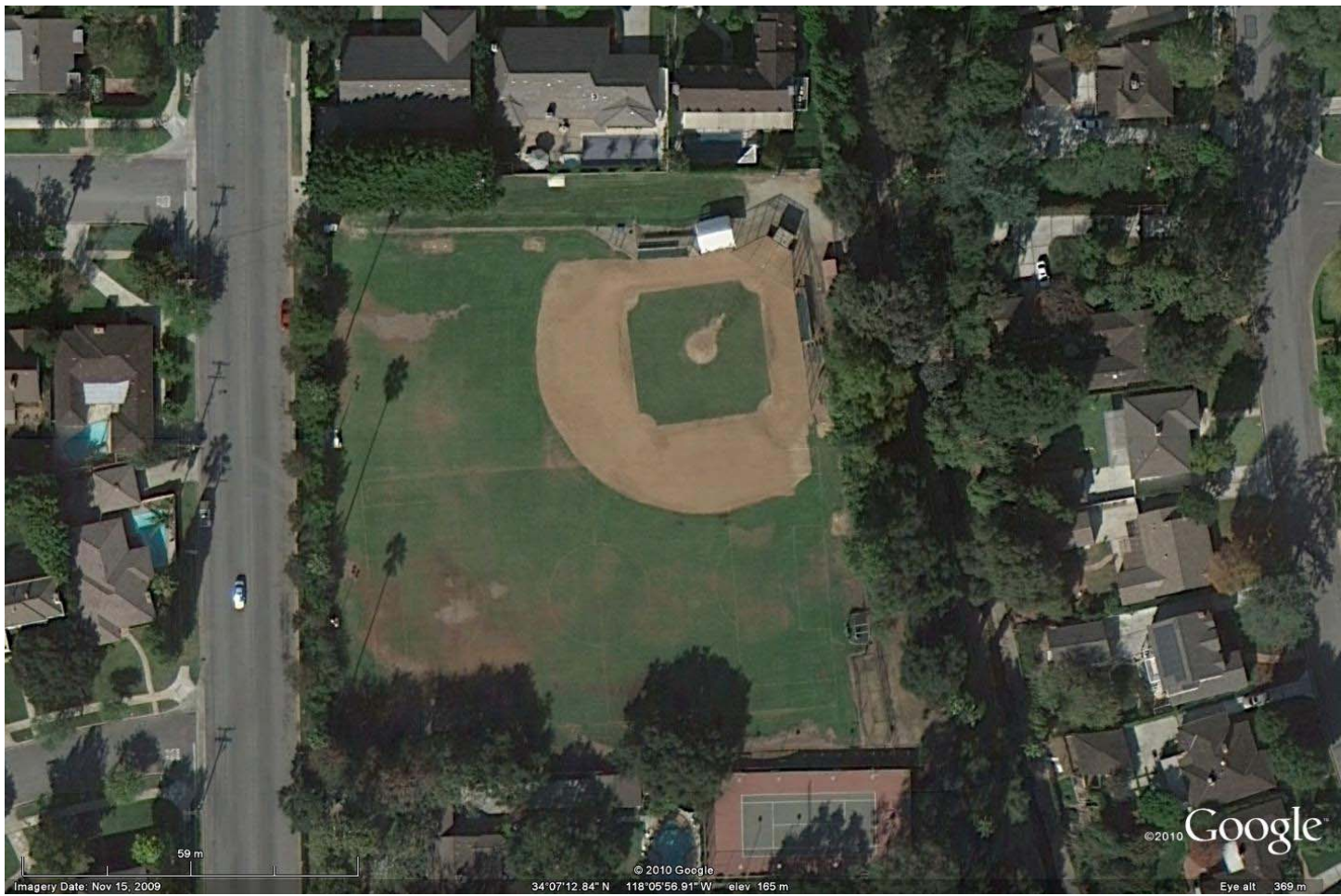
[Print](#) [Send](#) [Link](#)



Hide

- ☒ 1560 Pasqualito Dr, San Marino, Los Angeles, Ca
- ☐ 1560o pasquailito
- ☐ 156o pasquailito





59 m  
Imagery Date: Nov 15, 2009

© 2010 Google  
34°07'12.84" N 118°05'56.91" W elev 165 m

©2010 Google  
Eye alt 369 m

# Site Plan

1700 Del Mar Avenue

MELVILLE DR

DEL MAR AV

ADAIR ST

STORM DRAIN EASEMENT

DATE OF PLAN: AUGUST 17, 2010

SITE ADDRESS: 1700 DEL MAR AVE., SAN MARINO

APPROXIMATE AREA (GROSS): 123,618 SQ. FEET,  
2.84 ACRES

A.P.N.: 5332-025-900 AND 5332-023-901

Del Mar Field  
*San Marino*

STORM DRAIN EASEMENT

RUBIO WASH  
(L.A. COUNTY FLOOD CONTROL EASEMENT)

Prepared By:

Hahn and Associates, Inc.  
26074 Avenue Hall, Suite 2  
Valencia, CA 91355  
(661) 775-9500

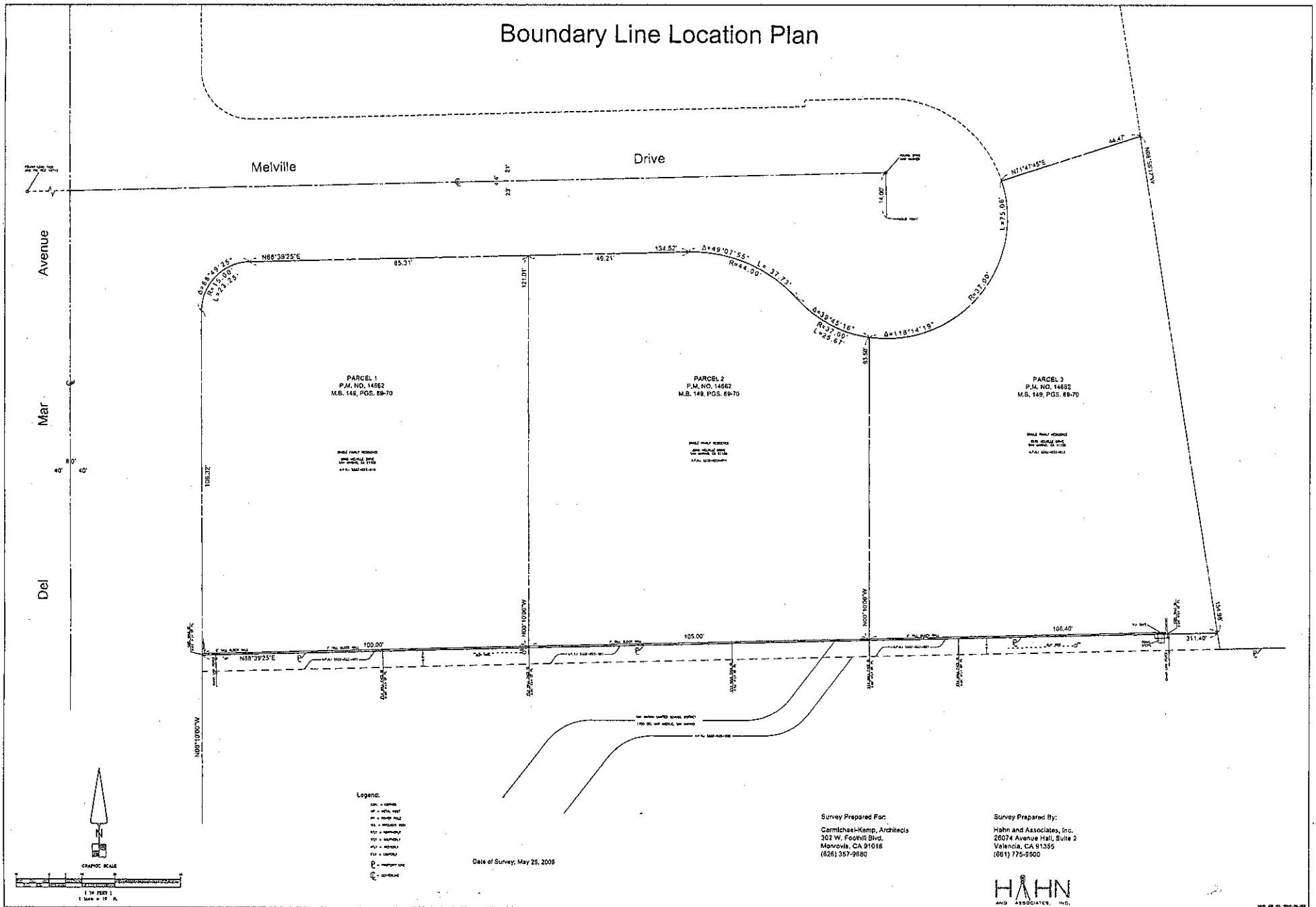
**H H N**  
AND ASSOCIATES, INC.

Prepared For:

San Marino Unified School District  
1665 West Drive  
San Marino, CA 91108  
(626) 299-7004

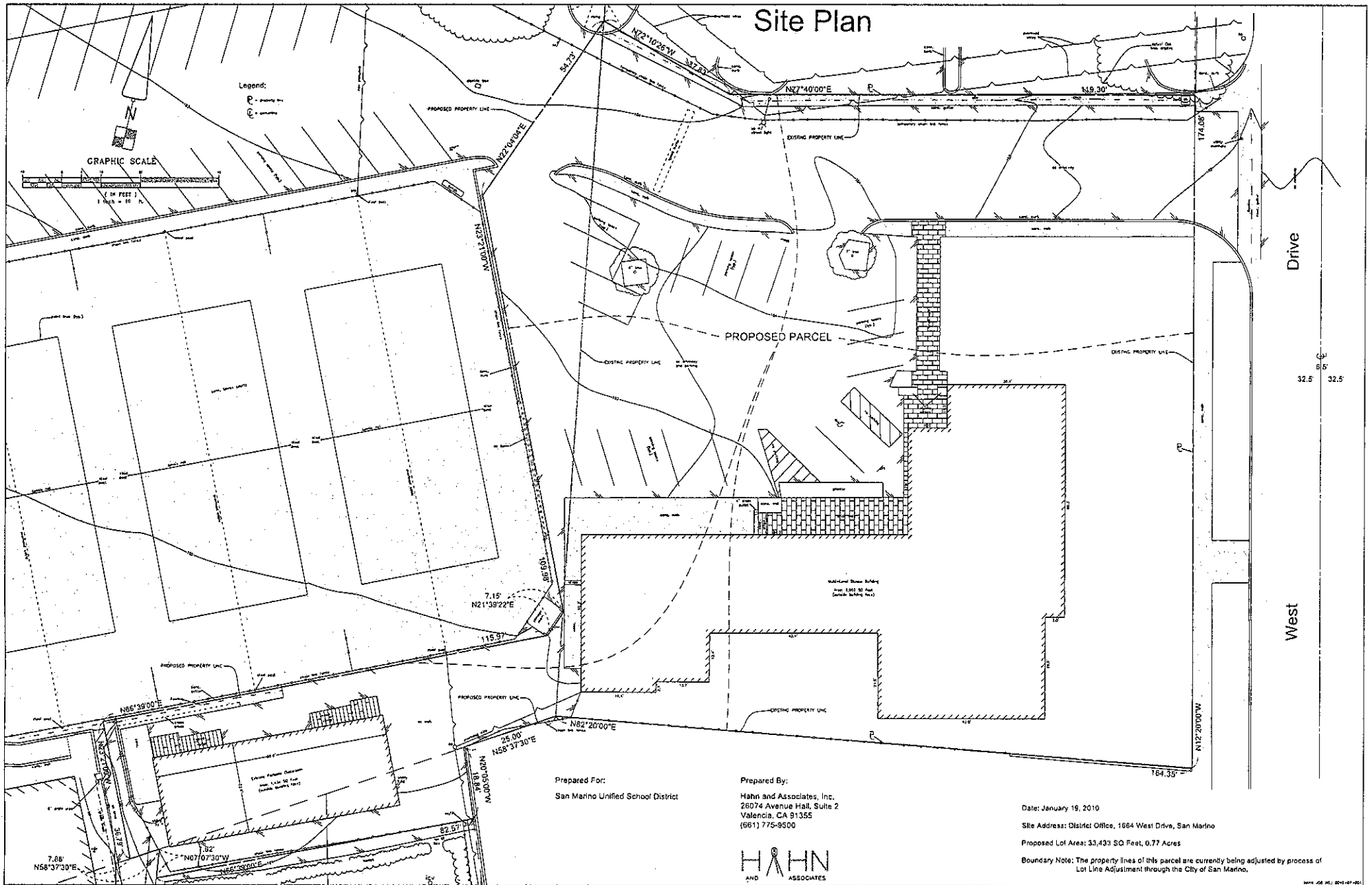
N

# Boundary Line Location Plan



Del Mar Field  
1700 Del Mar Ave.  
San Marino, CA 91108  
2.81 acres – 122,400 sq. ft. (2.51 acres net of County Flood Control easement)

