

# District Advisory Committee Role and Responsibilities

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**General Counsel**

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# Background

- Last January, the District retained a consultant (EPS) and began a review of its real estate assets.
  - Are all current properties are needed for current purpose?
  - Could unneeded properties could be sold, swapped, leased, or repurposed to meet needs.
- Last spring, District was made aware of a soil condition at Lum Elementary School.
- Following review, Board directed that Lum students and staff be relocated to other sites starting in the 17-18 school year.
- Board also directed formation of **district advisory committee** to provide required input on whether any District assets are not needed and how existing assets should be used.

# District Advisory Committees: What Do They Do?

- District may convene at any time, but must convene before the sale, lease, or long-term rental of any surplus District property (EC § 17388)
- DAC provides recommendations on “[u]se or disposition of school buildings or space in school buildings which is not needed for school purposes.”
- Additional properties may be relevant to determination of whether a given site is surplus.

# Properties Requiring DAC Input

- District sites currently used by students use or that could be made suitable for future student use:
  - Thompson Field
  - Lot adjacent to Bachelor Officers' Quarters
  - Lum Elementary\*

\*BOE could opt to remove Lum from this list if it decided to proceed with repair or replacement of Lum campus

# Additional Properties Relevant to Analysis

- Current District sites not suitable for student use
  - Maintenance yard
  - Food Services warehouse
  - Bachelor Officers' Quarters
- Other relevant sites
  - Former Miller Elementary School (Singleton Avenue)
    - Currently held by U.S. Navy
    - Could be reconveyed to District
  - Existing District schools

# DAC's Tasks

- EC § 17390:
  - Review projected school enrollment and other data as provided by the district to determine the amount of surplus space and real property
  - Establish a priority list of use of surplus space and real property that will be acceptable to the community
  - Notice and hold hearings to get community input on acceptable uses of space and real property
  - Determine “limits of tolerance of use of space and real property”
  - Draft report to the Board recommending uses of surplus space and real property

# DAC's Tasks

- Essentially, the DAC is to recommend answers for up to two questions for each property:
  1. Is the property needed for current or projected future student use?
  2. If not, what is the community's priority use(s) of the property?
- Answers set out in advisory report which must be adopted by a majority of the DAC.

# What Happens Next?

- DAC reviews data to determine whether it believes any of the three properties is surplus
- For any surplus property, DAC engages with community and recommends potential uses
- DAC recommendations go to the BOE
- BOE makes final decisions regarding:
  - Whether to declare property surplus
  - Use and disposition of property
  - Timing and terms of any sale, exchange or lease
  - Timing and terms of any construction work needed



# Questions?

# The Brown Act: Basics for DAC Members

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## **DISCLAIMER**

This presentation is not intended to be legal advice. It neither creates nor alters a privileged attorney-client relationship.

# The Big Question

- What does the Brown Act do?
- The Brown Act requires that all meetings of public agencies take place in public after sufficient notice has been given to the public of the matters to be discussed at the meeting.

# That Doesn't Seem So Hard

- Unfortunately, the simple answer to the big question ends up raising a number of smaller questions, each of which has a more complicated answer.
  - What is a “public agency”?
  - What is a “meeting”?
  - What does it mean to meet “in public”?
  - What happens if a public agency does not meet in public?

# What is a Public Agency?

- Public agencies include:
  - Governing bodies of local agencies (e.g. City Councils, School Boards, Public Utilities Boards); AND
  - Sub-committees or appointed bodies that:
    - Include a majority of board members, OR
    - Are standing committees with a specific mandate, OR
    - Are created by formal action of the governing body.
- Because the DAC is and appointed body created by formal board action, it is subject to the Brown Act.

