CALIFORNIA DEPARTMENT OF EDUCATION

GENERAL WAIVER REQUEST

GW-1 (Rev. 10-2-09) http://www.cde.ca.gov/re/lr/wr/

First Time Waiver: X
Renewal Waiver: ___

Send Original plus one copy to:
Waiver Office, California Department of Education
1430 N Street, Suite 5602
Sacramento, CA 95814

Send Electronic copy in **Word** and back-up material to: waiver@cde.ca.gov

CD CODE						

Local educational agency:	Contact name and Title:	Contact person's e-mail address:
West Contra Costa Unified School District	**Bill Fay, Associate Superintendent, Operation**	**bfay@wccusd.net**

Address:	(City)	(State)	(ZIP)	Phone (and extension, if necessary):
1108 Bissel Avenue	**Richmond**	**CA**	**94801-3135**	**510-231-1105** Fax Number: **510-236-0190**

Period of request: (month/day/year)	Local board approval date: (Required)	Date of public hearing: (Required)
From: **03/01/2010** To: **12/31/2020**	**11/17/2010**	**11/17/2010**

LEGAL CRITERIA

1. Under the general waiver authority of *Education Code* 33050-33053, the particular *Education Code* or *California Code of Regulations* section(s) to be waived (number): **15106 and 15270(a)** Circle One: *EC* or *CCR*

   Topic of the waiver: **Statutory Bonding Capacity**

2. If this is a renewal of a previously approved waiver, please list Waiver Number: **N/A** and date of SBE Approval______
   Renewals of waivers must be submitted two months before the active waiver expires.

3. Collective bargaining unit information. Does the district have any employee bargaining units? __ No X Yes If yes, please complete required information below:

   Bargaining unit(s) consulted on date(s): **Please see attached.**

   Name of bargaining unit and representative(s) consulted: **Please see attached.**

   The position(s) of the bargaining unit(s): __ Neutral X Support __ Oppose (*Please specify why*)

   Comments (if appropriate):

4. Public hearing requirement: A public hearing is not simply a board meeting, but a properly noticed public hearing held during a board meeting at which time the public may testify on the waiver proposal. Distribution of local board agenda does not constitute notice of a public hearing. Acceptable ways to advertise include: (1) print a notice that includes the time, date, location, and subject of the hearing in a newspaper of general circulation; or (2) in small school districts, post a formal notice at each school and three public places in the district.

   How was the required public hearing advertised?

   X Notice in a newspaper ___ Notice posted at each school ___ Other: *(Please specify)*

5. Advisory committee or school site councils. Please identify the council(s) or committee that reviewed this waiver:

   Facilities Board Subcommittee on October 19, 2010, and November 16, 2010.
   Citizen Bond Oversight Committee on October 27, 2010, and November 10, 2010.

   Date the committee/council reviewed the waiver request:

   Were there any objection(s)? No X Yes ___ (*If there were objections* please specify)

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GW-1 (10-2-09)

6. *Education Code* or *California Code of Regulations* section to be waived**.** If the request is to waive a portion of a section, type the text of the pertinent sentence of the law, or those exact phrases requested to be waived (use a **strike out key**).

Please See Attached.

7. Desired outcome/rationale. Describe briefly the circumstances that brought about the request and why the waiver is necessary to achieve improved student performance and/or streamline or facilitate local agency operations. If more space is needed, please attach additional pages.

Please See Attached.

8. Demographic Information:
*(District/school/program)*__ has a student population of 30,300 and is located in a __*(urban, rural, or small city etc.)*__ in **Contra Costa** County.

Is this waiver associated with an apportionment related audit penalty? (per *EC* 41344) No : Yes ☐
(If yes, please attach explanation or copy of audit finding)

Has there been a Categorical Program Monitoring (CPM) finding on this issue? No : Yes ☐
(If yes, please attach explanation or copy of *CPM* finding)

District or County Certification – *I hereby certify that the information provided on this application is correct and complete*.

