

## ***IV. Land Acquisition***

Per A.R.S. §41-1091 B: This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under A.R.S. §41-1033 for a review of the statement.

***Per A.R.S. §41-5741 F: At the direction of the Board, the division shall distribute the monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school.***

**A. Application Process for Funding of Land** (Adopted March 4, 1999, Modified January 11, 2012, August 3, 2022)

To acquire land, either through a purchase or donation, the Board follows a three-step process.

### **Step I. Justification of Need for Land**

When a school district has been approved or held for consideration approved for New School Facilities funding by the Board, it may request land for the new school, if necessary. District ownership of land does not necessarily prevent the school district from receiving funds for new land. If the school district can demonstrate that district-owned property is not suitable for the needed new school, the Board may approve funding for the acquisition of land.

### **Step II. Request to Acquire a Specific Site**

The school district initiates the land acquisition process by locating a parcel of land it wishes to acquire and submitting a land acquisition application to SFOB staff. The application for the Board to approve land as a donation for a school site and the application for the Board to approve the purchase or lease of land for a school site are available under *New School Facilities/Land Acquisition* on the SFOB website.

A. Justification of selected site The school district must provide a map of the school district showing current schools and the projected student population, grade levels served and attendance boundaries in various locations in the district, which supports the location of the new school at the requested site. The school district must also provide a listing of vacant parcels currently owned by the school district (including the size of each parcel and its location), describe the site selection process, explain why this site was chosen over alternative sites, and summarize any joint-use provisions or other intergovernmental agreements related to the site. The school district must also provide a legal description of the desired site, the size of the site and an estimate of the cost of the site. The school district may provide information on more than one site.

B. Size of site (Modified November 1, 2007) The range of acreage table approved by the Board is provided to the school districts as a guide; however, school districts have some leeway in determining the size of the site selection based on its needs. It is not expected that the Board will

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approve State funding for additional acreage for limited use activities that are only remotely related to the teaching and learning enterprise. Limited use activities would include, but not be limited to, athletic fields that are only used for interscholastic competition rather than daily activities, and non-school related community functions. The site size will be based on the eventual size of the school, if expansion is planned. The school district may purchase additional acres with local funds. Sites smaller than the minimum requirement will be considered to allow for the construction of school facilities within existing residential developments. School districts should give careful consideration to joint-use sites such as those which adjoin community parks and playgrounds, particularly if the school site is smaller than the minimum acreage recommended by the Board.

C. Information cost estimate (Modified November 1, 2007, August 3, 2022) The Board may authorize the Division of School Facilities to hire an entity to verify, gather and submit information required under Step III for a school district. After reviewing the recommendation, the Board may approve or disapprove the selection of the site for a school facility.

### **Step III. Additional Information Required** (Modified November 1, 2007, August 3, 2022, November 1, 2023)

After the completion of Step II, if the school district receives preliminary approval by the Board to accept the site, the Board may approve monies to allow the school district and SFOB staff to verify, gather and submit the following information about the site. Preliminary approval by the Board may also result in monies being allocated to cover closing costs. The school district will provide documentation of the actual expenditures from the monies provided per the Terms and Conditions for Land Acquisition.

1. An appraisal of the land that documents that the proposed cost is at or below the fair market value. Two appraisals are ordered for all land purchases, one is ordered for donations. Appraisals can typically be completed in 4-6 weeks.
2. Legal description
3. Phase one environmental assessment, plus the following factors (if not included):
  - Hazardous materials
  - Archaeology: to be submitted to the State Historic Preservation Office for review and approval (typically completed in 30 days)
  - Endangered flora and fauna
  - Noise
  - Soil conditions
  - Adjacent land owners and/or uses
  - Environmental Assessments typically take 4-6 weeks to complete. Environmental Assessments older than 180 days will need to be updated by the assessor.
4. ALTA and Topographical Survey
5. Testing for pesticides and herbicides
6. Drainage statement
7. Site development cost
8. Photographic survey (if required by planning and zoning departments)

9. Feasibility site diagram - conceptual study by a design professional illustrating proposed development of the site (based on the eventual size of the school, if there are plans for expansion), indicating:

- Property lines and measurements
- Setbacks, right-of-ways and easements
- Vehicular access and parking
- Pedestrian and bicycle access
- Building zone
- Drainage concept
- Utility routes or systems
- Activity fields and courts
- Limit-lines and calculation of useable area
- Existing features to be demolished or preserved
- Future expansion capability

If final distribution of monies are approved to purchase the site, distribution may be made if Step III reveals no serious problem with the site. The school district will provide documentation of the actual expenditures from the monies provided and the actual closing costs within 60 days of the final distribution. Expenditures exceeding this amount require approval by the Board. If the site is rejected as a result of information gathered in Step III, the school district repeats Steps II and III with a new site.