# What is a Meeting?

- Any gathering of a majority of the members of the legislative body to hear, discuss, and/or deliberate on any item of business within the subject matter jurisdiction of the body.
  - We will discuss the subject matter jurisdiction of the DAC shortly.
- “Gatherings” do not have to happen in person.
  - Conference calls
  - Group e-mails
  - Serial Meetings (more later)

# What is Not a Meeting?

If a majority of the BOC does not discuss BOC business, there is no “meeting” when a majority of members attend:

- Conferences and similar gatherings which are open to the public.
- Open and noticed meetings of another legislative body.
  - So a majority of you can attend meetings of the BOE so long as you avoid discussing DAC business that is not on the BOE agenda.
- Purely social or ceremonial occasions.
  - So you do not need to run away from each other at the supermarket.



# Serial Meetings

- In addition to prohibiting gatherings of a majority of the BOC to discuss business, the Brown Act also limits how BOC members can interact in smaller groups.
  - Communications with less than a quorum of other Board member on a topic are permissible.
  - Using a series of such communications to circumvent the Brown Act is not.
- Separate conversations or communications outside of a meeting with members of a legislative body are OK if the person does not communicate to other members of the board the comments or positions of any other member of the board.

# An Example

- DAC Member Al Meda e-mails DAC President Jen Cinelle to tell her that he has heard community concerns about the possible reuse of Thompson Field.
  - So far, so good. DAC members are permitted to engage in one-on-one communications about DAC business.
- Cinelle forwards the e-mail to three other DAC members with the heading “FYI”.
  - We now have a meeting. By communicating Meda’s position to three other members, Cinelle has inadvertently brought together a majority of the DAC. This is true even though Meda does not yet know Cinelle’s position on the issue.

# Best Practices to Avoid Serial Meetings

- If an e-mail concerns an issue that needs the District's attention, consider sending it to a District representative instead of another DAC member. That minimizes the risk of e-mail chains.
- Scrupulously avoid the "reply-all" button.
- Do not ask staff if they know how other members feel about a given issue. Even though staff are not part of the agency for Brown Act purposes, if staff conveys the position of other members, it is a violation of the Act.

# What Does It Mean to Meet “In Public”?

- Notice must be given of the time, place, and agenda of issues to be discussed at a meeting.
- DAC may not discuss non-agendized items in the absence of an emergency.
- Location must be accessible to the public.
- Teleconferences are permitted. But if you call in, the location you call from must be both accessible to the public and identified in advance on the meeting notice.
  - Yes, this means that if you called in from your house, you would have to make your house publicly accessible during the meeting.
- Public must be given the opportunity to comment on each agenda item.

# Enforcement

- Invalidation of actions taken in violation of the Act.
  - There are a few types of actions that will stand even in the face of a violation, but those are the exception, not the rule.
- Court order forbidding the agency from violating the Act again.
  - This means that if there were future violations, the member(s) at issue would be violating not just the Act, but a court order, leaving themselves open to civil contempt charges.
- Misdemeanor criminal charges.
  - For intentional violations only; this is very rare.

# Questions?

# AUSD Real Estate Strategy and Planning

*The Economics of Land Use*



*Prepared for*

Alameda Unified School District

*Prepared by*

Economic & Planning Systems, Inc.

and Allan D. Kotin & Associates

**ADK&A**

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Denver  
Los Angeles

# Team Introductions

- Economic & Planning Systems
  - About EPS
  - Key Personnel
    - Jim Musbach, Managing Principal
    - Ashleigh Kanat, Executive Vice President
- Allan D. Kotin & Associates
  - About ADK&A
  - Key Personnel
    - Allan Kotin



# Role and Tasks

- Advisors to the District
- EPS and ADK&A Tasks
  - Real estate strategy and planning
    - Analysis of surplus properties evolved to a more integrated evaluation of how to meet the needs of the District through effective use of existing real estate assets.

