



Memorandum

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DATE February 12, 2005
TO Davis City Council
FROM Harriet A. Steiner
RE Davis Joint Unified School District – Sale of Surplus Property

You asked us to provide an overview of the legal requirements for the sale of a school district’s real property, including a summary of the City of Davis’ potential rights to acquire the Grande property from the school district for a reasonable price.

Sacramento
555 Capitol Mall
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The Grande site is neither physically connected to a school nor used for school purposes. The site is undeveloped but was acquired for a school site. It has been used by the public for open space purposes and for informal public recreation, including, but not limited to, an informal dog park.

Oakland
1901 Harrison Street
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Oakland CA
94612-3501
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toll free 800.339.3030
fax 510.839.9104

Sale of surplus school property is subject to several statutory requirements as outlined below that make it possible for other public agencies to acquire the property for community and public uses.

Yuba City
422 Century Park Drive
Suite A
Yuba City CA
95991-5729
tel 530.874.9761
fax 530.671.0990

This memo will address the decision to sell school property and then the various statutory requirements to provide notice and the ability to purchase the property by public agencies, including the City. Finally, the memo will briefly address remedies if a school district fails to comply with these legal requirements.

1. Citizen Involvement in the Sale of School District Land

Prior to selling surplus school district property, the school district must comply with requirements designed to solicit community involvement and consensus, to "provide for community involvement," to "facilitate the best possible judgments about the use of excess school facilities in each individual situation," and "to avoid community conflict" Educ. Code § 17387¹

¹ All citations herein are to the California Education Code unless stated otherwise.

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The District is required to:

- Inventory all lands owned by it on or before December 31st of each year to determine what land is in excess of its foreseeable needs. Gov. Code § 50569.
- Appoint a district advisory committee, prior to the sale of district land, to assist the governing board with policies and procedures governing the disposition of property not needed for school purposes. § 17388. The advisory committee must be comprised of 7 to 11 community members representing particular demographics and characteristics. § 17389.
- The Advisory Committee must review the data, make recommendations and submit a report to the School Board.

To the best of our knowledge the School District has not appointed this committee or received a report from a citizens' committee that would satisfy this requirement. Furthermore, it is our understanding that the District's own documents contemplated that such a committee is required and has not yet been formed. (See Attachments to this Memo.²)

2. The Naylor Act

The Naylor Act (Education Code Section 17485 and following) governs the sale of certain land owned by a school district. Thus, one of the first steps in deciding whether to sell school property is determining whether the Naylor Act applies to the particular property. School sites that meet the following criteria are subject to the Naylor Act:

- The land, either in whole or in part, is used for playing fields **or other outdoor recreational purposes and is open space land particularly suited for recreational purposes**; and
- The land has been used for one or more of these purposes for at least eight years prior to the date of the determination to sell; and

² Attached to this memo are: (1) A 1990 memo from County Counsel to the District related to the sale of property; and (2) Excerpts from the District's Long Range Facilities Master Plan, including an outline from School District legal counsel related to procedures for sale of surplus property. Since these memos were prepared, the Education Code has been reorganized so that the code section numbers have changed; however, the content of the code sections remains virtually unchanged. The current code sections are cited in this memo.

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- No other available publicly owned land in the area of the site is adequate to meet the existing or foreseeable needs of the community for recreational and open space purposes, as determined by the public agency proposing to purchase the land. § 17486; emphasis added.

If the Naylor Act applies, before selling or leasing the land, the district's governing board must first offer it for sale or lease to the city within which the land is situated. § 17489. If offered for sale to the city, the city must notify the district of its intention to purchase the land within 60 days. § 17489. If the city chooses not to acquire the property, the district must then offer it to park districts, if any exist, and then to the county. *Id.* The selling price must be not less than 25% of the fair market value and not less than the school's cost of acquisition, as adjusted for increase in the area cost of living³ and any improvements made by the school. § 17491.

Prior to purchasing the land, the City Council must first:

- Make a finding, approved by 2/3 of the council members, that public lands in the vicinity of the school site are inadequate § 17492; and
- Adopt a plan for the purchase of the property, which designates the site and selling price, and designates at least 70% of the total school surplus land⁴ that the City does not want to purchase under the Naylor Act. § 17492.