### **Establishing Fair Market Value** (Standard Practice November 1, 2007, August 3, 2022)

For a land purchase, two appraisals are performed. The seller is offered the lower of the two valuations. If accepted, SFOB staff presents Step III to the Board for approval. If the lower valuation is not accepted, SFOB staff shall order a Review Appraisal to be performed by a third appraiser. The seller is then offered the valuation determined by the Review Appraiser. If the seller accepts the valuation determined by the Review Appraiser, SFOB staff presents Step III to the Board for approval. If the seller declines the valuation determined by the Review Appraiser, the district may pursue another parcel. The district may contribute local funds beyond the fair market value.

### **Additional Items**

The proposed process was developed based upon the purchase of undeveloped private land. The SFOB staff is granted authority to deviate from the process to meet other circumstances as they arise, such as purchasing state-owned land, condemnation, etc. and bring such recommendations to the Board.

### **Site Size Requirements (Useable Acres)**

Although there are many variables in the purchase of land, the acreage required for an elementary (K-6) school is generally less than that required for a middle (K-8/7-8), or a high school (9-12). The following is a breakdown by grade level and number of students of the acreage requirements:

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	<b>Elementary School</b>		<b>Elementary, Middle and Junior High School</b>		<b>High School</b>	
<b>Grade Levels</b>	<b>Preschool w/ Disabilities, Kindergarten, and Grades 1-6</b>		<b>Preschool w/ Disabilities, Kindergarten, and Grades 1-8</b>		<b>Grades 9-12</b>	
<b>Approved Useable Maximums</b>	Students	Size (Acres)	Students	Size (Acres)	Students	Size (Acres)
	249 or less	up to 8	249 or less	up to 18	249 or less	up to 30
	250 - 449	5 - 9	250-399	6 - 22	250-599	15 - 35
	450 - 649	6 - 10	400-599	8 - 24	600-999	20 - 40
	650 - 849	8 - 12	600-799	10 - 26	1000-1399	25 - 45
	850 - 1049	10 - 14	800-999	12 - 28	1400-1799	30 - 50
	1050 -1249	12 - 16	1000-1199	14 - 30	1800-2199	35 - 55
	1250 or more	14 - 18	1200-1399	16 - 32	2200-2599	40 - 60
			1400-1599	18 - 34	2600-2999	45 - 65
		1600 or more	20 - 36	3000 or more	50 - 70	

### **B. Land Donations** (Modified January 11, 2012, August 3, 2022)

Pursuant to A.R.S. §41-5741 (F), the Board may approve a 20% unrestricted capital contribution to the school district based upon the appraised value of the Board approved donated parcel, up to the maximum Board authorized acreage for the type and size of school involved. This donation factor is awarded to the school district upon commencement of construction. Additionally, a State tax credit may be available to the entity donating the land pursuant to A.R.S. §43-1089.02.

The donated real property must be at an appropriate school site approved by the Board and must be usable for academic purposes. Donated real property may be in the form of land, facilities or both. For a facility donation, the 20% contribution is based on the lesser of the cost per square foot or the cost per square foot prescribed in A.R.S. §41-5741.

### **Establishing Fair Market Value of a Donated Property** (Standard Practice November 1, 2007)

Fair market value for a donated property is established by a single appraisal. Final approval of Step III of the land acquisition process shall occur within the appraiser’s given lifetime of the appraisal, or if not specified, within 6 months from the date of the appraisal. If the appraisal has “expired” (is more than 6 months old or time has passed beyond the life of the appraisal as established by the appraiser), the property shall be re-appraised.

### **Elementary Sites within a Development**

The Board encourages, at a minimum, a significant portion of an elementary school site be donated, for a school facility that a developer wishes to be located within a residential development.

**C. Process for Acquiring State Land** (Modified January 11, 2012, August 3, 2022)

School districts may work with SFOB staff to acquire State Land as a site for a school facility. The school district must be approved or conceptually approved for a new school facility by the Board before the State Land Department will begin the acquisition process. School districts must first apply to the State Land Department; and coordinate a meeting with the Land Department, the Division of School Facilities and the School District. The process takes about 18 months to complete, as State Land requires several conferences, an advertising period, and various testing of the property. If State Land is sought, the Board requires school districts to pursue “Educational Beneficiary Land”. Due to the length of time it takes to lease State Land, school districts may pursue State Land leases for any conceptually approved project regardless of the fiscal year for which need has been projected.

