

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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**Request for Waiver of Property Use Requirements:
Sale, Lease, Use, Gift, and Exchange (Ed. Code § 81250 et seq.)**

Community College District: Desert Community College District		Contact's name and title: Lisa Howell		Email: lihowell@collegeofthedesert.edu	
Address: 43-500 Monterey Avenue		City: Palm Desert	State: CA	Zip: 92260	Phone: (760) 773-2511
Date of request: April 18, 2014		Local board approval date: (Required) April 17, 2014			
Justification					
Date of public hearing held on this matter: April 17, 2014					
What parts of Part 49, Chapter 2 are being requested to be waived? Why?					
In order for the District to benefit from a New Markets Tax Credit transaction, the District is requesting a waiver of Ed. Code §81360, which prohibits a community college district from selling or leasing property which may need to be used for classroom buildings, and a waiver of Ed. Code §81365, which requires that any sale or lease of community college district property be made by a sealed bid process.					
A complete description of the proposed transaction is attached as an Addendum.					
Does waiver request involve the sale or lease of district real property? Yes.					
If so, was written notice of at least 30 days prior to the public hearing provided to the appropriate entity outlined in § 81250(b)? Yes, notice to each of the appropriate entities was sent by first class mail and by email on March 14, 2014.					
District Certification – <i>I hereby certify that the information provided on this application is correct and complete.</i>					
Authorized Signature:		Name and Title: Lisa Howell, Vice President, Administrative Services		Date: April 18, 2014	
FOR California Community College Chancellor's Office USE ONLY					
Staff Member Name:		Signature:		Date:	

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California Community Colleges Chancellor's Office**

Please note that additional pages can be attached, if needed.

Send original plus one copy to:

California Community Colleges
Chancellor's Office
1102 Q Street
Sacramento, CA 95811-6549
ATTN: Legal Affairs

Or

Email the completed form and back-up material to: legallaffairs@cccco.edu

Addendum
Request for Waiver of Property Use Requirements
By the Desert Community College District

This is a request for approval to waive two requirements of the Education Code: (1) a waiver of the requirement that property which the District needs for classroom purposes may not be sold or leased as required by Education Code Sections 81360 et seq. and (2) a waiver of the sealed bid process defined in Education Code Sections 81365 et seq. This request is made pursuant to the requirements of Education Code Sections 81250 and 81252.

BACKGROUND.

The Desert Community College District (the “District”) seeks a waiver of the restrictions on the sale or lease of District-owned property and the sealed bid process because these provisions typically apply when a community college district is offering to lease or sell property to the public. In the current situation, the District essentially will lease the real property and improvements to itself and use the real property and improvements for District classrooms.

On March 21, 2014, the Board of Trustees of the District adopted a resolution to enter into a New Markets Tax Credit transaction (the “NMTC Transaction”) pursuant to Internal Revenue Code §45D (the “NMTC Program”). The NMC Program promotes investment in “low income communities,” which are census tracts that exhibit high unemployment, low incomes, and high poverty rates. The NMTC Program, through the U.S. Department of the Treasury, provides tax credits to “community development entities” which tax credits are sold to investors. The proceeds from the sale of the tax credits provide equity capital which must be used to subsidize real estate development and businesses in low income communities.

THE NMTC TRANSACTION.

The Indio Campus of College of the Desert is located in Indio, California, and is within a low income community. The Indio campus has been constructed and is currently being used for District classrooms with related ground floor retail and commercial uses. The NMTC Program will utilize the funds which have already been expended for construction of the Indio Campus to generate New Markets Tax Credits (“NMTCs”). A community development entity, Border Communities Capital Company, LLC, has committed to providing an allocation of NMTCs to the District, and U.S. Bancorp Community Development Corporation has committed to purchasing the NMTCs. The NMTC Transaction with the current allocation of NMTCs will generate significant revenues for the District. The District is attempting to secure additional NMTCs to use in this transaction in order to generate additional capital, but has not done so to date.

The equity capital generated by the NMTC Program will be made available to the District through a complex structure which is essentially a lease/lease-back transaction. The District will form a separate non-profit corporation (the “Facilities Corp”) to satisfy the requirements of the tax credit investor. Because of various NMTC Program regulations and guidelines, the

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Facilities Corp will lease the Indio campus from, and back to, the District. Since the District will be leasing the Indio campus to an entity created by the District for this transaction, the public is not invited to bid or participate in the transaction, and the District is assured that the Indio campus will continue to be used for classrooms. The NMTC Program requires that this lease/leaseback structure remain in place for 7 years. At the 7th anniversary of the funding of the NMTC Transaction, the District will dissolve the structure established for the NMTC Transaction, including termination of the lease and sublease.

BOARD OF GOVERNOR'S WAIVER AUTHORITY.

Education Code § 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. Education Code §§ 81360 et seq. and 81365 et seq. are included in chapter 2 of the Education Code.

Education Code § 81250(a) requires that the governing board of a community college district requesting a waiver of these provisions of the Education Code hold a public hearing to consider the waivers. The Board of Trustees of the District held a duly noticed public hearing to consider this request of waivers on April 17, 2014. Upon consideration, the Board of Trustees voted to request the Board of Governors to approve these waivers.

In addition, the District satisfies the following requirements that must be met in order for the Board of Governors to approve the waivers per Education Code § 81252 as described below:

1. *The district must provide the written notice required by Education Code § 81250(b).*

The District provided 30-day notice of its intent to seek a waiver at its April 17, 2014 Board of Trustees meeting to all public entities within which the Indio campus is located.

2. *Not Applicable.*

This subsection says the district must make a good faith effort to reach agreement with any public agency that sought to acquire the site pursuant to Education Code section 81363.5. Education Code section 81363.5 is only applicable to sales or leases with option to purchase; neither is the case in this instance.

3. *The waiver will not substantially increase state costs or decrease state revenues.*

The waiver will not increase state costs, but rather will result in savings through the New Markets Tax Credit program.

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4. *The waiver will further the ability of the district to meet the educational needs of the community.*

Granting this waiver will result in a substantial economic benefit to the District.