Signature of Superintendent or Designee:	Title: **Associate Superintendent of Operations**	Date: **12/22/10**

FOR CALIFORNIA DEPARTMENT OF EDUCATION USE ONLY

Staff Name (*type or print*):	Staff Signature:	Date:
Unit Manager (*type or print*):	Unit Manager Signature:	Date:
Division Director (*type or print*):	Division Director Signature:	Date:
Deputy (*type or print*):	Deputy Signature:	Date:

California Department of Education
General Waiver Request
Answer to Item #3.

Name of Unit	Representative Consulted	Date of Meeting
Local 1 Public Employees Union	Richard Leung Mike Wasilchin Bobby Killough	October 6th
UTR, United Teachers of Richmond	Diane Brown	November 3rd
SSA, Site Supervisors Association	Mary Jones Sandy Falk	October 7th
WCCAA, West Contra Costa Administrators Association	Susan Kahn	October 29th

California Department of Education
General Waiver Request
Answer to Item #5.

The District is requesting a waiver of the portion of Education Code Section 15106 identified in strike out text below:

15106. A unified school district or community college district may issue bonds that, in aggregation with bonds issued pursuant to Section 15270, shall not exceed ~~2.5~~ percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located. In computing the outstanding bonded indebtedness of a unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively. ...

The District is requesting a waiver of the portion of Education Code Section 15270(a) identified in strike out text below:

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed ~~2.5~~ percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIIIA of the California Constitution.

California Department of Education
General Waiver Request
Answer to Item #6

West Contra Costa Unified School District
Waiver of Education Code Section 15106 and Section 15270(a)

Summary. The West Contra Costa Unified School District (the "District") is seeking a waiver of Education Code Sections 15106 and 15270(a). Each of these statutes limits the statutory bonding capacity of a unified school district to 2.50% of its then–current assessed valuation (the former for bonds issued under measures approved by two-thirds vote and the latter for bonds issued under measures approved by fifty-five percent vote under Proposition 39). The waiver will allow the District to continue its construction program without interruption and without interim financing by enabling the District to issue bonds under its recently approved 2010 Measure D bond authorization in amounts necessary to keep its bond program moving forward toward its scheduled completion.

Bond Program Size and Public Support. The District is in the midst of a $1.3 billion facility improvement program that began in earnest in November 2000 with the approval of 2000 Measure M, a $150 million bond measure that was approved by 77.5% of the voters in the District (for these purposes we do not consider a small bond measure approved for specific projects in 1998 to be part of the broader program). The goal of the facility improvement program is to ultimately bring all District facilities to a common standard with regard to seismic/structural safety, upgrades to building systems, new classrooms, technology upgrades, and security. Since 2000, voters have approved general obligation bond measures on four separate occasions (again omitting the 1998 bond measure). The bond measures are described in the attached Exhibit A. To date, the District has expended $700 million on facility improvements. The District expects to expend another $600 million over the next ten years. By the end of this next ten year period, the District expects to have met its established goal of providing high quality facilities at all operating sites.

Bond Program Status. The District currently operates 58 school and program sites, including 38 elementary and pre-schools, 6 middle schools, 6 comprehensive high schools, and 8 other sites (including alternative education, adult education, and charter schools). Modernization work has been completed at 18 elementary schools, 1 middle school, and 1 high school. Work is ongoing at an additional 5 elementary schools, 2 middle schools, and 3 high schools. It is the District's current expectation that funds from the District's most recently approved bond measure (2010 Measure D, a $380 million bond measure approved by 62.6% of the voters in June 2010) and other sources will allow modernization work to be completed at all sites (except those slated for consolidation, 1 remaining elementary school, and 1 remaining middle school) over the next ten years. Such expectation is based on current estimates of scope, cost, and other factors.

