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9 UNITED WALNUT TAXPAYERS

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

12 UNITED WALNUT TAXPAYERS, a)
13 California Nonprofit Fictitious Business)
14 Entity,)
15 Plaintiff and Petitioner,)
16 v.)

17 MT. SAN ANTONIO COMMUNITY)
18 COLLEGE DISTRICT; WILLIAM)
19 SCROGGINS, in his official capacity as)
20 President and CEO of Mt. San Antonio)
21 Community College and DOES ONE)
22 through TEN, inclusive,)

23 Defendants and Respondents,)

24 AND ALL REAL PARTIES IN)
25 INTERESTS and DOES ELEVEN)
26 through THIRTY.)

Case No.: BC 639908

[action filed: November 7, 2016]

**SUPPLEMENTAL DECLARATION
OF CRAIG A. SHERMAN IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION**

RESERVATION ID NO.: 171219275729

Hearing Date: April 11, 2018

Time: 8:30 a.m.

Dept.: 42

I/C Judge: Hon. Holly E. Kendig

DECLARATION OF CRAIG A. SHERMAN

I, CRAIG A. SHERMAN declare:

1. I am counsel of record for plaintiff UNITED WALNUT TAXPAYERS (“Petitioner”) in the above-captioned action. I am personally aware of all of the information contained herein, and if I was called to testify, I could and would do so as set forth herein.

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2. Attached hereto as Exhibit D is a true and correct copy of excerpts of pages 67-72 and 105-134 from the deposition of Gary Nellesen taken on March 7, 2018, in this case.

3. As of the date of this writing I am informed that as of 4:04 p.m. on April 3, 2018 that grading activities have now ceased at the Stadium Project, as ordered by Judge Torribio in Case No. BS166152 . I have not received any official word from counsel for Mt. Sac.

4. A final trial on the merits and successful judgment does not guarantee that illegally spent bond funds will be returned to the taxpayers. I have personally been involved in at least one case where the Superior Court did not order the repayment of unlawfully spent Proposition 39 school bond funds, despite a taxpayer plaintiff obtaining a favorable final judgment *after the project was built*. Because restitution is an equitable remedy and there is no absolute right to restitution, a court may not grant restitution of Measure RR bond funds spent between now and final judgment on a number of equitable considerations including, but not limited to, complex school financing issues or other public policy considerations.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 4, 2018 in San Diego County.



Craig A. Sherman

1 SUPERIOR COURT OF THE STATE OF LOS ANGELES
2 COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE
3

4 -----
5 UNITED WALNUT TAXPAYERS, a)
6 California Nonprofit)
7 Fictitious Business Entity,)
8)
9 Plaintiff and)
10 Petitioner,)
11)
12)

13 vs.

) No. BC 639908
14)
15)

16 MT. SAN ANTONIO COMMUNITY)
17 COLLEGE DISTRICT; WILLIAM)
18 SCROGGINS, in his official)
19 capacity as President and CEO)
20 of Mt. San Antonio Community)
21 College and DOES ONE through)
22 TEN, inclusive,)
23)
24)

25 Defendants and)
Respondents.)
-----)

14
15
16 DEPOSITION OF GARY NELLESEN
17 Irvine, California
18 Wednesday, March 7, 2018
19 Volume I
20

21 Reported by:
22 SHARON LINDSAY-MILNIKEL
23 CSR No. 5335
24 Job No. 2803477

25 PAGES 1 - 234

Page 1

1 I'm going to mark, as Exhibit Number 2, a
2 document entitled "Resolution No. 08-01 - Ordering
3 a General Obligation Bond Election in November
4 2008," dated July 23rd, 2008.

5 (Exhibit 2 was marked for identification
6 by the court reporter and is attached hereto.)

7 BY MR. SHERMAN:

8 Q My first question to you, Mr. Nellesen, is
9 were you involved in the development of the bond --
10 Measure RR bond for the college?

11 A Yes.

12 Q And what role -- function did you have in
13 that?

14 A As director of facilities, I was involved
15 in identifying projects and preparing general scope
16 of work and initial cost estimates.

17 Q And how were the cost estimates developed?

18 A Very broadly, based on cost per square
19 foot for similar projects.

20 Q I want to point out in the second
21 paragraph of this Exhibit Number 2, there's a
22 paragraph that reads -- starts with the words
23 "staff has."

24 Do you see that there?

25 A Yes.

1 Q And I'll read that.
2 "Staff has narrowed our \$500 million
3 2008 Master Plan costs to the most
4 essential core needs, and that
5 Resolution No. 08-01 includes request
6 for the voters to approve \$353
7 million of project funding."
8 How was that \$353 million figure derived
9 at?

10 A There was a list of project concepts that
11 were developed collaboratively through the college,
12 part of master planning from prior years and -- and
13 in 2008, there were some broad-brush rough
14 order-of-magnitude cost estimates developed, and
15 then there was discussion at the senior management
16 level about which projects should go forward and at
17 what -- and what values should be used.

