



DATE: May 5, 2020

TO: Mayor and City Council

FROM: Deputy City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager to Negotiate an Amendment and Extend the Exclusive Negotiating Rights Agreement with Eden Housing Inc. and Pacific Companies through June 30, 2021

RECOMMENDATION

That the Council adopts a resolution (Attachment V) authorizing the City Manager to negotiate an amendment and extend the Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and Pacific Companies through June 30, 2021, to develop conceptual development plans, pursue entitlements, and negotiate a Disposition and Development Agreement (DDA) for former Route 238 Bypass properties: Parcel Groups 3 and 4.

SUMMARY

The City of Hayward entered into a Purchase and Sale Agreement (PSA) with the California Department of Transportation (Caltrans) in January 2016 to manage the disposition and development of former right of way for the now defunct 238 Bypass. This land is divided into 10 parcel groups and must be disposed of by 2022. This report covers Parcel Groups 3 and 4.

A Request for Proposals (RFP) for developers for Parcel Groups 3 and 4 was issued in April 2018, and in July 2018, Council provided authorization for the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and Pacific Companies (Development Team), to develop over 150 units of affordable housing and a school distributed over 14 acres. During the ENRA period, the Development Team has been diligently working towards developing conceptual development plans, pursuing entitlements, and negotiating a Disposition and Development Agreement (DDA) for Parcel Groups 3 and 4. Due to unforeseen delays and significant site planning issues and now the COVID-19 crisis, the Development Team requested an extension of the term of the ENRA until June 30, 2021. Given the importance of developing new affordable housing and the significant constraints faced by the Development Team, staff recommends authorizing the City Manager to enter into an amendment to extend the ENRA with the Development Team until June 30, 2021 with two 90-day administrative extensions at the City's sole discretion.

The proposed Project will add a total of 180 affordable housing units to the City’s housing stock, which would help the City to meet over 23% of the RHNA goals for low-income households and 4% of the RHNA goal for very low-income households.

BACKGROUND

Route 238 Corridor Lands Development

In the mid-1960s, the California State Department of Transportation (Caltrans) purchased more than 400 parcels of property for the construction of a 14-mile Route 238 Corridor Bypass Freeway to run through the City of Hayward and parts of unincorporated Alameda County. In 1971, a lawsuit, filed in federal court on behalf of residents to be displaced by the freeway construction, blocked the project. Caltrans subsequently abandoned the freeway plan and began to individually auction off these properties with the sole purpose of disposing of the land, without any larger land use or community considerations. To ensure the productive development of this land in a manner that maximizes land value while balancing the desires of the surrounding neighborhood and larger community, the City entered into a PSA with Caltrans to manage the disposition and development of these properties. The PSA divides the properties into 10 parcel groups, which must be disposed of by 2022. Table 1 below provides the current status of these parcel groups.

TABLE 1: STATUS OF 238 PARCEL GROUPS

PARCEL GROUP	STATUS	ENTITY	EST. DISPOSITION TIMELINE	ESTIMATED UNIT COUNTS	AFFORDABLE UNIT COUNT
1 & 10	Sold / Under Construction	William Lyon Homes (SOHAY)	August 2018	472 (approved)	48 (approved)
2	Executed Purchase & Sale Agreement	The True Life Companies (Mirza)	June 2020	189 (approved)	20 (approved)
3	Under Negotiation	Eden Housing and The Pacific Companies	Winter 2021	180	180
4	Under Negotiation	Eden Housing and The Pacific Companies	Winter 2021	3	0
5	Under Negotiation	Trumark Properties, LLC	Fall 2020	74	8
6	RFP Process	City of Hayward	Winter 2021	1,000	30-100
7	Under Negotiation	One Subaru of Hayward	June 2020	0	0
8	Master Development Planning	City of Hayward	Winter 2021	0	0
9	Master Development Planning	City of Hayward	Winter 2021	0	0
TOTAL				1,918	356¹

¹ Staff estimates 18% of total Route 238 Corridor Lands Development residential units will be affordable.

Parcel Groups 3 and 4

Parcel Group 3 consists of three parcels located between the Tennyson Road extension on the south and Broadway St. on the north. The parcel group consists of approximately 28.5 acres. The main parcel is primarily open space with barns and corrals for horses. The group also includes two smaller lots between Webster St. and Broadway St. that are currently vacant. Parcel Group 4 consists of approximately 80.7 acres. The majority of the land is open grassland, with a cabin located in the middle of the parcel, and a barn at Calhoun Street.

The Caltrans PSA sets forth an agreed upon methodology to determine the sales price for each parcel group based on the appraised value and approved unit count. Parcel Groups 3 and 4 were assumed to have nominal development value due to topography and fault constraints. Under the PSA, the purchase price for Parcel Group 3 was established at \$2.3 million, and the purchase price for Parcel Group 4 was established at \$1.53 million. These are the amounts the City must pay Caltrans when the parcel groups are sold. Unlike the other parcel groups, these are fixed and are not subject to adjustment based on residential unit count.