# Agenda

- I. Review of District's Real Estate Assets
- II. Review of Space Issues/Needs Facing District
- III. Emerging Opportunities
- IV. Next Steps

# Real Estate and Space Issues

## Potential Surplus Properties

1. Maintenance Yard at end of useful life
2. Food Services Warehouse at end of useful life
3. Thompson Field – track is not regulation-sized
4. BOQ and Alameda Point
5. Lum Elementary School

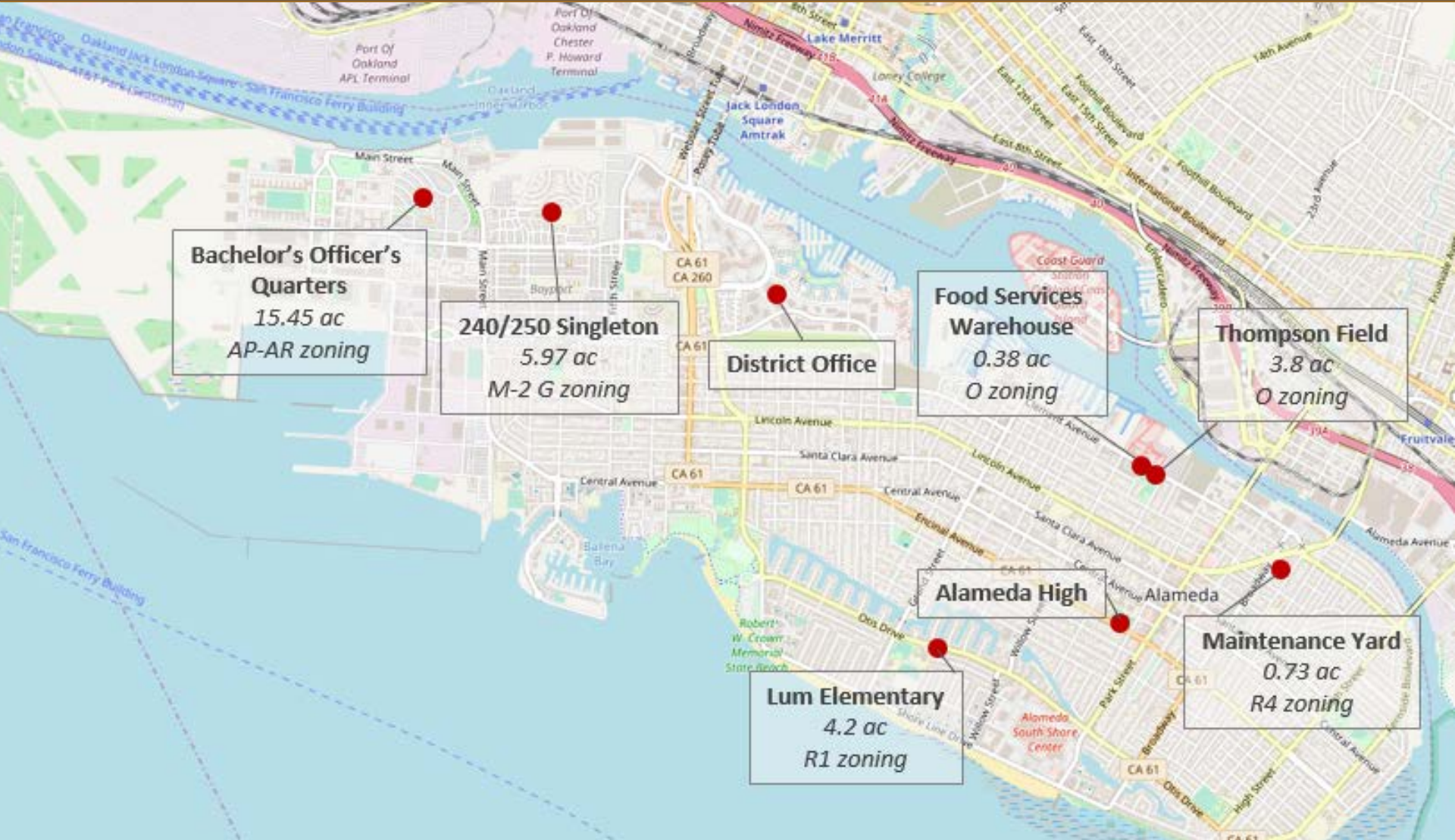
## Other Issues (or Property Acquisition)

6. Singleton conveyance
7. Alameda High swimming pool

# Anticipated Role of Advisory Committee

<b>Property</b>	<b>District/ School Use</b>	<b>Requires DAC Review</b>	<b>Board Action</b>
Maintenance Yard	District	No	Yes
Food Services Warehouse	District	No	Yes
Thompson Field	School	Yes (for disposition)	Yes
BOQ	None	No	Yes
Lum Elementary	School	Yes (for closure)	Yes

# AUSD's Select Real Estate Assets



# Maintenance Yard

- Property Profile
  - 2615 Eagle Avenue, 0.73 acres
  - Current zoning is R4 (Residential)
  - Parcel is an infill site adjacent to older and established residential uses.
- Issues/Considerations
  - The maintenance yard has outlived its useful life, and getting in and out of the site is problematic.
  - Near-term potential to sell this site to generate revenue for a new maintenance yard. Alternatively, this site may be more valuable to the District as part of a swap.
  - Maintenance Yard will need to be relocated.

# Food Services Warehouse

- Property Profile
  - 2146 Clement Avenue, 0.38 acres
  - Current zoning is O (Open Space) with a mixed-use overlay.
  - Parcel is adjacent to Thompson Field and a new 52-unit residential townhome development project.
- Issues/Considerations
  - The Food Services Warehouse has outlived its useful life.
  - Near-term potential to sell this site to generate revenue for a new food services warehouse. Alternatively, this site may be more valuable to the District as part of a swap.
  - The Food Services Warehouse will need to be relocated.

# Thompson Field

- Property Profile
  - 2164 Clement Avenue, 3.8 acres
  - Current zoning is O (Open Space)
  - Parcel is adjacent to the Food Services Warehouse
- Issues/Considerations
  - Thompson Field is used by the Alameda High for soccer and football.
  - The track is not regulation and the parcel cannot accommodate a regulation-sized track.
  - Near-term potential to sell this site to generate revenue for new athletic facilities. Replacement open space may need to be identified.
  - Replacement field also may need to be identified.