No more than thirty percent of the total surplus school acreage is subject to the Naylor Act requirements to sell the property at this below market value. The city or public agency purchasing property under the Naylor Act does, however, have the right to purchase the remaining 70% at fair market value. § 17499.

Finally, the school board has the right to exempt "not more than two surplus school sites" from the provisions of the Naylor Act if the district "has an immediate need for an additional schoolsite and is actively seeking to acquire an additional schoolsite and may exempt "not more than one surplus schoolsite" if the district is seeking an immediate expansion of the classroom capacity of an existing school by 50 percent or more. § 17497.

³ Any increase is calculated by the change in cost of living by the Bureau of Labor Statistics Consumers Price Index. § 17491.

⁴ In the context of the Naylor Act, surplus school land means property owned by a school district but not used for school purposes. § 17499.

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Since the Grande site has been used as open space and public informal recreation, the Naylor Act may apply to the sale of this site. At a minimum, the prior use of this site warrants an investigation and determination of whether the Naylor Act applies.

3. Sale of School District Land if the Naylor Act Does Not Apply

If the Naylor Act does not apply to the sale of the Grande site, there are still statutory requirements to offer the site to public agencies prior to sale to a private party. §17230; §17459; Gov. Code § 54220⁵.

The Government Code requires all local agencies, including cities and school districts, to offer surplus property for low and moderate income housing to specified public agencies and certain housing sponsors; and to public park and recreation agencies, including cities, for park purposes.⁶ The offer must be in writing and the agencies have 60 days to respond. Then the agency selling the property and the one desiring to buy the property enter into good faith negotiations to determine a mutually agreeable sales price. If no agreement is reached within 60 days, the property can be sold to a private party. Gov. Code § 54223. Sales under these provisions are generally at fair market value.

In addition to the Government Code requirements, the school district may still sell the land to the City for less than fair market value if it is surplus land and the City will use it for park, recreational, or open-space purposes. § 17230.

The governing board of the district must first adopt a resolution specifying that it will sell or transfer the property for less than fair market value to a park district, city, or county in which the land is located for park, recreational, or open-space purposes. § 17230. Again, the offer must remain open for at least 60 days. § 17232.

The land must be sold to whichever public entity first accepts the offer, or can negotiate satisfactorily for the purchase of the land. § 17232. However, if the district receives offers to purchase from more than one entity listed above, first priority must be given to an entity which agrees to use the site for park or recreational purposes if the land is already being used and will continue to be used for those purposes. Gov. Code § 54227.

This is a broad overview of the legal requirements for the sale of a school district's real property which is intended to provide a starting point for a more detailed

⁵ Here, surplus land means land owned by the district that is determined to be no longer necessary for the district's use. Gov. Code § 54221.

⁶ Certain surplus property is exempt from this requirement, including land which is less than 5,000 square feet. Gov. Code § 54221.

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discussion of options for the Grande site. There are many other statutory requirements, including procedures for sale of surplus property to private parties, circumstances when the district must offer the property to the prior owner, and occasions when a district may exchange properties. In addition, prior to sale or disposal of property, the district is required to notify the city's planning commission. The planning commission then has 40 days to determine if the sale or disposal is consistent with the city's General Plan. Gov. Code § 65402. Some public agency surplus property sales also require compliance with the California Environmental Policy Act ("CEQA").

4. Remedies for Failure to Comply with Statutory Requirements.

The Naylor Act and the other statutory provisions requiring offers to public agencies before sale all provide that: "failure of the school district to comply with the provisions of [the law at issue] shall not invalidate the transfer or conveyance of real property to a purchaser [] for value." § 17496; see also §17234; Gov. Code § 54230.5. Therefore, we believe that, should the city, another interested public agency, or a member of the public wish to assure that the school district complies with the procedures outlined above, the agency or person would have to seek judicial remedies prior to the completion of the sale to a private party. The remedies could include both a writ of mandate ordering the school district to comply and an injunction prohibiting the sale until the District did comply.

If you have any additional questions, please let me know.

Enclosures