Recent Decline in Tax Base. The recent global economic collapse was accompanied by sharply falling property values in the District, and the decline in property values brought unprecedented declines in the District's assessed value. After growing at an average of 8.6% per year during the ten-year period from 1998-99 through 2007-08, assessed values increased by only 0.3% in

2008-09, decreased by 12.3% in 2009-10, and decreased again by 7.6% in 2010-11. The cumulative effect of the last two years of decreases has been to reduce the size of the District's tax base from a maximum of $27.1 billion in 2008-09 to its current $21.9 billion (almost exactly the size of the District's tax base in 2005-06). A twenty-five year history of assessed values in the District is attached as Exhibit B.

Impact on the Pace of the Bond Program. The unprecedented decline in the District's tax base has had significant impact on pace of the District's bond program. In early 2009, the District had plans to issue the final $210 million of bonds authorized under 2005 Measure J, a $400 million bond measure approved by 56.9% of voters in November 2005, during the summer of 2009. Given the slow rate of tax base growth in tax year 2008-09 and the possibility of negative tax base growth in 2009-10, District staff recommended that the Board authorize the sale of only $160 million in bonds which the Board did in June 2009. When preliminary tax base figures were released in July showing a larger than expected decrease of 12.3%, the District reconsidered the issue size again, and in August issued only $105 million in Series C Bonds. The District was able to issue an additional $27 million in bonds in May 2010 only because it had received authority to issue qualified school construction bonds at a federally subsidized rate.

2009 Waiver. The unprecedented decline in the District's tax base has also had an impact on the District's bond program in terms of statutory bonding capacity. As is mentioned above, in early 2009 the District had plans to issue the final $210 million of bonds authorized under 2005 Measure J in the summer of 2009. Because the District's bonding capacity was not sufficient at that time to accommodate a $210 million bond issue (in part because of slow tax base growth in 2008-09), the District applied for a waiver of the bonding capacity requirement from the State Board of Education. The waiver was granted subject to three limitations: (1) the waiver would apply only to 2005 Measure J bonds; (2) the waiver would only cover the five year period from May 2009 through May 2014; and (3) the waiver would only increase the applicable percentage to 3.5%. At the time the District submitted its waiver request in 2009, an increase in the District's bonding capacity to 3.5% of its then current assessed valuation would have been sufficient to allow the issuance of all remaining 2005 Measure J bonds at that time. Over the past two years, however, the adjusted bonding capacity of the District has decreased from $947 million to $767 million. Currently the available bonding capacity is not sufficient for the District to issue all $75 million of remaining 2005 Measure J bonds within the 3.5% adjusted limit. Additionally, in order to adhere to prudent debt management principles and to meet the tax rate targets for the 2005 Measure J bond authorization, the District has no plans to issue bonds under the 2005 Measure J bond authorization in the near future and plans to continue its facilities improvement program using proceeds of the 2010 Measure D bond authorization. A recent history of the District's available bonding capacity is attached as Exhibit C.

Impact on Repayment Structure and Tax Rates. The unprecedented decline in the District's tax base has also had an impact on the District's bond program in terms of bond repayment structure. In order to stay within tax rate targets in the upcoming years, both the Series C and Series D bond issues under 2005 Measure J bond were structured with some element of deferred debt service. Both issues included both federal subsidy and capital appreciation bond components. In addition, the District used a portion of its Series D proceeds to prepay certain existing obligations in order to keep tax rates at or below targeted levels. In part because of such pro-active management, the District has been able to maintain tax rates at or below targeted levels for all four authorizations with bonds currently outstanding in each and every year such tax rates have been established. A history of tax rates levied on behalf of the District for each bond measure is attached as Exhibit D.

