



**DATE:** November 1, 2022

**TO:** Mayor and City Council

**FROM:** Assistant City Manager/Development Services Director

**SUBJECT:** Adopt a Resolution: (1) Authorizing the City Manager to Negotiate and Execute the First Amendment to the Disposition and Development Agreement with Eden Housing, Pacific West Communities, and Strategic Growth Partners and Other Affiliated Entities for Transfer of Specified City Owned Properties within Parcel Group 3 and Amendments to Exhibits Attached Thereto including the Restrictive Use Covenant Agreement; and (2) Approving Modifications to the Parcel Group 3 Affordable Housing Plan (Planning Application #202001594)

## **RECOMMENDATION**

That the Council adopts a resolution (Attachment II): (1) authorizing the City Manager to negotiate and execute the First Amendment to the Disposition and Development Agreement with Eden Housing, Pacific West Communities, and Strategic Growth Partners and other affiliated entities for transfer of specified City owned properties within Parcel Group 3 and amendments to exhibits attached thereto including the Restrictive Use Covenant Agreement; and (2) approving modifications to the Parcel Group 3 Affordable Housing Plan (Planning Application #202001594) (Attachment III).

## **SUMMARY**

After abandoning the State Route 238 Bypass Project in the 1970s, Caltrans began selling parcels that had previously been acquired for the planned freeway. In order to ensure that future development of the State Route 238 parcels located in Hayward align with the City's land use policies and overall vision, the City negotiated a Purchase and Sale Agreement (PSA) with Caltrans to assume responsibility for the sale of some of these properties to private developers. The City-controlled State Route 238 properties are divided into ten "parcel groups." Parcel Group 3, located north of Tennyson Road between 16th Street and the future La Vista Park, is the subject of this staff report.

In October 2021, Council adopted resolutions authorizing the City Manager to negotiate and execute a Disposition and Development Agreement (DDA) and related documents, with Eden Housing, Pacific West Communities, and Strategic Growth Partners (Developer) for the transfer of specified Parcel Group 3 properties and for the development of new affordable

housing and a school on the Parcel Group 3 property, as well as final approval of the Parcel Group 3 Affordable Housing Plan.

Since approval of the DDA, the Developer has requested changes to the DDA and Affordable Housing Plan to allow development of housing and all of the off-site project related infrastructure to commence ahead of the development of the school parcel, to provide more flexibility in the timing of development and the proposed allowable uses of the Adjacent Parcel (formerly the school parcel), and to address feasibility issues related to interest rate increases and cost escalation factors. Staff is recommending that the Council authorize the City Manager to negotiate and execute amendments to the DDA consistent with the Developer's request. The City findings and reports approved pursuant to Government Code Sections 52201 and 54221(f) are unaffected by the requested amendment.

## **BACKGROUND**

The City of Hayward entered into a PSA with Caltrans in January 2016 to acquire 10 parcel groups comprised of properties acquired by Caltrans for the State Route 238 expansion project. Caltrans has transferred those properties to the City subject to the City managing the disposition and development of these former State Route 238 parcel groups with the goals of removing blight, enhancing community involvement in the development process, and creating economic and public benefits, such as job generating uses and trails and parks. 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 PSA.

In April 2018, the Council approved the issuance of a RFP for the cluster of parcels located north of Tennyson Road and east of 16th Street, referred to as "Parcel Group 3." The RFP process was intended to facilitate the re-sale of the parcels through a competitive process to ensure the best price and land use for the City. Three proposals were received in response to the RFP, and in July 2018, the Council authorized the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement with the proposed Developer, based on their proposal to construct a minimum of 150 affordable housing units and a school on the Parcel Group 3 properties.

