

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2020 Agenda Item #W-04

## Subject

Request by **two local educational agencies** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

## Waiver Numbers

* Moreno Valley Unified School District: 2-11-2019
* Santa Barbara Unified School District: 12-12-2019

## Type of Action

Action, Consent

## Summary of the Issues

The Moreno Valley Unified School District (Moreno Valley USD) is requesting to waive all of California *Education Code (EC)* sections 17473 and 17474, and portions of sections 17455, 17466, 17468, 17470, 17472, and 17475, which will allow the district to maximize the return on the sale of two pieces of property in a manner that best serves their schools and community.

The Santa Barbara Unified School District (Santa Barbara USD) is requesting to waive all of California *EC* sections 17468, 17470, 17473, and 17474, and portions of sections 17455, 17466, 17469, 17472, 17475, 17476, and 17478, which will allow the district to maximize the return on the lease of one piece of property in a manner that best serves their schools and community.

## Authority for Waiver

California *EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following conditions: that the proposal each district’s respective governing board determines to be the most desirable shall be selected within 30 to 60 days of the public meeting where the proposal was received, and that the reasons for that determination be discussed in public session and included in the minutes of the meeting.

## Summary of Key Issues

Under provisions of *EC* Section 33050, the districts are requesting that specific portions of the *EC* relating to the sale or lease of surplus property be waived.

### Moreno Valley USD

Moreno Valley USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the sale of two pieces of property—approximately 10.1 acres of real property known as the Cactus/Wilmot Property (Assessor’s Parcel Number [APN] # 478-100-035 and APN # 478-100-012), and approximately five acres of real property known as the Reche Canyon Property (APN #471-240-002)—in a manner that best serves their schools and community. Both properties are currently vacant and the district's governing board has declared them surplus because the district has never used them and does not need them. The district has not made any previous attempts to sell or lease the sites. The district seeks to use the Request for Proposal (RFP) process, which will allow the district to receive offers to purchase either of the properties and then determine which of the proposals are most beneficial to the district. The district will work to develop a strategic plan for advertising and marketing the properties in order to solicit proposals from parties interested in either of them. The district will work closely with legal counsel to develop the RFP and ensure that the process by which the properties are sold is fair and open.

One of the bargaining units consulted, the Moreno Valley Educators Association, has a neutral position toward the waiver. The other local bargaining unit, California School Employees Association 410, supports the waiver.

**Santa Barbara USD**

Santa Barbara USD requests that the specified *EC* sections be waived in order to allow the district to maximize the return on the lease of one piece of real property, an undeveloped, 23.8-acre property known as the Tatum site. The district acquired the site in 1965, but has received no revenue from it for the 54 years it has owned it. The district does not need the site for school purposes, though its prospects for realizing revenue from the site were enhanced in 2015 when most of the site was up-zoned from three units per acre to 20 units per acre. The district's Real Property Advisory Board (formed under *EC* Section 17387 et seq.) previously evaluated the Tatum site and recommended to the district’s board that the Tatum site be used in a manner which will assist in meeting financial needs, but with the preference of retaining ownership of the property for the foreseeable future. The development of a senior housing facility was proposed for the site in 2016 and the SBE approved a waiver for that purpose   
(17-2-2019, W07, May 2016), but the district was unable to reach agreement with a team member on the project at the time, so it did not materialize and the waiver expired in 2018.

The district is currently resuming the development of the senior housing facility on the site, with a new team member substituted and a revised project proposal developed over the past year. The parties have reached an agreement on a term sheet, and the long-term lease and option are in the final stages of negotiation. Santa Barbara USD is seeking to waive the specified *EC* sections to facilitate entering into this prospective lease, which the district feels will best meet its own needs, as well as those of the community.

The bargaining units consulted—the local chapter of the California School Employees Association and the Santa Barbara Teachers Association—support the waiver.

### Demographic Information

Moreno Valley USD has a student population of 33,134 and is located in an urban area of Riverside County.

Santa Barbara USD has a student population of 15,000 and is located in a suburban area of Santa Barbara County.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information Web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

## Summary of Previous State Board of Education Discussion and Action

The SBE has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The districts are requesting to waive the same or similar provisions for the sale or lease of surplus property.

Waiver 17-2-2016 for Santa Barbara USD was previously approved by the SBE as part of the May 2016 agenda and it expired on May 12, 2018. It is available on the SBE Web page located at <https://www.cde.ca.gov/documents/may16w07>.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the districts to maximize revenue from the saleor lease of the properties.

The districts have certified that the sites have been owned for more than 10 years and therehave been no improvements funded by monies from the State School Facilities Program within the last 10 years. Therefore, pursuant to *EC* Section 17462.3, financial reimbursementis notdue to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Moreno Valley Unified School District General Waiver Request  
  2-11-2019 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Santa Barbara Unified School District General Waiver Request 12-12-2019 (5 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *EC* Section 17455 et seq.

| **Waiver Number** | **District** | **Property** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives** | **Advisory Committee Consulted** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-11-2019 | Moreno Valley Unified School District | Approximately 10.1 acres of vacant real property known as the Cactus/Wilmot Property (Assessor’s Parcel Number [APN] # 478-100-035 and APN # 478-100-012) and approximately five acres of vacant real property known as the Reche Canyon Property (APN #471-240-002) | **Requested:** December 1, 2019 to December 1, 2021  **Recommended:** March 12, 2020 to December 1, 2021 | 10/8/2019 | 10/8/2019  Public Hearing Advertised: Notice was published in the Press-Enterprise newspaper on 9/20/2019 and was also posted on the district's website, inside the district’s office, and at the city library. | California School Employees Association 410 Jolynn Neal, President 10/30/2019 **Support**  Moreno Valley Educators Association Harold Acord, President 10/30/2019 **Neutral** | District Surplus Property Advisory Committee 9/5/2019 **No Objections** |
| 12-12-2019 | Santa Barbara Unified School District | Tatum Site | **Requested:** January 1, 2020 to January 1, 2025  **Recommended:** March 12, 2020 to March 10, 2022 | 12/16/2019 | 12/17/2019  Public Hearing Advertised: Posted on the district's web site and at the district's office | California School Employees Association Paul Rooney, President 11/14/2019 **Support**  Santa Barbara Teachers Association Karen McBridge, President 12/6/2019 **Support** | Real Property District Advisory Committee 12/16/2019 **No Objections** |

Created by the California Department of Education

January 3, 2020

# Attachment 2: **Moreno Valley Unified School District General** **Waiver Request 2-11-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3367124

Waiver Number: 2-11-2019

Active Year: 2019

Date In: 11/12/2019 8:02:47 AM

Local Education Agency: Moreno Valley Unified

Address: 25634 Alessandro Blvd.

Moreno Valley, CA 92553

Start: 12/1/2019

End: 12/1/2021

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17470, 17472, 17473, 17474, 17475

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Moreno Valley Unified District desires to waive the following sections and portions of the *Education Code* ("*EC*"). Specifically, the

District requests that the language in brackets [] be waived:

*EC* 17455. The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district-which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article].

*EC* 17466. Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language indicates that the District must pass a resolution setting a time by which the District will open all sealed bids for the Cactus/Wilmot Property and the Reche Canyon Property. Since the District will not be conducting a bid process, and cannot predict the timing of the RFP process and its subsequent negotiations with proposers, it cannot at the time of adopting the resolution contemplated by Section 17466 know when proposals must be brought back to the governing board for consideration. After passing a resolution that authorizes the District to go forward with the RFP process, the District intends to solicit proposals for the Cactus/Wilmot Property and the Reche Canyon Property and bring proposals to the governing board to consider the approval of an agreement.

*EC* 17468. If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution: No commission shall be paid unless there is contained in or with the [sealed] proposal [or stated in or with the oral bid,] which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language indicates the District will receive sealed proposals and oral bids to purchase the property at an identified meeting of the District's governing board. The District is requesting that the requirement of sealed proposals and oral bidding to purchase the property be waived, allowing the District to negotiate the sale of the Cactus/Wilmot Property and the Reche Canyon Property with an interested purchaser.

*EC* 17470. (a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice [of the public meeting prescribed by Section 17466,] in writing, by certified mail[, at least 60 days prior to the meeting].  
(b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell ·the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language indicates the Board would be setting a specific meeting to receive proposals for the purchase of the Cactus/Wilmot Property and/or the Reche Canyon Property. Such a requirement, however, will be removed pursuant to the language stricken within *Education Code* Section 17466. As modified, the District would still be required to take reasonable steps to provide notice to the former owner, but the provision of such notice would no longer be tied to an established date to receive proposals.

*EC* 17472. At the time and place fixed in the resolution for the meeting of the governing body, all [sealed] proposals which have been received shall, in public session, [be opened], examined, and declared by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language requires the District to obtain sealed bids and select the highest bid. The District is seeking a waiver to allow it to seek proposals and negotiate with interested parties to select the proposal that best meets the needs of the District. The District may select a proposal that offers a lower price but agrees to terms that are more beneficial to the District. Thus, the District seeks to eliminate the language which requires it to enter into an agreement with the highest bidder.

*EC* 17473. WAIVE ENTIRE SECTION [Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offerer.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of the *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17474. WAIVE ENTIRE SECTION [In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, -and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the sale of the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into a sale agreement that provides the most benefit to the District. The deleted language relates to the bid process and allows school districts to accept oral bids at the bid hearing. The District will not be accepting bids or conducting a bid hearing but instead will accept proposals and negotiate with interested parties. Thus, the District will not need or accept oral bids.

*EC* 17475. The final acceptance by the governing body may be made [either at the same session or] at any [adjourned session of the same] meeting [held within the 10 days [next] following].

Rationale: The purpose of this request is to allow the District to waive the sealed proposal requirement of *Education Code* and use an alternative procedure for the Cactus/Wilmot Property and the Reche Canyon Property. Specifically, the District desires to sell the Cactus/Wilmot Property and the Reche Canyon Property via an alternative "Request for Proposals" ("RFP") process, in which the District seeks proposals and negotiates with selected proposers to enter into an agreement that provides the most benefit to the District. The deleted language indicates that a school district's governing board shall accept the highest bid at the bid hearing or within the next 10 days. The District will not conduct a bid hearing but instead will engage in negotiations with any party submitting a proposal in response to the RFP. Once the negotiations end, and the District identifies the best proposal, the District's Board will accept the proposal. Thus, the language in this Section requiring the board to accept a bid on the bid date or within 10 days does not apply to the RFP process.

Outcome Rationale: Moreno Valley Unified School District ("District") owns approximately 10.1 acres of vacant real property known as APN # 478-100-035 and APN # 478-100-012 (the "Cactus/Wilmot Property" and approximately 5 acres of vacant real property known as APN #471-240-002 (the Reche Canyon Property"). Both the Cactus/Wilmot Property and Reche Canyon Property are currently vacant land and are not being used by the District. The District's governing Board declared the Cactus/Wilmot Property and the Reche Canyon Property surplus because it no longer uses or needs the Property. The District determined that it is comfortable with selling the Cactus/Wilmot Property and the Reche Canyon Property. *Education Code* section 17466 et seq. requires school districts either selling or leasing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into a lease or sale agreement with the winning bidder. The District seeks a waiver of certain portions of the procedure set forth in *Education Cod*e section 17466 et seq. so it can pursue a sale. This RFP process will allow the District to receive offers to purchase either the Cactus/Wilmot Property and the Reche Canyon Property and then determine which proposer offers the best terms and conditions for the District. The bid auction scenario requires the District to pursue either a sale or lease of the Property and then limits the District's selection to the highest bidder. The District needs the ·ability to be flexible and work with interested parties to determine whether a sale is in the best interest of the District and establish the terms of an agreement. A waiver from the surplus property requirements will allow the District to do this. The District will work to develop a strategic plan for advertising and marketing the Property in order to solicit proposals from parties interested in either the Cactus/Wilmot Property or the Reche Canyon Property. The District will work closely with legal counsel to develop an RFP seeking proposals to purchase the Cactus/Wilmot Property and/or the Reche Canyon Property and develop a process by which the Cactus/Wilmot Property and the Reche Canyon Property is sold is fair and open.