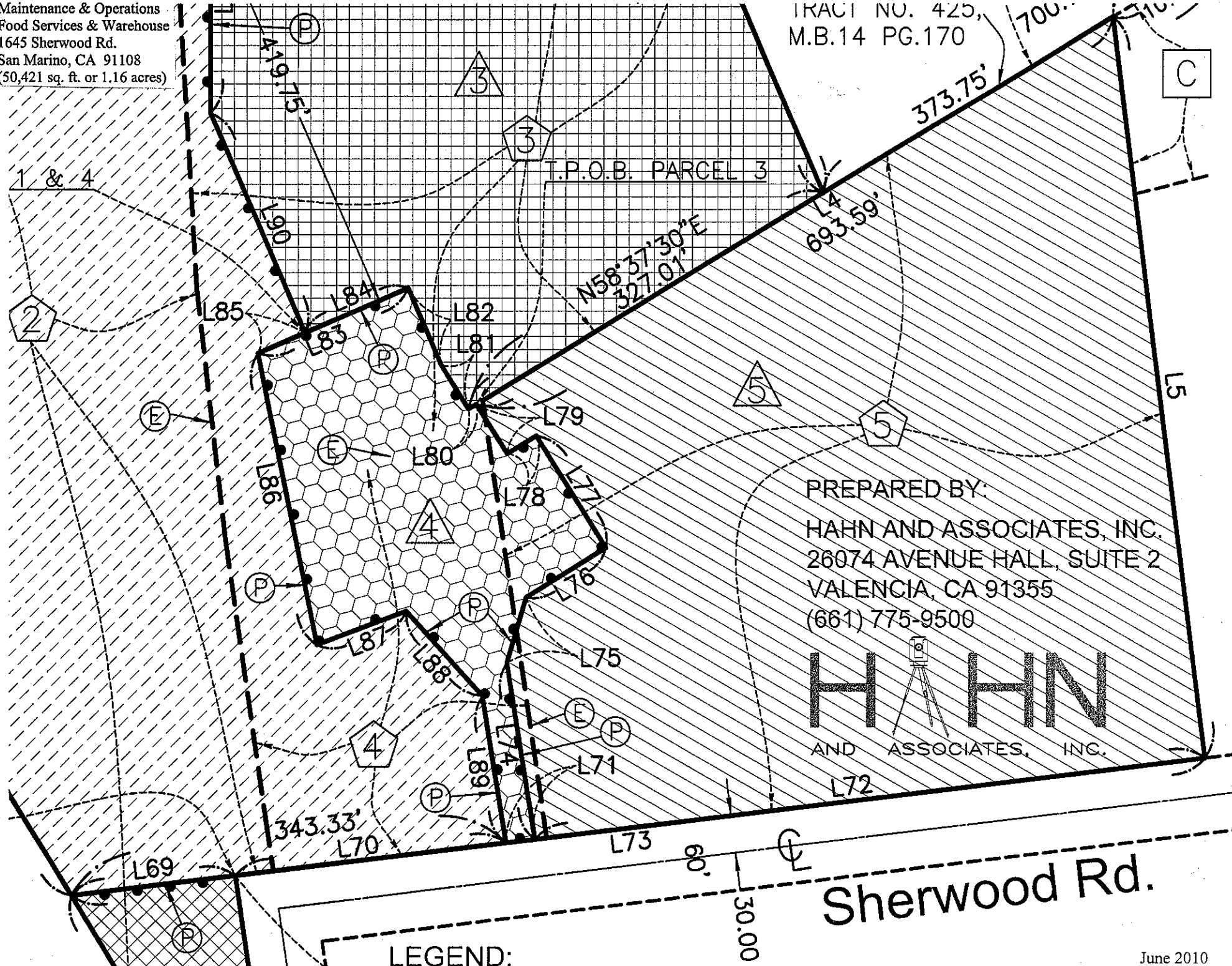
June 2008



District Office  
1665 West Drive  
San Marino, CA 91108  
33,433 sq. ft. land – 6,056 admin. offices

Maintenance & Operations  
Food Services & Warehouse  
1645 Sherwood Rd.  
San Marino, CA 91108  
(50,421 sq. ft. or 1.16 acres)

TRACT NO. 425,  
M.B.14 PG.170



# Site Plan

Sherwood Road.

Alhambra Road

N08°05'11"W

PROPOSED PARCEL

PROPOSED PROPERTY LINE

EXISTING PROPERTY LINE

Single Story Building  
Area = 3,000 SQ Feet  
(Excludes Building Foot)

N08°05'11"W

N08°07'26"E

N09°57'51"W

R = 735.30'

L = 172.00'

281.38'

GRAPHIC SCALE

1 inch = 10 feet

Legend:

- P = proposed line
- E = existing line

Prepared For:  
San Marino Unified School District

Prepared By:  
Hahn and Associates, Inc.  
26074 Avenue Hall, Suite 2  
Valencia, CA 91355  
(661) 775-9500

HAHN AND ASSOCIATES

Date: January 19, 2010

Site Address: Hill-Harblison House, Alhambra Road, San Marino

Proposed Lot Area: 18,074 SQ Feet, 0.41 Acres

Boundary Note: The property lines of this parcel are currently being adjusted by process of Lot Line Adjustment through the City of San Marino.

Hill-Harblson House  
1841 Alhambra Rd.  
San Marino, CA 91108  
18,074 sq. ft. land - 3,425 bldg. space

June 2010

**SAN MARINO UNIFIED SCHOOL DISTRICT**  
**Student Enrollment 15-Year Trend and Projections**

School Site	Oct-96	Oct-97	Oct-98	Oct-99	Oct-00	Oct-01	Oct-02	Oct-03	Oct-04	Oct-05	Oct-06	Oct-07	Oct-08	Oct-09	as of 8/10/2010	*** PROJECTIONS ***				
<b>Carver Elem</b>																				
K	71	59	67	59	87	93	59	81	82	92	94	76	75	93	81		81	81	81	81
1	90	86	80	85	74	121	111	79	101	101	119	114	84	97	109		97	97	97	97
	NA	15	21	18	15	34	18	20	20	19	27	20	8	22	16					
2	101	96	86	92	99	80	124	116	89	102	102	119	117	104	98		110	98	98	98
	NA	6	0	12	14	6	3	5	10	1	1	0	3	20	1					
3	128	111	117	92	100	118	93	121	116	92	103	100	119	123	111		105	117	105	105
	NA	10	21	6	8	19	13	-3	0	3	1	-2	0	6	7					
4	98	139	117	116	104	106	117	103	133	119	96	116	116	127	119		115	101	113	101
	NA	11	6	-1	12	6	-1	10	12	3	4	13	16	8	-4					
5	87	111	140	120	125	111	111	118	107	134	125	99	117	116	125		123	113	99	111
	NA	13	1	3	9	7	5	1	4	1	6	3	1	0	-2					
	575	602	607	564	589	629	615	618	628	640	639	624	628	660	643		631	607	593	593
<b>Valentine Elem</b>																				
K	80	77	81	73	79	101	93	121	100	76	85	75	105	77	75		75	75	75	75
1	113	97	87	91	81	85	124	110	126	107	97	97	103	117	98		96	96	96	96
	NA	17	10	10	8	6	23	17	5	7	21	12	28	12	21					
2	110	111	99	83	94	87	104	118	117	131	119	109	104	102	122		103	101	101	101
	NA	-2	2	-4	3	6	19	-6	7	5	12	12	7	-1	5					
3	127	115	119	99	97	101	90	118	119	122	143	131	116	106	102		122	103	101	101
	NA	5	8	0	14	7	3	14	1	5	12	12	7	2	0					
4	130	121	121	120	98	105	115	101	110	120	119	137	118	116	110		106	126	107	105
	NA	-6	6	1	-1	8	14	11	-8	1	-3	-6	-13	0	4					
5	120	119	117	126	126	107	108	117	105	111	125	123	142	116	119		113	109	129	110
	NA	-11	-4	5	6	9	3	2	4	1	5	4	5	-2	3					
	680	640	624	592	575	586	634	685	677	667	688	672	688	634	626		615	610	609	588
<b>Huntington Middle</b>																				
6	220	236	233	271	265	271	236	244	260	227	258	261	241	278	241		235	227	213	219
	NA	-29	-3	-14	-19	-20	-18	-25	-25	-15	-13	-11	-19	-19	-9					
7	242	230	245	248	284	286	284	246	251	267	235	266	267	248	279		242	236	228	214
	NA	10	9	15	13	21	13	10	7	7	8	8	6	7	1					
8	275	265	235	254	243	298	302	294	264	274	239	275	262	248	248		279	242	236	228
	NA	23	5	9	-5	14	16	10	18	13	7	4	9	-5	0					
	737	731	713	773	792	855	822	784	775	758	767	766	783	788	768		756	705	677	661
<b>San Marino High</b>																				
9	267	284	276	254	264	264	320	330	299	275	263	287	251	295	289		275	306	269	263
	NA	9	11	19	10	21	22	28	5	11	-1	13	12	20	27					
10	292	273	283	287	260	261	267	317	328	301	276	274	294	271	300		294	280	311	274
	NA	6	-1	11	6	-3	3	-3	-2	2	1	11	7	20	5					
11	253	298	289	287	284	267	264	270	320	320	292	280	275	300	270		299	293	279	310
	NA	6	16	4	-3	7	3	3	-8	-9	4	1	6	-1						
12	272	251	295	287	286	289	268	262	274	321	317	296	276	282	299		269	298	292	278
	NA	-2	-3	-2	-1	5	1	-2	4	1	-3	4	-4	7	-1					
	1,084	1,106	1,143	1,115	1,094	1,081	1,119	1,179	1,221	1,217	1,148	1,137	1,096	1,148	1,158		1,137	1,177	1,151	1,125
<b>GRAND TOTAL</b>	3,076	3,079	3,087	3,044	3,050	3,151	3,190	3,266	3,301	3,282	3,242	3,199	3,195	3,230	3,195		3,139	3,099	3,030	2,967
<b>DIFFERENCE</b>		3	8	-43	6	101	39	76	35	-19	-40	-43	-4	35	-35		-56	-40	-69	-63
<b>2015 vs. 2010</b>																				-277

**SAN MARINO UNIFIED SCHOOL DISTRICT**  
**Current Year Enrollment and 5-Year Projection**

	as of	*** PROJECTIONS ****				
School Site	8/10/2010	2011	2012	2013	2014	2015
<b>Carver Elem</b>						
K	81	81	81	81	81	81
1	109	97	97	97	97	97
2	16					
3	98	110	98	98	98	98
4	1					
5	111	105	117	105	105	105
6	7					
7	119	115	101	113	101	101
8	-4					
9	125	123	113	99	111	99
10	-2					
	643	631	607	593	593	581
<b>Valentine Elem</b>						
K	75	75	75	75	75	75
1	98	96	96	96	96	96
2	21					
3	122	103	101	101	101	101
4	5					
5	102	122	103	101	101	101
6	0					
7	110	106	126	107	105	105
8	4					
9	119	113	109	129	110	108
10	3					
	626	615	610	609	588	586
<b>Huntington Middle</b>						
6	241	235	227	213	219	212
7	-9					
8	279	242	236	228	214	220
9	1					
10	248	279	242	236	228	214
11	0					
	768	756	705	677	661	646
<b>San Marino High</b>						
9	289	275	306	269	263	255
10	27					
11	300	294	280	311	274	268
12	5					
13	270	299	293	279	310	273
14	-1					
15	299	269	298	292	278	309
16	-1					
	1,158	1,137	1,177	1,151	1,125	1,105
<b>GRAND TOTAL</b>	3,195	3,139	3,099	3,030	2,967	2,918
<b>DIFFERENCE</b>	-35	-56	-40	-69	-63	-49
<b>2015 vs. 2010</b>						-277