2010 Measure D. District voters approved 2010 Measure D, a $380 million bond authorization, on June 8, 2010, by a vote of 62.6% in favor. The District chose to place the measure on the June ballot for two primary reasons: (1) because more money was needed to complete the program (which was well known even at the approval of 2005 Measure J) and (2) because a public opinion survey indicated that there was significant voter support for an additional bond authorization. In addition, there was concern about constraints to the 2005 Measure J bond program including tax rate constraints, prudent debt management constraints, and bonding capacity constraints. Because 2010 Measure D established its own tax rate target over and above the existing tax rate targets, approval of 2010 Measure D had the effect of relaxing the former two constraints (tax rate and prudent debt management) on the program as a whole. The District's current plan is to issue bonds in roughly equal amounts in alternate years between 2012 and 2020. The attached pro-forma tax rate analysis (attached as Exhibit E) shows the District's plan to issue bonds over time assuming an average of 4% tax base growth between now and tax year 2020-21 (the year in which the District is currently planning on issuing its last series of bonds) and for long-term tax base growth at 4%. Because future tax base growth is unknown, the District has prepared similar pro-forma analyses assuming 2%, 6%, and 8% growth between now and tax year 2020-21. Such analyses are based on the District's current plan and the timing, sizing, and repayment structure for future bond issues will be adjusted based on tax base growth and other factors.

Waiver Request. The District is seeking a waiver of the bonding capacity limitation in order to continue its facilities improvement program without interruption and without interim financing. Specifically, the District is seeking a waiver that will allow for the issuance of bonds under its recently approved 2010 Measure D bond authorization in amounts necessary to keep its program moving forward to its scheduled completion. The District's request is limited to bonds approved this past June under 2010 Measure D. The District is requesting that this waiver increase the District's bonding capacity to 5.00% until December 31, 2020. An increase to 5.00% will allow the District some flexibility in the event of continued negative tax base growth in the short-term or long-term stagnation of the District's tax base. A ten year term will cover the period during which the District is currently planning on issuing bonds under the 2010 Measure D authorization. To be clear and as is described above, circumstance may change so that it is not desirable (or even possible) for the District to issue all bonds approved under 2010 Measure D prior to December 31, 2020. In such event, the District would expect to submit another waiver request well enough in advance of the December 31, 2020, expiration of this current waiver, to allow the bond program to proceed without interruption at that time.

Available Bonding Capacity at Un-Waived Limit. Given a fixed amount of 2010 Measure D Bonds to be issued, the scheduled redemption of bonds currently outstanding, and the assumption of positive tax base growth into the future, at some point the amount of District debt outstanding will drop below the current statutory limit of 2.5% of the then-current assessed value. Because of uncertainty as to how quickly the District will issue new bonds, how quickly the District will repay bonds yet to be issued, and, more significantly, uncertainty as to how quickly the District's tax base will grow, it is unclear when this will occur. If we assume that all 2010 Measure D Bonds are issued and none are redeemed (the most conservative assumption) and that tax base growth averages 4% over the indefinite future, the District will be within the 2.5% limitation by tax year 2022-23. If the tax base grows more slowly than 4%, it will take longer for the District to be within the existing limit, and vice versa if the tax base grows more quickly. The attached Exhibit F shows the District's available bonding capacity under various tax base growth scenarios assuming that five series of 2010 Measure D bonds are issued in like amounts in alternate years from 2012 through 2020 and that no redemption of these bonds is made.

Potential of Program Suspension. If the request is denied, the District will likely need to suspend its bond program and to proceed only to the extent that annual tax base growth and repayment of previously issued bonds allows. Such an alternative would have significant negative consequences on a number of fronts as described below.

Cost and Disruption. Suspending a program that has been ongoing would have obvious cost implications. The current bidding climate for construction projects is strong and the District has a construction management system in place. Suspending the program and re-starting the program in the future would be both costly and disruptive. Undoubtedly, there would be public criticism as well.

