





The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: November 17-18, 2014

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 2.4	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Dan Troy, Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	X
		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 section 81370 as authorized by Education Code sections 81250 and 81252.

BACKGROUND: San Jose-Evergreen Community College District is requesting a waiver of Education Code section 81370, which requires sealed bid proposals with acceptance of the highest bid for the long-term lease of property. The district wants to enter into a long-term ground lease agreement for a site located adjacent to its Evergreen Valley College campus. The district notified other public agencies as required by Government Code section 54222 et seq. and Education Code section 81363.5. No agency or entity described in those code sections expressed interest in the site.

Because of the complexity of any long-term ground lease transaction, and the non-economic factors the district must take into account when evaluating competing proposals, it will be difficult for the district to do a “highest bid” analysis on the bid proposals. Further, the mixture of uses may vary from one proposed developer to another and each proposal may have different economic structures making it impractical to calculate and compare each proposal’s exact monetary value. For these reasons, the district states that it is in the best interest of the district and the community for the Board of Governors to waive the “highest bid” requirement mandated in Education Code section 81370(b).

RECOMMENDED ACTION: It is recommended that the Board of Governors approve San Jose-Evergreen Community College District’s request for the waiver of Education Code section 81370 as shown in Exhibit 1 and described in this item for for the long-term lease of the property.

ANALYSIS:

BOARD OF GOVERNORS' WAIVER AUTHORITY

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 of district property, a district is required to give 30-day notice of the public hearing to various public agencies which San Jose-Evergreen Community College District has done. Education Code section 81370 is included in Chapter 2 of the Education Code. Education Code section 81252 requires that the districts certify to certain actions and statements prior to approval of the waiver. To this end the district has provided the following information

1. The district conducted a public hearing regarding the waiver on May 28, 2014 and provided written notice to the appropriate public entities 30 days before the hearing.
2. The district has complied with the provisions of Education Code section 81363.5 and California Government Code section 54222 et seq. No agency or entity described in those code sections expressed an interest in the site within the statutory time period set forth in those code sections.
3. The waiver will not increase state costs or decrease state revenues.
4. 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 81252 then provides that the Board of Governors of the Community Colleges can approve the waiver based on the district's action detailed above.

WAIVER REQUEST

The Evergreen Valley College campus site is located in San Jose, Santa Clara County, California on approximately 175 acres. The district wants to enter into a long-term lease for a 27-acre portion of the property that is located adjacent to the campus (Exhibit 2). The site was originally intended to be used for later expansion and further development of the Evergreen Valley College campus but thus far has only been used for administrative offices and a training facility for public safety that has been operated by a joint powers agency pursuant to a lease. The lease will expire soon and the training facility will be relocated off campus. The recently completed update of the district's Master Plan indicates that the campus does not need the site for future use. The San Jose-Evergreen Community College District Board of Trustees has declared the site surplus.

STATUTORY REQUIREMENTS

Education Code section 81370 requires districts to accept the highest bid received. San Jose-Evergreen Community College District desires to enter into an agreement with tenants that will provide a reasonable economic return to the district while assuring that the development will provide the aesthetic and other amenities consistent with the neighborhood and be compatible with other development in the area. The City of San Jose's General Plan will need to be amended to change the designation of the site from "public / quasi -public facilities district" to another designation. The district is confident that such an amendment will be adopted subject to completion of the California Environmental Impact Report and mitigation monitoring plan.

Similarly, the district believes that the required zoning for development of the site will be obtained from the City of San Jose.

The above objectives can be best accomplished by having the district solicit proposals that allow the developer(s) the flexibility to propose material terms that are over and above the minimum requirements being solicited by the district. These material terms include: (1) the term of the lease; (2) the base rent; (3) escalation clauses; and (4) a general description of improvements on the site.

The district believes that it must also consider other important factors in addition to economic factors, such as the reputation and long-term financial stability of each proposed tenant as well as each proposed tenant's willingness to cooperate with respect to the educational and environmental impact of each respective proposal that is received, such as traffic mitigation and aesthetic qualities. Because these items are not conducive to a "highest bid" analysis, it may not be possible to ascertain which proposed tenant has tendered the "highest bid" as required by California Education Code Section 81370 for which this waiver is requested. A list of some of the factors or criteria the district will consider in evaluating bids from developers is shown in Exhibit 3.

Exhibit 1

Education Code Provisions to be Waived

81370. (a) At the time and place fixed in the resolution for the meeting of the governing body, all ~~sealed~~ proposals that have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted that conform to all terms and conditions specified in the resolution of intention to sell or to lease and that are made by responsible bidders, ~~the sealed proposal that is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith,~~ shall be finally accepted, unless the board rejects all of these bids.

(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.