SAN MARINO UNIFIED SCHOOL DISTRICT						Carmichael-Kemp, Architects
GENERAL BUILDING DATA						T. Schaeffer
						8/10/2010
Description	DSA App. Date	Bldg.	Bldg. SF Area (footprint)	# of Classrooms	Min Student Capacity	Comments
<b>SAN MARINO H.S. (Site is 24.8 acres)</b>						
Cafeteria	10/21/1946	B	7,700	0	0	
Auditorium	10/7/1953	F	23,050	1	27	
Visual Arts	10/7/1953	G	3,633	2	54	
Art Gallery		G	550	0	0	
Classroom	10/7/1953	H	4,622	4	108	
Performing Arts	10/7/1953	I	9,750	3	81	
Multi-Purp. Athl. Rm	9/28/1998	J - East	3,077	0	0	
Small Gym	--	J - West	11,053	0	0	
Large Gym	--	K	15,400	0	0	
Classroom	--	L1	4,013	4	108	
Classroom	--	L2	6,230	3	81	
Classroom	--	M	8,485	8	216	
Field Houses		N	3,070	0	0	
Career Center	8/13/1999	P	6,237	0	0	
Classroom	9/28/1998	S	29,960	14	378	
Administration	8/13/1999	V	49,400	20	540	
Classroom	2/14/2002	W	1,520	0	0	
		<b>Totals</b>	<b>187,750</b>	<b>59</b>	<b>1,593</b>	
<b>HUNTINGTON M.S. ( Site is 14.5 acres)</b>						
Classroom	1/6/1953	A1	3,180	2	54	
Classroom	1/6/1953	A2	2,190	2	54	
Classroom	12/12/1934	B1	1,750	1	27	
Classroom	12/12/1934	B2	2,490	2	54	
Classroom	12/12/1934	C1	1,750	1	27	
Classroom	12/12/1934	C2	2,490	2	54	
Classroom	2/4/1966	D	3,930	2	54	
Auditorium	12/17/1934	E	6,199	0	0	
Classroom	4/30/1928	F1	4,405	4	108	
Classroom	4/30/1928	F2	2,400	2	54	
Lib/Admin	1/8/1969	G	7,950	1	27	
Classroom	1928	H1 & H2	4,940	4	108	
Cafeteria	6/13/1947	I1 & I2	11,131	3	81	
Classroom	2/8/1935	J	2,614	2	54	
Classroom	2/8/1935	L1	2,160	2	54	
Gymnasium	2/8/1935	L2	5,800	1	27	
Shop	10/14/1947	M	3,255	2	54	
Locker Room	4/18/1960	N	5,430	1	27	
Classroom	2/24/1999	P1	1,080	1	27	
Classroom	2/24/1999	P2	2,719	1	27	
Modular Classrooms		R	1,575	2	54	
Modular Classroom			960	1	27	
Modular Classroom			960	1	27	
		<b>Totals</b>	<b>81,358</b>	<b>40</b>	<b>1,080</b>	

SAN MARINO UNIFIED SCHOOL DISTRICT						Carmichael-Kemp, Architects
GENERAL BUILDING DATA						T. Schaeffer
						8/10/2010
Description	DSA App. Date	Bldg.	Bldg. SF Area (footprint)	# of Classrooms	Min Student Capacity	Comments
<b>CARVER E.S. (Site is 10 acres)</b>						
Admin	2/5/1953	A	3,480	0	0	
Multipurpose	2/5/1953	B	9,450	1	25	
Classroom	2/5/1953	C1	5,586	5	125	
Classroom	2/5/1953	C2	5,586	5	125	
Classroom	2/5/1953	D1	4,900	5	125	
Classroom	2/5/1953	D2	4,900	5	125	
Kindergarten	2/5/1953	E	5,295	3	75	
Library/Comp Lab/Classr.	8/11/1998	F	10,306	5	125	Does not count Computer Lab as CR
Modular Classrooms			2,880	3	75	72' x 40'
Modular Classrooms			2,880	3	75	72' x 40'
Modular Classroom			960	1	25	24' x 40'
Modular Classroom			960	1	25	24' x 40'
		<b>Totals</b>	<b>57,183</b>	<b>37</b>	<b>925</b>	
<b>STONEMAN SITE (Site is 2.82 acres - 122,840 s.f.)</b>						
Classroom	2/19/1960	CR 11, 12	1,936	2	50	
Modular Classroom		16	960	1	25	Owned by City of San Marino
Classroom	2/19/1960	CR 16	668	1	25	
Offices	2/19/1960	Offices	2,720	0	0	Includes Restrooms and Small Offices
Classroom	12/12/1957	CR 1 & 2	2,613	2	50	
Multipurpose Room	2/19/1960	MPR & CR 14	2,121	1	25	
Classroom	2/19/1960	CR 9 & 10	1,680	2	50	
Classroom	2/19/1960	CF 7 & 8	1,992	2	50	
Offices	2/19/1960	Offices	1,734	2	50	
Offices	2/19/1960	Offices	987	0	0	
Classroom	2/19/1960	CR 3	1,300	1	25	
Auditorium	1/24/1950	Auditorium	2,375	0	0	
		<b>Totals</b>	<b>21,086</b>	<b>14</b>	<b>350</b>	
<b>VALENTINE E.S. (Site is 7.8 acres)</b>						
Multipurpose Room	1/6/1953	A	2,774	0	0	
Classroom	2/4/1966	B	1,190	1	25	
Classroom	9/26/1938	C1	4,360	3	75	
Restroom	9/26/1938	C2	366	0	0	
Classroom	9/26/1938	C3	1,190	1	25	
Classroom	9/26/1938	C4	2,380	2	50	
	9/26/1938	C5	360	0	0	
Library/Computer Lab	6/16/1937	D1	2,183	0	0	
Kindergarten	6/16/1937	D2	2,248	2	50	
Kindergarten	1/6/1953	E	1,346	1	25	
Classroom	6/16/1937	F1	2,380	2	50	
Classroom	6/16/1937	F2	2,380	2	50	
Classroom	6/16/1937	F3	1,695	0	0	
Classroom		G	4,419	4	100	
Classroom	4/5/1950	H	2,919	3	75	
Classroom		J	9,647	6	150	
Modular Classrooms			5,760	6	150	
Modular Classroom			960	1	25	
		<b>Totals</b>	<b>48,557</b>	<b>34</b>	<b>850</b>	

## **Julie Boucher**

---

**From:** "Jenna Snow" <jenna@chattel.us>  
**To:** "Julie Boucher" <jboucher626@smusd.us>; "Henry Kaplan" <hkaplan@planningcenter.com>  
**Cc:** "Robert Chattel" <robert@chattel.us>; "Barbara Heyman" <bwu@planningcenter.com>  
**Sent:** Tuesday, June 08, 2010 1:49 PM  
**Attach:** Determination of Eligibility.pdf  
**Subject:** RE: Stoneman School

Please find attached the determination of eligibility for the Stoneman School from 1991. The attached letter confirms National Register eligibility of the entire school property by the State Historic Preservation Office, which was prepared in connection with an undertaking that initiated a Section 106 process. The Office of Historic Preservation cannot locate corresponding file with the Section 106 review, which appears to have been prepared by the Community Development Division of the County of Los Angeles. Even if the Section 106 review were available, we would recommend updating the assessment should you be contemplating additional work. We would be happy to provide you with a proposal to perform this work.

If you have any questions or would like to discuss this further, please do not hesitate to call. Thanks-

**Jenna Snow**  
Principal Associate  
Chattel Architecture, Planning & Preservation, Inc.  
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Sherman Oaks, CA 91423-3938  
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[jenna@chattel.us](mailto:jenna@chattel.us)

OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION  
P.O. BOX 942896  
SACRAMENTO 94296-0001  
(916) 445-8006  
FAX: (916) 322-6377



May 29, 1991

REPLY TO: HUD910506C

Sheila Patton  
Development Specialist  
Community Development Commission  
County of Los Angeles  
2525 Corporate Place, Suite 200  
MONTEREY PARK CA 91754

Dear Ms. Patton:

RE: REPAIRS TO STONEMAN SCHOOL, 1560 PASQUALITO DRIVE, SAN MARINO

Thank you for forwarding the above referenced undertaking to my office for review and comment pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations 36 CFR Part 800.

The undertaking involves repairs to the Stoneman School at 1560 Pasqualito Drive, San Marino. The area of potential effect has been defined as the school property bounded by Pasqualito Drive, Granada Avenue, Huntington Drive, and residences to the west.

I concur in your determination that the Stoneman School, constructed in 1930, is eligible for inclusion in the National Register of Historic Places under criterion C at the local level of significance. Because of its association with the development of the surrounding neighborhood, I believe that it is also eligible under criterion A. The boundaries of the historic property are the school property boundaries.

I look forward to reviewing the plans for the repair of the school. Should you have further comments or questions, please do not hesitate to contact Staff Historian Lucinda Woodward at (916) 322-9622.

Sincerely,

Kathryn Gualtieri  
State Historic Preservation Officer

AT05PH-01



# George Stoneman

George Stoneman, Jr.




---

**15th Governor of California**

**In office**  
1883–1887

---

<b>Born</b>	August 8, 1822 <u>Busti, New York</u>
<b>Died</b>	September 5, 1894 (aged 72) <u>Buffalo, New York</u>

**George Stoneman, Jr.** (August 8, 1822 – September 5, 1894) was a career United States Army officer, a Union cavalry general in the American Civil War, and the 15th Governor of California between 1883 and 1887.

## Early life

Stoneman was born on a family farm in Busti, New York, the first child of ten. His parents were George Stoneman, Sr., a lumberman and justice of the peace, and Catherine Rebecca Cheney. He studied at the Jamestown Academy and graduated from the United States Military Academy in 1846; his roommate at West Point was future Confederate General Thomas J. "Stonewall" Jackson. His first assignment was with the 1st U.S.

Dragoons, with which he served across the West and in California. He was the quartermaster of the Mormon Battalion, which marched from Fort Leavenworth, Kansas, to San Diego, California. He fought in the Indian Wars and was responsible for survey parties mapping the Sierra Nevada range for railroad lines. After promotion to captain of the 2nd U.S. Cavalry in March 1855, he served mainly in Texas until 1861.

## Civil War service



 Union Cavalry General George Stoneman

At the start of the Civil War Stoneman was in command of Fort Brown, Texas, and refused the order of Maj. Gen. David E. Twiggs to surrender to the newly established Confederate authorities there, escaping to the north with most of his command. Returning east, he served as a major of the 1st U.S. Cavalry and then adjutant to Maj. Gen. George B. McClellan in western Virginia. As the cavalry was being organized in the Army of the Potomac, he commanded the Cavalry Reserve and then the Cavalry Division, with the title Chief of Cavalry. He was promoted to brigadier general on August 13, 1861. He did not relate well to McClellan, who did not understand the proper use of cavalry in warfare, relegating it to assignment in small units to infantry brigades. This organization fared poorly in the Peninsula Campaign and the Seven Days Battles of 1862, where the centralized Confederate cavalry under Maj. Gen. J.E.B. Stuart seriously outperformed their Union counterparts.

On November 22, 1861, Stoneman married Mary Oliver Hardisty of Baltimore. They eventually had four children.

After the Peninsula, Stoneman was an infantry commander, commanding a division in the II Corps and the III Corps. At the Battle of Fredericksburg, Stoneman commanded the III Corps. He was promoted to major general of volunteers on November 29, 1862. However, following Fredericksburg, a new commanding general took over the Army of the Potomac: Maj. Gen. Joseph Hooker. Hooker had a better understanding of the

strategic value of a centralized Cavalry Corps and he named Stoneman to lead it. The centralized corps could undertake long raids into enemy territory, destroying supplies, and gathering intelligence about the enemy forces. They were not subject to the commanders of small infantry units.



Union General George Stoneman & staff, 1863.

The plan for the Battle of Chancellorsville was strategically daring. Hooker assigned Stoneman a key role in which his Cavalry Corps would raid deeply into Robert E. Lee's rear areas and destroy vital railroad lines and supplies, distracting Lee from Hooker's main assaults. However, Stoneman was a disappointment in this strategic role. The Cavalry Corps got off to a good start in May 1863, but quickly bogged down after crossing the Rapidan River. During the entire battle, Stoneman accomplished little and Hooker considered him one of the principal reasons for the Union defeat at Chancellorsville.<sup>[1]</sup> Hooker needed to deflect criticism from himself and relieved Stoneman from his cavalry command, sending him back to Washington, D.C., for medical treatment (chronic hemorrhoids, exacerbated by cavalry service),<sup>[2]</sup> where in July he became a Chief of the U.S. Cavalry Bureau, a desk job. A large cavalry supply and training depot on the Potomac River was named Camp Stoneman in his honor.