**D. Leasing of Land** (Modified January 11, 2012, August 3, 2022)

Per A.R.S. §41-5741(F), the Board may distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty percent. Therefore, the lease must be for at least 75 years. State Land Leases must be at least 75 years.

**E. Development within a Military Air Force Base’s Noise and Accident Potential Zones** (Modified August 3, 2022)

Per A.R.S. §41-5741 (J), the Board’s consideration of any application filed after July 1, 2001, or after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in A.R.S. §28-8461, for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility shall include, if after notice is transmitted to the military airport pursuant to A.R.S. §41-5702 and before the public hearing the military airport provides comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential zone generated by military airport or ancillary military facility operations that may have an adverse effect on public health and safety, consideration and analysis of the comments and analysis provided by the military airport before making a final determination.

**F. Pesticide Covenants** (Modified January 11, 2012, August 3, 2022)

A.R.S. §3-365 establishes buffer zones for highly toxic/odoriferous pesticides and states:

A. The odoriferous pesticides profenofos, sulprofos, def and merphos and other pesticides with similar odoriferous characteristics shall not be applied within one-fourth mile of a school, child care facility, a health care institution that meets the requirements of section 36-421, subsection D, a child care group home as defined by section 36-897 or at least twenty-five residences adjoining the field to be sprayed, except by soil injection.

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B. Highly toxic pesticides or paraquat shall not be applied within four hundred feet of a health care institution that meets the requirements of section 36-421, subsection D, except by soil injection.

C. Highly toxic pesticides or paraquat shall not be applied in liquid form, except by soil injection, within one hundred feet by aircraft or within fifty feet by ground equipment of at least twenty-five residences adjoining the field to be sprayed. Highly toxic pesticides shall not be applied in dust form by aircraft within three hundred feet of at least twenty-five residences adjoining the field to be sprayed.

D. Highly toxic pesticides and paraquat may be applied within one-fourth mile of schools, child care group homes, and child care facilities only if authorized activities at the school, child care group home or child care facility are not scheduled to occur before the reentry time period assigned to the pesticide by provisions of the product label elapses. A responsible individual at a school, a child care group home or a child care facility shall be notified of the application of pesticides, other than highly toxic pesticides or paraquat, by aircraft during daylight hours.

E. Nothing in this section permits the application of pesticide in such a way as to cause drift within the grounds of a residence, school, health care institution, child care group home, or child care facility, but compliance with this section and the requirements of the pesticide label establishes a presumption of compliance with this subsection.

F. For the purposes of this section, distances shall be measured from the property boundary of a school, residence, child care facility, child care group home, or health care institution closest to the field to be sprayed to the area of the field that is to be sprayed.

A.R.S. §15-341 (D) states “The governing board may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the school district may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.”

To demonstrate compliance with these statutes, the school district shall provide to the Board the Pesticide Restrictive Covenants for all parties within a ¼ mile radius of the subject property. It is the responsibility of each school district to see that the document is properly executed and recorded with the appropriate county recorder. A sample pesticide restrictive covenant is available under *New School Facilities/Land Acquisition* on the SFOB website.

If no agricultural land or other land within ¼ mile radius of the subject property requires a Pesticide Restrictive Covenant, the school district shall provide an affidavit to the Board stating that the subject property is not subject to this requirement. This affidavit is available under *New School Facilities/Land Acquisition* on the SFOB website.

### **G. Improvements not covered by the SFOB**

The Board generally does not fund any off-site improvements to a school site with New School Facilities funding. Districts may use Adjacent Ways monies to fund these items.

### **H. Use of Class A or B Bond Funding to Construct a School on SFOB Acquired Land** (Adopted March 9, 2000, Modified January 11, 2012, August 3, 2022)

#### **Construction of School Facility Using Class A Bonds**

The Board may purchase land or lease State land for a school facility needed within the next ten years. A school district may construct a school facility on the land using Class A Bonds. The square footage of the new facility is included in the net square footage of the school district for purposes of determining need for additional square footage.

#### **Construction of School Facility Using Class B Bonds**

The Board may purchase land or lease State land for a school facility needed within the next ten years. A school district may construct a school facility on the land using Class B Bonds. The square footage of the new facility is not included in the net square footage of the school district for purposes of determining need for additional square footage, unless it exceeds the district's excluded space threshold as established in A.R.S. §41-5711 (E.6.b.). The school district must also agree that since the district is building a school facility with Class B Bonds on a site funded by the Board for a needed school, that when the district does qualify for a new school funded by the Board that the Board will not lease or purchase an additional site for that school.

