

Board of Trustees Agenda Item

Board Meeting Date: February 6, 2012

Title of Item: Educational Center Acquisition Update; Board of Trustees Resolution Authorizing Acquisition of Property at Onizuka Air Force Station

Background and Analysis:

After the Sunnyvale City Council, acting as the Local Redevelopment Authority, unanimously and enthusiastically amended the Onizuka Air Force Station Redevelopment Plan to include an education center as a preferred use for the site on December 13, 2011, we finalized and submitted our public benefit conveyance application for 9.56 acres to the Department of Education on December 19, 2011.

On January 24, 2012, the Department of Education advised of their conditional approval of the public benefit conveyance based upon the Board of Trustees approving the Department of Education's standard board resolution at our next regularly scheduled meeting and based upon receipt of a "Finding of Suitability to Transfer" from the Air Force. A copy of the Department of Education's conditional approval letter is attached. It is anticipated that the Air Force will provide a Finding of Suitability to Transfer in the near term since the Air Force has completed their environmental review of the site and has certified a finding of No Significant Impact associated with the closing of Onizuka Air Force Station.

Ms. Shawyer, who is in the Federal Real Property Division of the U.S. Department of Education, has advised that the attached Board of Trustees resolution to document the Board's authorization to acquire the property is required. This resolution includes provisions related to approved uses of the site, timeliness of development of the site, and the potential for financial sanctions if the Educational Center is not in use within three (3) years after the transfer of the property to Foothill – De Anza Community College District. According to Ms. Shawyer, the language in the board resolution is required by statute and implementing regulations and that this language will also be incorporated into a deed of conveyance.

Ms. Shawyer has also advised that the board resolution is a standard document that has been vetted by the Department of Education Office of General Counsel. She has advised that this document has been used for decades and has been accepted as written by applicants across the country.

In response to informal inquiries by Executive Director Allen regarding possible alterations to the language of the resolution, Ms. Shawyer advised that she had discussed the situation with the Director of the Real Property Division and that they have concluded that the Department of Education is unable to accept any changes to the resolution language as written. This decision was based upon the thorough review and approval of the board resolution by the Department of Education legal counsel.

However, in separate communication, Ms. Shawyer has also advised that the Department of Education has some flexibility to work with the District in extending the 36-month requirement should the estimated construction dates slip. According to Ms. Shawyer, several past grantees, similarly to our situation, have had to demolish existing unusable structures and construct new facilities to be able to use the property for educational purposes. In those cases, Ms. Shawyer indicates that the Department of Education has been able to successfully work with the applicant to

address any delay in program implementation without requiring cash payments. She asked that the District understand that the Department of Education typically only requires a monthly cash payment if the property is not being used at all or when other compliance enforcement options are not feasible.

Recommendation: Executive Director of Facilities, Operations, and Construction Management Charles Allen and Vice Chancellor of Business Services Kevin McElroy recommend adoption of Resolution #2012-01

Submitted by:	Charles Allen, Executive Director
Additional contact names:	Kevin McElroy, Vice Chancellor
Is backup provided?	Yes



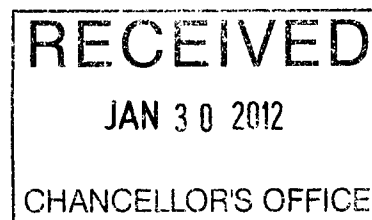
UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

E-mail: Barbara.Shawyer@ed.gov

January 24, 2012

Linda M. Thor, Ed.D.
Chancellor
Foothill-De Anza Community
College District
12345 El Monte Road
Los Altos Hills, CA 94022



Dear Dr. Thor:

This will acknowledge receipt of Foothill-De Anza Community College District's (FHDA) application dated December 19, 2011, as revised January 13, 2012, submitted to the U.S. Department of Education (Department) to acquire Parcel C of the former Onizuka Air Force Station property in Sunnyvale, California.

The Department is pleased to advise that we have conditionally approved FHDA's application to acquire Parcel C of the former Onizuka Air Force Station property for the relocation of the Foothill College/Middlefield Education Center. The Middlefield Education Center will offer support services and credit and noncredit programs in basic skills, transfer and workforce preparation as well as not-for-credit, fee-based community education. FHDA will be granted a Public Benefit Allowance discount of 100 percent.

Please recognize that the Department's conditional approval is based upon the Board of Trustees approving the Department's standard board resolution at its next regularly scheduled meeting.

