



The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: January 13-14, 2014

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 1.4	
		Attachment: No	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Frederick E. Harris, Assistant Vice Chancellor	Consent/Routine	X
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	
		Information	

ISSUE: This item requests approval for the Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange pursuant to the requirements of Education Code sections 81360 *et seq.* and as authorized by Education Code sections 81250 and 81252.

BACKGROUND: Long Beach Community College District is requesting a waiver of Education Code sections 81360 *et seq.* which govern the ways in which community college districts lease district property to another entity. The district wants to enter into a long-term ground lease agreement for its property located at 3340 Los Coyotes Diagonal, Long Beach, California 90808. The district attempted to lease the property per the provisions of Education Code sections 81360 *et seq.* The district received one bid proposal which the district determined to be a counter-offer because it contained terms that differed materially from those contained in the district’s bid package. After reviewing the counter-offer, the district’s Board of Trustees voted to reject the counter-offer.

The district therefore purposes to develop the Los Coyotes Diagonal property to its highest and best use pursuant to a negotiated ground lease. A negotiated ground lease will allow the district the flexibility in selecting the best fit for the development of the property and to maximize the revenue from the ground lease. The waiver will allow the district to negotiate directly with the entity determined by the district’s Board of Trustees to be best suited for the development of the property rather than go through the time and expense of a second, and likely unsuccessful, bid process.

RECOMMENDED ACTION: It is recommended that the Board of Governors approve Long Beach Community College District’s request for a waiver of Education Code sections 81360 *et seq.* for the leasing of the Los Coyotes Diagonal property.

ANALYSIS:

WAIVER REQUEST

The Long Beach Community College District is requesting a waiver of the bid process defined in Education Code sections 81360 *et seq.*, made pursuant to the requirements of Education Code sections 81250 and 81252, so the district can lease 2.2 acres of vacant property to create a long-term income stream.

The Long Beach Community College District's Board of Trustees declared the Los Coyotes Diagonal property as surplus in April 2013 and authorized the district to proceed with the bid process set forth under Education Code sections 81360 *et seq.* to lease the property. After the district passed a resolution declaring its intention to lease the property, a bid package was disseminated setting forth the minimum terms and soliciting bids from interested parties to develop the property as a healthcare/medical facility in keeping with the permitted zoning of the property. A public bid hearing was held on July 18, 2013 at which time the district received one bid proposal. The proposal was so materially different from the terms included in the district's bid package that it constituted a counter-offer. The district subsequently rejected the counter-offer.

The district states that repeating the statutory competitive bidding process set forth in the Education Code would not be effective given the district's experience as well as the collective experience of other districts. These experiences show that most commercial property developers are reluctant to submit unconditional bids in a competitive bid process. Further, the district will receive a better economic return on the property by using a negotiated lease agreement that can take into consideration necessary land use approvals from local government agencies. The district requires flexibility in selecting the best fit for the development of the property as well as to maximize the revenue from the ground lease. The district would benefit from the potential ongoing cash flow that could be generated by a negotiated ground lease.

BOARD OF GOVERNORS' WAIVER AUTHORITY

Education Code section 81252 allows the Board of Governors of the California Community Colleges to approve any waiver upon finding that it would promote efficiency and further the public benefit. Pursuant to that section:

- The district conducted a public hearing regarding the waiver on October 22, 2013 and provided written notice to the appropriate public entities 30 days before the hearing.
- Long Beach Community College District did attempt to lease the property without a waiver per the provisions of Education Code sections 81360 *et seq.* and was unsuccessful. No public agency made an effort to acquire the site during the bid process. However, it should be noted that Education Code section 81363.5 applies only to the sale of property or lease with an option to purchase and does not apply in this case to a straight lease since there is no option to purchase involved.
- The waiver will not increase state costs or decrease state revenues.
- The waiver will further the ability of the district to meet the educational needs of the community by providing the district with additional funds.

Education Code section 81250 allows the governing board of a community college district to request a waiver of all or part of any section of the California Education Code, Division 7, Part 49, Chapter 2. In the case of leasing district property, a district is required to give 30-day notice of the public hearing to various public agencies, which the Long Beach Community College District has done. Education Code sections 81360 *et seq.* are included in Chapter 2 of the Education Code.