In early 1864, Stoneman was impatient with garrison duty in Washington and requested another field command from his old friend Maj. Gen. John Schofield, who was in command of the Department of the Ohio. Although originally slated for an infantry corps, Stoneman assumed command of the Cavalry Corps of what would be known as the Army of the Ohio. As the army fought in the Atlanta Campaign under Maj. Gen. William T. Sherman, Stoneman and his aide, Myles Keogh, were captured by Confederate soldiers outside Macon, Georgia, becoming the highest ranking Union prisoner of war. He was a prisoner for three months.

Stoneman was exchanged relatively quickly based on the personal request of Sherman to the Confederates and he returned to duty. In December 1864, he led a raid from East Tennessee into southwestern Virginia. He led raids into Virginia and North Carolina in 1865, took Salem and other towns, destroyed Moratock Iron Furnace (a Confederate foundry) and at Salisbury freed about 1,400 prisoners. In recognition of his service, he was brevetted major general in the regular army. His command nearly captured Confederate president Jefferson Davis during his flight from Richmond, Virginia. In June 1865, he was appointed commander of the Department of Tennessee and administered occupied Memphis. The Memphis riots broke out among the still rebellious citizens who

were angry at the presence of black Federal soldiers in the military government. Stoneman was criticized for inaction and was investigated by a congressional committee, although he was exonerated.

## Postbellum politics

In 1866, Stoneman became opposed to the radical policies of Reconstruction and joined the Democratic Party. As he administered the military government in Petersburg, Virginia, he established a reputation of applying more moderate policies than some of the other military governors in Reconstruction, which eased some of the reconciliation pain for Virginians. He mustered out of volunteer service, in September 1866, and reverted to his regular army rank of lieutenant colonel. He took command of the Department of Arizona, First Military District, headquartered at Drum Barracks. He was a controversial commander in that role because of his dealings with Indian uprisings and he was relieved of his command in May 1871.

## California



Official portrait of Governor George Stoneman

Stoneman moved to California, the place of which he had dreamed since his service as a young officer before the war. He and his wife settled in the San Gabriel Valley on a 400-acre (1.6 km<sup>2</sup>) estate called *Los Robles*, which is now a state historical landmark.<sup>[3]</sup> He was a state railroad commissioner from 1876 to 1878. In 1882, he was elected governor of California as a Democrat and served a single four-year term. He was not renominated by his party for a second term. After his house was destroyed by fire, an event rumored to be the work of his political enemies, Stoneman was broken financially and in poor health. He returned to New York State for medical treatment. He died following a stroke in Buffalo, New York, and is buried in the Bentley Cemetery in Lakewood, New York.

## In memoriam

Stoneman has been memorialized by songwriter Robbie Robertson of The Band, whose 1969 rock and roll song, "The Night They Drove Old Dixie Down", referred to one of Stoneman's 1865 raids:

*Virgil Caine is the name, and I served on the Danville train,  
Til Stoneman's cavalry came and tore up the tracks again...*

Stoneman is not mentioned in several Joan Baez recordings of the song. Her interpretation substituted "so much" for "Stoneman's," because that's how it sounds in The Band's version.

Stoneman Avenue in Alhambra, California, was named in his honor. Camp Stoneman, near Pittsburg, California, was the place from where many soldiers shipped out to the Pacific Theater in World War II and the Korean War, and is remembered by Stoneman Elementary School.<sup>[4]</sup> Stoneman Elementary School in San Marino, California, is built on Stoneman's Los Robles Ranch Property. Stoneman Bridge, in Yosemite Valley, is named in his honor.



# Stoneman Site Task Force

Review of December 2008 Findings  
San Marino School Board Meeting – April 27, 2010

# Stoneman Task Force Background

## ▶ **Spring 2008**

- ▶ Strategic Finance Committee reviews Stoneman Situation
- ▶ Committee recommends that the lease with the City be a triple net lease to avoid additional repair costs.

## ▶ **October 2008**

- ▶ Stoneman Task Force formed to make a recommendation as to potential alternatives for the Stoneman Site
- ▶ Task Force recommendation made December 9, 2008 (Attached)
- ▶ Recommendation was essentially...
  1. Retain property and negotiate a more favorable lease with the City or other philanthropic /educational organization (>\$500,000 per year) (however cost to modernize would be well over \$7.5 Million)
  2. Sell or Exchange the property to the City or other philanthropic / educational organization (> \$7 Million)
  3. Sell or Exchange the property to a residential developer (>\$7 Million)

## ▶ **April 2010**

- ▶ Review prior recommendations and in particular the advantages of an exchange versus an outright sale.

# Stoneman – Sale v. Exchange

- ▶ Outright of sale of the property would not allow the district to utilize the funds for operations
  - ▶ Proceeds from the sale of the property must be used for capital expenditures
- ▶ If the District has a party interested in buying Stoneman, then an Exchange of Stoneman property potentially achieves at least two important goals:
  - ▶ Keeps District Invested in Real Estate at a Higher Return – District can exchange Stoneman Property for income producing property at a much higher return than received from the City today.
  - ▶ Generates Increased Funds for Operations– Income producing property will generate substantially greater funds for District operations.
- ▶ Other Considerations
  - ▶ The District should consider a sale (exchange) process with a professional broker to generate multiple alternatives – this maximizes the potential value to the School District.

# **Appendix A**

## **Stoneman Task Force Recommendation December 9, 2008**

# Stoneman Site Task Force

Recommendation to San Marino Unified School District  
December 9, 2008

# School Board Charter

The Board of Education desires to make decisions regarding the future of this site, which would provide maximum financial benefit to the District as well as maximum use opportunities.

**Scope of Work:** Evaluate and make a recommendation regarding the optimal use of Stoneman's space/site with the key objective being sustainable income. Work will include feasibility and timing expectations of any projected funds.

# Task Force Participants

## Community Members

- ▶ Kevin McDonnell – Co Chair
- ▶ Greg Forgatch – Co Chair
- ▶ Mustapha Baha
- ▶ Ann Brazil
- ▶ Frank Bryant
- ▶ Darbin Chan
- ▶ Isaac Hung
- ▶ Dave Lipps
- ▶ Steve Silk
- ▶ John Semcken

## District and Board Participants

- ▶ Chris Norgaard
- ▶ Joseph Chang
- ▶ Gary Woods
- ▶ Julie Boucher

# Working Assumptions

- ▶ The District has no plans to use Stoneman as a comprehensive school site
- ▶ The District does not have capital funds to invest in Stoneman to bring it up to modern standards for school or other uses.
- ▶ Any foreseeable increases in student enrollment could be absorbed by the current active school sites
- ▶ The District currently spends at least \$300,000 on deferred maintenance and capital projects each year

# Legal Considerations

- ▶ **The Education Code prescribes very specific procedures for disposition, lease, exchange and joint use of property by a School District.**
- ▶ **Property sold or “leased” by the District needs to follow surplus property procedures**
  - ▶ Requires formation of 7-11 advisory committee to make formal recommendation to the Board of Education
- ▶ **Disposition of property may trigger Naylor Act**
  - ▶ Recreational site must be offered to other governmental agencies (City, county, etc) at a discount.
  - ▶ Whether the Stoneman sites would be considered a recreational site falling under the Naylor act is an open issue and not within the scope of the Task Force’s analysis
- ▶ **Use of Proceeds**
  - ▶ Lease or Sale proceeds could not be used as operating funds and must be deposited into the District’s Capital Account and/or Deferred Maintenance Budget
- ▶ **Exchange of property potentially avoids surplus property procedures**
  - ▶ However, rental income from new property would have to go into capital account

# Other Considerations

## From the School District's Perspective.....

### ▶ **Below Market Return on \$7 Million Asset**

- ▶ Currently the School District nets approximately \$120,000 per year from the Stoneman Site.
- ▶ The net income from Stoneman represents less than a 2% return
- ▶ Expected return on real estate assets is 7% to 8% or \$500,000 to \$550,000 NOI (Net Operating Income) per year.
- ▶ The District receives 3% on invested funds (\$210,000 on \$7 Million invested)

### ▶ **Substantial Deferred Maintenance Over Hang**

- ▶ Facility assessment completed by the District's architectural firm (Carmichael-Kemp Architects) in December 2007 estimated cost to modernize (structural, electrical, ADA, life/safety) Stoneman was over \$7.5 Million. If it were to be demolished and rebuilt, the costs would exceed \$15 Million.

### ▶ **Repair Cost Exposure**

- ▶ The District's ability to continue leasing the Stoneman Site is dependent upon no major structural issues which require repair.
- ▶ If repairs are required, the District may have to make a capital investment and/or discontinue leasing the facility.

# Other Considerations

## From the Community's Perspective.....

- ▶ **Programs provided by the City of San Marino on the Site provide an important service to the community**
  - ▶ Pre School
  - ▶ Before and After School Day Care (which benefits the current student population)
  - ▶ Recreation Department
  - ▶ Work Programs
- ▶ **Stoneman Site is an asset that should be retained for Community Use**
  - ▶ The Stoneman Site at approximately 3 acres is a valuable piece of real estate
  - ▶ Options to keep the site for community use should be maximized

# Stoneman Site Stakeholders & Interests

<div> <div>Interests →</div> <div>↓</div> <div>Stakeholders</div> </div>	Upgrade Stoneman Facility to Modern Standards	Keep Land for Future Use	Alternative Educational Use of Stoneman	Preserving Stoneman as "Historical" Site	Conversion of Stoneman for Alternative Recreational Use	Maintaining Current Stoneman Programs	Avoidance of Investments in Stoneman Site	Maintaining Character of Neighborhood	Maximizing Current SMUSD Operating Funds	Maximizing Current SMUSD Capital Funds	Quality of Educational Programs Future	Quality of Educational Programs Today
San Marino Unified School District					X		X		X	X	X	X
Children Attending San Marino Schools					X		X		X	X		X
Parents of Children Attending San Marino Schools					X	X	X		X	X		X
Teachers within the San Marino Unified School District			X		X		X		X	X	X	X
Residents of the City of San Marino		X	X	X	X	X		X	X		X	X
Residents located near the Stoneman Site		X	X	X	X			X	X		X	X
Children Attending San Marino Schools in the Future		X			X					X	X	
Children Attending Pre School or After School Program at the Stoneman Site			X	X	X	X						
Parents of Children Attending Pre School or After School Program at Stoneman Site	X				X	X		X				
San Marino Recreation Department	X		X		X	X						
The City of San Marino		X			X	X		X	X		X	X

# Stoneman Decision Rests on Perspective and Needs of District

Reasons to Keep	Reasons to Sell	Reasons to Exchange
<ol style="list-style-type: none"> <li>1. Continuation of Current Programs at Site</li> <li>2. Hold for future sale at a higher price.</li> <li>3. Alternate User May be Able to Increase Income and benefit the community</li> <li>4. Student Population Increase</li> <li>5. Offer new educational programs (ROP, Transition, etc.)</li> <li>6. Sentimental / Historical Attachment</li> </ol>	<ol style="list-style-type: none"> <li>1. Generate \$7M of Cash for capital funds and/or income from investments.</li> <li>2. Expense &amp; Capital Avoidance</li> <li>3. New Owner Can Better Utilize the Property <ul style="list-style-type: none"> <li>• City</li> <li>• Commercial Development</li> <li>• Residential Development</li> <li>• Other Non-Profits</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Easier Process</li> <li>2. Remain "invested" in real estate with higher return</li> <li>3. Acquire property via exchange</li> </ol>

# Key Decision-making Criteria

Sustainable Income	Annual funds received by the School District. These funds will be "capital funds" meaning they can be used for capital projects and deferred maintenance.
Capital Funds	Funds in School District's capital account which can be used for capital projects or deferred maintenance.
Cost Avoidance	Avoidance of investment in Stoneman or other owned properties.
Long Term Asset	A real estate asset that can be sold at a later date.
Community Acceptability	How acceptable will each alternative be to the San Marino Community at large.
Feasibility	How feasible is the alternative given the time frame and anticipated financial benefit.
Time Frame	How long will this alternative take to implement.
Community Use	Will this alternative benefit the San Marino Community at large.