18 Q Isn't it true that your office and the
19 school developed a list of projects, priority
20 projects, as they were called, that were identified
21 in the 2008 master plan that amounted to a figure
22 of \$353 million, as it's described in this Exhibit
23 Number 2?

24 MR. ABSHER: Objection. Lacks foundation.

25 THE WITNESS: I'm -- I know that there was

1 a list of projects that were developed, yes.

2 BY MR. SHERMAN:

3 Q And were you involved in developing that
4 list?

5 A Yes.

6 Q And what involvement did you have in that,
7 other than what you testified before?

8 A I think what I testified before covered it
9 pretty well.

10 Q So you have personal knowledge and
11 information to testify as to how that \$353 million
12 amount was determined?

13 A I participated in the process, yes.

14 Q You testified earlier that you were
15 involved in the drafting of board agendas.

16 Were you involved in drafting this
17 Exhibit Number 2, or at least the staff report part
18 of it, not the resolutions?

19 A I'll have to look.

20 Yes, I participated in -- in the process
21 that gave us this priority projects list.

22 Q And was one of the things that you did in
23 developing that projects list was to develop a
24 facilities needs assessment?

25 A Yes, we -- we update our facilities needs

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1 assessment every three years at Mt. SAC.

2 Q Do you have an understanding that prior to
3 presenting a list of projects in a measure --
4 Proposition 39 bond measure, that the school is to
5 perform a facilities needs assessment prior to
6 developing this project list for a Proposition 39
7 bond measure?

8 MR. ABSHER: I'll object to the extent it
9 calls for a legal conclusion.

10 THE WITNESS: I can say that is something
11 that we -- that we do on a regular basis and did
12 prior to this.

13 BY MR. SHERMAN:

14 Q Have you ever read Proposition 39 as it
15 pertains to school bond measures such as Measure
16 RR?

17 A Parts of it, certainly. I can't say that
18 I've read every word of it.

19 Q As you sit here today, are you aware of
20 whether the term "facilities needs assessment" is
21 required as part of the creation of the bond
22 project list?

23 MR. ABSHER: I'm going to object.

24 Could I have the question reread please.

25 (Record read as follows:

1 "Q As you sit here today, are
2 you aware of whether the term
3 "facilities needs assessment" is
4 required as part of the creation of
5 the bond project list?")

6 MR. ABSHER: Objection. It lacks
7 foundation and calls for a legal conclusion.

8 BY MR. SHERMAN:

9 Q If you know.

10 A I know that it's something that we do as
11 facilities managers because it's the right thing to
12 do.

13 Q And did you do one in advance of
14 developing the project list for the 2008 Measure RR
15 bond measure?

16 A Yes.

17 Q And that was used to create and develop
18 the priority project list in Measure RR?

19 A It was certainly a point of reference for
20 developing that, yes.

21 Q I want to direct your attention to page 8
22 of that document, Exhibit 2. And just so we get a
23 point of reference, this is -- what we're looking
24 at here is the presentation of the staff report and
25 proposed resolution as well as the proposed bond

1 language that went before the Mt. SAC board of
2 trustees for approval to put on the ballot.

3 Is that your understanding?

4 A Are you referring to this "Exhibit B,"
5 "Full Text Ballot Proposition"?

6 Q I'm speaking generally as to the entire
7 document, and it contains a number of different
8 features.

9 Well, let me ask you to explain what this
10 particular staff report and its contents includes
11 so that I'm not testifying for you.

12 MR. ABSHER: I'll object to the extent it
13 calls for a narrative.

14 MR. SHERMAN: Well, we can go page by
15 page, Counsel, or I can ask him to explain what it
16 is.

17 MR. ABSHER: Well, the document speaks for
18 itself.

19 BY MR. SHERMAN:

20 Q Well, let's talk about the document.

21 Page 1, this is staff report that you're
22 involved -- strike that -- were involved in
23 preparing for this instant July 23rd board meeting
24 of the Mt. SAC trustees?

25 A Can you clarify when you say "staff

1 Exhibit 3 for the purposes of today's deposition.

2 BY MR. SHERMAN:

3 Q In looking at what has been represented as
4 the 2008 facility's master plan, does that contain
5 the list of priority projects, as contained in the
6 Measure R bond measure?

7 MR. ABSHER: I'll object. I believe the
8 witness's testimony, that this is incomplete.

9 MR. SHERMAN: So noted.

10 THE WITNESS: The document contains a list
11 of projects, they're not prioritized necessarily in
12 this document.

13 BY MR. SHERMAN:

14 Q If you can turn to page 9 of that
15 document, please, the master plan.

16 Let me ask you this, Mr. Nellesen, in
17 looking at page 9 of this exhibit, is this a list
18 of the priority projects that is referenced and
19 contained in Measure RR.

20 A It's a list of projects. When you're --
21 when you're connecting the language that's in
22 the -- in the resolution, the resolution talks
23 about priorities for the college --

24 Q Well, let me ask you --

25 A -- that's more general than this project

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1 list. Many of the things that are on the
2 resolution exist in numerous projects on this list.

3 Q So if we look at projects on page 9, it's
4 Projects A through L.

5 Do you see that there?

6 A Uh-huh.

7 Q And are those -- those are identified
8 "Projects to Complete 2008 Master Plan."

9 Do you see that heading there?

10 A Yes.

11 Q Is that an accurate statement?

12 A Yes --

13 Q And --

14 A -- 2008 master plan.

15 Q And that was the list of the projects that
16 were developed in association with the bond measure
17 to put forth to the voters, the \$353 million
18 proposal to the public, to fund those projects; is
19 that correct?

20 MR. ABSHER: I'll object to the extent
21 that it calls for a legal conclusion, lacks
22 foundation.

23 THE WITNESS: This is the list of projects
24 that -- that were put together as part of the 2008
25 master plan and -- and as part of our 2008 bond

1 effort building program --

2 BY MR. SHERMAN:

3 Q And --

4 A -- that's a list of projects.

5 Q And that amount to the \$353 million asked
6 of the voters, correct?

7 A In amounts of 485 million which includes
8 353- plus some state money, yes.

9 Q Okay. So my statement was the money that
10 you asked from the voters was \$353 million,
11 correct, local funds?

12 A Local funds, 353-, yes.

13 Q And that's this in the column here on page
14 9 of Exhibit 3, correct?

15 MR. ABSHER: The document speaks for
16 itself.

17 MR. SHERMAN: Well, he's a grown man, he
18 can answer the question.

19 THE WITNESS: I think I have a couple of
20 times.

21 BY MR. SHERMAN:

22 Q Well, is it on the document? I'm asking
23 you to review the document. We testified earlier
24 about the \$353 million bond program that your
25 office put together to formulate to put into the

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1 Measure R bond program, correct? Do you remember
2 that testimony?

3 A Yes.

4 Q Okay. And that's represented here on this
5 page in Exhibit Number 9, it also says \$353,450,
6 that's correct?

7 A Yes.

8 Q And that's the amount that was put forward
9 to the voters in November 2008?

10 MR. ABSHER: Objection. Lacks foundation,
11 assumes facts not in evidence.

12 THE WITNESS: I'm not sure -- I'm not
13 hearing a question.

14 BY MR. SHERMAN:

15 Q You don't know --

16 A I'm not hearing a question. What are you
17 asking me?

18 Q You don't know if that was the amount that
19 was put forward to the voters in Measure RR, \$353
20 million?

21 A Yes, that was the amount that was
22 requested of voters in the local -- yes.

23 Q That was my question that you didn't
24 answer. Okay.

25 If you can turn to page 21 of this Exhibit

1 Number 3, 2008 master plan.

2 Can you describe to me what this is,
3 Mr. Nellesen.

4 A It's a -- it's a graphic depicting an area
5 of campus that's to be developed, Athletic Complex
6 Phase 2.

7 Q And in the 2008 master plan -- and as that
8 term "Athletics Complex Phase 2," as it's contained
9 in the Measure R bond measure, is this blue dotted
10 outlined area the location of the project as listed
11 on this page 21?

12 A That's part of the project.

13 Q Well, what's the other part of the
14 project?

15 A Football fields, Heritage Hall, track.

16 Q And where are those located?

17 A On the same sheet.

18 Q Were those things encompassed as part of
19 the Athletics Complex Phase 2 project or were those
20 different projects?

21 MR. ABSHER: Objection. Asked and
22 answered.

23 THE WITNESS: Part of the Athletics
24 Complex Phase 2.

25 BY MR. SHERMAN:

1 Q And what do you base that on, that
2 testimony?

3 A The project description that we developed
4 in 2008.

5 Q And is that contained in the 2008 master
6 plan?

7 A I -- it certainly is, yes.

8 Q Can you show me where in this
9 Exhibit Number 43 it's represented that Heritage
10 Hall and these other areas, other than depicted in
11 this blue dotted outline area in Exhibit 1, are
12 part of the Athletic Complex Phase 2?

13 A It's in the --

14 MR. ABSHER: Yeah, I'm going to object
15 because the witness has testified that this
16 document -- I believe it's Exhibit 4 -- is
17 incomplete.

18 MR. SHERMAN: It's Exhibit 3, and I'm not
19 asking him about what may be in his office. I'm
20 asking him to look in here, this Exhibit 3, to tell
21 me where, if anywhere, there's a representation
22 that any of those things that he mentioned are
23 contained here.

24 MR. ABSHER: Excuse me, I'm not clear.
25 Exhibit 3 was marked as this document,

1 which is -- appears to be an excerpt of Exhibit 43.

