



DATE: November 15, 2022

TO: Mayor and City Council

FROM: Assistant City Manager/Development Services Director

SUBJECT: Adopt a Resolution Authorizing the City Manager to Negotiate and Execute the First Amendment to the Disposition and Development Agreement with Trumark Properties, LLC to Allow Deferral of the Excess Purchase Price above the Caltrans Base Purchase Price until Issuance of Certificate of Occupancy for the Transfer of Parcel Group 5, Bunker Hill

RECOMMENDATION

That the Council adopts a resolution (Attachment II) authorizing the City Manager to negotiate and execute the First Amendment to the Disposition and Development Agreement (DDA) with Trumark Properties, LLC allowing for deferral of the excess purchase price above the Caltrans base purchase price until issuance of certificate of occupancy for the transfer of Parcel Group 5, Bunker Hill.

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." The 37.75-acre parcel group located west of the California State University Easy Bay (CSUEB) Campus between Carlos Bee Boulevard and Harder Road, referred to as "Parcel Group 5," is the subject of this staff report.

In July 2019, the Council approved the Master Development Plan for Parcel Group 5 and the issuance of a Request for Proposals (RFP) from developers for development of Parcel Group 5. In December 2019, the Council authorized the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with the preferred developer, Trumark Properties (Developer), based on their proposal to construct a development consistent with the Master Development Plan.

The project proposed by the Developer included development of a new 74-lot residential subdivision with eighteen accessory dwelling units deed restricted for very low-income households, consistent with the adopted Parcel Group 5 Master Development Plan. On March 24, 2022, the Planning Commission recommended that the Council approve the project. On April 19, 2022, the project was approved in conjunction with the approval of a DDA for the transfer of Parcel Group 5, Bunker Hill, from the City to the Developer for \$14 million.

Since approval of the DDA, the Developer notified the City of significant feasibility issues related to the increase in construction and financing costs due to inflation, and continuing increases in interest rates, which have affected both market demand from potential homebuyers and direct financing costs for the Developer. As a result, the Developer requested an extension of the land transfer and other project milestones outlined in the DDA to allow time for interest rates to stabilize, to value-engineer the housing development, and to explore other potential cost saving measures. Consistent with the DDA, on October 3, 2022, the City Manager granted an extension of the DDA milestones for three months to March 1, 2023 with the potential to extend for additional time, if needed.

In addition to the time extension granted by the City Manager, staff is also recommending that the Council authorize the City Manager to negotiate and execute a first amendment to the DDA with the Developer to allow for deferral of the excess purchase price above the Caltrans base purchase price until issuance of certificate of occupancy for the transfer of Parcel Group 5, if needed to make the project feasible. The deferral of the excess sales proceeds to the City reduces the Developer's financing and carrying costs, which helps the Developer improve the feasibility of the Parcel Group 5 development.

BACKGROUND

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 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." The 37.75-acre parcel group located west of the CSUEB Campus between Carlos Bee Boulevard and Harder Road, referred to as "Parcel Group 5," is the subject of this staff report.

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DISCUSSION

As described above, staff is recommending that the Council authorize the City Manager to negotiate and execute a first amendment to the DDA with the Developer to allow for deferral of the excess purchase price above the Caltrans base purchase price until issuance of certificates of occupancy, if needed to make the project feasible. The following summarizes the key proposed modifications of the DDA:

- **Deferral of "Excess" Purchase Price** – While the Developer will still be required to pay the full amount of \$14,000,000 in sales proceeds to the City, only \$10,100,000 will be paid at the time of land transfer to pay the base price to Caltrans. The "excess" sales proceeds of \$3,900,000 will be deferred and paid to the City at issuance of certificate of occupancy on a per unit basis of \$52,702 per unit. The deferral of the excess sales proceeds to the City reduces the Developer's financing and carrying costs, which helps the Developer improve the feasibility of the Parcel Group 5 development.
- **Additional Security** – The City will negotiate with the Developer additional security to help ensure that the City receives the \$3.9 million in excess purchase price after land transfer, even in the event of default or DDA termination. Options the City will explore include: letters of credit, guarantees, and bonds.

- **Other Modifications** – There will be other minor modifications to the DDA to allow for the above changes, potentially including to the transfers, remedies, and survival provisions of the DDA.

Staff is recommending that the Council authorize the City Manager to negotiate and execute the first amendment to the DDA consistent with the above terms, if needed for project feasibility, because the deferral of the excess sales proceeds to the City reduces the Developer’s financing and carrying costs, which will help the Developer improve the feasibility of the Parcel Group 5 development.

Environmental Review

On July 9, 2019, the Council reviewed and approved the Parcel Group 5 Master Development Plan and a related Addendum to the Hayward 2040 General Plan EIR. The Addendum was prepared pursuant to CEQA Guidelines Section 15164 that “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.” As part of the approval of the Master Plan, the Council found that the proposed modifications to the General Plan EIR described in the Addendum would not require major revisions to the General Plan EIR due to new or substantially increased significant environmental effects. Further, the analysis contained in the Environmental Checklist confirmed that the Master Plan development project was within the scope of the General Plan EIR, would have no new or more severe significant effects and that no new mitigation measures were required. Additionally, the proposed Zone Change and Tentative Map application was deemed consistent with the adopted Master Plan; therefore, no subsequent or supplemental EIR or further CEQA review was required prior to approval of the proposed project. Finally, 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 5 development.

ECONOMIC IMPACT

The development will have a positive economic benefit in that it will result in development of a currently vacant site with a high-end single family residential neighborhood, a new roadway connector, a segment of the Foothill Trail and open spaces that will beautify the site and increase property values in the area.

STRATEGIC ROADMAP

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

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

FISCAL IMPACT

If the first amendment to the DDA is executed, the Developer is still required to pay the full amount of \$14,000,000 in sales proceeds to the City with repayment to Caltrans for \$10,100,000 at the time of land transfer, while the “excess” sales proceeds of \$3,900,000 will be deferred and paid to the City at issuance of certificates of occupancy on a per unit basis of \$52,702 per unit. Additionally, the City will still receive approximately \$2,000,000 in affordable housing in-lieu fees to the City’s Inclusionary Trust Fund consistent with the Affordable Housing Plan for a total of approximately \$5,900,000 in contributions to the City.

SUSTAINABILITY FEATURES

The proposed project will comply with the City’s Reach Code for new residential development at the time of approval.¹ The Reach Code prohibits natural gas connections and requires installation of an EV Ready space within each garage. Further, the project will include solar on all homes, installation of energy star appliances, tankless water heaters and low flow plumbing fixtures, pre-manufactured walls for construction, recycled building materials and compliance with other Cal Green requirements.

NEXT STEPS

Following Council approval and if needed to make the project feasible, City staff will negotiate and execute the First Amendment to the DDA for Parcel Group 5 and convey the property to the Developer in accordance with the DDA. If needed, the City Manager may also grant additional time extensions related to the land transfer and other performance milestones.

Prepared by: Nicole Gonzales, Deputy Director of Finance

Recommended by: Jennifer Ott, Assistant City Manager/Development Services Director

Approved by:



Kelly McAdoo, City Manager

¹ Hayward Reach Code. <https://www.hayward-ca.gov/reach-code>