# Group Assessment

Option		Alternatives	Use	Sustainable Income	Capital Funds	Cost Avoidance	Long Term Asset	Community Acceptability	Feasibility	Time Frame	Community Use
Keep	1	Current Lease with City	Current Use	Low	\$0	No	Yes	High	High	Now	Medium
	2	Expanded Lease to City	Expanded Community Use	Low	\$0	Yes	Yes	High	High	Short	High
	3	Land Lease to Developer	Commerical or Senior Living	Medium	\$0	Yes	Yes	Medium	Low	Long	None
	4	New/Add Tenant	Education, Regional Center or Other	Low	\$0	Yes	Yes	High	Medium M=7; H=1	Medium	Medium
Sell for Cash	1	City	Current or potentially expanded use	Low Interest Income	\$6M to \$8M	Yes	No	High H=6, M=1, L=1	Low/Med H=0, M=3, L=5	Medium	High
	2	Residential Developer	10 New Homes	Low Interest Income	\$6M to \$8M	Yes	No	High/Med H=3, M=2, L=3	High/Med H=4, M=2, L=2	Medium L=2, M=6	None
	3	Educational or Philanthropic Entity	Educational, Regional Center or Philanthropic	Low Interest Income	\$6M to \$8M	Yes	No	High H=6, M=1, L=1	Low/Med H=2, M=1, L=5	Long	High H=6, M=1, L=1
	4	Senior Housing Developer	Senior Housing Complex	Low Interest Income	\$6M to \$8M	Yes	No	Med/Low M=4, L=4	Low H=8	Long	None
Exchange for Property	1	Within San Marino	Same Uses as Sell for Cash	Low / Med H=0, M=3, L=5	\$0	No	Yes	Same Rating as Sell	Low	Med /Long M=4 L=4	Same as Rating for Sell
	2	Outside San Marino		Med / High H=4, M=2, L=2	\$0	No	Yes		High H=6, M=2	Short / Med S=6 M=2	
	3	Adjacent to District Property		Low	\$0	No	Yes		Low	Long	

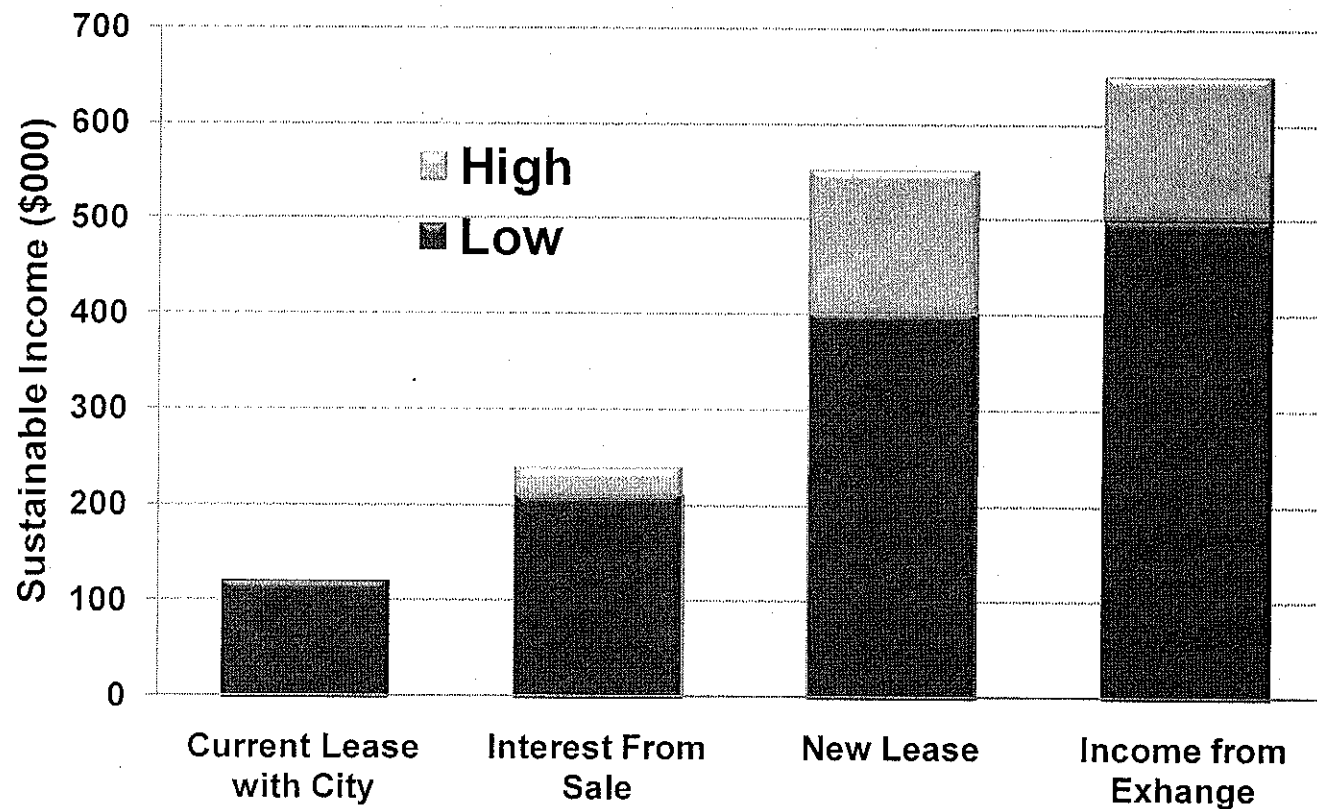
High 500K+  
Med \$250K - \$500K  
Low <\$250K

Short <1YR  
Med 1YR to 3YR  
Long Over 3 YR

# Summary of Group Assessment

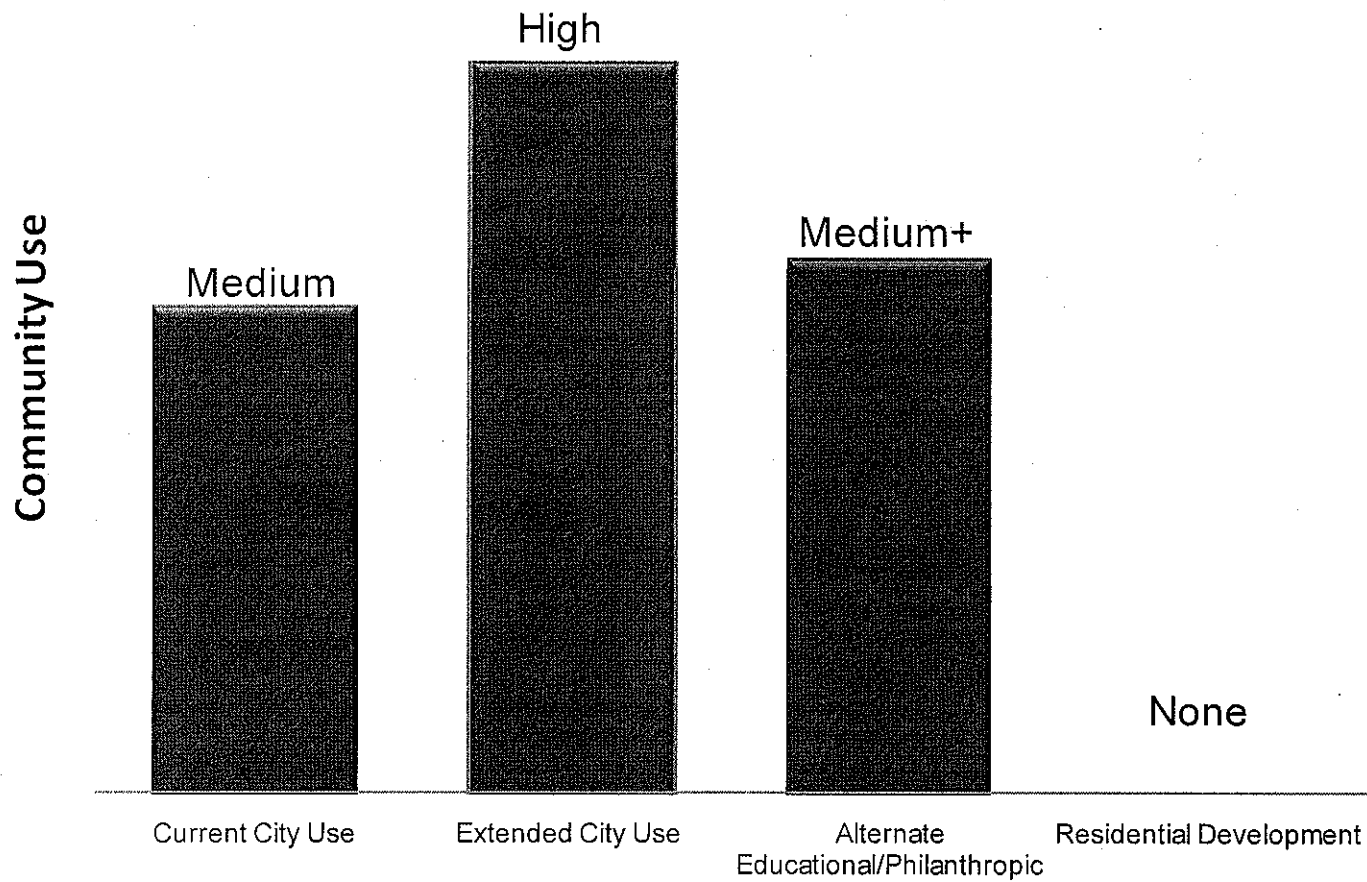
- ▶ Best course of action for the School District rests largely on need and timeframe
- ▶ Status quo represents a below market return on investment to the School District
- ▶ Desire for Stoneman site to remain as community asset even if the school District needs to sell the property
- ▶ Preferred buyer/long term Lessee is the City of San Marino as long as they provide a reasonable price or return
- ▶ The sale of the property to a residential developer is an option that is achievable.
- ▶ While other more community oriented solutions like selling to a philanthropic or educational entity may be appealing, they likely will fall outside the time frame required by the School District.
- ▶ If there is a desire to stay “invested” in real estate, then exchange for other higher income producing real estate should be considered.
  - ▶ Properties outside of San Marino would likely have the highest return

# Sustainable Income



**Note:** The above is only a representation of on-going (sustainable) income and assumes that any sale proceeds are deposited in an interest bearing account. However, the generation of \$7M to \$8M of capital funds provides far greater flexibility than the above chart indicates.

