



DATE: February 8, 2022

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution: (1) Declaring Specified City-Owned Properties Associated with the Former 238 Bypass Project Exempt Surplus Lands; and (2) Declaring Parcel Group 4 as Surplus Lands Pursuant to Government Code Section 54221

RECOMMENDATION

That Council adopts a resolution inclusive of Exhibit A (Attachments II and III): (1) declaring specified City-owned properties associated with the former 238 Bypass Project exempt Surplus Lands; and (2) declaring Parcel Group 4 as surplus lands pursuant to Government Code Section 54221.

SUMMARY

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 (City) 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 public benefits and the desires of the surrounding neighborhood and larger community, the City entered into a Purchase and Sale Agreement with Caltrans in 2016 (2016 PSA) to manage the disposition and development of the 238 corridor properties. The 2016 PSA divides the properties into 10 parcel groups. The disposal of the 238 corridor properties to and by the City is authorized subject to conditions established by the Local Alternative Transportation Improvement Program statutes under Government Code Sections 14528.6 and 14528.65 (LATIP Statutes).

Caltrans has transferred these properties to the City in trust subject to the City managing the disposition and development of these former 238 parcel groups on behalf of and for the benefit of Caltrans with the goals of removing blight, enhancing community involvement in the development process, and creating economic and public benefits. As the City sells or transfers

particular parcels, the City is obligated to repay Caltrans the negotiated purchase prices for the various parcel groups under the 2016 PSA.

Pursuant to the Surplus Lands Act, the City must declare land as either surplus or exempt surplus prior to the disposition process. While the transfers of the 238 corridor properties are subject to the LATIP Statutes, staff also proposes a parcel group-by-parcel group approach that additionally complies with the terms of the Surplus Lands Act for the remaining City-owned 238 corridor properties, including Parcel Group 3 (excluding the portions being retained by the City for park use), as well as Parcel Groups 4, 5, 6, 8, and 9. The proposed approach has been preliminarily vetted and confirmed by the California Housing and Community Development Department (HCD), the arm of the State that oversees and enforces the Surplus Lands Act. As a result, City staff recommends that Council adopts a resolution inclusive of Exhibit A (Attachments II and III): (1) declaring specified City-owned properties associated with the former 238 Bypass Project exempt Surplus Lands; and (2) declaring Parcel Group 4 as surplus lands pursuant to Government Code Section 54221.

BACKGROUND

In the mid-1960s, 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 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 public benefits and the desires of the surrounding neighborhood and larger community, the City entered into the 2016 PSA with Caltrans to manage the disposition and development of these properties. The PSA divides the properties into 10 parcel groups. Additionally, the LATIP Statutes under Government Code Sections 14528.6 and 14528.65 were enacted to govern the disposition of the surplus 238 Parcels and to implement an agreement to settle the lawsuit.

Caltrans has transferred these properties to the City subject to the City managing the disposition and development of these former 238 corridor properties with the goals of removing blight, enhancing community involvement in the development process, and creating economic and public benefits lacking as a result of years of under investment. As the City sells or transfers particular parcels, the City is obligated to repay Caltrans the negotiated purchase prices for the various parcel groups under the 2016 PSA.

Pursuant to the Surplus Lands Act, the City must declare land as either surplus or exempt surplus prior to the disposition process. While the transfers of the 238 corridor properties are subject to the LATIP Statutes, staff also proposes a parcel group-by-parcel group approach that complies with the terms of the Surplus Lands Act for the remaining City-owned 238

corridor properties, including Parcel Group 3 (excluding the portions being retained by the City for park use), as well as Parcel Groups 4, 5, 6, 8, and 9. The proposed approach has been preliminarily vetted and confirmed by HCD, the arm of the State that oversees and enforces the Surplus Lands Act. A summary of the proposed approach for complying with the Surplus Lands Act for each remaining Parcel Group is provided below under the Discussion section.

DISCUSSION

The following provides a summary of the proposed approach for disposition of the remaining 238 corridor properties that was preliminarily vetted and confirmed by HCD as consistent with the Surplus Lands Act:

- **Parcel Groups 3 and 5** – Process Parcel Groups 3 and 5 collectively with the City declaring the property “exempt surplus land” in compliance with the Surplus Lands Act consistent with *Government Code §37364*, which requires adherence to the following provisions:
 - Not less than 80 percent of the area of any parcel of property disposed of pursuant to this section shall be used for development of housing.
 - Not less than 40 percent of the total number of those housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to, or less than, 75 percent of the maximum income of lower income households, and at least half of which shall be affordable to very low income households. In other words, at least 20 percent of the units must be affordable to households earning 60 percent, or below, of the area median income (AMI) and 20 percent of the units must be affordable to households earning less than 50 percent of AMI.
 - Affordable units must be restricted by a regulatory agreement for at least 30 years.

As combined, Groups 3 and 5 meet the above provisions. As currently planned, the combined Parcel Groups 3 and 5 consist of a total of 258 units [176 in Parcel Group 3 and 82 in Parcel Group 5, including eight deed restricted Accessory Dwelling Units (ADUs)] comprised of 148 units (or 59%) that qualify for the exemption described above. The distribution of the units to be made affordable to very-low-income households between the two Parcel Groups required by the above provisions is still yet-to-be determined, but may require adding deed restricted ADUs affordable to very-low-income households to the Parcel Group 5 project to comply with the Surplus Lands Act.

