

MEMORANDUM OF LAW

DATE: March 3, 1988

TO: Councilman Ed Struiksma

FROM: City Attorney

SUBJECT: Surplus School Site in Mira Mesa - Requirement
to Offer to United States Navy; City

By memorandum dated February 11, 1988, copy attached, you indicated that the San Diego Unified School District owns a parcel of land surplus to its needs in the Mira Mesa area. Your memorandum further stated that the Mira Mesa community would like to have the City purchase the site for use as a park and that money has been set aside to acquire the site for that purpose. You indicated that the problem is that the Navy has also expressed an interest in purchasing the site for Navy housing and that a "School Board representative has indicated that the District may be required by law to give the Navy first priority for purchase of the site."

You asked for our opinion with regard to the required order of priority for a right to purchase the surplus school property, and the regulations controlling the sale of such property. Your memorandum further referenced certain sections of the State Education Code and Government Code which apply to the disposition of surplus school property.

Attached for your information is a copy of a memorandum of law of this office dated March 3, 1986, which provides a general discussion of the School District's obligation to offer its surplus property to the City for park and open space purposes. Also attached for your reference is a copy of Education Code Sections 39295 through 39299 which provides for the appointment of a district advisory committee from a community to advise the School Board in connection with the development of policies and procedures for the disposition of surplus school property.

A review of the State and Federal Codes indicates that there is no legal requirement on the School District to offer its surplus property to the Federal Government prior to disposition of such property. Therefore, the School District cannot voluntarily sell its property to the Federal Government without first complying with the applicable provisions of the State Code, including the provision relating to a district advisory committee, as well as the provisions of Government Code Section 54220 et seq. and, if applicable, Education Code Section 39390 et seq. A complete copy of Section 54220 et seq. is attached for

your reference, and a copy of the Naylor Act (Education Code Section 39390 et seq.) is an exhibit to the attached memorandum of law.

It should be noted that Section 54222(f) would require that the City indicate its intent to acquire the property for park purposes within sixty days after notification of its availability from the School District. Also, if the property meets the requirements of Section 39391 of the Naylor Act and the City complies with Section 39397.5 of the Naylor Act, the City could possibly acquire the site for twenty-five percent of its fair market value but would, once again, have to make its determination to acquire within sixty days after notification of the availability of the parcel from the School District (Section 39394). Also, it is my understanding the City has not yet adopted the plan required under Section 39397.5.

As a related matter, while the School District is not required to offer its surplus property to the Federal Government, the Federal Government is always in the legal position of acquiring any property, surplus or not, through its powers of eminent domain.

However, I discussed this matter with Mr. Jose De Luna (696-5337) and his supervisor, Commander Douglas Mann (696-5345), both of whom work on site acquisition for Navy housing, and was informed that the Navy has no intention at this time of acquiring the subject site by use of its eminent domain powers. Also, I was informed that while funds have been designated for acquisition of housing sites in the San Diego area, any specific acquisition must be reviewed by the House Armed Services Committee, of which Congressman Lowery is a member, and that the Navy staff is aware that significant community opposition, resulting in opposition by elected officials representing this area, could result in an adverse determination by the House Armed Services Committee.

In summary, the School District cannot voluntarily sell its surplus parcels to the United States Government without first complying with State Code requirements to offer the property to the City for park purposes. Also, the City must be able to commit to such acquisition within sixty days after notice from the School District or it will lose its priority rights.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Deputy City Attorney

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Attachments 4

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