In April 2018, the City Council approved the issuance of RFP for Parcel Groups 3 and 4 for the re-sale of the parcels through a competitive process to ensure the best price and land use for the City. When the City issued the RFP, the minimum price included a 5% administrative fee to cover City sales costs, which made the minimum price for Parcel Group 3: \$2.415 million, and for Parcel Group 4: \$1.61 million. In July 2018, the City Council reviewed the summary of proposals from the RFP and provided authorization for the City Manager to negotiate and enter into the ENRA with Eden Housing Inc. and Pacific Companies, to develop conceptual development plans, pursue entitlements, and negotiate a DDA for Parcel Groups 3 and 4. The initial proposal included two and three story buildings, with 150-235 units, distributed across 13-14 acres on Parcel Group 3, and a dedication of open space.

Requests for Extensions

After execution of the initial ENRA, the Development Team engaged in seismic trenching work to better understand the topography and suitability of Parcel Group 3. The trenching took longer than anticipated because of rain and the results raised challenges to the feasibility of the Development Team's initial designs. The site exploration uncovered additional environmental concerns such as fault traces and areas that are prone to landslides. This had the effect of greatly reducing the buildable area of Parcel Group 3 from 13-14 acres to 2-3 acres, as can be seen in Attachment II Site Plans. This necessitated a much more condensed development in order to maintain project feasibility, as seen in the Attachment III Roundabout rendering. As a result, the Development Team requested a 90-day extension of the ENRA in November 2019, and the City administratively approved the request. In December 2019, the Development Team provided the Planning Division with a pre-application and staff provided feedback to them regarding an updated site plan condensed on a much smaller parcel, while still preserving the same amount of development. Given the site challenges of designing the project on a much smaller parcel, the Development Team's design team spent the next month and a half responding to the comments and revising their plans.

At the end of January 2020, the Planning Division convened an interdepartmental working group, including the La Vista Park team, to workshop the revised plans with the Development Team. Attachment IV Amenity Map provides a contextualized visual of the locations of the buildings with the neighboring access points to public transit, La Vista Park, and other amenities. In February 2020, the City administratively agreed to extend the ENRA for an additional 90-day period, ending on May 23, 2020, to allow more time for the Development Team to integrate feedback and recommendations from the workshop into their plans. The Development Team is in the process of finalizing their entitlements package, which will be submitted to the City by the end of May 2020, with an estimated 12-month review and approval period for the entitlements and DDA. The Development Team is now proposing 180 affordable units spreading across two 5-story buildings with a 2-story school building. As there are no further administrative extensions allowed under the existing ENRA, the City Council must authorize an amendment to the ENRA to extend the duration of the ENRA to June 30, 2021. Given uncertainty due to the COVID-19 crisis and how this will impact the development and financing process, City staff is also recommending two 90-day administrative extensions in the event of future unforeseen delay.

DISCUSSION

Key Elements of ENRA Extension Terms

The primary terms of the ENRA remain in place, with the following change in key terms recommended for approval for the ENRA Extension:

1. *Negotiating Period* – Through June 30, 2021; two 90-day administrative extensions by City Manager possible if Developer is showing progress on meeting performance responsibilities, and additional non-refundable negotiating deposits are made per #2.
2. *Extension Payments* – \$10,000 will be required for each 90 day-term extension approved by City Manager, which is applicable to the purchase price if a DDA is adopted and retained by City if the project is terminated.
3. *Schedule of Performance* – A revised schedule of performance, including Planning Commission Review in February 2021, the DDA executed by June 2021, with the close on land and construction financing occurring in October 2021. See Table 5 below for additional dates.
4. *Current Concept* - 180 affordable units targeting individuals or families earning between 40%-80% AMI; these units will be spread across two 5-story buildings with a 2-story school building sitting adjacent on the South side of the Parcel Group next to Tennyson Road.

Parcel Group 4

Parcel Group 4 is zoned for open space with the potential for two-to-three large residential lots. A short-term commercial tenant will be moved from Parcel Group 3 to Parcel Group 4 to allow for the La Vista Park development. While at this time the long-term development plans for this land are undetermined, the details for the development on Parcel Group 4 will be determined as a part of the future DDA negotiations with the Development Team.

Project Financing

The COVID-19 pandemic has highlighted the need for affordable housing, and this is important to continue to move forward. Additionally, this project does not require any of the City’s local housing trust funds or other competitive financing sources. Being able to finance the project without local financing and without potential delays due to the use of competitive financing sources, the Development Team can move quickly upon approval of entitlements.

Housing Component. The Development Team anticipates structuring the housing development as a 4% Low Income Housing Tax Credit (LIHTC) project, eliminating the need to compete for highly competitive 9% tax credits and other public subsidies. Additionally, the 4% LIHTCs do not have a local match component, and, as a result, no City financial assistance is required.

School Component. The school component will be financed with a combination of private capital, private philanthropy, new market tax credits, and customary institutional loan products. No soft public subsidies, including City funding, are needed.