Exhibit 2

Maps

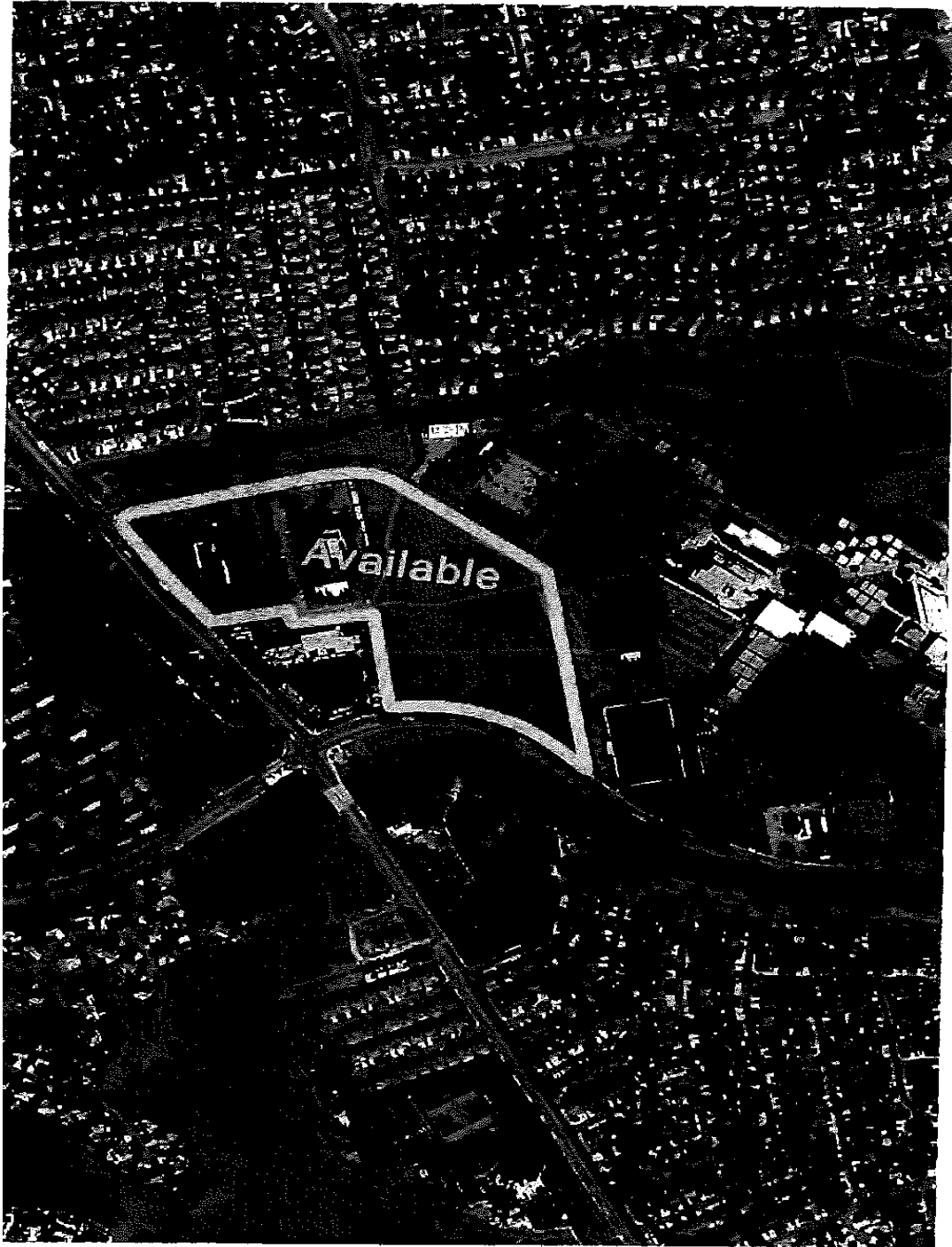


Exhibit 3

FACTORS TO CONSIDER FOR SURPLUS LAND DEVELOPMENT

City of San Jose

1. Compliance with CEQA
2. Compliance with restrictions on zoning

Benefits to Students

1. Proximity of other services for students, e.g., restaurants, retail stores, housing

Project Design

1. Traffic impact on the community and on Evergreen Valley College students
2. Noise impact on Evergreen Valley College students and surrounding community
3. Effect on potential expansion of Evergreen Valley College
4. Impact on Evergreen Valley College while under construction
5. Use of buildings at end of the lease
6. Configuration of property to be retained by the district

Economic

1. Long term revenue stream produced for the district
2. Timing of revenue stream
3. Risk of revenue stream
4. Vulnerability of revenue stream

Developer

1. Reputation of developer
2. Financial capabilities of developer
3. Market feasibility of project
4. Long-term stability of developer

Contract terms

1. Nature of contract provisions (details to be considered by real estate, financial, and legal consultants)