# Community Use



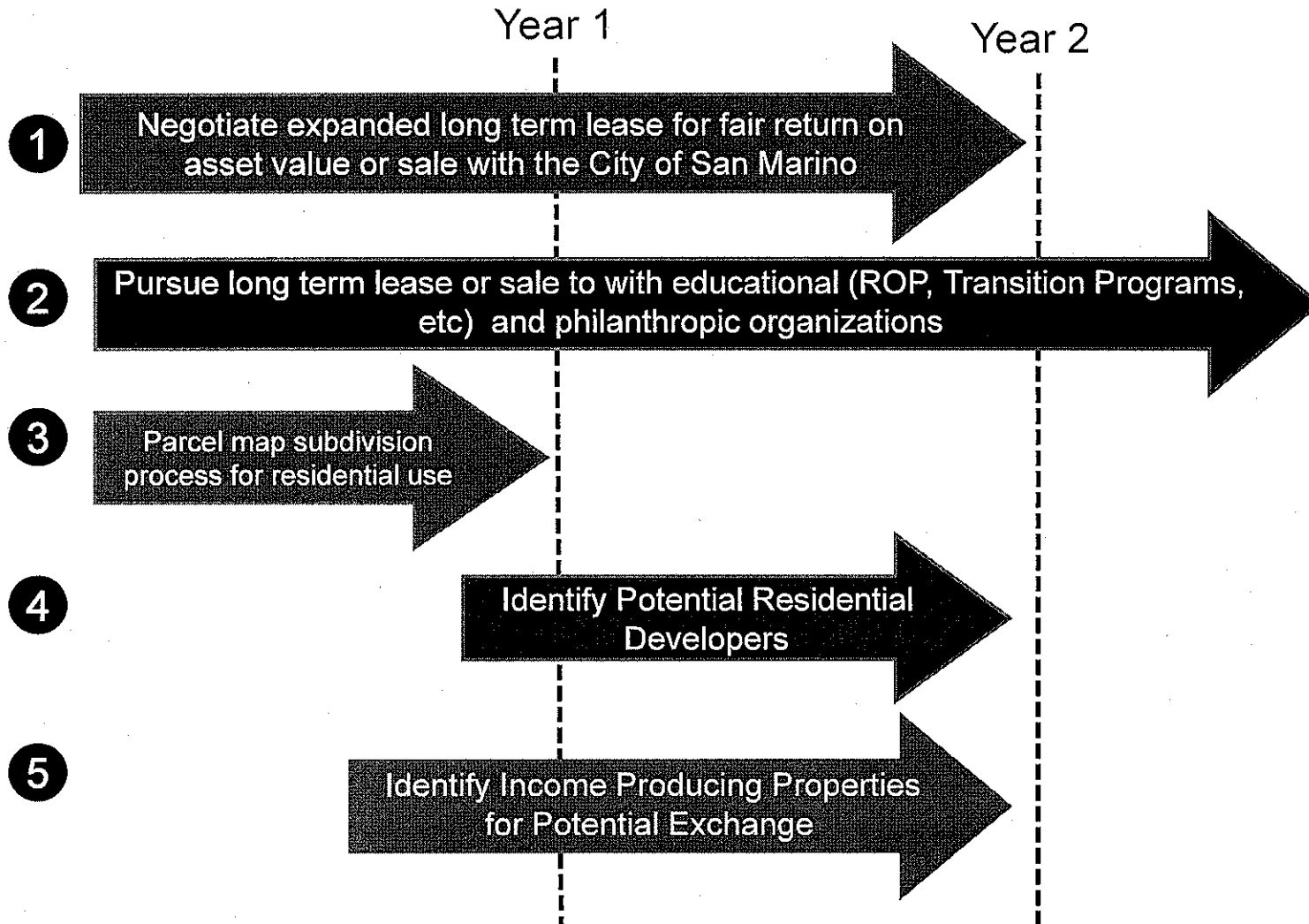
# Recommendation for Stoneman Site

To best balance the need to generate funds and the desire to maximize use of this valuable community asset, the District should:

1. **Attempt to generate more favorable returns on the site by negotiating long-term leases with the City of San Marino, other 3<sup>rd</sup> parties, or philanthropic/educational institutes.**
  - ▶ The threshold level of "favorable " returns to be determined by the School Board but would approach a current market rate of \$500-550k/year.
  - ▶ Special consideration could be given to establishing a regional center (ROP), should an adequate business plan be advanced.
2. **Simultaneously begin process of parcel map subdivision for residential use and of identifying income-producing properties for potential exchange.**
  - ▶ Neither of these activities lock the district into a decision, but would lay the ground work for fallback plans.
3. **Should the district be unable to secure a long-term lessee at an acceptable rate, it should seek to sell the property at an acceptable price within the required timeframe**
  - ▶ City of San Marino is the preferred buyer.
  - ▶ Other philanthropic or educational institutes should be considered if timeframe is acceptable
  - ▶ A Residential developer
4. **Proceeds from a sale could be invested (3% return) or property could be exchanged to provide a higher return.**
  - ▶ Properties outside of San Marino would likely have the highest return
  - ▶ Remaining invested in real estate is higher risk (same capital investment risk as Stoneman) but provides longer term appreciation.

# Recommendation Timeline

The District should pursue the following paths in parallel:



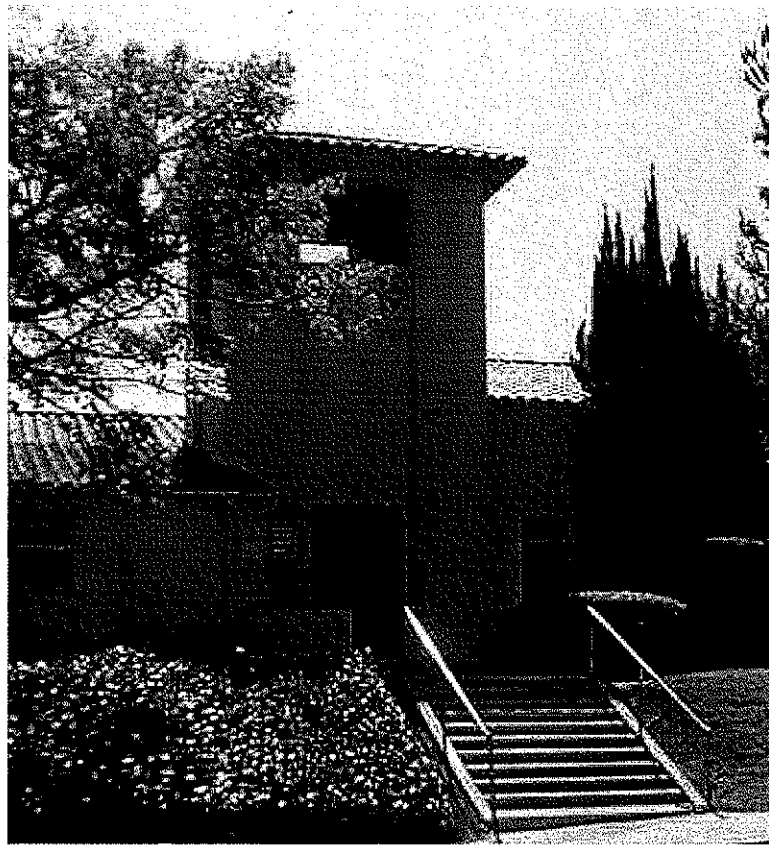
Concluding remarks.....



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# STONEMAN

1560 Pasqualito Drive  
San Marino, CA 91108



## MASTER PLAN STUDY

for the

SAN MARINO UNIFIED SCHOOL DISTRICT

Board Presentation – January 22, 2008

Prepared by:

CARMICHAEL-KEMP ARCHITECTS

# OVERVIEW

---

STONEMAN was originally designed and constructed for use as an elementary school in 1929.

Closed for school use in 1983, due to decrease in enrollment

Now houses both District programs and a portion is leased by the City of San Marino for their recreational programs and services.

Was not upgraded as a part of the District-wide Modernization Program.

Other than recent upgrades to the electrical service and some regular maintenance work, the Stoneman Stoneman has not been upgraded or modernized in the last 40 years.

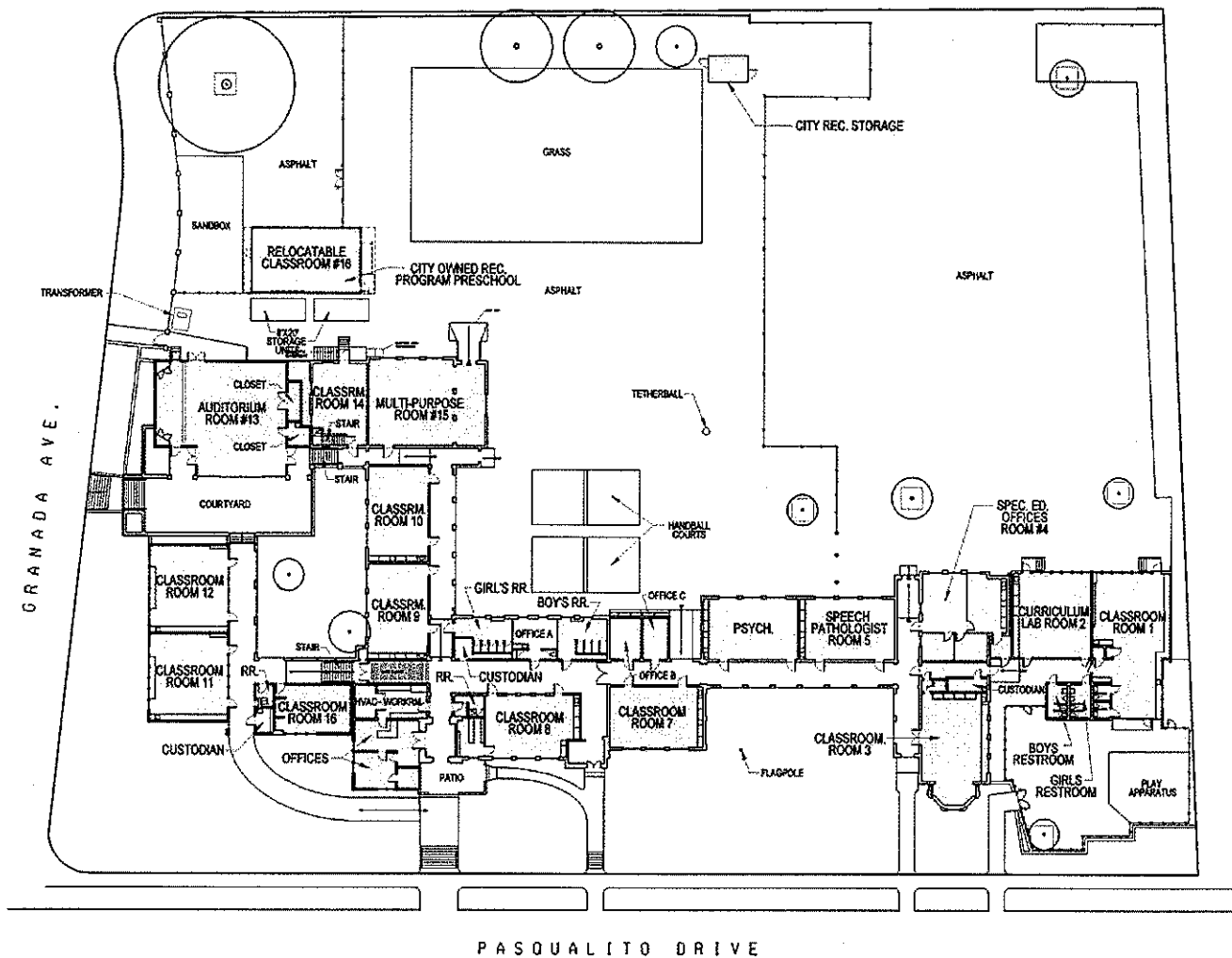
Improvements are needed, primarily.....

- to upgrade the facility to a condition equivalent to that of the other District school sites,
- to add air conditioning,
- to bring the facility into compliance with current codes,
- to minimize long term maintenance costs,
- and to protect the District's investment in the facility.

# STONEMAN SITE PLAN

Yellow = City Leased Space

Green = District Programs & Uses



# OVERVIEW

---

## The MASTER PLAN.....

- ☐ documents the assessment of the condition of the existing facility
- ☐ makes recommendations for upgrades and/or improvements anticipated to be needed to extend the life of the building for the next 30 years.
- ☐ provides an Estimate of Probable Cost for purposes of establishing a MASTER PLAN BUDGET

## The RECOMMENDATIONS are based on.....

- ☐ Limited site investigation and observed conditions by the Architect and Engineers
- ☐ Input from District Maintenance and Staff
- ☐ Review of drawings and reports.

# CONTRIBUTING ENGINEERS

---

STRUCTURAL  
ENGINEER

JOHN A. MARTIN & ASSOCIATES, INC.  
950 South Grand Avenue, 4<sup>th</sup> Floor  
Los Angeles, CA 90015  
Phone (213) 483-6490  
Contact: "Ike" Ikeda,

MECHANICAL/  
PLUMBING  
ENGINEER

CEDG INC.  
2725-A West Burbank Blvd.  
Burbank, CA 91505  
Phone (818) 566-7755  
Contacts: Cirillo Gatilao  
Jimmy Wunno

ELECTRICAL  
ENGINEER

TURPIN & RATTAN ENGINEERING  
2441 Honolulu Ave.  
Montrose, CA 91020  
Phone (818) 249-0444  
Contact: Ken Kraut

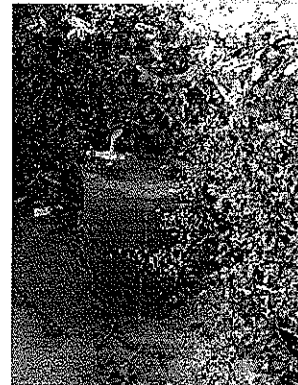
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b. Diagrams #1 thru 7.....	7 pages
c. Abatement Reports .....	Bound Separately
d. DSA Application History...	Bound Separately

# ADA UPGRADES

Drinking Fountains: Do not comply with ADA



Toilet Rooms:

Are not ADA accessible and are in need of upgrading.