2 Are we switching what was originally
3 marked as Exhibit 3 and making what was Exhibit 43
4 Exhibit 3?

5 MR. SHERMAN: That's correct. I did that
6 earlier on the record. So Exhibit 3 is now the
7 full and complete -- so, thanks, Counsel, I'm sorry
8 about the confusion.

9 We're marking as the complete 43-page
10 prior Exhibit 43, as Mr. Nellesen declared in the
11 superior court to be the master plan, as Exhibit
12 Number 3, the entirety of that, and for the
13 purposes of today's deposition will be Exhibit 3.

14 THE WITNESS: So you are asking me to show
15 you -- this document is a PowerPoint presentation
16 that represents the facilities master plan. If you
17 look at the facilities master plan there's a
18 project description page that -- that provides more
19 detail.

20 BY MR. SHERMAN:

21 Q And it's your testimony that -- well, let
22 me ask you this: Can you find any other project
23 aspects of -- strike that. Let me ask it a
24 different way.

25 If you can turn to page 22 of this Exhibit

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1 Number 3.

2 Are these the classrooms that were
3 intended to be developed and associated with the
4 Athletic Complex Phase 2 as set forth in the 2008
5 master plan and Measure R ballot measure?

6 MR. ABSHER: Objection. Lacks foundation.
7 Object to the extent it calls for a legal
8 conclusion.

9 THE WITNESS: That's a -- that's a
10 depiction of a portion of the Athletics Complex
11 Phase 2 project.

12 BY MR. SHERMAN:

13 Q And what -- based upon -- are you aware of
14 the purpose and function of these particular
15 building were to be?

16 A Yes.

17 Q And what is that?

18 A Gymnasium, wellness, faculty offices,
19 classrooms, weight rooms.

20 Q And if you go back to Exhibit --
21 Exhibit 3, page 21, is that the project location
22 there where it's designated D where those were
23 intended to be developed?

24 A The D is a block diagram showing that
25 it's -- that that work is to take place on this

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1 site. It's a very general block diagram.

2 Q As a general locator, correct?

3 A Right.

4 Q But if we look at page 22, that's
5 rendering, conceptual, of the classroom or the
6 types of buildings intended at that location, D,
7 correct, general location D? Is that accurate?

8 A I'm not sure when you say "general
9 location D."

10 What does "general location D" refer to?

11 Q Why don't you tell me what general -- what
12 was intended, as we look at this page 21, in the
13 development of the bond program and the list of
14 priority projects for that location D?

15 MR. ABSHER: Objection. Lacks foundation.
16 Read back the question.

17 Please listen very carefully. Mr. Sherman
18 has a habit of qualifying his question with lots of
19 assumptions.

20 (Record read as follows:

21 "Q Why don't you tell me what
22 general -- what was intended, as we
23 look at this page 21, in the
24 development of the bond program and
25 the list of priority projects for

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1 that location D?")

2 THE WITNESS: Yeah, I'm not understanding
3 that location D piece of it, I don't --

4 BY MR. SHERMAN:

5 Q Well, you stated, going to page 22, and
6 you talked about the intended uses and facilities
7 as part of the depiction we see there.

8 Do you remember that testimony? You
9 described administrative, you described some
10 particular intended classes and uses for this,
11 correct?

12 A Exhibit 43, page 22?

13 Q Correct.

14 A Yes, I described some elements that would
15 be in that building, yes.

16 Q And my question is the location for that
17 building depicted on page 21 this D?

18 A The drawing that is Exhibit 43, page 21,
19 shows the entire Athletics Complex Phase 2 site,
20 and it shows all of the components of that project
21 on that site.

22 Q And I'm asking where is that one from page
23 22?

24 A It isn't specific. It's -- it's -- D is a
25 project letter and what's on -- Athletics Complex

1 Phase 2, page 21 is -- is a block diagram. That's
2 I -- they don't necessarily connect one to the
3 other, that's what I'm trying to say.

4 Q Can you move to page --

5 A It wasn't designed yet.

6 Q Can you move to the next page, page 23.

7 As indicated in the second bullet point,
8 are these the three -- I'm sorry -- can you read to
9 me the projects that were encompassed on this for
10 Athletic Complex Phase 2, as set forth in the
11 second bullet point?

12 A Can I read to you the projects?

13 Q The second bullet point.

14 A The second point.

15 "Replaces 1950 Gym, Golf, Football
16 Tennis."

17 Q Can you show me where on that diagram,
18 Exhibit 21, any of those facilities were intended
19 to be located as was studied for preparation of the
20 facility needs, the 2008 master plan and the
21 Measure RR bond measure?

22 A I can say where the tennis is, I can say
23 where the football is, I can show you where
24 Heritage Hall is, and I can show you where the
25 block diagram of the remaining elements are.

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1 Q And that's the -- and that's depicted on
2 that page 21, correct -- well, strike that. You
3 answered.