Student Population: 33,134

City Type: Urban

Public Hearing Date: 10/8/2019

Public Hearing Advertised: Notice was published in The Press-Enterprise newspaper on September 20, 2019. Notice was also posted on the District's website, inside the District office, and at the City library.

Local Board Approval Date: 10/8/2019

Community Council Reviewed By: District Surplus Property Advisory Committee

Community Council Reviewed Date: 9/5/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Suparna Jain

Position: Attorney for District

E-mail: [sjain@aalrr.com](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2020\March%202020\sjain@aalrr.com)

Telephone: 626-773-7661

Bargaining Unit Date: 10/30/2019

Name: California School Employees Association 410

Representative: Jolynn Neal

Title: President

Position: Support

Bargaining Unit Date: 10/30/2019

Name: Moreno Valley Educators Association

Representative: Harold Acord

Title: President

Position: Neutral

# Attachment 3: **Santa Barbara Unified School District General** **Waiver Request 12-12-2019**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4276786

Waiver Number: 12-12-2019

Active Year: 2019

Date In: 12/18/2019 11:22:59 AM

Local Education Agency: Santa Barbara Unified

Address: 720 Santa Barbara St.

Santa Barbara, CA 93101

Start: 1/1/2020

End: 1/1/2025

Waiver Renewal: YES

Previous Waiver Number: 17-2-2016 W07

Previous SBE Approval Date: 5/12/2016

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Lease of Surplus Property

*Ed Code* Section: 17455, 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475,

17476, 17478

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: The Santa Barbara Unified School District desires to waive the following sections and portions of the *Education Code* ("*EC*"). Specifically, the

district requests that the language in brackets [] be waived:

## *Education Code* §17455.

The governing board of any school district may sell any real property belonging to the school district or may lease for a term not exceeding 99 years, any real property, together with any personal property located thereon, belonging to the school district which is not or will not be needed by the district for school classroom buildings at the time of delivery of title or possession. The sale or lease may be made without first taking a vote of the electors of the district [, and shall be made in the manner provided by this article].

## *Education Code* §17466.

Before ordering the sale or lease of any property the governing board, in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it [and shall specify the price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

## *Education Code* §17468.

[If, in the discretion of the board, it is advisable to offer to pay a commission to a licensed real estate broker who is instrumental in obtaining any proposal, the commission shall be specified in the resolution. No commission shall be paid unless there is contained in or with the sealed proposal or stated in or with the oral bid, which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, and the amount or rate thereof. Any commission shall, however, be paid only out of money received by the board from the sale or rental of the real property.]

## *Education Code* §17469.

Notice of the adoption of the resolution [and of the time and place of holding the meeting] shall be given by posting copies of the resolution signed by the board or by a majority thereof in three public places in the district [, not less than 15 days before the date of the meeting and by publishing the notice not less than once a week for three successive weeks before the meeting in a newspaper of general circulation published in the county in which the district or any part thereof is situated, if any such newspaper is published therein].

## *Education Code* §17470.

[(a) The governing board of a school district that intends to sell real property pursuant to this article shall take reasonable steps to ensure that the former owner from whom the district acquired the property receives notice of the public meeting prescribed by Section 17466, in writing, by certified mail, at least 60 days prior to the meeting. (b) The governing board of a school district shall not be required to accord the former owner the right to purchase the property at the tentatively accepted highest bid price nor to offer to sell the property to the former owner at the tentatively accepted highest bid price.]

## *Education Code* §17472.

[At the time and place fixed in the resolution for the meeting of the governing body, all sealed] proposals which have been received shall [, in public session,] be [opened,] examined [, and declared] by the board. [Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders,] the proposal which is the highest [, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith,] shall be finally accepted, unless [a higher oral bid is accepted or] the board rejects all [bids].

## *Education Code* §17473.

[Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offerer.]

## *Education Code* §17474.

[In the event of a sale on a higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in Section 17468 of this code, the board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.]

## *Education Code* §17475.

The final acceptance by the governing body may be made [either at the same session or] at any [adjourned] session [of the same meeting held within the 10 days next following].

## *Education Code* §17476.

The governing body may [at the session], if it deems such action to be for the best public interest, [reject any and all bids, either written or oral, and] withdraw the property from sale or lease.

## *Education Code* §17478.

Any resolution of acceptance [of any bid] made by the governing body authorizes and directs the president of the governing body, or other presiding officer, or the members thereof, to execute a deed or lease and to deliver it upon performance and compliance by the purchaser or lessee of all the terms or conditions of his or her contract to be performed concurrently therewith.

Rationale: the sections and phrases requested to be waived, in sum, allow for a negotiated lease.

Outcome Rationale: PURPOSE

This request is a renewal of the waiver granted on May 12, 2016 (Waiver No. 17-2-2016-W07), which expired in 2018.

The purpose of this waiver request is to streamline the Education Code's surplus property disposition procedures to facilitate a conventional long-term ground lease of surplus Santa Barbara Unified School District property - the 'Tatum site" - in order to maximize the District's return on the lease. The Tatum site has remained undeveloped and the District has received no revenue from it for the 54 years it has owned the site. The development potential of the site markedly improved in 2015 following the upzoning of the site. The development of a senior housing facility was then proposed for which the SBE approved a waiver. That project did not timely materialize, and the waiver expired. The District is currently working on the development of a senior housing facility that is sufficiently far along that the District anticipates an option and lease agreement to be executed within two to three months.

Accordingly, the District is now seeking a waiver of specified *Education Code* sections to allow the District to enter into a lease with its prospective lessee, who has the knowledge, ability and financial strength to obtain the required entitlements and successfully build and operate the project, and who can best meet the needs of the District and the community. The development of the proposed lease-and the resulting revenues to the District- involve direct negotiations, with many variables, and is not amenable to traditional competitive bidding, sealed proposals or overbids.

## BACKGROUND

The Santa Barbara Unified School District acquired the Tatum site in 1965. It is a 23.8- acre undeveloped property, which is not needed for school purposes.

The District's prospects for realizing revenue from the Tatum site were enhanced in 2015 when most of the Tatum site was up-zoned from 3 units/acre to 20 units/acre. This new zoning will accommodate a substantial project. The parties are now negotiating the terms of an option and long-term ground lease.

The District's Real Property Advisory Board (formed under *Education Code* section 17387 et seq.) previously evaluated the Tatum site and recommended to the District board that the Tatum site be used in a manner which will assist the District in meeting large, unmet capital facility and other financial needs, with a preference for retaining ownership of the property for the foreseeable future. The Committee also determined that the Tatum site did not meet the needs of the District for a new school site. There have been no material changes in the District's financial or operational needs during the intervening period that is contrary to those conclusions.

Student Population: 15,000

City Type: Suburban

Public Hearing Date: 12/17/2019

Public Hearing Advertised: On District's website and posting at District's office

Local Board Approval Date: 12/16/2019

Community Council Reviewed By: Real Property District Advisory Committee

Community Council Reviewed Date: 12/16/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Craig Price

Position: General Counsel

E-mail: [price@g-tlaw.com](file:///\\CDE.Cal\DATA\SFTSDATA\SHARED\SBE-Waivers-Items\Waivers\2020\March%202020\price@g-tlaw.com)

Telephone: 805-965-5131 x116

Bargaining Unit Date: 11/14/2019

Name: California School Employees Association

Representative: Paul Rooney

Title: President

Position: Support

Bargaining Unit Date: 12/06/2019

Name: Santa Barbara Teachers Association

Representative: Karen McBridge

Title: President

Position: Support