# ADA UPGRADES



Stairs Between Lower and Main Level  
Approximately 5 ½ ft. of vertical  
elevation – requires long ramp or  
possibly even an elevator, depending on  
DSA review.



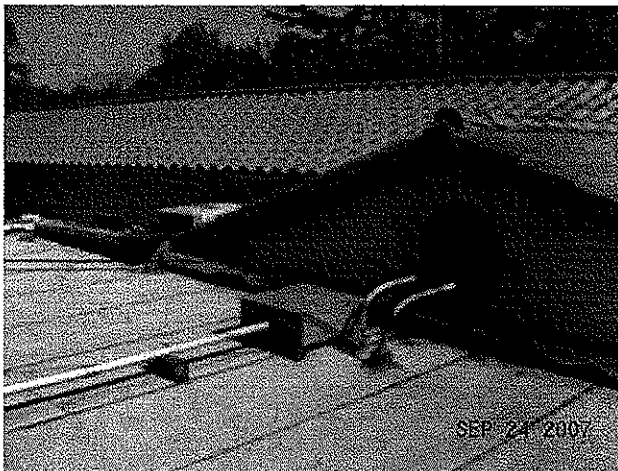
Stairs and Ramps: Do not comply with ADA

# ROOFING

Gutters & Flashings:  
Gutters need to be reviewed  
– and repainted and  
repaired as necessary

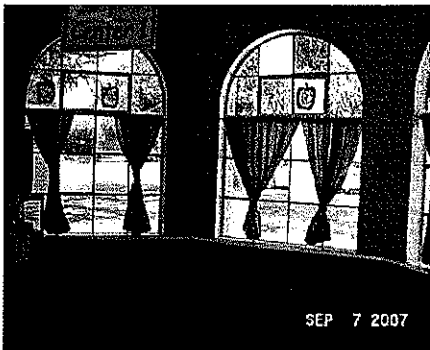
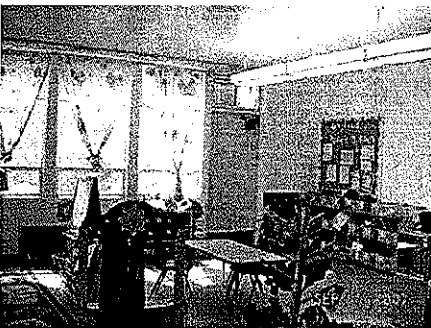
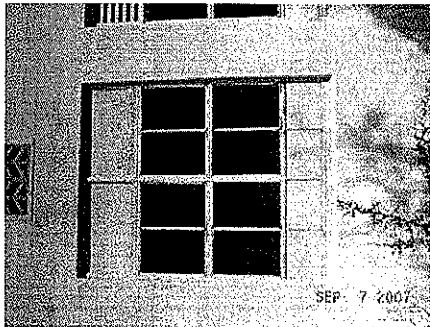


Roof Penetrations &  
Conduits:  
Some flashings at  
penetrations and  
removal of abandoned  
conduits is needed.

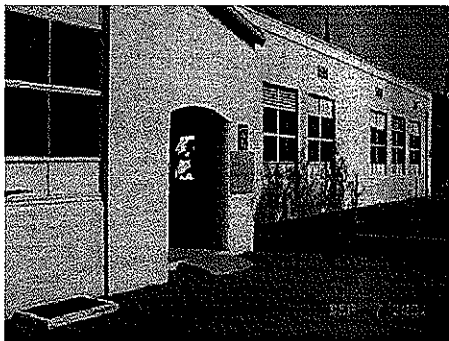
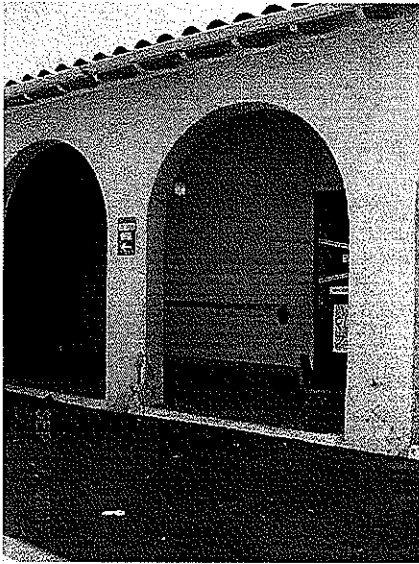


Tile Roofs:  
Generally are in  
good condition  
– only minor  
work needed at  
tile roof areas.

# WINDOWS

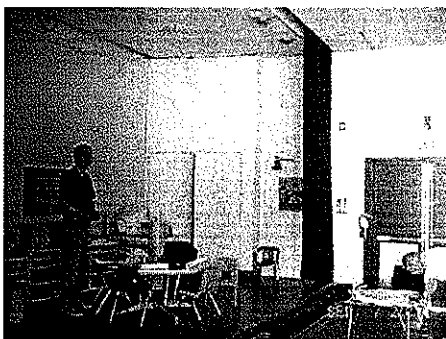
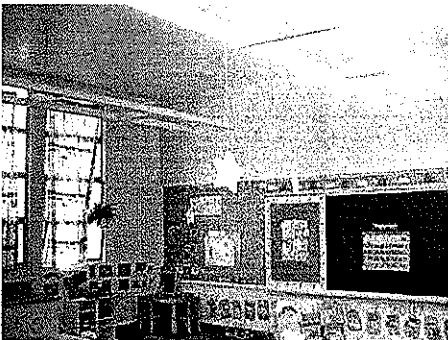
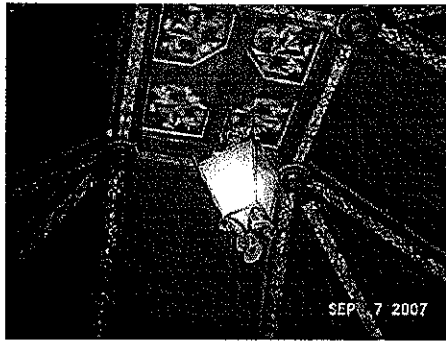
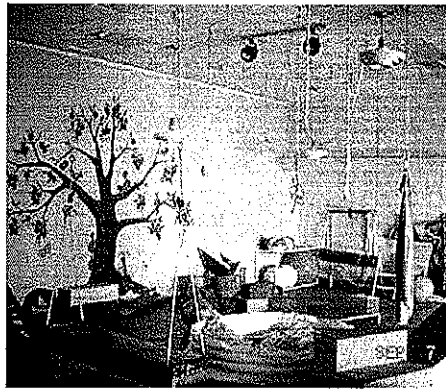


# BUILDING EXTERIORS



CARMICHAEL-KEMP ARCHITECTS

# BUILDING INTERIORS



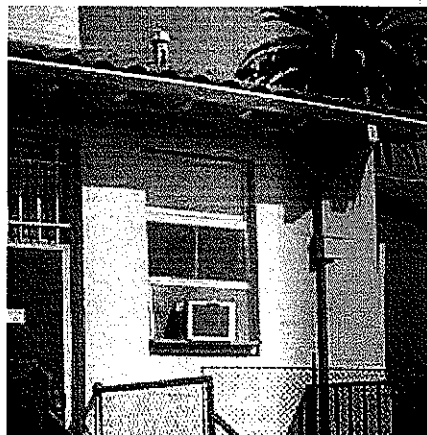
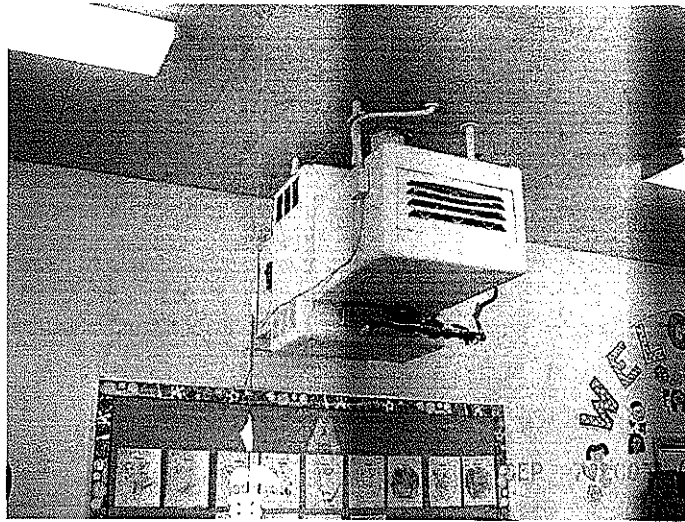
CARMICHAEL-KEMP ARCHITECTS

# CABINETRY



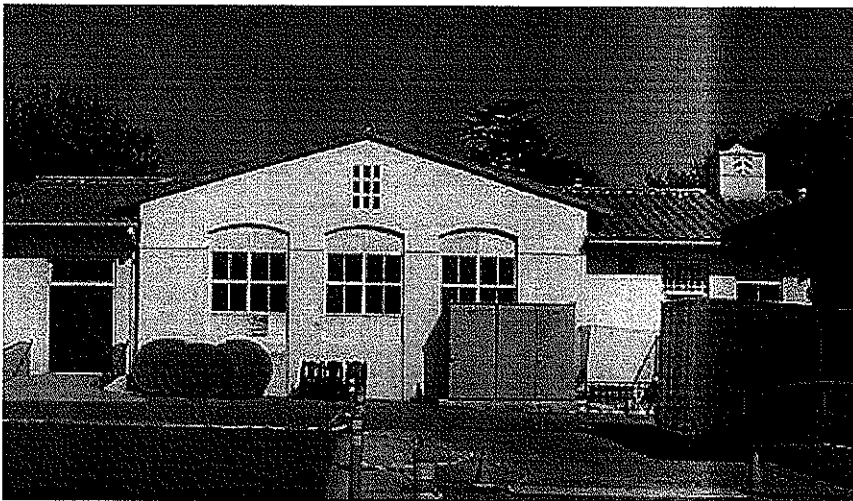
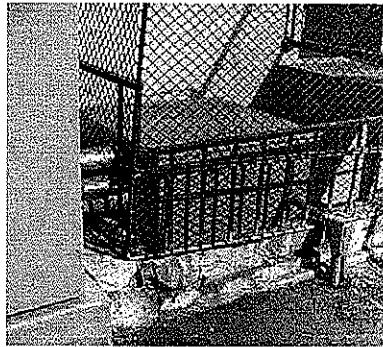
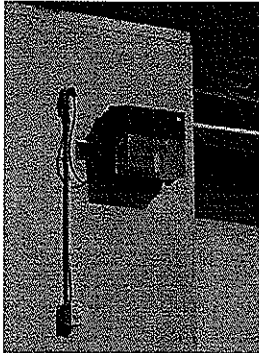
# HVAC

by CEDG Inc.