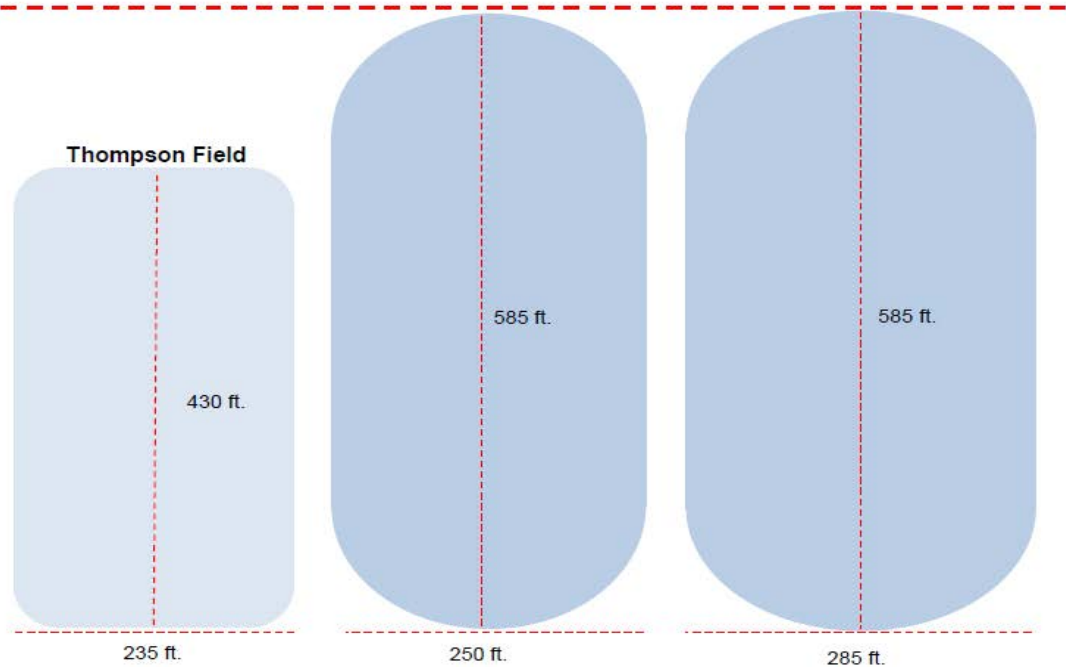


# Thompson Field



**Berkeley High School**  
- 400 meters  
- 6 lanes

**College of Alameda**  
- 400 meters  
- 6-8 lanes



# BOQ and Alameda Point

- Property Profile
  - 700 West Essex
    - Parcel 1: 7.74 acres
    - Parcel 2: 7.71 acres
  - Current zoning is AP-AR (Alameda Point, Adaptive Reuse)
- These parcels were acquired through a land swap with the City of Alameda.
- The BOQ is considered a “contributor” to Alameda Point’s historic district, and it is on the National Register of Historic Places.

# BOQ and Alameda Point – Issues and Considerations

- Issues/Considerations
  - Only Parcel 1 (the northern parcel) can be developed with residential uses within the existing zoning allowances – up to the EIR cap.
  - Parcel 2, the BOQ Parcel, would require a conditional use permit to allow residential development, further contributing to what will already be an uncertain entitlement process.
  - Significant investment and infrastructure costs exist.

# Singleton Properties/ Navy Conveyance

- Property Profile
  - 240/250 Singleton
    - 240: 1.15 acres, 250: 4.82 acres
  - Current zoning is M-2 G. General Manufacturing with a Government Overlay.
- Issues/Considerations
  - Parcels offered for conveyance by the Navy; Requirement that site be used for “school purposes” within 3 years.
    - Timing requirements may be subject to modification.
  - Inadequate infrastructure – no sewerage.
  - Carmel Properties purchased the navy housing and will install/improve infrastructure.

# Alameda High Swimming Pool

- Swimming pool at Alameda High needs replacement.
- Pool can be replaced in the same location.
- Conversely, other options may exist for relocation.

# Lum Elementary School

- Property Profile
  - 1801 Sandcreek Way (at Otis Drive), 4.2 acres
  - Building area is 36,150 sq.ft.
  - Current zoning is R1 (Residential); General Plan designation is Public/Institutional/School
- Issues/Considerations
  - The school has been closed to children since the end of the 16/17 school year.
  - District needs to determine if it needs the site for a school or if it is potentially surplus.
  - Central location and adjacency to existing sports fields present opportunities for other District uses.

# Maintenance Yard and Food Services Warehouse

- District needs to relocate both facilities which are at the end of their useful lives.
- Ideally, the two facilities can be co-located – but this is not necessary.
- Immediate opportunities for disposition (e.g., Maintenance Yard, Food Services Warehouse) have value and can be monetized to fund other District objectives.

# Athletic Facilities

- District lacks a regulation-sized track & field and a replacement swimming pool.
- Facilities may be able to be located at Alameda High.
  - The swimming pool is already there.
  - With significant site planning, a track & field facility could be located at Alameda High but would displace parking.
- The potential closure of Lum Elementary may create an opportunity for an athletic complex and/or other District uses.
- Immediate opportunities for disposition (e.g., Maintenance Yard, Food Services Warehouse) have value and can be monetized to fund other District objectives.



# Next Steps

- Board discussion on 1/23 will provide direction re: Lum School, clarifying potential opportunities.
- Meanwhile, we will be working with District staff to develop an appropriate strategy which we will bring back to this advisory committee.
- Property-specific issues will be brought to this group.