After significant due diligence and site planning efforts, the Developer submitted an application for development of two five-story residential buildings comprised of 176 affordable rental housing units, a two-story 36,000-square-foot public community school for up to 384 preschool and elementary students, and indoor and outdoor amenity spaces located north of Tennyson Road between 16th Street and the future La Vista Park. The application required a Site Plan Review, Administrative Use Permit, and Density Bonus application, which were approved by the Planning Commission on July 22, 2021. The Planning Commission's approval of the project was appealed to the Council, and the appeal was denied by the Council on September 28, 2021.<sup>1</sup> Twenty-one parcels of land zoned for single family housing will also

---

<sup>1</sup> [CITY OF HAYWARD - File #: PH 21-063 \(legistar.com\)](#) and [CITY OF HAYWARD - File #: PH 21-080 \(legistar.com\)](#)

be transferred to the Developer, but is not currently planned for development. The 21.5-acre remainder of Parcel Group 3 will be retained by the City for extension of La Vista Park.<sup>2</sup>

On October 19, 2021<sup>3</sup>, the Council adopted resolutions declaring City-owned properties generally located between Tennyson Road and Broadway Street as exempt surplus lands pursuant to Government Code Section 54221(f)(1)(H); and authorized the City Manager to negotiate and execute a DDA and related documents, with the Developer for the transfer of specified Parcel Group 3 properties and for the development of new affordable housing and a school as well as final approval of the Parcel Group 3 Affordable Housing Plan. (Planning Application #202001594), finding the project is consistent with prior California Environmental Quality Act (CEQA) determinations.

## DISCUSSION

Since the approval of the DDA, the Developer has requested changes to the DDA and Affordable Housing Plan to allow development of housing and all of the off-site project related infrastructure to commence ahead of the development of the Adjacent Parcel, to provide more flexibility in the timing of development and the proposed allowable uses of the Adjacent Parcel, and to address feasibility issues related to interest rate increases and cost escalation factors. Staff is recommending that the Council authorize the City Manager to negotiate and execute amendments to the DDA consistent with the Developer's request. The City findings and reports approved pursuant to Government Code Sections 52201 and 54221(f) are unaffected by the requested amendment. The following section summarizes the key terms of the proposed amendments to Parcel Group 3 DDA, and Affordable Housing Plan:

### I. Key Terms of Proposed Amendments to the Parcel Group DDA

City staff recommends that the Council authorize the City Manager to amend the approved DDA with the Developer with the following key terms:

- **Phasing and Performance Milestones** - Allow for the affordable housing development to be constructed first with land closing anticipated for December 2022, including an update of performance schedules for both phases of the projects.
- **Infrastructure Phasing** - Front load all project off-site infrastructure improvements except specific improvements directly related to the Adjacent Parcel instead of a bi-furcated, phased infrastructure approach, including updates to related agreements and performance schedules.
- **School Covenant** - Provide greater flexibility on timing and use of the Adjacent Parcel, including allowing a one-year period for the Adjacent Parcel Developer to notify the City of its intent to either (1) develop a school or school related uses on

---

<sup>2</sup> [CITY OF HAYWARD - File #: LB 21-044 \(legistar.com\)](#)

<sup>3</sup> [CITY OF HAYWARD - File #: PH 21-087 \(legistar.com\)](#)

the Adjacent Parcel; or (2) exercise the right to meet and confer to establish proposed development uses and the development timelines for the Adjacent Parcel; maintaining the "Excluded Business" provision, which consists of no market rate residential, golf course/country club, massage parlor, gambling or sale of alcoholic beverages; and allowing a public serving use (nonprofit or profit), which includes: educational, recreation, affordable housing uses, and other uses allowed under New Market Tax Credits.

II. Proposed Amendments to the Parcel Group 3 Affordable Housing Plan

The Developer has also requested changes to the Affordable Housing Plan to address feasibility issues related to interest rate increases and cost escalation. By changing the unit mix, the Developer can increase project revenue to pay for the financing needed to develop the projects while still maintaining the average affordability level below 60% of Area Median Income (AMI). Table 1 illustrates the overall change to the unit distribution by affordability level.

Table 1. Percent Distribution of Affordability Level

<u>Affordability Levels</u>	<u>Approved AHP</u>	<u>Revised AHP</u>	<u>Percent Change</u>
<u>Extremely Low-Income (30% AMI)</u>	<u>10.3%</u>	<u>12.1 %</u>	<u>1.7%</u>
<u>Very Low-Income (50% AMI)</u>	<u>10.3%</u>	<u>21.8%</u>	<u>11.5%</u>
<u>Low Income (60% AMI)</u>	<u>59.8%</u>	<u>37.4%</u>	<u>-22.4%</u>
<u>Low Income (80% AMI)</u>	<u>19.5%</u>	<u>28.7%</u>	<u>9.2%</u>
<u>Average</u>	<u>59.8%</u>	<u>59.9%</u>	<u>.1%</u>

While the current Affordable Housing Plan provides more units targeting households earning incomes below 60% AMI, the proposed unit mix provides a better distribution of units by affordability levels, which better meets the diverse housing needs of the community. The revised Affordable Housing Plan will provide more units for extremely low- and very low-income households, while decreasing the number of low-income units that serve 60% and increasing the number of low-income units that serve 80% AMI households. This distribution better supports development of affordable units that address the housing supply gap identified in the 2021 City of Hayward Displacement Study<sup>4</sup>.

The amendment makes other necessary minor changes to the schedule of performance and other non-material provisions. If approved, and upon execution of the amendments, the City anticipates transferring all of the specified Parcel Group 3 properties to the Developers in December 2022, with commencement of construction on infrastructure and the affordable housing to commence soon thereafter.

<sup>4</sup> City of Hayward Displacement Study  
<https://www.hayward-ca.gov/sites/default/files/documents/Hayward-Displacement-Study-w-Appendix.pdf>

## ***Environmental Review***

In 2014, the City certified the EIR for the *Hayward 2040 General Plan*.<sup>5</sup> The General Plan represents the community's view of its future and expresses the community's conservation and development goals through the year 2040. An Addendum to the General Plan EIR was prepared pursuant to Section 15164 of the CEQA guidelines, 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 proposed modifications to the General Plan EIR described in the Parcel Group 3 Addendum would not require major revisions to the General Plan EIR due to new or substantially increased significant environmental effects. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the General Plan EIR and would have no new or more severe significant effects and no new mitigation measures are required.<sup>6</sup> Additionally, the proposed First Amendment to the DDA and changes to the related agreements do not change the proposed project or uses. Therefore, no subsequent or supplemental EIR or further CEQA review is required for the Parcel Group 3 development. To the extent necessary, any future revisions to the allowable use and development of the Adjacent Parcel will be reviewed for consistency with current project approvals.

## **ECONOMIC IMPACT**

The proposed development would have a positive economic benefit in that it would result in development of a currently vacant site with new residential units and a public community educational use site that would beautify the location and increase surrounding property values.

## **FISCAL IMPACT**

There are no fiscal impacts related to the amendments to the DDA, Restrictive Use Covenant Agreement, and Affordable Housing Plan. However, 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. According to projections provided by the developer, the construction valuation of the project is estimated at \$72,900,000.

The project would also generate annual revenue from taxes, including: real property transfer tax, business license tax, and emergency facilities tax among others, while requiring annual costs related to City services including but not limited to Fire, Police, Library, and Maintenance Services. Communities sometimes attempt to quantify positive or negative fiscal impacts to help decide if a particular development project should move forward. While an important planning tool for city resource allocation, this data does not account for other

---

<sup>5</sup> Hayward 2040 General Plan EIR: <https://www.hayward-ca.gov/your-government/documents/planning-documents>

<sup>6</sup> [CITY OF HAYWARD - File #: PH 21-080 \(legistar.com\)](#)

elements or community benefits the project may provide that address Council priorities and policies. These benefits, such as increasing affordable housing supply to help stabilize housing costs, promoting equity and housing opportunities, and adding new consumers that can support city businesses and help attract new ones, offer offsets for negative fiscal impacts.

### **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.

### **NEXT STEPS**

Following Council approval, City staff will take the necessary steps to negotiate and execute the First Amendment to the DDA and convey the property to the Developer later this year in accordance with the DDA. The Developer will continue the process of pursuing construction permits for the project.

*Prepared by:* Nicole Gonzales, Deputy Director, Finance

*Recommended by:* Jennifer Ott, Assistant City Manager

Approved by:



---

Kelly McAdoo, City Manager