CARMICHAEL-KEMP ARCHITECTS

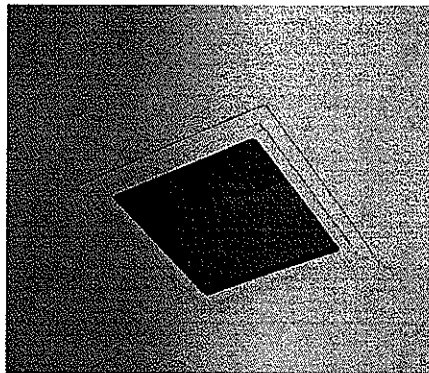
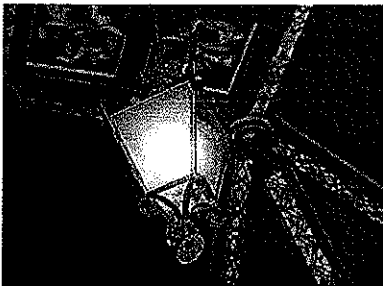
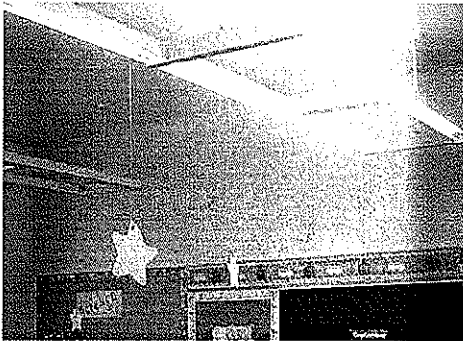
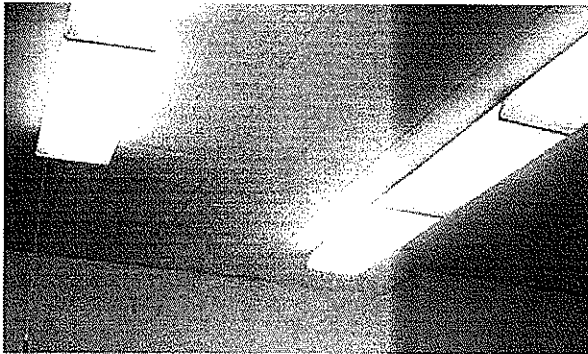
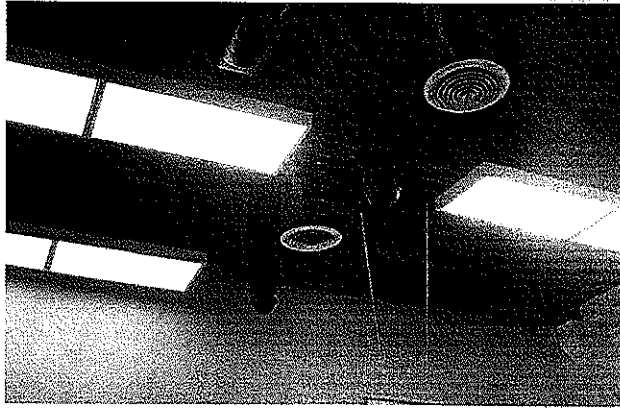
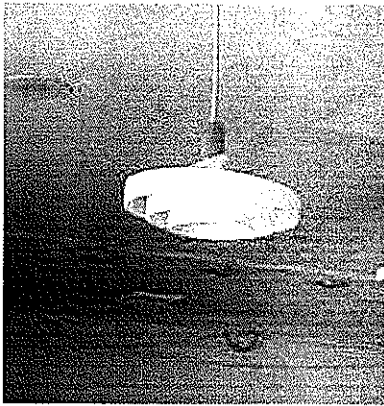
# ELECTRICAL



CARMICHAEL-KEMP ARCHITECTS

# ELECTRICAL

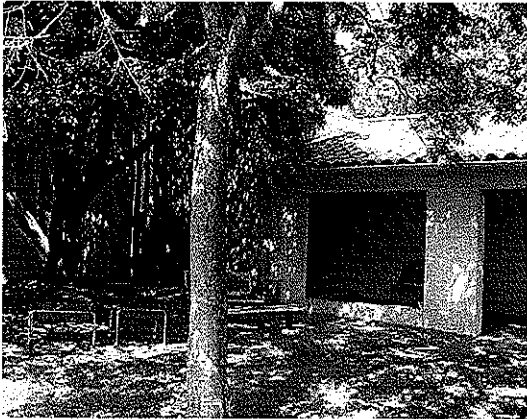
by Turpin & Rattan Engineering



CARMICHAEL-KEMP ARCHITECTS

# SITE PHOTOS

## Landscape & Irrigation:



## Fencing:

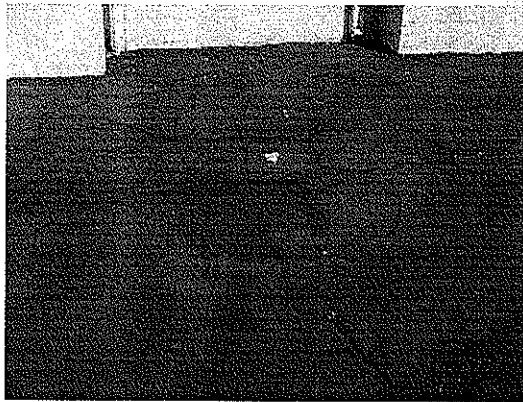


# SITE PHOTOS



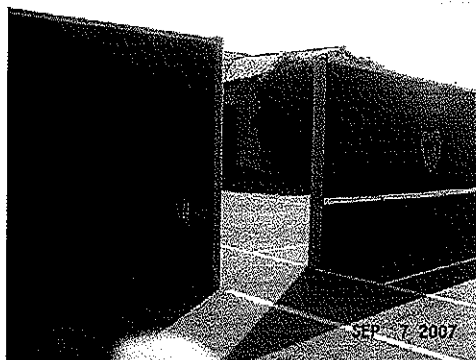
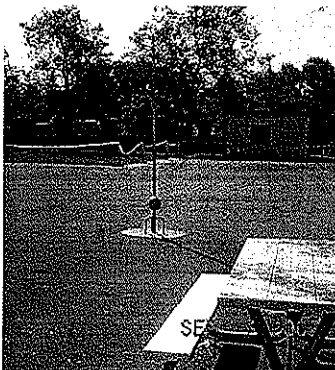
## Pavement:

- Asphalt Paving is cracked throughout.
- Repair may extend life for a few years, however complete removal and replacement is necessary for long term.



## Play Equipment:

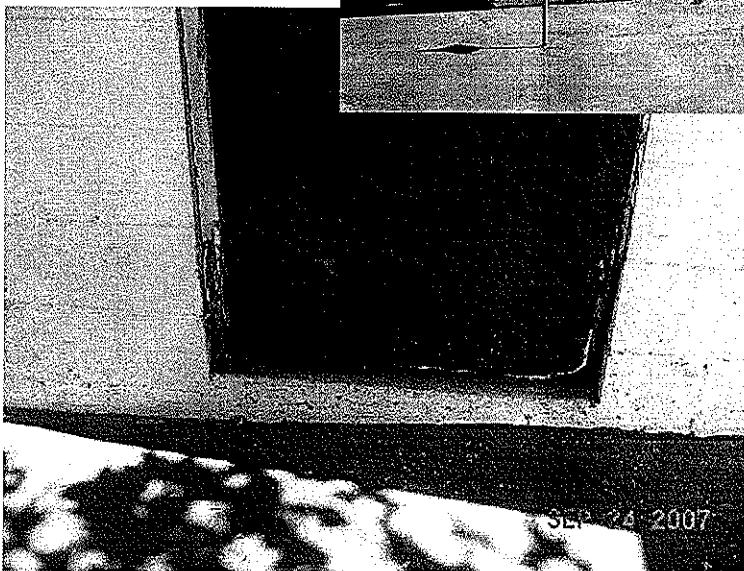
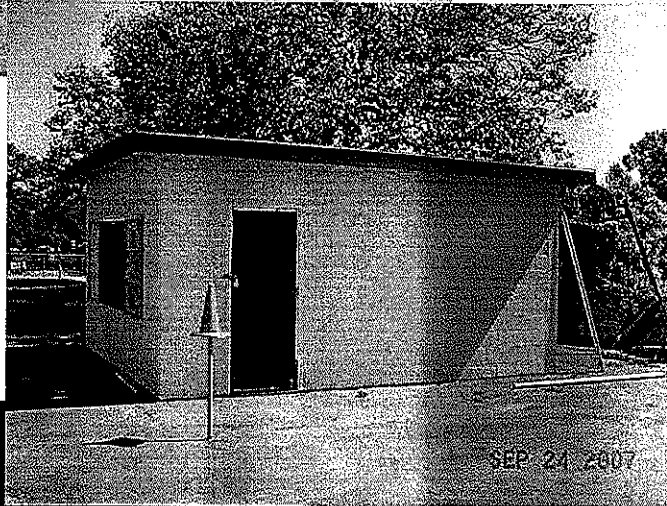
- Existing Ballwalls are in need of replacement of wood surfacing.
- Existing tetherball in good condition.



# SITE PHOTOS



Play Equipment Bldg:



# MASTER PLAN ESTIMATE

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## COST ESTIMATE PARAMETERS

- ☐ Assumptions made relative to desired scope – very preliminary
- ☐ Based on today's bid market, as taken from historical data of recent past, similar projects.
- ☐ A 5% markup is included for cost escalation for two years.

*(Additional cost escalation markups may be required for beyond the two years)*

- ☐ Contingencies & Soft Costs
  - 10% overall project cost contingency has also been included
  - Soft costs (architect/engineering, plancheck, testing, inspection, and legal fees) are budgeted at 20% .

- ☐ Assumes a General Contract delivery method

*(CM-Multi Prime delivery method will result in increased soft costs)*

- ☐ Assumes one phase of construction

*(More phases will increase soft costs)*

- ☐ Costs for Interim Housing and Furniture and Equipment – NOT included

# PROJECT WORK SCOPE & BUDGET –MASTERPLAN

## MODERNIZATION OF STONEMAN SITE

### SAN MARINO UNIFIED SCHOOL DISTRICT

Area of Building Foot print	21,086 sf
Area of Covered Walkways	5365 sf
<b>TOTAL AREA –Foot print &amp; Covered Walkways</b>	<b>26,451 sf</b>

DESCRIPTION OF WORK SCOPE		ESTIMATED COST
1.	SEISMIC RETROFIT	\$ 76,044
2.	ADA UPGRADES	
	a. Misc. ADA Upgrades –Path of Travel	\$ 1,015,019
	b. Restroom Upgrades	\$ 614,963
	<b>SUBTOTAL –ADA UPGRADES</b>	<b>\$ 1,629,981</b>
3.	MAT'LS ABATEMENT	\$ 209,034
4.	ROOFING	\$ 178,538
5.	WINDOW REPLACEMENT	\$ 209,749
6.	PAINTING	\$ 277,725
7.	CEILING REPLACEMENT	\$ 292,332
8.	FLOORING REPLACEMENT	\$ 162,566
9.	MARKER BOARDS / TACK BOARDS	\$ 86,227
10.	REPLACE CABINETRY	\$ 494,086
11.	WINDOW COVERINGS	\$ 61,860
12.	HVAC UPGRADES	\$ 321,678
13.	PLUMBING UPGRADES	\$ 248,745
14.	ELECTRICAL UPGRADES	
	a. Main Elect. Service Upgrade	Complete
	b. Power Distribution –HVAC	\$ 65,946
	c. Power Distribution –Computers	\$ 79,136
	d. Interior Lighting	\$ 131,893
	e. Exterior Lighting	\$ 61,855
	f. Emergency Lighting	\$ 33,474
	g. Telephone/Intercom/PA	\$ 106,515
	h. CATV	\$ 46,163
	i. Security	\$ 58,579
	j. Data / LAN	\$ 184,650
	k. Fire Detection & Alarm	\$ 173,463
	<b>SUBTOTAL –ELECTRICAL UPGRADES</b>	<b>\$ 941,674</b>
15.	SITE IMPROVEMENTS	\$ 658,605
<b>ESTIMATE OF PROBABLE CONSTRUCTION COST</b>		<b>\$ 5,190,238</b>
●	FURNITURE & EQUIPMENT	\$ -
●	INTERIM HOUSING	\$ -
●	CONTINGENCY @ 10%	\$ 519,024
●	ESCALATION @ 5% PER YEAR –2 Years calculated	\$ 570,926
●	PROJECT RELATED (SOFT) COSTS (@ 20%)	\$ 1,256,038
●	<b>TOTAL PROJECT BUDGET</b>	<b>\$ 7,536,225</b>

# MASTER PLAN ESTIMATE

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PRIORITIES.....it is recommended that the District consider the following:

1. Code Required Upgrades such as...
  - ☐ Disabled access (ADA)
  - ☐ Fire and Life Safety (ie, fire alarm, exiting, etc.)
2. Voluntary Seismic Strengthening to minimize future damage and possible injuries to staff
3. Upgrades to minimize...
  - ☐ long term maintenance
  - ☐ energy usage
4. Grouping work scope into logical phases or sequences of work – if work is to be phased
5. Improvements necessary to make facility leasing the facility

# MODERNIZE or REBUILD?

HOW MUCH should be INVESTED into the upgrading of an existing facility, before considering demolishing and replacing it with new construction?

1. For State Funded projects: must have an approved cost/benefit analysis that indicates that required upgrades exceed 50% of the Current Replacement Cost of the facility.
2. Available funding is primary to the decision to demolish an existing facility and rebuild.
  - ☐ Funding to rebuild is generally significantly more than the cost to upgrade
  - ☐ Ability to phase project construction may allow more time to generate funds.
  - ☐ The need to relocate current uses will impact the phasing and the cost of the project.
3. Based on the Stoneman Master Plan Estimate:
  - ☐ Modernization Cost of Construction is estimated at 46.2% of Cost to Demo & Rebuild

COMPARISON OF COST OF CONSTRUCTION BASED ON PRELIMINARY ESTIMATES	
Modernization Cost	Approx. \$5.2 million
Demolish & Rebuild (25,000 sf x \$450/sf)	Approx. \$11.25 million