

C.A.S.H. 26th Annual Conference on School Facilities

Beyond the Bond

Keeping the Promise for School Facilities

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WORKSHOP #25

PLANNING 201

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LEGAL REQUIREMENTS OF SCHOOLSITE ACQUISITION

BY

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REQUIRED APPROVALS & COMPLIANCE

- California Department of Education
- Department of Toxic Substances Control
- California Environmental Quality Act
- City/County
- Negotiated Purchase and Sale or Eminent Domain
- Governing Board Approval

CALIFORNIA DEPARTMENT OF EDUCATION

- Site Selection Standards and Procedures (Title 5, California Code of Regulations §§ 14010 – 14012).
- Criteria:
 - Size and enrollment established in 2000 Edition, “School Site Analysis and Development”.
 - Distance from power line and railroad track easements.
 - Not adjacent to road or freeway where traffic or sound level studies determine existence of safety problems or sound levels which adversely affect educational program.

CDE APPROVAL – cont.

- Required geological and soil engineering studies disclose that site does not contain active earthquake fault or fault trace, or if located within an area of a flood or dam flood inundation, the cost of mitigating the impact is reasonable (Education Code §§ 17212 & 17212.5).
- Distance from water or fuel storage tanks or underground pipeline easement that can pose safety hazard.

CDE APPROVAL – cont.

- Site not subject to moderate or high liquefaction or landslides.
- Shape of site with proportionate length to width ratios.
- Accessibility to site from arterial roads
- Zoning of surrounding properties compatible with schools.
- Proximity of site to public services and utilities.
- Site preparation and maintenance costs.

CDE APPROVAL – cont.

- Site not within 2 miles of airport runway or potential runway included in an airport master plan (Education Code § 17215).
 - If within 2 miles of an airport runway, school district must give CDE written notice of the proposed acquisition.
 - CDE forwards the notice to the Department of Transportation, who must investigate the proposed site and submit a written report of its findings and recommendations to CDE.
 - Within 10 days of receiving the Department of Transportation report, CDE must forward the report to the governing board of the school district.

CDE APPROVAL – cont.

- Governing board may not acquire title to the property until the report has been received.
- If the report does not favor the property acquisition, the school district may not acquire title to the property.
- If the report does favor the property acquisition, governing board must hold a public hearing on the matter before acquiring the site.

CDE APPROVAL – cont.

- References
 - SFPD 4.0 Initial School Site Evaluation
 - www.cde.ca.gov/ls/fa/sf/documents/stpd40.pdf
 - School Site Selection and Approval Guide
 - www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp
 - SFPD 4.01 School Site Approval Procedures
 - www.cde.ca.gov/ls/fa/sf/documents/stpd401.pdf
 - School Site Analysis & Development Guide, 2000
 - www.cde.ca.gov/ls/fa/sf/documents/schoolsiteanalysis2000.pdf
 - SFPD 4.03 School Site Certification
 - www.cde.ca.gov/ls/fa/sf/documents/stpd403.pdf

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

- If School District elects to receive state funds under the Leroy F. Greene School Facilities Act of 1998 (commencing with Education Code § 17070.10), must comply with the requirements of DTSC prior to site acquisition.
 - Education Code §§ 17210 & 17213.1
- Phase 1 Environmental Site Assessment, or
- Preliminary Endangerment Assessment (PEA)
 - Environmental Oversight Agreement
- If response action required due to release of hazardous materials or threat of release, one of the following response actions will be required:
 - Removal Action Workplan (RAW) >\$1 Million
 - Remedial Action Plan (RAP) ≤\$1 Million

DTSC APPROVAL—cont.

- DTSC certifies to School Facilities Planning Division (SFPD), Division of State Architect (DSA) and Office of Public School Construction (OPSC) that necessary response actions have been completed, or
- DTSC submits a “Contingent Site Approval” letter to the school district, and along with CDE contingent site approval, authorizes district to proceed with acquiring site, with either RAP or RAW to be completed prior to construction activities.

DTSC APPROVAL – cont.