Housing Element Compliance and Progress Reports

Local jurisdictions report their progress meeting their RHNA goals. Table 2 (below) reflects the progress made towards meeting Hayward’s RHNA goal as of the last report year (2019), estimated progress based on number of units entitled, and progress based on projects seeking approval, for the period between 2015-2023. Table 2 provides the income limits associated with each income category for Alameda County. Permits to construct the units must be issued in order to count toward the City’s RHNA goals.

The proposed Project will add a total of 180 affordable housing units to the City’s housing stock, which would help the City to meet over 23% of the RHNA goals for low-income households and 4% of the RHNA goal for very low-income households. Additionally, the project helps the City meet the following goals established in the City’s Housing Element:

- Assist in the development of housing affordable to low- and moderate-income households; and
- Promote equal housing opportunities for all persons.

TABLE 2. 2015 -2023 RHNA GOAL PROGRESS IN THE CITY OF HAYWARD

Income Category	Unit Goal	Reported 2019		Approved		Pending* Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal
Very low	851	40	5%	339	40%	2	0.2%	381	45%	470	55%
Low	480	39	8%	228	48%	0	0%	267	56%	213	44%
Moderate	608	27	4%	61	10%	3	0.5%	91	15%	517	85%
Above Moderate	1981	1902	96%	1,588	80%	129	7%	3,619	183%	0	N/A

* The project units are not reflected in the above table because the entitlement application is still pending

TABLE 3. INCOME LIMITS BY INCOME CATEGORY AND HOUSEHOLD SIZE FOR ALAMEDA COUNTY AS ESTABLISHED BY CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Household Size								
Income Category	1	2	3	4	5	6	7	8
Extremely Low 30% AMI*	\$26,050	\$29,750	\$33,450	\$37,150	\$40,150	\$43,100	\$46,100	\$49,050
Very low 50% AMI*	\$43,400	\$49,600	\$55,800	\$61,950	\$66,950	\$71,900	\$76,850	\$81,800
Low 80% AMI*	\$69,000	\$78,850	\$88,700	\$98,550	\$106,450	\$114,350	\$122,250	\$130,100
Median 100% AMI	\$78,200	\$89,350	\$100,550	\$111,700	\$120,650	\$129,550	\$138,500	\$147,450
Moderate 120% AMI	\$93,850	\$107,250	\$120,650	\$134,050	\$144,750	\$155,500	\$166,200	\$176,950

* Percent area median income (AMI) is used to identify income and rent levels; however, the method for calculating income limits involves assessment of multiple data points and is not necessarily a percent of the median income. For more information see <https://hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2019.pdf>

ECONOMIC IMPACT

No property taxes are currently being paid on these parcel groups. Resale of the parcel groups may partially return them to the tax rolls, provide an opportunity for new residential development needed to address the goals of the Housing Element, and provide a dedication of open space.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following project(s):

Project 5, Part 5.a and 5b: Facilitate disposition and development of Route 238 Corridor lands; Finalize planning on redevelopment of 6 remaining parcel groups; Finalize disposition and development agreements for all parcels.

FISCAL IMPACT

The estimated amount of new tax revenue from the proposed project has not yet been calculated, which will be estimated at the conclusion of the negotiating period when the amount of development has been finalized. Affordable housing owned by a nonprofit developer, like Eden Housing, will be tax exempt. The land sale proceeds are projected in Table 4.

TABLE 4: LAND SALE PROCEEDS

PARCEL GROUP	CALTRANS BASE PRICE	RFP MINIMUM PRICE	EST. PURCHASE PRICE
#3	\$2,300,000	\$2,415,000	\$3,075,000
#4	\$1,533,000	\$1,610,000	\$1,533,000
Total	\$3,833,000	\$4,025,000	\$4,608,000

SUSTAINABILITY FEATURES

The RFP required information on sustainable development features including incorporating green building standards into design and operation of the project. This element continues to be a part of the plans required by the terms of the ENRA.

PUBLIC CONTACT

No public notice is required with this action. As the Development Team finalize their entitlements, community outreach will be conducted by the Development Team and the City throughout the entitlement review and approval process. In addition, there will be standard hearings before the Planning Commission and City Council as the City considers the necessary approvals for the proposed project.

NEXT STEPS**Subsequent Actions and Estimated Timing**

The following Table 5 is a summary of the proposed schedule. These dates will be subject to discussion with the developer and may change during negotiations of a Disposition and Development Agreement.

TABLE 5: PROPOSED DEVELOPMENT SCHEDULE

ITEM	ESTIMATED TIMING
Council Approves Amendment of Exclusive Negotiating Rights Agreement to Extend Agreement	May 5, 2020
Community Outreach	May 2020
Entitlement Submittal	May 2020
Planning Commission Vote on CEQA & Entitlements	February 2021
Submit for Building Permits	April 2021
DDA Executed	June 2021
Funding Commitments	July 2021
City Council Financing Approvals & TEFRA Hearing	August 2021
Plan Check & Permitting Complete	October September 2021
Close on Land & Construction Financing	September October 2021

Prepared by: Monica Davis, Community Services Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager