



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item#11.3

Meeting Date: June 19, 2014

Subject: Real Property Surplus Workshop on Process

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Facilities Support Services

Recommendation:

Provide the Board an opportunity to discuss the disposition of the property around the District.

Background/Rationale:

Per Board request, a workshop has been scheduled to discuss the process of addressing surplus property within the District.

Financial Considerations: N/A

Documents Attached:

1. Executive Summary
2. Additional Materials

Estimated Time of Presentation: 10 minutes

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Chief Accountability Officer
Cathy Allen, Assistant Superintendent
Facilities Support Services

Approved by: Sara Noguchi, Ed.D., Interim Superintendent



I. OVERVIEW / HISTORY

The District currently has three properties that may be considered for disposition pursuant to Education Code and Government Code. The three properties, 16th and N, Old Marshall and Florin and 24th, have been through a prior 7-11 process and a recommendation from the committee was presented to the Board in August 2011. The recommendation was to not surplus the properties. The process for disposition of school property is similar for most sites and will be discussed during the workshop.

Several attempts over the years to lease the properties has resulted in mixed results and, ultimately, all three sites have been empty for some time. The buildings are deteriorating and are a liability to the District. Staff is interested in pursuing the disposition of these properties resulting in a satisfactory outcome for the District.

Most recently, the site at 16th and N has been the topic of interest as the District has been exploring potential sites for the construction of a central kitchen as provided for in Measure R.

Staff pursued the possible exchange of 16th and N for a piece of property on San Joaquin Avenue directly across from the District's Transportation yard. While pursuing this course of action several other entities approached the Board and/or staff to present a proposal for the acquisition of the property utilizing alternative Education Code and Government Code sections.

Board members requested the opportunity to discuss the process at a workshop scheduled for June 19, 2014.

II. DRIVING GOVERNANCE

Education Code §17385 et seq.

III. BUDGET

N/A

Board of Education Executive Summary

Facilities Support Services

Real Property Surplus Process Workshop

June 19, 2014



IV. GOALS, OBJECTIVES, AND MEASURES

Fully educate and supply the Board with the various processes available that will help inform their decision as to the disposition of the District's surplus properties.

V. MAJOR INITIATIVES

N/A

VI. RESULTS

Staff has prepared presentation/workshop materials for the Board that will assist in their decision-making process.

VII. NEXT STEPS

To be identified by the Board.

SURPLUS PROPERTY PROCESS

**7-11 Advisory
Committee**

**Declare Surplus
by Simple Bd
Majority**

**Major
Exceptions**

Historic Building
EC 17482
Non-Profit Organization
2 Votes:
Board: Simple Majority
County Supervisors:
Simple Majority

Land Exchange
EC 17536
Terms and Conditions
agreed to by parties
Resolution by 2/3rds
vote

**State Board of Ed
Waiver**
from Competitive Sale
(Not from Gov Code
offers of sale)
Board majority vote and
meeting state
conditions; State Board
of Ed majority vote

**Offers of Sale
Required by Statute**

1. EC 17464
2. Gov Code 54220
(See list attached)

Generally, 60 day notice
of offer followed by 60
day negotiation period.
Simple majority vote.

Charters who submit
written notice and site
must be suitable

Naylor Act if there was
a prior playground use

**Declaration of Intent
for Competitive Sale**
EC 17466
2/3rds Vote
(If Charter or Naylor Act
exceptions do not apply or
no offer of sale accepted)

SURPLUS PROPERTY PROCESS
LIST OF SPECIFIC STATUTORY OFFERS

1. Offers of Sale Required by Ed. Code 17464.

- a. First priority, to charter schools, with a minimum of 80 ADA, upon written request by a charter. But the real property facilities must be “. . . designed to provide direct instruction or instructional support.” This is in addition to Prop 39 requests by charter schools.
- b. Second priority, for park and recreational purposes under Gov. Code 54222(b) to the park or recreation department of the City of Sacramento; to the County of Sacramento; to any regional park authority where the surplus property is located; and to the State Resources Agency.
- c. Third priority, to the Director of General Services; the UC Regents; the Trustees of the California State University system; any public housing authority in Sacramento County; other entities and organizations, by public notice or in response to a written request, including any public district, public authority, public agency, public corporation, or any other political subdivision in California, to the federal government, and to nonprofit charitable or public benefit corporations.

2. Offers of Sale Required by Gov. Code 54220 et seq.

Overall intent is to give priority for developing low and moderate income housing; for park or recreational uses; and for clustering housing and commercial development around transit hubs.

Specific provisions are:

- a. For purposes of developing low and moderate income housing, with priority to lower income elderly or disabled persons: to the City of Sacramento; the County of Sacramento; housing authorities as public corporations created under Health & Safety Code 34200 et seq.; and housing sponsors, approved or certified by the California Housing Finance Agency, pursuant to Health & Safety Code sections 50074 and 50074.5.
- b. For purposes of preserving property for park or recreation use, the same entities set forth in 1.b. above.
- c. For purposes of developing an infill opportunity zone for housing and mixed use commercial development (Gov. Code 65088.4) or for a transit village plan under the Transit Village Development Planning Act of 1994 (Gov. Code 65460 et seq.): to the City of Sacramento; the County of Sacramento; any public transportation agency; and to any housing authority where the surplus property is located.



Checklist for Sale or Lease of School District Surplus Property

(Revised November 2013)

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The following is an executive summary of the process and statutory time requirements throughout the process; a more detailed discussion follows.

Summary

- First identify the surplus real property and convene a committee to develop a District wide policy on the use of surplus real property. ([Ed. Code §§ 17387, et seq.](#))
- Declare intent to sell or lease the property to general public: To place the property on the market, the Board must consider the committee's recommendation that the property be declared surplus and declare its intent to dispose of the property in a resolution. ([Ed. Code § 17466.](#))
- Offer to sell or lease real property to any charter school that has submitted a written request to the school district to be notified of surplus property offered for sale or lease by the school district and that meets certain other criteria. The District must allow such charter schools sixty days to respond to the offer. ([Ed. Code §§ 17457.5 and 17464\(a\)](#)) (a school district selling or leasing surplus property is only required to offer that property to a charter school until June 30, 2016).)
- Offers required by the Naylor Act ([Ed. Code § 17485, et seq.](#)): The Naylor Act only applies to real property that has been used entirely or partially for school playgrounds, playing fields, or other outdoor recreational uses and open-space land particularly suited for recreational purposes. If the Naylor Act does apply, the District must offer to negotiate to sell or lease the property to certain entities, usually for a below-market rate. The District may seek a waiver of the Naylor Act. ([Ed. Code § 33050.](#)) The District must allow Naylor Act entities sixty days to respond to the offer. ([Ed. Code § 17489\(c\).](#))
- Selling or leasing with option to purchase ([Ed. Code § 17464](#) and [Gov. Code § 54220](#)):
 - The property must be offered to a first group of designated entities. These entities must be allowed sixty days after receiving notice to respond and are also entitled to a negotiation period of sixty days after giving notice to the District of their interest in the property. This requirement cannot be waived.
 - The property must be offered to a second group of

designated public entities. This group must also be notified that it has sixty days to make offers, but is not entitled to an additional negotiation period.

- Lease (with no option to purchase): No additional notices, beyond the requisite offers to charter schools and Naylor Act entities, are expressly required. The District may proceed to lease the property to the highest responsible bidder pursuant to [Education Code sections 17466](#). (Note: More conservatively, and in recognition of limited legal precedent, the additional notices may still be sent.)
- Leasing vacant classrooms ([Ed. Code § 17465](#)): The District must offer the classrooms to other school districts in the District's SELPA or the County Office of Education ("COE") for use for special education programs. The school districts or the County Office of Education are entitled to a negotiation period of sixty days from receipt of the offer.
- All property sales ([Govt. Code § 65402\(c\)](#)): The District must notify the local city or county planning agency, if such city or county has adopted a general plan which affects or includes the area where the property is located.
- Competitive bidding ([Ed. Code §§ 17466](#)): The District may ultimately sell or lease the property to the highest responsible bidder. Bids may not be opened until at least three weeks after the Board adopts its resolution of intent to sell or lease the property. Districts may seek waivers of the competitive bidding process from the State Board of Education; in recent years, waivers from the bidding process have been granted, but districts have still been required to provide mandatory notices and engage in certain public procedures.
- The Education Code also contains a provision indicating that failure to comply with the Education Code's surplus property provisions will not invalidate a conveyance of property that has already occurred. ([Ed. Code § 17483](#).)

I. Determination of Surplus Status

Detailed Checklist

- ❑ The District may wish to adopt an initial resolution to commence the process of whether to declare District property as surplus, but no such resolution is required.
- ❑ The School Board must appoint a committee of between seven and eleven members (“7-11 Committee”, or “Advisory Committee”), who are representative of each of the following ([Ed. Code § 17388-17389](#)):
 - The ethnic, age group, and socioeconomic composition of the District.
 - The business community, such as store owners, managers, or supervisors.
 - Landowners or renters, with preference to be given to representatives of neighborhood associations.
 - Teachers.
 - Administrators.
 - Parents of Students.
 - 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 and counties in which surplus space and real property is located.
- ❑ The 7-11 Committee must do all of the following ([Ed. Code § 17390](#)):
 - Review the projected school enrollment and other data provided by the District to determine the amount of surplus real property.
 - Establish a priority list of use of surplus space and real property that will be acceptable to the community.
 - Cause to have circulated throughout the attendance area a priority list of surplus space and real property

and provide for hearings of community input to the community on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes.

- Make a final determination of limits of tolerance of use of space and real property.
- Forward to the Board a report recommending uses of surplus space and real property.
- The 7-11 Committee's recommendation is advisory only, and need not be implemented by the Board.

II. Consider Physical and Political Aspects of Site

- Optional: Clarify Site's Physical Development Constraints, both for the District's purposes and for the information of prospective buyers and developers.
 - Ensure title is free and clear of tax lien liabilities, restrictive covenants, conditions and restrictions, restrictive easements, and any additional constraints.
 - Obtain a boundary/survey map to verify acreage and land area and a legal description.
 - Determine current zoning and general plan restrictions on the property as well as the likelihood and time line for changes to a more favorable designation. This review should also reveal other restrictions and costs such as Coastal Commission approval, Corps of Engineers approval, availability of water and sewer connections, off-site costs such as traffic mitigation, park dedication fees, fees for special districts, etc.
 - Obtain a soils or geological study, if potential problems are identified (e.g. liquefaction risks, slope problems, etc.).
 - Consider having the site inspected to determine whether it contains any toxic or hazardous materials.
 - Obtain an asbestos study and removal cost estimate for existing buildings.

- Optional: Clarify Political and Policy Issues.
 - Although an appraisal is not required, it is often wise to obtain at least one appraisal to obtain minimum and target values, whether the district elects to share the appraisal or keep it confidential.
 - Meet with key political players in City or County having jurisdiction to ensure that highest and best use recommendations have potential for obtaining development approvals.
 - If possible, obtain information from City or County which outlines its approval process (e.g., allowable densities and land uses, fees, exactions).
 - Meet with key homeowners' associations and community leaders concerning recommended development plan.

III. Board Action Declaring Property Surplus

- Optional: The Board may wish expressly to declare certain property surplus. This is an action preliminary to the later resolution of intent to lease or sell the property, and can be used to trigger the offer of the property to other public agencies. To do so, the Board can adopt a resolution taking each of the following actions:
 - Consider the 7-11 Committee's recommendations. ([Ed. Code § 17388.](#))
 - Describe the property to be declared surplus.
 - Declare the property surplus.
 - Authorize offers to other public agencies.

IV. Required Offers

A. Offers to Interested Charter Schools

- At least until June 30, 2016, the governing board of a school district seeking to sell or lease surplus real property designed to provide direct instruction or instructional support must first offer that property for sale or lease to any charter school that (1) has submitted a written request to the school district to be notified of surplus property offered for sale or lease by the school district, and (2) has projections at the time of the offer of at least 80 in-district

students for the following fiscal year. The offer must be made pursuant to the following conditions:

- The charter school must use the real property exclusively to provide direct instruction or instructional support. ([Ed. Code § 17457.5\(a\)\(1\).](#))
- If the charter school is interested in purchasing or leasing the property, it must so notify the District within 60 days of the District's written solicitation. If more than one charter school notifies the District of its intent to purchase or lease the property, the District may determine to which charter school it will sell or lease. ([Ed. Code § 17457.5\(b\).](#))
- The price at which the property is sold to an interested charter cannot exceed the District's cost of acquisition, adjusted by increases or decreases in the cost of living, plus the cost of any school facilities construction undertaken by the District, adjusted by the statewide cost index for class B construction as annually determined by the State Allocation Board, from the year the improvement is completed to the year in which the sale is made. If a statewide cost index is not available, the school district must use a factor equal to the average statewide cost index for class B construction for the preceding 10 years. In no event can the price be less than 25 percent of the fair market value of the property or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property. ([Ed. Code § 17457.5\(c\).](#))
- Land that is leased to an interested charter must be leased at an annual rate of not more than five percent of the maximum sales price allowable under the above provision, adjusted annually by increases or decreases in the cost of living. ([Ed. Code § 17457.5\(d\).](#))
- Offers to interested charter schools are only required for real property identified by a school district as surplus property after July 1, 2012. ([Ed.](#)

[Code § 17457.5\(f\).](#) From the statutory language, it is not clear what constitutes “identifying” property as surplus for purposes of this requirement.

- A school district selling or leasing surplus property is only required to offer that property to a charter school until June 30, 2016. [\(Ed. Code § 17457.5\(f\).\)](#)

B. Offers Required by the Naylor Act

- Determine whether the Naylor Act [\(Ed. Code §§ 17485, et seq.\)](#) applies. The Naylor Act applies when all of the following conditions are present [\(Ed. Code § 17486\)](#):
 - All or a portion of the property is used for school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes.
 - The land has been used for such purposes for at least eight years immediately preceding the Board’s decision to sell or lease the property.
 - No other available publicly owned land in the vicinity is adequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes, as determined by the governing body of the agency which proposes to purchase or lease land from the District.
- The District may exempt two surplus properties from the Naylor Act for each planned school site acquisition if the District has an immediate need for an additional school site and is actively seeking to acquire an additional site, and may exempt one surplus property from the Naylor Act if the District is seeking immediate expansion if the classroom capacity of an existing school by 50% or more. [\(Ed. Code § 17497.\)](#)
- No more than 30% of the total surplus school acreage (inclusive of both developed and undeveloped property) owned by a school district may be purchased or leased by public agencies through the Naylor Act. [\(Ed. Code § 17499\(a\).\)](#)
- If the Naylor Act applies and the property is not exempted, the District must first make a written offer to sell or lease

the property to the following agencies for use as outdoor recreational space, in order of priority ([Ed. Code § 17489](#)):

- First, to any city within which the land is situated.
 - Second, to any park or recreation district within which the land is situated.
 - Third, to any regional park authority having jurisdiction within the area in which the land is situated.
 - Fourth, to any county within which the land is situated.
- If any of the above entities wishes to purchase or lease the property, the entity must notify the District in writing within 60 days after receiving written notification from the District of its offer to sell or lease the property. ([Ed. Code § 17489.](#))
 - In the event the Naylor Act applies, the District may seek a waiver of Naylor Act requirements from the California Department of Education. (Ed. Code § 33050.) To request a waiver, the District must do the following:
 - Enable the employees' unions to participate in the development of the waiver. ([Ed. Code § 33050 \(d\).](#))
 - Hold a public hearing on the issue. ([Ed. Code § 33050 \(a\).](#))
 - Submit an application to the State Board of Education.
 - The State Board of Education must provide 30 days written notice of the hearing on the waiver to each public agency to which an offer of sale or lease must be made under the Naylor Act. ([Ed. Code § 33051.5.](#))
 - If the Naylor Act applies, the price of the land shall not exceed the school district's cost of the original acquisition, with adjustments made for any percentage increase or decrease in the CPI from the original date of purchase to the year in which the offer of sale is made, plus the cost of any improvement to the land made by the school district

since the original acquisition. However, the final sale price shall not be less than 25 percent of the fair market value of the land or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property. ([Ed. Code § 17491\(a\).](#))

- If public entities decline a school district's offer to sell or lease school property under the Naylor Act, the property may be sold, leased and/or developed to the same extent as is permitted on adjacent property. The process of zoning necessary for such development is to be expedited by the local city or county. ([Gov. Code § 65852.9.](#))

C. Offers to Sell or Lease with Option to Purchase

- The District must first make written solicitations to the following government agencies: any park or recreation department of any city or county within which the land is situated, any regional park authority having jurisdiction within the area in which the land is situated, and the State Resources Agency. Such agencies must use the property for park and recreational purposes if they purchase or lease the property under [Government Code section 54222](#). ([Ed. Code § 17464\(b\)](#); [Gov. Code § 54222\(b\).](#))
- [Government Code section 54222](#) also requires written solicitations to additional government agencies, however, they are not expressly required by [Education Code §17464](#), which lists the offers a school district must make, and the order in which it must make them. There is no express guidance or case law clarifying whether the additional Government Code offers must be made. Therefore, the most conservative approach would be to make these additional offers, to the following entities, although that does not literally appear to be required:
 - Any local public agency as defined in [Health and Safety Code section 50079](#) for the purpose of developing low- and moderate-income housing.
 - Housing sponsors (defined by [Health and Safety Code § 50074](#)) that have provided the District with a written request, and that will use the property for the purpose of developing low- and moderate-income housing.

- Any other school district in which the property is situated, if the school district will use the property for school facility construction or open-space purposes.
 - If the property is in any area designated as an enterprise zone, an offer must be sent to the nonprofit neighborhood enterprise association corporation in the zone for enterprise zone purposes.
 - Any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located, for the purpose of developing property located within an infill opportunity zone designated pursuant to [Government Code section 65088.4](#), or within an area covered by a transit village plan adopted pursuant to [Government Code sections 65460, et seq.](#)
- If any of the above entities is interested in obtaining the property, it must so notify the District within 60 days of the District's written solicitation. ([Gov. Code § 54222\(f\).](#))
 - In the event of such notification, the District must enter into good faith negotiations to determine a mutually satisfactory price. If the price cannot be agreed upon after a good faith negotiation period of at least 60 days, the District's obligations under Government Code section 54222 are discharged. ([Gov. Code § 54223.](#))
 - If none of the above government agencies purchase or lease the property with an option to purchase under the foregoing procedures, the property must be offered at fair market value to the following additional entities ([Ed. Code § 17464\(c\)](#)):
 - In writing to the Director of General Services, Regents of the University of California, the Trustees of the California State University, the county and city in which the property is situated, and any public housing authority in the county in which the property is situated, and to any entity referenced in the paragraph immediately below ([regarding Ed.](#)

[Code § 17464\(c\)\(2\)](#)) that has submitted a written request to the District to be directly notified of the offer for sale or lease with an option to purchase the real property by the District. [\(Ed. Code § 17464\(c\)\(1\).\)](#) This notice must be mailed no later than the date of the second publication described in the paragraph immediately below.

- By public notice, published once per week for three successive weeks (with at least five days between each publication, not counting the actual publication dates) in a newspaper of general circulation within the district, specifying that the property is being made available to any public district, public authority, public agency, and other political subdivision or public corporation in the state or of the federal government, and to other nonprofit charitable or nonprofit public benefit corporations. [\(Ed. Code § 17464\(c\)\(2\).\)](#)

- If any of the above entities is interested in purchasing the property, it must so notify the District within 60 days of the third publication of the District’s notice of intent to sell or lease. If the parties do not agree upon a mutually satisfactory price within this 60 day period, the property may be sold or leased by competitive bidding.

D. Offers to Lease with No Option to Purchase

- The District may choose to notify all of the same government agencies and other entities identified above, although doing so does not appear to be required expressly by the Education Code. If the District elects not to do so, it can proceed to Step VI, below, “Board Action Declaring Intention to Sell or Lease the Property”.
- Note: There is no express statutory guidance or case law clarifying whether additional notices are required. A more conservative approach would be to follow the same process as applicable to sales or leases with options to purchase, although that does not strictly appear to be mandatory.
- The District must offer to lease the classrooms for special education programs that are provided by either other school districts that comprise part of the District’s SELPA, or

E. Additional Offers if Leasing
Vacant Classrooms

by the COE (and that serve the District's students, in whole or in part). [\(Ed. Code § 17465\(b\).\)](#)

- ❑ Upon adoption of the resolution of intent to lease real property (further described below), the District must notify in writing the other districts or the COE of its intent to lease vacant classrooms. [\(Ed. Code § 17465\(c\).\)](#)
 - The notice shall describe the vacant classrooms, specify that the lease shall not exceed a 99-year term, specify that the lease payment and other lease terms are subject to negotiation, and state that the offer is valid for no more than 60 days after receipt thereof. [\(Ed. Code § 17465\(c\).\)](#)

- ❑ The school district/COE shall inform the Board in writing of its intent to lease or not lease the classrooms within 60 days from the receipt of the notification. [\(Ed. Code § 17465\(e\).\)](#)

- ❑ The District may include in its resolution of intent a time for a regular Board meeting at which sealed proposals to lease will be received and considered, and may post copies of the resolution and publish notice of the adoption of the resolution. However, the Board shall not act on any proposal prior to the first of the following conditions occurring [\(Ed. Code § 17465\(d\)\)](#):
 - Receipt from the public education agency or the county superintendent, as appropriate, of its intent to lease the classrooms or of its intent not to do so.

 - Expiration of the 60-day period.

- ❑ The lease terms shall be negotiated by the entity desiring to lease the vacant classrooms and the Board (the terms may be negotiated prior to availability of the classrooms). [\(Ed. Code § 17465\(f\)\(1\).\)](#)
 - The lease payments shall not exceed the District's actual costs for maintenance, operation, and custodial services for the leased classrooms. [\(Ed. Code § 17465\(f\)\(2\).\)](#) If more than one school district offers to lease classrooms, the leasing district may elect to negotiate either individually or jointly with the interested districts. [\(Ed. Code § 17465\(f\)\(3\).\)](#)

V. Notification of Local City or County Planning Agency Prior to Sale

VI. Board Action Declaring Intention to Sell or Lease the Property

- ❑ If the parties are unable to arrive at a mutually satisfactory lease within the 60-day period, the District may offer the property to other parties. ([Ed. Code § 17465\(g\).](#))
- ❑ If the local city or county planning agency has adopted a general plan or part thereof which affects or includes the area where the property is located, the District must notify the agency in writing before the District may sell the property. The notification must identify the property's location, and the purpose and extent of the proposed sale. ([Govt. Code §65402\(a\), \(c\).](#))
- ❑ The local planning agency must report back to the District within 40 days, indicating whether the proposed sale is in conformity with the general plan. If the agency fails to respond within 40 days, it is conclusively deemed a finding that the proposed sale is in conformity with the general plan or part thereof. ([Govt. Code § 65402\(c\).](#))
- ❑ Even if the planning agency disapproves of the location, purpose or extent of the property sale, the District may overrule such disapproval. ([Govt. Code § 65402\(c\).](#))
- ❑ If the property remains unsold or unleased after the foregoing steps, the Board must declare its intention in a regular meeting to sell or lease the property prior to putting the property up to competitive bid. To do so, it should adopt a resolution taking each of the following actions:
 - Consider the 7-11 Committee's recommendations. ([Ed. Code § 17387, et seq.](#))
 - Describe the property proposed to be sold or leased in such a manner as to identify it. ([Ed. Code § 17466.](#))
 - Specify the minimum price and the terms upon which the property will be sold or leased. ([Ed. Code § 17466.](#))
 - State the commission or rate, if any, which the board will pay to a broker out of the minimum price. ([Ed. Code § 17466.](#))

- Specify a date at least three weeks later for a public Board meeting at which proposals to purchase or lease will be received and considered. ([Ed. Code § 17466.](#))
- The resolution must be adopted by a two-thirds vote of the Board. ([Ed. Code § 17466.](#))
- The District must give public notice of the adoption of the resolution by posting copies of the resolution signed by the Board in three public places in the District at least 15 days before the meeting where the bids are opened, and by publishing the notice at least once per week for three successive weeks before the meeting where the bids are opened in a newspaper of general circulation within the county in which the District is located. ([Ed. Code § 17469.](#))
- The governing board of a District that intends to sell surplus real property must also make efforts to notify the former owner from whom the District acquired the property 60 days in advance of the meeting at which the resolution will be considered. ([Ed. Code § 17470.](#)) Also, special rules may apply to property that was acquired by eminent domain, including that the former owner may have to be offered a right of first refusal in certain circumstances. ([Civ. Proc. Code § 1245.245.](#))
- Optional: Although not required by law, the District may wish to obtain a preliminary title report to determine if there are any exceptions in the report which would affect the bid process. Also, the preliminary title report should be made available to prospective bidders who may require the report as part of their due diligence process before submitting a bid.
- CEQA Compliance: The District should give consideration to the application of the California Environmental Quality Act (“CEQA”). Generally, a sale or lease of property is exempt from detailed CEQA review if it can be said with certainty that there is no possibility that the sale or lease will have a significant environmental effect. ([Cal. Code Regs., tit. 14, § 15061\(b\)\(3\).](#)) The District may adopt a Notice of Exemption at the same time it adopts the resolution described above. ([Id., § 15062.](#))

VII. Competitive Bidding

- At the public Board meeting where the bids are opened (in open session), the Board must do the following ([Ed. Code §§ 17472, 17473](#)):
 - Open, examine, and declare all sealed proposals which have been received by the Board.
 - Call for oral bids.
 - Either accept the highest responsible bid (after deducting the commission, if any) which conforms to all terms and conditions specified in the resolution of intention to sell or lease the property, or reject all bids.
 - If an oral bid is the highest bid, it does not need to be accepted unless it exceeds the written bids by at least 5%.
 - The bid may be accepted at an adjourned meeting of the Board within ten days of the bid opening. ([Ed. Code § 17475.](#))

- The District may seek a waiver of the competitive bidding requirements from the State Board of Education. ([Ed. Code § 33050.](#)) In recent years, the State Board has been granting some waivers of the competitive bidding requirement, particularly where a district intends to sell property to a developer, including when the sale is contingent on the developer's obtaining entitlements to build on the property. In such circumstances, the district may prefer the buyer most qualified to seek and obtain those entitlements, rather than the highest bidder in all instances. Such waivers have not, however, exempted districts from the various notice requirements set forth above, and certain public process is still required, including use of a request for proposal and a waiting period for public input after proposals are received.