4 Moving to page 26, if you will, please.

5 Can you describe to me at the time of
6 2008, when the 2008 master plan was prepared and
7 before the bond measure was put to the voters, what
8 that building in the designated E was used for,
9 assuming that it existed.

10 MR. ABSHER: Yeah, I was going to say
11 lacks foundation.

12 THE WITNESS: E represents a
13 temporary building that was constructed before the
14 Measure R building program, back in the '90s, and
15 Classroom Renovation Phase 1 upgraded that building
16 to a permanent Field Act building.

17 BY MR. SHERMAN:

18 Q And what does that mean, the Field Act?

19 A The Field Act is the law that governs
20 school construction in California, K-14.

21 Q And what are the uses that it was put to
22 after its renovations, as you just stated?

23 A It includes dance, locker rooms and shower
24 facilities for softball and soccer, some office
25 space and some dedicated study rooms for student

1 athletes called the WIN program.

2 Q Is that part of the -- is this building,
3 designated on page 26 and that location, part of
4 the athletic facilities for Mt. SAC?

5 A Yes, part of the athletics facilities --

6 Q Yes.

7 A -- but not Athletics Complex East.

8 Q And was work done on that building
9 location designated E on page 26 with Measure RR
10 funds?

11 A Yes.

12 Q And what was that project called?

13 A Classroom Renovation Phase 1 or Building
14 45.

15 Q And if you turn to page 27, is that the
16 master plan page or PowerPoint, or whatever the
17 heck it is, describing that project there that was
18 designated E that we were just talking about?

19 A Yes.

20 Q I'm going to show you what I'm going to
21 mark as Exhibit 4 for the purpose of our deposition
22 here today, and I'll represent to you that it's
23 excerpts from the 2008 Draft Subsequent EIR for the
24 2008 master plan update, and I'll note for the
25 record that is denoted Exhibit 35 in the lower

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1 right-hand corner from a prior submission in the
2 Los Angeles Superior Court.

3 (Exhibit 4 was marked for identification
4 by the court reporter and is attached hereto.)

5 BY MR. SHERMAN:

6 Q I'm going to direct your attention to the
7 second page, bottom of the second page in this
8 exhibit, which is designated page 36.

9 Do you see that page there?

10 A Yes.

11 Q And if you can read to me the
12 second-to-last line beginning "The 2008 MPU."

13 A "The 2008 MPU replaces the 2005
14 Gymnasium project by the D-Athletics
15 Complex Phase 2 and E-Physical
16 Education Classroom projects (See
17 Exhibit 4). Parking on campus will
18 expand from 7,260 spaces in 2008 to
19 9,415 spaces in 2020."

20 Q So in reference to the master plan
21 document, Exhibit 43 we were just talking about,
22 those are the referenced project designator D and
23 project designator E that we were just talking
24 about; is that correct?

25 MR. ABSHER: I'll object as vague and

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1 ambiguous.

2 MR. SHERMAN: I'm just asking him are
3 those the D and E that we were just talking about.

4 What's objectionable to that?

5 MR. ABSHER: I think the way the question
6 was framed.

7 MR. SHERMAN: Well, I'm sure you can find
8 an objection in there to create but that wasn't a
9 trick question.

10 Q Is that the D and E that we just spoke
11 about two minutes ago. Yes or no?

12 A Yes.

13 Q I would like to direct your attention to
14 page 41 of this Exhibit Number 4 to today's
15 deposition. And, once again, I direct your
16 attention to projects delineated D and E on that
17 page.

18 Do you see them there?

19 A Yes.

20 Q And, once again, those are the two
21 projects that we were talking about on --
22 earlier --

23 A Yes.

24 Q -- D and E? Thank you.

25 I want to direct your attention to page 50

1 of the original full exhibit, it's the next page
2 from my excerpts here. It's got a "17" on the
3 bottom -- yes, you've got the right page there.

4 In the middle it reads, and I quote:

5 "The 2008 MPU proposes a new Athletic
6 Complex Phase 2, Physical Education
7 Classrooms and Fire Academy south of
8 Temple Avenue. The Athletics Complex
9 Phase 2 is located south of Woods
10 Memorial Walnut Grove. However
11 grading will not extent (sic) into
12 the grove substantially and few trees
13 will be lost."

14 My question to you, Mr. Nellesen, is does
15 this paragraph I just read in the environmental
16 impact report reference those areas that we looked
17 at in the -- in the prior exhibit, Number -- Number
18 3, those locations for the Athletic Complex Phase
19 2?

20 A Yes.

21 Q Next page, 18, there's an Item Number 6,
22 the EIR references, in the first paragraph, (6),
23 and I quote:

24 "Development of the Athletics Complex
25 Phase II west of Hilmer Stadium."

1 Do you see that there?

2 A Yes.

3 Q Once again, that's the project area
4 location that was designated in the blue hash marks
5 in the prior master plan exhibit, correct?