Parcel Group 3 for purposes of the Surplus Lands Act compliance only includes the portions being transferred to developers since the remaining portions of Parcel Group 3 are being retained by the City for open space and park use.

The above outlined approach will allow the City to generate critically needed housing at several income levels dispersed across the collective area. Moreover, approaching the development as a whole allows for greater economic and social opportunities for a more inclusive and well-planned community. Additionally, this approach will be the most expedient manner to produce housing in the area as it capitalizes on the City's previous efforts to develop the area. Accordingly, staff believes that Council can make the finding that this approach is in the best interest of the City.

- **Parcel Group 4** – Declare Parcel Group 4 surplus, and upon approval of the Council, release a Notice of Availability in accordance with *Government Code §54220* for the purpose of developing low- and moderate-income housing to certain required public agencies and housing sponsors that have provided notice to HCD of their interest in acquiring surplus land. Interested parties have 60 days to respond. If responses are received, the City must negotiate in good faith for a minimum of 90 days. The Surplus Land Act does not prevent the local agency from obtaining fair market value for the sale/lease of surplus properties. If there are no responses or if negotiations fail to result in a sale or lease, the City can proceed with the marketing and sale or lease to a third-party.
- **Parcel Group 6** – Declare Parcel Group 6 “exempt surplus land” under *Government Code §54221(f)(1)(F)(ii)*, which requires the City put the property out to open, competitive bid for a mixed-use development that is more than one acre in area, includes not less than 300 housing units, and that restricts at least 25 percent of the residential units to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing.
- **Parcel Group 8 (Open Space Sub-Parcel)** – Declare the Parcel Group 8 Open Space Sub-Parcel “exempt surplus land” consistent with *Government Code §54221(f)(1)(D)* and/or *Government Code §54221(b)(1),(c)(1),&(d)* because the land will be transferred to another local, state, or federal agency for conservation and/or open-space purposes or retained for open spaces purposes. In this case, the City is in discussions with the Hayward Area Recreation District for the potential transfer of this Sub-Parcel for an expansion of the Carlos Bee Park.
- **Parcel Group 8 (Affordable and Market Rate Sub-Parcels)** – Declare these two Sub-Parcels of Parcel Group 8 “exempt surplus land” in compliance with the Surplus Lands Act consistent with *Government Code §37364*, which is described in detail above under the combined approach to Parcel Groups 3 and 5. As currently proposed, the nonprofit affordable housing developer, Resources for Community Development (RCD), will provide 109 units of affordable housing by developing 96 new units and converting 13 units of naturally occurring affordable housing to restricted affordable housing. The project is proposed to include twenty 60% AMI and eight-three 50% AMI housing units for Parcel Group 8 (Affordable Sub-Parcel). Any future development of the Parcel Group

8 (Market Rate Sub-Parcel) together with the Parcel Group 8 (Affordable Sub-Parcel) would need to collectively comply with the provisions of **Government Code §37364**.

The above outlined approach will allow the City to generate critically needed housing at several income levels dispersed across the collective area, possibly inclusive of Parcel Group 9, as discussed below. Moreover, approaching the development as a whole allows for greater economic and social opportunities for a more inclusive and well-planned community. Additionally, this approach will be the most expedient manner to produce housing in the area as it capitalizes on the City's previous efforts to develop the area and its efforts to avoid displacement. Accordingly, staff believes that Council can make the finding that this approach is in the best interest of the City.

- **Parcel Group 9** - Declare Parcel Group 9 “exempt surplus land” in compliance with the Surplus Lands Act consistent with **Government Code §37364**, which is described in detail above under the approach to the combined Parcel Groups 3 and 5 sub-group. Any future development of Parcel Group 9 together with the Parcel Group 8 (Affordable and Market Rate Sub-Parcels) would need to collectively comply with the provisions of **Government Code §37364**. If this is not possible for Parcel Group 9, then the City may elect in the future to declare this property surplus in accordance with Government Code §54220 or pursue another qualified exemption consistent with the Surplus Lands Act.

In sum, staff recommends that Council adopts a resolution inclusive of Exhibit A (Attachments II and III): (1) declaring specified City-owned properties associated with the former 238 Bypass Project exempt Surplus Lands; and (2) declaring Parcel Group 4 as surplus lands pursuant to Government Code Section 54221.

ECONOMIC IMPACT

Resale of the 238 corridor properties 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 new commercial development opportunities.

STRATEGIC ROADMAP

The proposed project supports the Strategic Priorities of Preserve, Protect, and Preserve Housing for All, as well as of Grow the Economy, and specifically, relates to the implementation of the following project:

Project 5, Part 5.a-c: Facilitate disposition and development of Route 238 Corridor lands.

FISCAL IMPACT

The sales proceeds will be utilized by the City to repay Caltrans as required under the PSA and any excess to sales proceeds will be retained by the City. The revenues generated through the

sale of the 238 corridor properties is required to be used by Caltrans to fund certain local alternative transportation improvement projects.

NEXT STEPS

Upon approval of the resolution, the City Manager will transmit a copy of the resolution to HCD and continue implementation of the disposition and development process for the remaining City-owned 238 corridor properties.

Prepared and Recommended by: Jennifer Ott, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is written over a horizontal line.

Kelly McAdoo, City Manager