



DATE: December 14, 2021

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager to: (1) Negotiate and Enter into an Easement Agreement with California State University East Bay for a Roadway and Utility Connection to Carlos Bee Boulevard from Former Caltrans Property Parcel Group 5; and (2) Appropriate \$295,668 from Fund 411 for the Parcel Group 5 Project in the Route 238 Settlement Administration Project 05014

RECOMMENDATION

That the Council adopts a resolution (Attachment II) authorizing the City Manager to: (1) negotiate and enter into an easement agreement with California State University East Bay for a roadway and utility connection to Carlos Bee Boulevard from the former Caltrans property Parcel Group 5 in a form approved by the City Attorney; and (2) appropriate \$295,668 from Fund 411 for the easement to be paid for by the Route 238 Settlement Administration Project 05014.

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 2027. This report covers an easement agreement required to help facilitate the development of Parcel Group 5.

On July 9, 2019, the Council adopted a resolution approving a Master Development Plan for Parcel Group 5 (MDP), certifying an Addendum to the 2014 General Plan Environmental Impact Report (2014 GP EIR) and approving issuance of a Request for Proposals (RFP) from developers to entitle and construct a 74-lot subdivision including eight deed restricted affordable Accessory Dwelling Units (ADUs) and related site improvements. The MDP contemplated the City acquiring an easement agreement (Easement) from California State University East Bay (CSUEB) for a roadway and utility connection to Carlos Bee Boulevard from Parcel Group 5.

On December 16, 2019, the Council adopted a resolution authorizing the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Trumark Properties (Developer) to design and entitle the development project consistent with the MDP and to negotiate a Disposition and Development Agreement (DDA), which are still under review and negotiation, and anticipated for Council consideration in first quarter 2022.

The City and CSUEB have agreed upon the terms of the Easement for facilitating a roadway and utility connection between Parcel Group 5 and Carlos Bee Boulevard, including a pedestrian and bicycle trail and a temporary construction easement (TCE). Upon approval by the Council and CSUEB, the City will acquire the Easement immediately for \$295,668 and then will be repaid from the Parcel Group 5 purchase price paid by the Developer at the time the property is transferred from the City to the Developer, which is currently slated for late 2022/early 2023. The Developer will pay for the construction of all roadway and utilities improvements within the Easement area, upon obtaining all relevant permits.

BACKGROUND

The City of Hayward entered into a PSA with 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 2027. This report covers an easement agreement required to help facilitate the development of Parcel Group 5.

Parcel Group 5 encompasses Maitland Drive, Bunker Hill Blvd., Bunker Hill Court, and a portion of Central Blvd. The roughly 37-acre Parcel Group 5 is bounded by the Westview Drive neighborhood to the west, CSUEB and Carlos Bee Blvd. to the north and Harder Road to the south. The area is sloped and was previously developed with 32 single family homes, all of which were abated and demolished between 2018-2020. The site is currently vacant.

On July 9, 2019, the Council adopted a resolution approving a MDP for Parcel Group 5, certifying an Addendum to the 2014 GP EIR, and approving issuance of a RFP for developers to entitle and construct a 74-lot subdivision including eight deed restricted affordable ADUs and related site improvements. The MDP contemplated the City acquiring an Easement from CSUEB for a roadway and utility connection to Carlos Bee Boulevard from Parcel Group 5.

On December 16, 2019, the Council adopted a resolution authorizing the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Trumark Properties (Developer) to design and entitle the development project consistent with the MDP and to negotiate a DDA, which are still under review and negotiation, and anticipated for Council consideration in first quarter 2022.

The City and CSUEB have agreed upon the terms of the Easement for facilitating the roadway and utility connection between Parcel Group 5 and Carlos Bee Boulevard, including for a pedestrian and bicycle trail and a temporary construction easement. Staff recommends that the Council authorize the City Manager to negotiate and to enter into the Easement with CSUEB subject to the key terms outlined in the section below.