Depending on the length of time it takes the Air Force to complete the environmental remediation and associated documents pertaining to the Onizuka Air Force Station, the Department may require FHDA to update its proposed program and plan of use to ensure that your needs and financial resources have not changed during the intervening period since application approval. Please recognize that the Public Benefit Allowance discount granted with our approval of your application may need to be recalculated if your proposed program and plan of use is significantly revised in the future.

Congratulations and we look forward to working with you in the future on the transfer of Parcel C of the former Onizuka Air Force Station to the Foothill-De Anza Community College

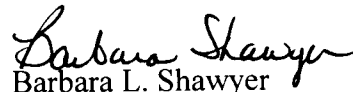
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

District. Please understand that our approval is contingent upon satisfactory remediation of any environmental contamination discovered prior to the Air Force's assignment to the Department to the point where the Air Force will be able to assign the property under a Finding of Suitability to Transfer (FOST). The Department's approval of your application and the resulting request for assignment is contingent upon the Air Force accepting the recommendation of the Department and should not be construed as an assurance that the property requested will actually be transferred to you.

Please contact me at (202) 401-0044 or via e-mail if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara Shawyer".

Barbara L. Shawyer
Federal Real Property Division

cc: Charles Allen, FHDA
Shaunn Mendrin, City of Sunnyvale
Terilyn Anderson, LRA

RESOLUTION

#2012-01

WHEREAS, certain real property owned by the United States of America, located in the County of Santa Clara, State of California, has been declared surplus to the needs of the Federal government and is subject to assignment for disposal for educational purposes by the Secretary of Education, under the provisions of Section 203(k)(1)(a) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) (Act), as amended, and rules and regulations promulgated pursuant thereto, more particularly described as follows:

Parcel C as shown on the attached map, which parcel contains approximately 9.56 acres with approximately 550,000 square feet of obsolete improvements located on the former Onizuka Air Force Station in Sunnyvale, California.

WHEREAS, Foothill – De Anza Community College District ("District") needs and can utilize said property for educational purposes in accordance with the requirements of said Act and the rules and regulations promulgated thereunder of which this Board is fully informed, including commitments regarding use and time within such use shall commence.

NOW, THEREFORE, BE IT RESOLVED, that the District, shall make application to the Secretary of Education for, and secure the transfer to it of, the above-mentioned property for said use upon and subject to such exceptions, reservations, terms, covenants, agreements, conditions and restrictions as the Secretary of Education, or his authorized representative may require in connection with the disposal of said property under said Act and rules and regulations issued thereto; and

BE IT FURTHER RESOLVED, that the District_ has legal authority and is willing and is in a position financially and otherwise to assume immediate care and maintenance of the property, and that Linda M. Thor, Chancellor, is hereby authorized, for and on behalf of the District to do and perform any and all acts and things which may be necessary to carry out the foregoing resolution including the preparing, making and filing of plans, applications, reports and other documents; the execution, acceptance, delivery and recordation of agreements, deeds and other instruments pertaining to the transfer of said property; and the payment of any and all sums necessary on account of the purchase price thereof including fees or costs incurred in connection with the transfer of said property for surveys, title searches, real estate appraisals,

recordation of instruments or costs associated with escrow arrangements; together with any payments necessary by virtue of nonuse or deferral of use of the property. If the applicant is unable to place the property into use (or determines that a deferral of use should occur), IT IS UNDERSTOOD AND AGREED that the District will pay to the United States Department of Education for each month of nonuse beginning thirty-six (36) months after the date of the deed the sum of $1/360^{\text{th}}$ of the then current fair market value of the property for each month of nonuse.

If submission of the Application for Public Benefit Allowance Acquisition of Surplus Federal Real Property for Educational Purposes is approved, a copy of the application and standard deed conditions will be filed with the permanent minutes of the Board.

Board of Trustees
Foothill – De Anza Community College District
12345 El Monte Road
Los Altos Hills, California 94022

I, Joan Barram, hereby certify that I am the President of the Foothill – De Anza Community College District Board of Trustees and that the foregoing resolution is a true and correct copy of the resolution adopted by the vote of a majority of the members of said Board of Trustees present at a meeting of said Board of the 6th day of February, 2012, at which a quorum was present.

Joan Barram
President

Onizuka Air Force Station
Reuse Plan
January 2012

