

ARUSD Exempt Surplus Lands

California State Board of Education
Waiver Application

Subject

Request by the **Alum Rock Union Elementary School District** to waive California *Education Code* sections specific to statutory provisions for the sale or lease of surplus property.

Summary of the Issues

The Alum Rock Union Elementary School District (ARUSD) is requesting to waive all of California *Education Code* (EC) sections 17473, 17474, and portions of sections, 17455, 17466, 17468, 17470, 17472 and 17475. Those provisions provide for a public bid process, which requires a district to specify terms and conditions for the sale or lease of surplus property, and then sell or lease to the highest bidder. This will allow the district to sell or lease the property in a manner that best serves its schools and community, through the request for proposal (RFP) process.

Authority for Waiver

California EC Section 33050

Summary of Key Issues

Under provisions of EC Section 33050, the San Jose ARUSD requests that the specified EC sections be waived to allow the district to maximize their flexibility in negotiating the sale or lease of five pieces of real property located throughout the school district. Each site is listed below and discussed in greater detail below.

On January 14, 2021, pursuant to Education Code Section 17388, et seq., the ARUSD District's Governing Board unanimously (ARUSD Board) approved the establishment of the District's Facilities Repurposing Advisory Committee (the "Advisory Committee") for the purpose of reviewing projected school enrollment and other data to determine the amount of surplus space and real property, establishing a priority list of use of surplus space and real property that will be acceptable to the community, cause to have circulated throughout the district a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, make a final determination of limits of tolerance of use of space and real property, and forward to the district governing board a report recommending uses of surplus space and real property. The Advisory Committee held 10 meetings and public forums and issued its recommendations and report on April 27, 2021.

The Advisory Committee issued a report and recommendations dated April 27, 2021. In the 2021 report, and based on then-current and projected declines in enrollment, and considering the extent of under-utilization and operational costs and impacts to the District's budget and financial resources, the Advisory Committee recommended that the ARUSD Board consider declaring all sites that had unoccupied space which could be used for alternative

purposes without closing the facility to school use, as *surplus*. No action was taken by the ARUSD Board on the recommendations in the report.

Since then, the ARUSD has experienced financial challenges resulting primarily from declining enrollment and the loss of one-time funding received during the COVID pandemic. On May 21, 2024, the ARUSD Board approved closing up to nine schools in the 2025-26 school year as a part of its fiscal solution plan to address a \$20 million budget deficit stemming from declining enrollment and the end of temporary COVID relief funds, and on July 13, 2024, the ARUSD Board approved the timeline for the community engagement process on the school consolidation process. On December 2, 2024, the ARUSD Board approved Resolution #26-24/25 authorizing the closure and consolidation of schools, including the closure of the following school sites:

1. Sylvia Cassell Elementary School

Property Address: 1300 Tallahassee Drive, San Jose CA 95122
Property APN: 486-35-002
Property Size: 9.76 Acres

General Plan: Public/Quasi-Public (PQP)
Zoning: Public/Quasi Public (PQP)

Current Use: Vacant former elementary school

2. Horace Cureton Elementary School

Property Address: 3720 East Hills Drive, San Jose CA 95127
Property APN: 601-26-060
Property Size: 11.1 Acres

General Plan: Public/Quasi Public (PQP)
Zoning: R-1-8

Current Use: Vacant former elementary school

3. A.J. Dorsa Elementary School

Property Address: 1290 Bal Harbor Way, San Jose CA 95122
Property APN: 486-18-057
Property Size: 9.58 Acres

General Plan: Public/Quasi Public (PQP)
Zoning: Public/Quasi Public (PQP)

Current Use: Vacant former elementary school

4. Donald Meyer Elementary School

Property Address: 1824 Daytona Drive, San. Jose CA 95122
Property APN: 491-15-010; 491-16-086; 491-16-023
Property Size: 9.76 Acres

General Plan: Public/Quasi Public (PQP)
Zoning: R-1-8; Public/Quasi-Public (PQP)

Current Use: Vacant former elementary school

5. Joseph George Middle School

Property Address: 277 Mahoney Drive, San. Jose CA 95127
Property APN: 601-17-002; 601-18-001
Property Size: 20.79 Acres

General Plan: Public/Quasi Public (PQP)
Zoning: R-1-1

Current Use: Vacant former middle school

Considering these conditions and the school closures the District reconvened its Facility Repurposing Advisory Committee.

The Advisory Committee met and held additional Public Hearings on June 16, 2025, June 30, 2025, and July 14, 2025, and held its final meeting on July 28, 2025. All Advisory Committee meetings and public forums were held in person, and agendas were created and posted and agendas created in accordance with the Brown Act. Meetings were recorded and placed on the District's YouTube channel; the June 30, 2025, meeting, was held in person but also over Zoom to allow public remote participation. A quorum (at least five members) was present at each meeting.

The Advisory Committee invited and considered public comments during each public meeting and during the public hearing portion of each meeting. The Advisory Committee received extensive public comment at the meetings and public hearings. Based on current and projected declines in enrollment, and the extent of under-utilization and operational costs and impacts to the District's budget and financial resources, the Advisory Committee recommended that the Board of Trustees declare the five closed school sites listed above as surplus lands.

On September 11, 2025, the ARUSD Board approved Resolution 15-25/26 with a determination of 1300 Tallahassee Drive, 1824 Daytona Drive, 3720 East Hills Drive, 1290 Bal Harbor Drive, and 277 Mahoney Drive (Assessor's Parcel Numbers 486-35-002, 491-15-010, 491-16-086, 491-15-023, 601-26-060, 486-18-057, 601-17-002, 601-18-001) (Properties), as "exempt surplus land." According to the Resolution, due to declining enrollment, the District's

Facilities Repurposing Advisory Committee (7-11 Committee) recommended the closure of four (4) separate elementary schools and one (1) middle school. The ARUSD Board approved the Committee's recommendations and has declared the five sites as exempt surplus land under Government Code 54221, subdivision (f)(1)(N). According to subdivision (f)(1)(N), "Real property that is used by a district for an agency's use expressly authorized in subdivision (c)" is exempt surplus land.

On September 24, 2025, the ARUSD submitted the "Exempt Surplus Land" determination to the California Housing and Community Development (HCD). HCD reviewed Resolution 15-25/26 dated September 11, 2025, pursuant to Section 400 of the Surplus Land Act Guidelines. Based on the documentation provided by the ARUSD, on November 24, 2025, the HCD found that the Properties qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(N) and issued a formal compliance letter.

Demographic Information

The San Jose ARUSD is an urban school district in the city of San Jose, within Santa Clara County. It has a current population of _____ students.

Summary of Previous State Board of Education Discussion and Action

The State Board of Education (SBE) has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The ARUSD district is requesting to waive the same or similar provisions for the sale or lease of surplus property.

Fiscal Analysis

The flexibility in property disposition requested herein will allow the district to maximize value from the sale or lease of the properties.

Attachments

- **Attachment 1** ARUSD General Waiver Request _____ (___ pages).

Attachment 1: Alum Rock Union Elementary School District General Waiver Request

California Department of Education WAIVER SUBMISSION - General

CD Code: 5672652

Waiver Number: _____

Active Year: 2025

Date In: _____

Local Education Agency: Alum Rock Union Elementary School District
Address: 2930 Gay Avenue
San Jose, CA 95127

Start: 8/1/2025
End: 8/1/2027

Waiver Renewal: No

Waiver Topic: Sale or Lease of Surplus Property

Ed Code Title: Sale or Lease of Surplus Property

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

Ed Code Authority: 33050

Education Code or *CCR* to Waive: Alum Rock Union Elementary 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 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 lease or sale of the

Properties. Specifically, the District desires to sell or lease the Properties via an alternative “Request for Proposals” (“RFP”) process, in which the District seeks proposals and negotiates with selected proposers to enter into either a sale or lease agreement that provides the most benefit to the District.

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 deleted language indicates that the District must pass a resolution setting a time by which the District will open all sealed bids for the Properties. 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 Properties 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 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 or lease of the Properties 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 deleted language indicates the Board would be setting a specific meeting to receive proposals for the purchase of the Properties. 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 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 offeror.]

Rationale: 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 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 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: Alum Rock Union Elementary School District ("District") owns the following properties: 1) property located at 1300 Tallahassee Drive, San Jose CA 95122, 2) real property located at 3720 East Hills Drive, San Jose CA 95127, 3) real property located at 1290 Bal Harbor Way, San Jose CA 95122; 4) real property located at 1824 Daytona Drive, San. Jose CA 95122; and 5) real property located at 277 Mahoney Drive, San. Jose CA 95127 (collectively, the "Properties"). The District previously declared the Properties as surplus lands pursuant to the *Education Code* and authorized staff to seek a waiver to use the alternative Request for Proposal ("RFP") to pursue disposing of the Property. As set forth herein, the District believes the RFP process will allow the District to identify the best overall disposal option for the Property that meets the District's needs.

Education Code section 17466 et seq. requires school districts disposing property to conduct a formal bid hearing process in which the school district solicits bids and then enters into an agreement with the winning bidder. The District seeks a waiver of certain portions of the procedure set forth in *Education Code* section 17466 et seq. so it can pursue disposing the Properties. This RFP process will allow the District to receive offers to dispose of the Properties and then determine which proposer offers the best terms and conditions for the District. The bid auction scenario requires the District to pursue a lease or sale of the Properties 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 or lease is in the best interest of the District and establish the terms of the 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 Properties in order to solicit proposals from parties interested in the Properties. The District will work closely with legal counsel to develop an RFP seeking proposals for the Properties and develop a process by which the Properties are disposed of through a fair and open process.

