

Staff Report 44

PARTIES:

California State Lands Commission

Barstow Spanish Trail, LLC, a California limited liability company

PROPOSED ACTION:

Fifth amendment to Offer to Purchase Real Estate in the County of San Bernardino and Acceptance of Offer to Purchase.

BACKGROUND:

At its August 17, 2017 meeting, the California State Lands Commission (Commission), acting as the trustee of the School Land Bank Fund (Fund), authorized the Executive Officer or designee to execute the document entitled "Offer to Purchase Real Estate in the County of San Bernardino and Acceptance of Offer to Purchase" (Offer) between the Commission and Barstow Spanish Trail, LLC, a California limited liability company (Purchaser) ([Item 67, August 17, 2017](#)). The Offer covers the sale of approximately 63.3 gross acres of indemnity school lands in Barstow and included a provision that allowed either party to terminate the agreement without penalty until August 1, 2018.

In May 2018, the Purchaser requested an amendment to the Offer to extend the date to allow either party to terminate the agreement without penalty to December 31, 2018. The Commission approved the amendment to the Offer at its meeting of June 21, 2018 ([Item 74, June 21, 2018](#)).

In September 2018, the Purchaser requested a second amendment to the Offer to extend the date to allow either party to terminate the agreement without penalty to June 30, 2019. The Commission approved the amendment to the Offer at its meeting of December 3, 2018 ([Item 66, December 3, 2018](#)).

In March 2019, the Purchaser requested a third amendment to the Offer to extend the date to allow either party to terminate the agreement without penalty to June 30, 2020. The Commission approved the amendment to the Offer at its meeting of

June 28, 2019, contingent on the receipt of a non-refundable deposit in the amount of \$45,000 (Initial Deposit) ([Item 77, June 28, 2019](#)). The Initial Deposit was to be applied to the purchase price only if the transaction closed prior to June 30, 2020. The transaction did not close prior to June 30, 2020 and the Initial Deposit was transferred into the Fund.

On April 29, 2020, the Purchaser requested a fourth amendment to the Offer to extend the date to allow either party to terminate the agreement without penalty to June 30, 2021. The Commission approved the amendment to the Offer at its meeting of April 29, 2020, contingent on the receipt of a non-refundable deposit in the amount of \$45,000 (Second Deposit) ([Item 60, April 29, 2020](#)). The Second Deposit is to be applied to the purchase price if the transaction closes prior to June 30, 2021. The transaction has not closed, and the Second Deposit will be transferred into the Fund.

The Purchaser is now requesting a fifth amendment to the Offer that will extend the date that allows either party to terminate the agreement to June 30, 2022. The amendment includes a provision that the Purchaser must submit a non-refundable deposit in the amount of \$46,054 (Third Deposit) prior to the execution of the fifth amendment. The Third Deposit will be applied to the purchase price only if the transaction closes on or prior to June 30, 2022. If the transaction does not close by that date, the Third Deposit will be transferred into the Fund.

The fifth amendment also allows the Purchaser and Commission to agree to two additional option periods to extend the closing date.

- First Option Extension – Before July 1, 2022, Purchaser may elect to deposit an Adjusted Deposit or previous year's deposit, whichever is greater, which will extend the close of escrow from July 1, 2022 to June 30, 2023. The Adjusted Deposit will be the previous year's deposit adjusted with an annual Consumer Price Index adjustment. The Adjusted Deposit will be credited towards the Purchase Price at the close of escrow, subject to the condition that escrow must close on or before June 30, 2023. If escrow does not close on or before June 30, 2023, then the full amount of the Adjusted Deposit shall be forfeited to the Commission and transferred to the Fund.
- Second Option Extension – Before July 1, 2023, Purchaser may elect to deposit an Adjusted Deposit or previous year's payment, whichever is greater, which will extend the close of escrow from July 1, 2023 to June 30, 2024. The Adjusted Deposit will be the previous year's deposit adjusted with an annual Consumer Price Index adjustment. The Adjusted Deposit will be credited towards the Purchase Price at the close of escrow, subject to the condition that escrow must close on or before June 30, 2024. In the event that escrow does not close on or

before June 30, 2024, then the full amount of the Adjusted Deposit shall be forfeited to the Commission and transferred to the Fund.