Safety Issues. In addition to being costly and disruptive, such a suspension would mean that students would continue to be housed in facilities that are to some degree inadequate and/or unsafe and that are certainly not the equal of facilities provided to other students in the District. As a result of the events of October 2009 at Richmond High School, issues surrounding security systems have been well documented and continue to be addressed. In addition, because the District is located in the East Bay, seismic issues are a major concern for the District. An example is the Portola Middle School which was one of the schools on the SAB 300 list. Earlier this year, the District moved the students out of the main campus to a temporary campus just below the main campus. The temporary campus lacks an adequately sized cafeteria, adequate athletic facilities, a gymnasium, and a multi-purpose facility. One of the first priorities under 2010 Measure D is to rebuild Portola at another site location within the District. If the District is unable to obtain this waiver it will delay the construction of the new campus and the students will be housed close to a seismic fault area until the District is able to sell more bonds. Given the District's current bonding capacity, it could be several years or more before construction might begin. The effect of this is that students would continue to be housed in an inadequate facility.

Will of the People. From a political standpoint, suspension of the program would deny voters the benefits of a program that they voted to continue (and, in fact, expand) as recently as this past June. As is documented elsewhere in this request, voters have consistently demonstrated their support for facility improvements in the District and their willingness to pay for such improvements. Given that voters have approved multiple bond measures over time and that tax rates have increased after each measure has passed (without exceeding projected maximums), it is difficult to argue that the 62.6% who voted in favor of 2010 Measure D were uninformed of the consequences of their vote. Even more, voters were made aware in the ballot language that issuing such bonds if approved may require a waiver of the bonding capacity limitation by the State Board of Education. An excerpt of the ballot language is attached as Exhibit G.

Impact on Local Economy. Suspension of the bond program would also have a negative impact on the local economy. The District's construction program employs many area residents and suspension of the program would result in significant job losses. Many economists continue to stress the importance of public agencies moving forward with construction projects during these difficult times as a means of economic stimulus.

Summary Rationale. The District is requesting this waiver because such a waiver is necessary in order for the District's construction program to move ahead without interruption or interim financing. In turn, continuation of the construction program is necessary if the District is to provide adequate and safe school facilities for all of its students. The District notes that the construction program has been consistently supported over time by a public that is well aware of its costs and willing to pay them. Furthermore, continuing the program will provide economic stimulus and avert job losses. As is noted elsewhere in this request, the waiver will not impact the District's commitment to move ahead responsibly from a debt management perspective, specifically its ability to meet its tax rate objectives.

Equity Issues. Finally, the District notes the equity issues raised by the fact that the District's statutory bonding capacity is significantly less than the statutory bonding capacities of in similarly sized local school districts. In fact, the District's statutory bonding capacity is lower than the statutory bonding capacity of each of the eight other school districts in the six county Bay Area that serve a similarly sized student population, and is less than half the statutory bonding capacity of four of these eight school districts. The most significant discrepancy is to the San Jose USD, which serves nearly the same number of students as the District and has a statutory bonding capacity which is more than five times that of the District. The attached Exhibit H shows all school districts in the six county Bay Area that have an enrollment of between 24,000 and 36,000 students, their 2010-11 tax base and statutory bonding capacity, and how their statutory bonding capacity compares to that of the District. In order to provide comparable figures, high school districts are treated as if they were unified with their feeder elementary school districts where such distinctions exist. The bottom line is that these are school districts with a similar educational charge as the District (in terms of number of students served) and similar facility costs (since they are all located in the Bay Area), but in every case have significantly more resources on which to draw in terms of local bond funding.

Conclusion. The District understands the importance of bonding capacity limitations and prudent debt management; however, given the recent tax base declines caused by the general economic climate, the District will need a waiver of bonding capacity to continue its bond program. The waiver will help the District continue its improvement of facilities so that District students can have educational opportunities and safe learning environments that are available to students in more affluent areas. Equity among students within the District as well as equity among students from various socio-economic areas throughout the State is an important objective. The District requests that the CDE grants this waiver so that the District can move ahead with its voter supported capital program to improve the safety and equity of educational facilities for its students without delay.