### **I. Non-Reimbursables** (Standard Practice April 3, 2003, Modified November 1, 2007, Modified January 11, 2012, August 3, 2022)

It is the Board's policy not to approve or pay for school district legal expenses., The School District should first work with the county attorney's office to provide this service. If the county attorney's office declines the school district's request to provide legal services needed for land acquisition, the school district, prior to issuing a purchase order for legal services, may request and the Board may approve use of monies appropriated for land acquisition to cover legal services needed to complete the land acquisition process.

The Board has a long-standing precedent not to reimburse school districts for any costs incurred, without the Board's prior approval and/or authorization. Notwithstanding this policy, A.R.S. 41-5741 (Q) states "If the board approves a school district for funding from the new school facilities fund and the full legislative appropriation is not available to the school district in the fiscal year following the approval by the board, the school district may use any legally available monies to pay for the land or the new construction project approved by the board and may

reimburse the fund from which the monies were used in subsequent years with legislative appropriations when those appropriations are made available by this state.”.

To qualify for reimbursement under A.R.S. 41-5741(Q), the school district shall provide a governing board resolution explaining their intent to proceed and need for reimbursement for land acquisition or the new construction project approved by the Board for which the full legislative appropriation is not available in the fiscal year following Board approval. SFOB staff will use the resolution in the agency’s annual budget request to OSPB to include in their proposed budget to the legislature.

**J. Disposition of Land** (Modified August 3, 2022)

Pursuant to A.R.S. §15-342 (10) (c), for the sale of property acquired by the school district prior to July 9, 1998, the school district may enter into an agreement with the Board to sell the improved or unimproved property and transfer proceeds equal to the cost of the acquisition of a more suitable school site. If there are any remaining proceeds after the transfer of monies to the Board, a school district shall only use those remaining proceeds for future land purchases approved by the Board, or for capital improvements not funded by the Board for any existing or future facility.

Per A.R.S. § 41-5741(F), the proceeds derived through the sale of any land purchased or partially purchased with monies provided by the Board shall be returned to the State fund from which it was appropriated and to any other participating entity on a proportional basis. The district shall notify the Board at least 60 days prior to the governing board’s action to dispose of land purchased by the SFOB. SFOB staff may analyze and negotiate the final proceeds agreed to with the district.

**K. Title Insurance** (Adopted November 1, 2007, Modified January 11, 2012)

In most cases, the cost of title insurance is the responsibility of the seller. On a case-by-case basis and in rare circumstances the Board may cover the cost of standard title insurance.

**L. SFOB-Funded Vacant Land** (Modified August 3, 2022)

SFOB staff may conduct an administrative review of land funded by the SFOB on which the school district has not constructed a school within five years. The administrative review may include capital plan and ADM projection analysis and/or student population/density within the school district boundary analysis to determine if the land is still needed by the school district to accommodate future growth needs. The administrative review may be conducted at 5 years and every year thereafter, to determine whether ARS 41-5741(C) will be exercised. If the administrative review determines that the land is no longer needed, SFOB staff will prepare a recommendation to the Board for action and will coordinate these efforts with the school district. A.R.S. 41-5741(C) states “ The board may require a school district to sell land that was previously purchased entirely with monies provided by the board if the board determines that the



property is no longer needed within the ten-year period specified in this subsection for a new school or no longer needed within that ten-year period for an addition to an existing school. Monies provided for land are in addition to any monies provided pursuant to subsection D of this section.”

**M. Uses of SFOB-funded land** (Modified August 3, 2022)

A.R.S. 41-5741(F) states “A school district shall not use land purchased or partially purchased with monies provided by the school facilities board for a purpose other than a site for a school facility without obtaining prior written approval from the school facilities board. A school district shall not lease, sell or take any action that would diminish the value of land purchased or partially purchased with monies provided by the school facilities board without obtaining prior written approval from the school facilities board. The proceeds derived through the sale of any land purchased or partially purchased, or the sale of buildings funded or partially funded, with monies provided by the school facilities board shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis.”

The district shall request in writing approval to lease, sell or use land purchased or partially purchased with monies provided by the SFOB for a purpose other than a site for a school facility. Based on an administrative review of land funded by the SFOB on which the school district has not constructed a school within five years. The administrative review may include capital plan and ADM projection analysis and/or student population/density within the school district boundary analysis to determine if the land is still needed by the school district to accommodate future growth needs. The administrative review may be conducted at 5 years and every year thereafter, to determine whether ARS41-5741(F) will be exercised.