STAFF ANALYSIS AND RECOMMENDATION:

STATE'S BEST INTERESTS ANALYSIS:

The fifth amendment to the Offer is expected to provide the necessary time to complete the transaction. Proceeds from the sale will be deposited into the State Treasury to the credit of the Fund pursuant to Public Resources Code section 6217.7. In the event the transaction does not close by the specified date, the Third Deposit will be deposited into the State Treasury to the credit of the Fund pursuant to Public Resources Code section 6217.7.

Deposits to the Fund are intended to be used to acquire revenue-generating assets with net revenues deposited in the State Treasury to the credit of the California State Teachers' Retirement Fund, which benefits the California State Teachers' Retirement System (CalSTRS), consistent with Public Resources Code section 6217.5. For this reason, Commission staff believes authorization of the fifth amendment to the Offer is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the amendment to the Offer is a discretionary action by the Commission.
2. This action is consistent with the "Committing to Collaborative Leadership" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. The authorization to amend the Offer to Purchase Real Estate in San Bernardino County and Acceptance of Offer to Purchase to extend the closing date is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Site and Location

RECOMMENDED ACTION:

It is recommended that the Commission:

STATE'S BEST INTERESTS:

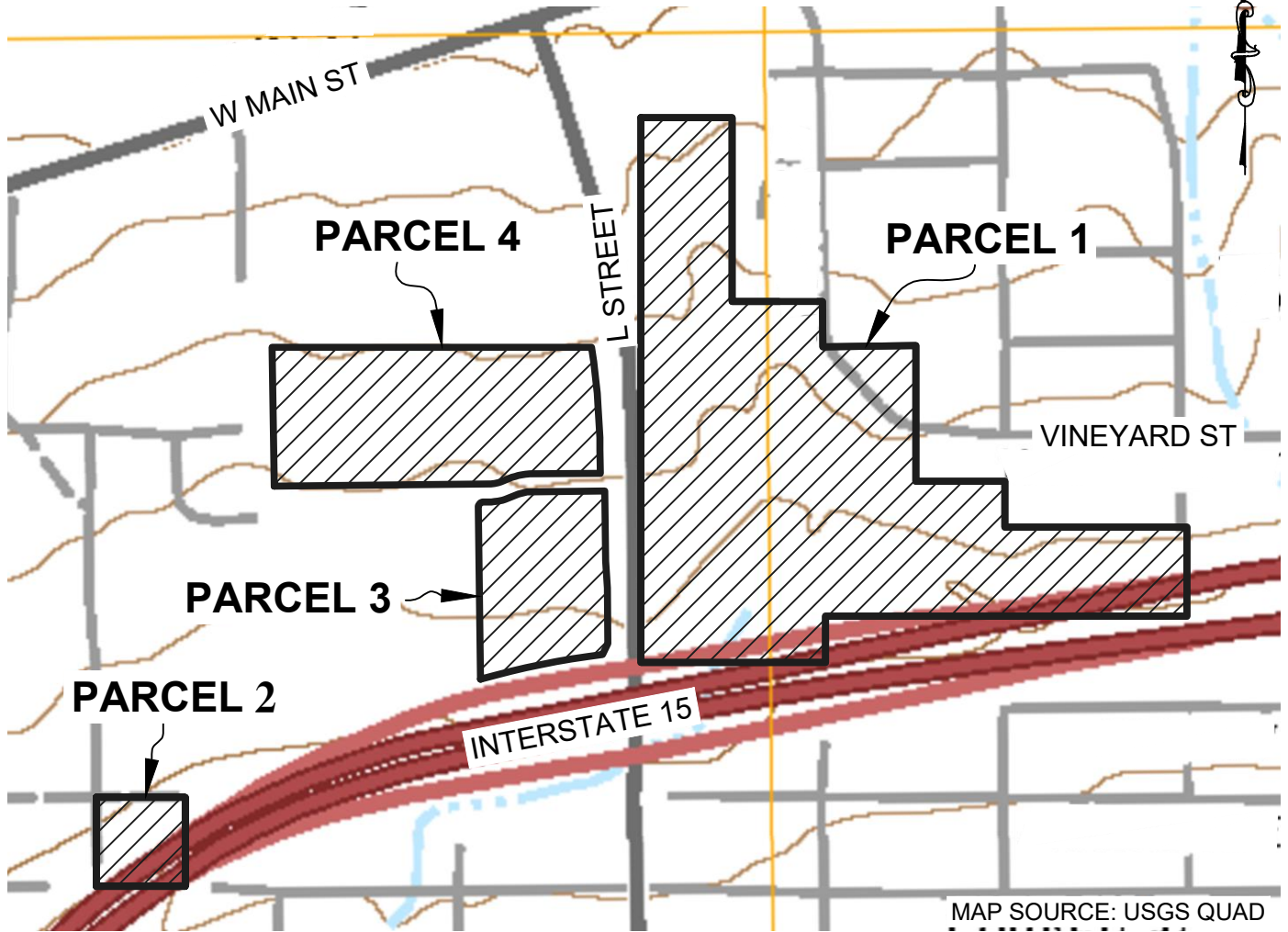
Find that the authorization for the Executive Officer, or designee, to amend the Offer to Purchase Real Estate in San Bernardino County and Acceptance of Offer to Purchase is in the best interests of the State.