- References
 - Flow Chart for CDE Site Approval and DTSC Review
 - www.cde.ca.gov/ls/fa/sf/documents/siteapp.pdf
 - DTSC Web Site
 - www.dtsc.ca.gov/
 - DTSC Publications
 - www.dtsc.ca.gov/database/Publications/pub_index.cfm
 - Preliminary Endangerment Assessment Guidance Manual
 - www.dtsc.ca.gov/database/Publications/pub_index.cfm

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- The proposed acquisition of real property is subject to the provisions of the California Environmental Quality Act (“CEQA”).
- The CEQA process entails 3 separate phases.
 - (1) The preliminary review of a proposed project to determine whether it is subject to CEQA.
 - (2) The preparation of an Initial Study to determine whether the project may have a significant environmental effect.
 - (3) The preparation of an Environmental Impact Report (“EIR”), if the project may have a significant effect, or a Negative Declaration (“ND”), if no significant effects will occur.

COMPLIANCE WITH CEQA – cont.

- “Significant Effect on the Environment” is defined in the CEQA Guidelines at § 15382 to mean:

“[A] substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”

COMPLIANCE WITH CEQA – cont.

- Although an EIR may be required in urban areas and/or where active opposition exists to a new school site, in many instances, a district will be able to process a ND. A ND may be prepared when either:
 - No substantial evidence exists that the project may have a “significant environmental effect”;
 - The Initial Study identifies a potentially significant effect but the district, before release of a proposed ND, has made or agreed to project revisions that clearly mitigate the effects, and no substantial evidence indicates that the revised project may have a significant environmental effect. (CEQA Guidelines § 15070.)

COMPLIANCE WITH CEQA – cont.

- Public Resources Code § 21151.8 requires that the EIR or ND addresses each of the following:
 - Site is current or former hazardous waste disposal site or solid waste disposal site, and if so, has the waste been removed.
 - Site is a hazardous substance release site identified by DTSC.

COMPLIANCE WITH CEQA – cont.

- Site contains pipelines that carry hazardous substances, acutely hazardous materials, or hazardous wastes, other than pipelines carrying natural gas which serve that school or neighborhood, or other nearby schools.
- Site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.
- School District has notified in writing both the Certified Unified Program Agency (CUPA) and air pollution control district or air quality management district having jurisdiction in the area, to identify any permitted and non-permitted facilities, including:

COMPLIANCE WITH CEQA – cont.

- Freeways and busy traffic corridors.
- Large agricultural operations.
- Rail yards.
- Identify whether any of the permitted or non-permitted facilities are located within $\frac{1}{4}$ mile of the proposed school site, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste.
- Governing Board must make one of the following findings:

COMPLIANCE WITH CEQA – cont.

- Consultation identified no such facilities.
- The facilities or other pollution sources exist, but either:
 - (1) The health risks do not and will not constitute an actual or potential endangerment of public health to the pupils or staff of the school.
 - (2) Corrective measures required by another agency having jurisdiction will be completed which will mitigate such health risks, or

COMPLIANCE WITH CEQA – cont.

- (3) If the school site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, after completing air dispersion modeling and considering potential mitigation measures, that the air quality at the proposed site will not pose significant health risks to pupils.
- The facilities or other pollution sources exist, but the findings in items (1), (2) and (3) above cannot be met, and the school district is unable to locate a suitable alternative site.

COMPLIANCE WITH CEQA – cont.

- Prior to the governing board approving a ND, public notice is required to be given for a reasonable period of time (normally at least 30 calendar days).
- Once the project is approved and the Notice of Determination and Certificate of Fee Exemption is filed, a 30-day statute of limitations period commences in which legal challenges to the ND approval can be initiated.

COMPLIANCE WITH CEQA – cont.

- References
 - Public Resources Code §§ 21000 – 21178.1 (<http://ceres.ca.gov/planning/>)
 - CEQA Guidelines, located at Title 14, California Code of Regulations, at §§ 15000 – 15387, which are the interpretive regulations for implementing CEQA
 - California State Clearinghouse Handbook (<http://www.opr.ca.gov/clearinghouse.html>)

CITY/COUNTY REVIEW

- Government Code § 65402(c) provides that a school district may not acquire a proposed school site, if the city or county has adopted a general plan, until the location, purpose and extent of such acquisition, has been submitted to and reported upon by the planning agency as to conformity with the adopted general plan.
 - Planning agency must render its report within 40 days after notice is received from school district.

CITY/COUNTY REVIEW – cont.

- If the planning agency fails to submit its report to the school district within the 40 day period, it shall be deemed conclusive that the proposed site acquisition is in conformity with the adopted general plan.
- If the planning agency disapproves the location, purpose, or extent of such acquisition, the school district may overrule the agency's disapproval.
- Public Resources Code § 21151.2 requires a school district to give written notice of the proposed site acquisition to the planning commission having jurisdiction over the proposed school site.

CITY/COUNTY REVIEW – cont.

- Planning Commission is required to investigate the proposed site and within 30 days after receipt of the notice provide the governing board a written report of its investigation and recommendations concerning the acquisition.
- School District may not acquire the property until after the report has been received.
- If the report does not favor the acquisition, governing board must wait until after 30 days following the receipt of the commission's report to acquire title to the property.

CITY/COUNTY REVIEW – cont.

- If proposed site is located in an area designated in a city and/or county general plan for agricultural use and zoned for agricultural production, Education Code § 17215.5 requires that prior to commencing the acquisition, the governing board make the following findings:
 - (1) School District has notified and consulted with the applicable city and/or county.
 - (2) Final site selection has evaluated all factors affecting the public interest.
 - (3) School District will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the school site.

CITY/COUNTY REVIEW – cont.

- School Districts are normally exempt from the zoning ordinances of a city or county, unless the zoning ordinance makes provision for the location of public schools and the city or county has adopted a general plan (Government Code § 53094).
 - In the event the location of schools has been provided for in the zoning ordinance and a general plan has been adopted by the city or county, Government Code § 53094(b) authorizes the governing board by a $\frac{2}{3}$ vote to render the zoning ordinance inapplicable to the proposed use of the property, provided:

CITY/COUNTY REVIEW – cont.

- The school district has complied with the notice and consultation provisions of Government Code § 65352.2 and the notice requirements of Public Resources Code § 21151.2.
- School District must notify the city or county within 10 days of taking any action to render a zoning ordinance inapplicable.
- City or county, as applicable, may seek legal review by commencing an action in superior court, on the issue whether the school district's action was arbitrary and capricious.
- If the court determines the action to be arbitrary and capricious, the school district's action will be of no force and effect, and the school district will be required to comply with the applicable zoning ordinance.

NEGOTIATED PURCHASE OR EMINENT DOMAIN

- If Preliminary Site Approval has been secured from CDE and no preliminary environmental concerns have surfaced, school district should ascertain the ownership of the proposed school site by ordering a Preliminary Report from a recognized title company.
 - Preliminary Report will indicate the current owner, whether property taxes are current, and the existence of any monetary liens, easements or other encumbrances of record impacting the property.

NEGOTIATED PURCHASE OR EMINENT DOMAIN – cont.

- School District or its consultant should contact the property owner to determine willingness to sell the property.
- If willing seller, a Purchase and Sale Agreement should be prepared. If unwilling to sell, District may choose to acquire the property through the legal process known as eminent domain.
- Education Code § 35270.5 authorizes a school district to acquire “any property necessary to carry out any of the powers or functions of the district.”

PURCHASE AGREEMENT

- Minimum terms and conditions to include:
 - Description of Property.
 - Purchase Price, including any required deposits.
 - Condition of Title.
 - Due Diligence Investigation (Ensure sufficient time to complete CEQA and secure approvals of DTSC and CDE).
 - Seller’s and Buyer’s Representations and Warranties.
 - Escrow Holder and Title Insurer.

PURCHASE AGREEMENT –cont.

- License to conduct any necessary site investigations.
- Opening and Closing Dates of Escrow.
- Conditions to Closing.
- Type of Title Insurance, including endorsements.
- Payment of Taxes and Escrow/Title costs.
- Brokerage Fees.
- Assignment.
- Remedies should Escrow fail to close.

PURCHASE AGREEMENT AND EMINENT DOMAIN –cont.

- Resources
 - Education Code § 35162 authorizes governing board of school district to acquire property for use and benefit of school district.
 - Education Code § 35270.5 authorizes a school district to acquire real property by eminent domain.
 - Code of Civil Procedure §§ 1240.010 et seq.; Government Code § 7267.2 governing eminent domain proceedings.
 - Legal Counsel for school district.

GOVERNING BOARD APPROVAL

- Once all required approvals, reviews and consultations have been secured and complied with, the governing board may give final approval to acquire the school site.