6 A Yes, at this time, yes.

7 Q And is there anything in this paragraph or
8 in the last two pages that we read that reference
9 any project in any way relating to the Hilmer Lodge
10 Stadium?

11 A I'd have to look at the document.

12 Q Yes, if you would, please.

13 MR. ABSHER: I'm going to object. The
14 witness hasn't -- I'll just make a statement for
15 the record. This is an excerpt of a document.
16 It's not a complete document.

17 MR. SHERMAN: Well, let me bring him the
18 document. And let the record reflect that I have
19 the full and complete copy of Exhibit 35 here, as
20 presented in case BC 576587, and it is a 513-page
21 document. I don't intend to attach it for the
22 purposes of our deposition here today, but it's
23 available for the witness to review.

24 But as we're focusing on the land use plan
25 for -- on pages 17 and 18 that we just discussed,

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1 my question to the witness was is there any
2 discussion that any project or effect or impact or
3 development that Hilmer Lodge is intended --
4 covered by anything on these pages of the EIR.

5 THE WITNESS: Yeah, I believe there is. I
6 just need to show you where it is.

7 BY MR. ABSHER:

8 Q Okay, well -- and just for the record, you
9 were director of facilities and planning, you were
10 involved in the review, preparation and the
11 finalization of the 2008 facilities EIR for the
12 facilities master plan, correct?

13 A Yes. I think we have to go to the
14 "Scheduled Maintenance" discussion --

15 MR. ABSHER: Is there a question pending?

16 (Record read as follows:

17 "Q Okay, well -- and just for
18 the record, you were director of
19 facilities and planning, you were
20 involved in the review, preparation
21 and the finalization of the 2008
22 facilities EIR for the facilities
23 master plan, correct?")

24 THE WITNESS: Yes.

25 BY MR. SHERMAN:

1 Q And it got lost in the shuffle, because
2 you wanted to review the whole document.

3 I'll go back and rephrase.

4 The question was is there any reference in
5 the 2008 EIR for the 2008 master plan update with
6 regards to stadium reconstruction or redevelopment
7 of the Hilmer Lodge stadium of any kind.

8 MR. ABSHER: Were you asking that question
9 based on Exhibit 4 or are you wanting the witness
10 to review the 500 pages?

11 MR. SHERMAN: I have asked about
12 Exhibit 4, he said I need to look at the whole
13 document. He didn't respond with regards to
14 Exhibit 4. But now he has the whole document. Let
15 him respond as to that.

16 MR. ABSHER: Well, I'll object, the
17 document speaks for itself.

18 THE WITNESS: I guess the document says
19 what it says.

20 BY MR. SHERMAN:

21 Q Well, that's what your counsel said.

22 My question to you is are you aware of any
23 reference for development, reconstruction,
24 renovation to the Hilmer Lodge Stadium set forth in
25 the 2008 master plan EIR.

1 A I believe there is, but I would have to
2 find it to show it to you.

3 Q And if you back to pages 17 and 18 that I
4 provided, it's not in there, is it?

5 A I don't see it on page 17, no.

6 Q Well, as to page 18, if you would review
7 it, please.

8 A Is that the right one?

9 Q Other than knowing -- well, let me --
10 answer that question, then.

11 A It's real hard to tell because this being
12 out of context, you know, you really need to look
13 at the whole document, so I don't know.

14 Q On page 18 it's not there, correct?

15 MR. ABSHER: The witness asked and
16 answered.

17 THE WITNESS: Yeah, I don't know.

18 BY MR. SHERMAN:

19 Q What section of the EIR do you believe
20 that the Hilmer Lodge redevelopment, renovation,
21 reconstruction of any kind is -- is present in?

22 A I'd have to go back and look at the
23 document and then I could probably answer your
24 question.

25 Q And you started to testify earlier that

1 you thought it was in some maintenance or what
2 section was that?

3 A I'll tell you, I'd have to go back and
4 look at the whole document and then I could tell
5 you, but I'm not going to do it right now.

6 Q But as you sit here today, you believe
7 it's in there?

8 A I believe there is -- yes.

9 Q If you can focus your attention --

10 A I could be wrong, but I believe it's in
11 there.

12 Q On the excerpts, the exhibit I marked as
13 Exhibit 4, if you can turn your attention to page
14 110, as it was?

15 A Yes.

16 Q In the lower right-hand corner, as it was
17 Exhibit 35 in the prior case.

18 Have you located page 110?

19 A Yes.

20 Q I want to focus your attention to the
21 exhibit -- I'm sorry -- the paragraph under
22 "Existing Conditions," it's talking about
23 "Biological Resources" there in Section 3.5.

24 Do you see that there?

25 A Uh-huh. Yes.

1 Q And Item Number (2) mentions, and I quote:
2 "Grading for the proposed Athletics
3 Complex Phase 2 west of Stadium Hill
4 has a minimal impact on Woods
5 Memorial Walnut Grove."