DISCUSSION

The key terms of the proposed Easement between the City and CSUEB for roadway and utility connections from Parcel Group 5 and Carlos Bee Boulevard are as follows:

1. *Easement Parties, Parties and Area* – CSUEB grants the City a non-exclusive irrevocable easement for roadway and utility connections for vehicles and pedestrians between Parcel Group 5 and Carlos Bee Boulevard, including a pedestrian and bicycle trail and a temporary construction easement, for the Easement area shown on Attachment III.
2. *Monetary Consideration and Timing of Payment for Permanent Easement* – The City will pay CSUEB \$295,668 for the permanent roadway and utility easement within 14 days of execution of the Easement Agreement. The City will be reimbursed from the Parcel Group 5 purchase price paid by the Developer at the time the property is transferred from the City to the Developer, which is currently slated for late 2022/early 2023.
3. *Monetary Consideration and Timing of Payment for Temporary Construction Easement* – The cost of the TCE is \$19,017.54 per year that will be prorated for any partial year of construction. The TCE will be paid for by Caltrans through a deduction from the purchase price.
4. *Traffic Study and Traffic Control Measures* – The City shall require any development on the Parcel Group 5 property to comply with the recommended traffic mitigations related to impacts to the CSUEB campus from the development that are adopted as a condition of development of the Parcel Group 5 Project contained in the traffic study prepared as part of the 2014 GP EIR Addendum consistent with the California Environmental Quality Act (CEQA).
5. *Construction and Maintenance of Improvements* – The City is obligated to construct and maintain any improvements in the Easement area. The obligation to fund and construct all of the roadway and utilities improvements will be passed on to the Developer via the DDA, upon obtaining all relevant permits.
6. *Indemnity and Insurance* – The City agrees to indemnify CSUEB for the liability created by the Easement and roadway and utility improvements within the Easement area, as well as to provide evidence of insurance. In the DDA, the City will require the Developer to indemnify the City for relevant liability created by the Developer's construction of the roadway and utility improvements and provide any required evidence of insurance.
7. *Reservation of Rights* - CSUEB reserves the right to use the Easement area provided that such uses do not unreasonably interfere with the City's permitted use of the Easement area.

In sum, City staff recommends that the Council authorize the City Manager to negotiate and execute an Easement Agreement consistent with the key terms outlined above.

Environmental Review

The Addendum to the GP EIR was certified by the City Council on July 9, 2019 pursuant to CEQA Guidelines Section 15164, which states: “The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” The analysis contained in the Addendum confirmed that the proposed Parcel Group 5 project, including the roadway and utility connections between Parcel Group 5 and Carlos Bee Boulevard within the Easement area, consistent with the MDP and RFP, is within the scope of the GP EIR and will have no new or more severe significant effects and no new mitigation measures are required. Therefore, no subsequent or supplemental EIR or further CEQA review is required prior to approval of the proposed project, as described in the Addendum.

ECONOMIC IMPACT

No property taxes are currently being paid on the former Caltrans 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.

FISCAL IMPACT

This Parcel Group 5 project is included in the FY 2022 Capital Improvement Program. An appropriation of \$295,668 from Fund 411 to the Route 238 Settlement Administration Project 05014 is required to cover the cost of the Easement. Adequate funding is available from the sale proceeds of 238 Parcel Group 2 in Fund 411 for the additional appropriation. Subsequently, the City will be reimbursed from the Parcel Group 5 purchase price paid by the Developer at the time the property is transferred from the City to the Developer, which is currently slated for late 2022/early 2023. The cost of the TCE will be paid for directly via a deduction from the Caltrans purchase price at the time the property is transferred with no direct fiscal impact to the City.

SUSTAINABILITY FEATURES

The proposed development will comply with the City’s Reach Code which prohibits new gas connections for utilities and includes minimum EV ready parking spaces. In addition, the project will be required to install solar panels and will generally incorporate green building standards into design and operation of the project per the RFP.

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.

PUBLIC CONTACT

No public notice is required with this action. Community outreach is being conducted throughout the entitlement review process. City staff and the Developer have held several neighborhood and individual meetings to allow neighbors to review the entitlement submittal documents. 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

Upon approval by the Council and CSUEB, the City will appropriate the required funds, enter into the Easement Agreement with CSUEB, and pay CSUEB the monetary consideration for the Easement.

Prepared and Recommended by: Jennifer Ott, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager