

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2021 AgendaItem #W-06

## Subject

Request by the **Santa Barbara Unified School District** to waive California *Education Code* sections specific to statutory provisions for the sale of surplus property.

## Waiver Number

18-6-2021

## Type of Action

Action, Consent

## Summary of the Issues

The Santa Barbara Unified School District (Santa Barbara USD) is requesting to waive all of California *Education Code* (*EC*) sections 17466, 17468, 17469, 17470, 17472, 17473, 17474, 17475, and 17476, and portions of sections 17455 and 17478, which will allow the district to execute a purchase and sale agreement for one piece of property in a manner that best serves its 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 condition (please note: all standard conditions have already been met): the previously approved waiver from March 2020 (Waiver 12-12-2019, W-04, <https://www.cde.ca.gov/be/ag/ag/yr20/documents/mar20w04.docx>), permitting the ability to lease this same property, will be null and void.

## Summary of Key Issues

Under provisions of *EC* Section 33050, the district is requesting that specific sections of the *EC* relating to the sale of surplus property be waived, either entirely or partially.

Santa Barbara USD is requesting this waiver in order to allow the district to execute a purchase and sale agreement for one piece of real property, an undeveloped, 23.8-acre parcel known as the Tatum site. The district acquired the site in 1965 and it has remained undeveloped for 55 years. The district does not need the site for school purposes and has deemed it surplus. There has been a long history of the district attempting to lease this property since 2004, for such purposes as the development of a senior citizen housing facility and for workforce housing.

In March 2005, the district sought and obtained a State Board of Education (SBE) waiver for this property to develop workforce housing. (Waiver Number 7-11-2004, Item W-20, <https://www.cde.ca.gov/be/ag/ag/documents/agenda0305.pdf>, Pages 1,196–1,198) However, this project never came to fruition due to economic and other issues.

Since then, the district has been seeking other opportunities for the site, and its prospects for realizing revenue were improved in 2015 when most of the site was up-zoned from three units per acre to 20 units per acre. Development of a senior housing facility was proposed for the site in 2016 and the SBE approved a waiver in May 2016 for that purpose (Waiver 17-2-2016, Item W-07, <https://www.cde.ca.gov/be/ag/ag/yr16/documents/may16w07.doc>), but the district was unable to reach an agreement at the time and the waiver expired in 2018.

In 2020, the district resumed the development of the senior housing facility project and sought a new waiver to lease the site. This waiver was approved at the March 2020 meeting of the SBE (Waiver 12-12-2019, W-04, <https://www.cde.ca.gov/be/ag/ag/yr20/documents/mar20w04.docx>). This waiver will expire on December 1, 2021.

Since obtaining this waiver, however, the district has revised the project and now wishes to sell the property. It has been determined that selling the property will better meet both local housing needs and the needs of the district, as it will provide funds for needed capital projects. The district has entered into a Purchase and Sale Agreement with Fowler Property Acquisitions Multifamily, LLC (FPA Multifamily, LLC) to sell the Tatum site, contingent on this waiver request being approved by the SBE. FPA Multifamily, LLC is the company that the district had already been working with to lease the property and, during their negotiations, they became interested in purchasing the site.

The sale of the Tatum site to FPA Multifamily, LLC involves direct negotiations, with many variables, and is not amenable to traditional competitive bidding, sealed proposals, or overbids. Santa Barbara USD is seeking to waive the specified *EC* sections to facilitate this sale. The project is now being designated as workforce housing, with 331 rental units. The Santa Barbara County Housing Authority is now part of this project and will be constructing 56 of these units as affordable housing.

### Demographic Information

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

**Because this is a general waiver, if the SBE decides to deny the waiver, 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 district is requesting to waive the same or similar provisions for the sale of surplus property.

## Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize revenue from the saleof the property.

This site has been owned for more than 10 years and there have 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 reimbursement is not due to the State Allocation Board.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Santa Barbara Unified School District General Waiver Request 18-6-2021 (6 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** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 18-6-2021 | Santa Barbara Unified School District | Tatum Site4750 Hollister Ave, Santa Barbara, CA 93110 | **Requested:**October 1, 2021 to October 1, 2024**Recommended:**October 1, 2021 to September 29, 2023 | 6/22/2021 | 6/22/2021Public Hearing Advertised: Posted on the district's website and at the district's office | California School Employees AssociationPaul Rooney, President6/9/2021**Support**Santa Barbara Teachers AssociationJoyce Adriansen, Vice President6/10/2021**Support** | District's Citizen Bond Oversight Committee for Measure I and J6/17/2021**No Objections** |

Created by the California Department of Education

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# Attachment 2: **Santa Barbara Unified School District General** **Waiver Request 18-6-2021**

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4276786

Waiver Number: 18-6-2021

Active Year: 2021

Date In: 6/28/2021 4:56:58 PM

Local Education Agency: Santa Barbara Unified

Address: 720 Santa Barbara St.

Santa Barbara, CA 93101

Start: 10/1/2021

End: 10/1/2024

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

*Ed Code* Title: Sale 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:

*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].