To request a waiver, the District must do the following:

- Enable the employees' unions to participate in the development of the waiver. ([Ed. Code § 33050 \(d\).](#))
- Hold a public hearing on the issue. ([Ed. Code](#)

VIII. Exceptions

[§ 33050 \(a.\)](#)

- Submit an application to the State Board of Education.
- The District may bypass the above described notification and bidding procedures in several situations, including the following:
 - Child Care and Development Services ([Ed. Code § 17458](#)): The District may sell or lease any surplus real property to any contracting agency exclusively for the delivery of child care and development services (as defined in [Ed. Code § 8208](#)), for not less than five years. However, this exception only applies if a charter school has not accepted an offer to purchase or lease the property pursuant to [Education Code section 17457.5](#), therefore, the District is still required to comply with that section.
 - 30 Days ([Ed. Code § 17480](#)): The District may lease any property for a period not exceeding 30 separate or consecutive calendar days in each fiscal year.
 - Residences ([Ed. Code § 17481](#)): The Board, by a two-thirds vote of its members, may lease school district property with a residence which cannot be developed for District purposes because of the unavailability of funds for a term not exceeding three months.
 - Historic Buildings ([Ed. Code § 17482](#)): The Board may sell or lease a building that has an historic value, and the site upon which the building is located, for fair market value to certain non-profit or civic organizations, if the county board of supervisors finds that various conditions exist.
 - Land Exchanges ([Ed. Code § 17536](#)): The exchange of real property is exempt from the surplus property procedures described herein. An exchange of properties with a private person or entity may be accomplished by a resolution adopted by a two-thirds majority of the Board. Due to an apparent error made when the Education Code was reorganized, exchanges with public agencies are no

longer as clearly addressed in the Education Code; legal counsel should be consulted regarding those requirements.

IX. Use of Proceeds of Sale or Lease with Option to Purchase

- ❑ Statutory limitations on the use of the proceeds of the sale of surplus property apply to (1) sales and (2) leases with the option to purchase. They do not apply to leases with no option to purchase.
- ❑ The proceeds of the sale of surplus property generally must be used for capital outlay or non-recurring maintenance costs. The proceeds of a lease with option to purchase may be deposited in a restricted fund for routine repairs for up to a 5-year period. The proceeds must be used for one-time expenditures, and may not be used for ongoing expenditures, such as general operating expenses. ([Ed. Code § 17462\(a\).](#))
- ❑ With concurrence of the State Allocation Board that the District has no anticipated need for additional sites or construction in the next ten years or major deferred maintenance requirements, the District may surrender its state facility funding eligibility for those ten years and place the proceeds into its general funds, again for one-time expenditures. ([Ed. Code § 17462\(a\).](#))
- ❑ Subject to certain conditions and State Allocation Board concurrence, a school district having an average daily attendance of less than 10,001 in any fiscal year may deposit interest earned on the funds from a sale of surplus property in that fiscal year into the general fund for any general fund purpose, while surrendering state facilities funding for ten years. ([Ed. Code § 17463.](#))
- ❑ Under 2009 budget legislation, as revised in 2011, the proceeds of the sale of surplus property that was purchased entirely with local funds may be deposited into the general fund for one-time expenditures. If local funds used for the original purchase were either bond funds or developer fees, the amount that may be deposited into the general funds is reduced. Districts making such a deposit become ineligible for certain state hardship funding. This legislation sunsets on January 1, 2016, unless extended by the Legislature. ([Ed. Code § 17463.7.](#))

- Although it has not yet done so, as of October 2, 2013, the State Allocation Board is authorized to establish a program that would require school districts to return state school facilities funding to the State if the school district sells surplus property that was purchased, modernized, or improved using that funding, and the following conditions are met:
 - The property is not being sold to a charter school, another school district, a county office of education, or any agency that will use the property exclusively for the delivery of child care and development services.
 - The proceeds from the sale will not be used for capital outlay.
 - The property was purchased, or the improvements were constructed or modernized, within 10 years before the property is sold.

[\(Ed. Code, §17462.3.\)](#)

X. Use of Proceeds of Lease
with No Option to
Purchase

- There are no statutory limitations on the use of proceeds from a lease of surplus property if the lease does not include an option to purchase.

Disclaimer:

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