6 Do you see that there?

7 A Yes.

8 Q Is that project -- strike that.

9 My question to you with regard to that
10 statement and other contents of the 2008 master
11 plan and this environmental review document, that
12 all construction and development for the Athletic
13 Complex Phase 2 project was west of the Hilmer
14 Lodge Stadium?

15 A I -- I'm -- I missed the -- the question
16 again. Go ahead.

17 Q No problem.

18 That in reference to this statement on
19 this page, the Item Number (2) that I just read and
20 as depicted in the Athletics Complex Phase 2
21 development area, that the project development in
22 the 2008 master plan and EIR were west of the
23 Hilmer Lodge Stadium, in that area?

24 A I still don't get the question. What are
25 you asking me?

1 Q I'm asking you is -- well, I tell you
2 what, why don't you read Item Number (2), and my
3 question to you, sir, is what was your
4 understanding and meaning when you wrote that?

5 MR. ABSHER: Objection. Lacks foundation.

6 THE WITNESS: "Grading for the proposed
7 Athletics Complex Phase 2 west of
8 Stadium Hill has a minimal impact on
9 Woods Memorial Walnut Grove and...
10 Development of the proposed Fire
11 Academy in an existing retention
12 basin."

13 BY MR. SHERMAN:

14 Q I have two questions for you. First, what
15 was your meaning and intent when -- in development
16 of the plan as -- what that means, Item Number (2)?

17 MR. ABSHER: Objection. Lacks foundation.

18 THE WITNESS: Can I talk to Sean?

19 BY MR. SHERMAN:

20 Q Well, let me ask you another way. I can
21 maybe clarify it for your.

22 A I'm still going to want to talk to Sean.

23 Q Let me ask this question and maybe it will
24 ease the waters, so to speak.

25 A Sure.

1 Q Where is that location pertaining to, in
2 Item Number (2) on this page 110, can you describe
3 that to me?

4 A Where --

5 Q The "Grading for the proposed
6 Athletics Complex Phase 2 west of
7 Stadium Hill," where is that -- can
8 you describe to me what is in that location and
9 what was intended to be developed there?

10 MR. ABSHER: Objection. Lacks foundation.

11 THE WITNESS: Yeah, I need -- give me a
12 minute, I need -- I think it's all pretty clear,
13 but I just want to have a chance to talk to counsel
14 first.

15 MR. SHERMAN: Okay, we'll go off the
16 record.

17 (Recess.)

18 MR. SHERMAN: Back on the record.

19 Q Before the break I was asking you if that
20 was the scope of projects -- or strike that.

21 I asked you where the location of that
22 reference is to, if you can describe it to me,
23 please.

24 MR. ABSHER: That's the Exhibit 4, I
25 think, right, page --

1 MR. SHERMAN: Right, Item (2), the area
2 that won't be affected west of somewhere.

3 MR. ABSHER: It's right here, I think,
4 page 110.

5 THE WITNESS: Right.

6 So to the -- to the west of Stadium Hill,
7 at this time, in 2008, there was a parking lot, and
8 the project planning at that point was to construct
9 the new gymnasium in that -- in that parking lot
10 west of the Stadium Hill.

11 MR. SHERMAN: Thank you. Very helpful.

12 Q If you can turn to page 114 and look at
13 the diagram there. In fact, this is the area that
14 you're talking about. It's west of the stadium and
15 west of the hill, correct, in the two pictures that
16 we see, particularly 4?

17 A Yeah, I don't know about 3. 4 depicts a
18 parking lot that is --

19 Q What you just talked about.

20 A No, not exactly.

21 The parking lot that is depicted in
22 picture 4 is further to the west of the site
23 that -- that was to be site of the gymnasium at
24 this point in time.

25 Q Okay. And continuing on this page, 114,

1 the hill there, as it was known and/or called at
2 the time that this EIR was put out, what was it
3 called?

4 A They refer to it as Stadium Hill. I --

5 Q And that's located west of the Hilmer
6 Lodge Stadium, correct?

7 A Correct.

8 Q Was the removal of that hill encompassed
9 within the Measure RR priority projects, as you
10 understood it, at the time of bond measure and EIR
11 study for the plan update?

12 A At the time of the Measure RR, it was
13 unclear whether the stadium itself would be
14 salvageable in part or in whole in terms of meeting
15 the goals of the college of the project.

16 Q And what makes you say that?

17 A Because we hadn't done a full evaluation
18 of the stadium, structural, access, life safety in
19 2008, that wasn't until later.

20 Q But it's your belief that the intent to
21 renovate and redevelop the stadium was encompassed
22 in both the 2008 master plan and it was covered in
23 the 2008 EIR for the 2008 master plan update?

24 A I believe in the 2008 EIR, that it -- the
25 stadium portion was still under consideration for

1 major maintenance and renovation, not remove and
2 replace.