AUTHORIZATION:

1. Find that the Commission is acting as the School Land Bank Fund Trustee.
2. Authorize the Executive Officer, or designee, with the written agreement of Barstow Spanish Trail LLC, a California limited liability company, to amend the "Offer to Purchase Real Estate in the County of San Bernardino and Acceptance of Offer to Purchase" previously authorized by the Commission, to extend the date that allows either party to terminate the agreement from July 1, 2021 to June 30, 2022, and include two option extensions, contingent on the receipt of a non-refundable Third Deposit in the amount of \$46,054.
3. In the event the transaction does not close on or before June 30, 2022, authorize the transfer of the Third Deposit of \$46,054 into the School Land Bank Fund.

NO SCALE

SITE

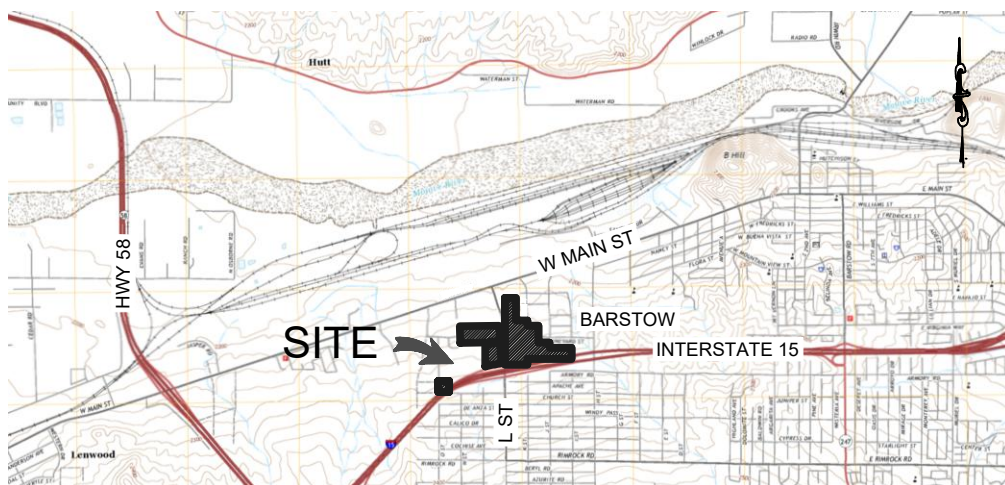


MAP SOURCE: USGS QUAD

VICINITY OF THE INTERSECTION OF INTERSTATE 15 AND L STREET, CITY OF BARSTOW

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE SALE PROPOERTY, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE APPLICANT OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT A
 SA 5772
 BARSTOW SPANISH
 TRAIL, LLC
 SCHOOL LANDS - SALE
 SAN BERNARDINO
 COUNTY



JWP 3/18/2020