Rationale: The language indicating that the sale of the property is to be made in the manner provided by this article is to be waived since the District is asking that several provisions of the article be waived and consequently, the sale will not be made in the manner provided in Article 4.

*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 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 District has entered into a Purchase and Sale Agreement with a buyer, subject to approval of this waiver. The complex nature of the transaction is not susceptible to traditional competitive bidding and would not result in the best terms for the District. Accordingly, the District is requesting that the language be waived that calls for the governing board to declare its intention to sell the property, in a regular open meeting, establish a minimum price, and receive sealed proposals for the sale of the property at an identified meeting of the District’s governing board. The District has already entered into a Purchase and Sale Agreement with a buyer for a sale price of $17 million, which the District believes results in the best terms for the District. The District does not believe more favorable terms can be achieved through the process contemplated by Section 17466. Also, the District has not and will not use a real estate broker so no commission will be paid in connection with the proposed sale.

*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 entire section is stricken because the District will not be paying a commission in connection with the proposed transaction.

*EC* 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].

Rationale: The entire section is stricken because under the process to be followed the governing board would not be adopting a resolution of intent to sell and would not be setting a specific meeting to receive sealed proposals for the sale, therefore, the District will not have anything to post in three public places in the district or publish in a newspaper.

*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 stricken language is to be waived because the District acquired the site fifty-five years ago—making notification unrealistic.

*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 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].

Rationale: The entire section is stricken because the District will not be receiving and opening sealed proposals and oral bids at an identified meeting of the board. The District is requesting that the requirement of sealed proposals and oral bidding be waived, allowing the District to consummate the Purchase and Sale Agreement it entered into.

*EC* 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 offeror].

Rationale: The entire section is to be waived because the District will not be accepting sealed or oral bids.

*EC* 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.]

Rationale: This waiver is being requested because there will be no oral bidding and no real estate commission.

*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: This waiver is being request because the District has already entered into a Purchase and Sale Agreement, subject to the waiver, with a buyer to purchase the surplus land for $17 million.

*EC* 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.]

Rationale: The Board has entered into a Purchase and Sale Agreement, subject to the waiver.

*EC* 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: This waiver removes references to bidding.

Rationale: the sections and phrases request to be waived, in sum, allow for a negotiated sale of surplus property.

Outcome Rationale: PURPOSE

This request is for a waiver to sell surplus Santa Barbara Unified School District property – the “Tatum site.” The SBE approved a waiver for the lease of the Tatum site on March 10, 2020, which expires on March 10, 2022 (Waiver No. 12-12-2019).

The purpose of this waiver request is to streamline the Education Code’s surplus property disposition procedures to facilitate a sale of the Tatum site. Since obtaining the previous waiver on March 10, 2020, the District has revised the project at the Tatum site to provide that the property be sold, instead of leased, for a workforce and affordable housing development to better meet local housing needs and the needs of the District for funds for capital projects. The Tatum site has remained undeveloped and the District has received no revenue from it for the 55 years it has owned the site. The development potential of the site markedly improved in 2015 following the up-zoning of the site. The development of a senior housing facility was then proposed under a long-term lease for which the SBE approved a waiver. That project did not timely materialize, and the waiver expired. The SBE then renewed the waiver. Under the revised project, the District has entered into a Purchase and Sale Agreement with FPA Multifamily, LLC to sell the Tatum site for $17 million, contingent on this waiver request being approved by the SBE, for the development of workforce and affordable housing.

Accordingly, the District is now seeking a waiver of specified Education Code sections to allow the District to sell the Tatum site to FPA Multifamily, LLC, who has the knowledge, ability and financial strength to obtain the required entitlements and successfully develop the project, meeting the needs of the District and the community. The sale of the Tatum site to FPA Multifamily, LLC involves 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. After working on an option and long-term ground lease of the Tatum site, the District has revised the project to provide for a sale of the property, instead of a lease, for workforce and affordable house which better meets housing needs in the community and the needs of the District for funds for capital projects. The District and FPA Multifamily, LLC have entered into a Purchase and Sale Agreement to sell the Tatum site for $17 million, contingent on the SBE granting this waiver request.

Both collective bargaining groups and the Citizens’ Bond Oversight Committee have approved this waiver request. Also, 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. The Committee also determined that the Tatum site did not meet the needs of the District for a new school site.

Student Population: 15,000

City Type: Suburban

Public Hearing Date: 6/22/2021

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

Local Board Approval Date: 6/22/2021

Community Council Reviewed By: District's Citizen Bond Oversight Committee for Measure I and J

Community Council Reviewed Date: 6/17/2021

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

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Bargaining Unit Date: 06/09/2021

Name: California School Employees Association

Representative: Paul Rooney

Title: President

Phone: (805) 637-8636

Position: Support

Bargaining Unit Date: 06/10/2021

Name: Santa Barbara Teachers Association

Representative: Joyce Adriansen

Title: Vice President

Phone: (805) 687-6819

Position: Support