3 Q Going back to our Exhibit Number 2 today,
4 the Measure RR bond language, can you show me where
5 in Measure RR it is that you understood and
6 intended so -- that stadium project that you just
7 described to be located and described?

8 MR. ABSHER: Vague and ambiguous as to
9 "that project," which project?

10 BY MR. SHERMAN:

11 Q Do you understand the stadium project that
12 you just described here on the record, testimony
13 under oath about a minute ago, Mr. Nellesen? Your
14 counsel is confused, I'm asking if you're confused.

15 The stadium project that you defined about
16 whether how much we're going to study and renovate
17 it to meet your goals, do you recall that
18 testimony?

19 A Yes.

20 Q My question is where is it in Measure RR
21 that that project is listed.

22 MR. ABSHER: You're asking for his legal
23 conclusion now? I am going to instruct him not to
24 answer.

25 MR. SHERMAN: No, I'm asking him in his

1 capacity as the facilities director who developed
2 the bond program and the language and worked on
3 the project before putting it to the board.

4 MR. ABSHER: I will object as lacking
5 foundation and raise a legal conclusion objection.

6 If you can answer the question based on
7 your personal knowledge, then you can answer the
8 question.

9 THE WITNESS: My knowledge about that is
10 based on a legal opinion received from Dave
11 Casnocha.

12 BY MR. SHERMAN:

13 Q My question is is what language are you
14 relying on, if any, in the bond measure that the
15 stadium renovation or complete rebuild project is
16 encompassed in the bond measure?

17 MR. ABSHER: Objection. Asked and
18 answered, argumentative.

19 THE WITNESS: Yeah, that was ten years
20 ago. I know that when we were studying this issue
21 we got a legal opinion on whether rebuild was
22 within the language of RR and so we proceeded that
23 way.

24 BY MR. SHERMAN:

25 Q I'm confused. You did that back ten years

1 ago or you did that recently, getting the opinion?

2 A What I was referring to ten years ago,
3 this document is ten years old -- right -- so
4 subsequent to -- I was just saying that I don't
5 have it all memorized anymore, that's --

6 Q I'm just asking you --

7 A Okay.

8 Q -- can you pinpoint me to any language --

9 A I'm going to refer to counsel.

10 Q Let me finish my question, please.

11 Can you point me to any language in
12 Measure RR where the stadium rehabilitation project
13 is encompassed, any language whatsoever?

14 MR. ABSHER: Objection. Asked and
15 answered, argumentative, calls for a legal
16 conclusion.

17 THE WITNESS: My answer was that we
18 received a legal opinion about that, and that's
19 what my understanding was based on.

20 BY MR. SHERMAN:

21 Q So as we sit here today, as the director,
22 the chief person implementing the bond program, the
23 director of facilities, you're not aware or you
24 can't direct me or you refuse to direct me to any
25 intentions that you believe, as the director, that

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1 that project, rehabilitation of the stadium or a
2 complete brand-new stadium is encompassed in the
3 Measure R bond measure?

4 MR. ABSHER: Objection. Argumentative.

5 THE WITNESS: I'm just relying on
6 counsel's opinion.

7 BY MR. SHERMAN:

8 Q Any word, any project identification,
9 nothing?

10 MR. ABSHER: Objection. Argumentative,
11 asked and answered.

12 BY MR. SHERMAN:

13 Q Directing your attention to page 141 of
14 Exhibit Number 4. My question to you is the last
15 full sentence on the bottom of this page reads, and
16 I quote:

17 "These areas include the Athletics
18 Complex Phase II site (16.8 acres),
19 lane widening along the existing
20 Wildlife Sanctuary (1.1-acres) and
21 the Fire Academy site (1.0 acre)."

22 Is the area that was studied and
23 considered for development in the 2008 master plan
24 that 16.8 acres, as referenced on page 141?

25 A I'm not understanding your question.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript () was () was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: March 12, 2018



SHARON LINDSAY-MILNIKEL

CSR No. 5335

Proof of Service

United Walnut Taxpayers v. Mt. San Antonio Community College District, et al.
Los Angeles Superior Court Case No.: BC 639908

I, the undersigned, declare under the penalty of perjury that I am over the age of eighteen years, my place of business is in the County of San Diego, located at 1901 First Avenue, San Diego, CA; and I served the below-named person(s) the following document(s):

SUPPLEMENTAL DECLARATION OF CRAIG A. SHERMAN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

on April 4, 2018 on the following person(s) in a sealed envelope or package, addressed as follows:

Sean B. Absher, Esq.
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**Counsel for Mt. San Antonio
Community College District**

in the following manner:

1) By placing a copy in a separate envelope, with postage fully pre-paid, for each person and address named above and depositing each with the Overnight Carrier Golden State Overnight at San Diego, CA.

2) By sending to each person named above via electronic service at the above electronic notification addresses.

I declare under the penalty of perjury under the laws of the State of California that the above foregoing is true and correct.

Executed on April 4, 2018 at San Diego, California.



Paul Best