



DATE: December 14, 2021

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution: (1) Finding a Statutory Conflict between the Local Alternative Transportation Improvement Program Statutes (Government Code 14528.6 and 14528.65) and the Surplus Lands Act; and (2) Declaring City-Owned Properties Associated with the Former 238 Bypass Project, and Subject to the 2016 Purchase and Sale Agreement between the State of California Department of Transportation and the City of Hayward, as Exempt Surplus Lands

RECOMMENDATION

That Council adopts a resolution and Exhibit A to the resolution (Attachments II and III): (1) finding a statutory conflict between the Local Alternative Transportation Improvement Program Statutes (Government Code Sections 14528.6 and 14528.65) and the Surplus Lands Act; and (2) declaring City-owned properties associated with the former 238 Bypass Project, and subject to the 2016 Purchase and Sale Agreement between the State of California Department of Transportation and the City of Hayward, as exempt surplus lands. Exhibit A to the resolution in Attachment III includes legal descriptions for Parcel Groups 3, 4, 5, 6, 8, and 9.

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 properties. The 2016 PSA divides the properties

into 10 parcel groups. The disposal of the 238 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), which are in direct conflict with the Surplus Lands Act.

Caltrans 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 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 revised Surplus Lands Act, the City must declare land as either surplus or exempt surplus prior to beginning a disposition process. The transfers of the 238 properties are subject to the more specific LATIP Statutes, which conflict directly with the terms of the Surplus Lands Act and are inapplicable to the 238 properties. Nonetheless, City staff recommends that Council take an action to adopt a resolution (Attachment II) declaring the properties as exempt surplus land, in addition to finding them in statutory conflict with the Surplus Lands Act.

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 (Settlement Agreement).

Caltrans transferred these properties to the City subject to the City managing the disposition and development of these former 238 properties 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 beginning a disposition process. Under the LATIP Statutes, the Surplus Lands Act does not apply to the sale of the 238 excess property. In addition, the 238 properties are exempt surplus land pursuant to: (1) Government Code Section 54234(a), stating that if a local agency, as of September 30, 2019, has executed legally binding contracts to dispose of property, such as the 2016 PSA, the provisions of AB 1486 shall not apply, so long as the dispositions are completed no later than December 31, 2022; and (2) Government Code Section 54221(f)(1)(H) because the land was granted by Caltrans in trust to the City and for which disposal of the land is authorized or required subject to conditions established by the LATIP Statutes.

DISCUSSION

Under the Surplus Lands Act, the City must declare land as either surplus or exempt surplus prior to beginning a disposition process. While the transfers of the 238 properties are subject to the LATIP Statutes, which conflicts directly with the terms of the Surplus Lands Act rendering it inapplicable to the 238 properties, City staff recommends nonetheless that Council take an action to adopt a resolution (Attachment II) declaring the properties as exempt surplus land, in addition to finding them in statutory conflict with the Surplus Lands Act, as outlined below.

I. LATIP Statutes, Settlement Agreement, and Purchase Agreement Supersede Surplus Lands Act

The LATIP Statutes were enacted to govern the disposition of the surplus 238 properties and to implement the requirements of the Settlement Agreement. The LATIP Statutes and Settlement Agreement complement each other and together with the 2016 PSA have collectively governed the transfer of the SR 238 Properties since 2016. The transfer of the 238 properties are subject to the requirements of the LATIP Statutes (and Settlement Agreement and 2016 PSA), which collectively conflict directly with the terms of the Surplus Lands Act Government Code Section 54220 et seq. For instance, under the LATIP statutes and Settlement Agreement, the City was required to generate 237 affordable units in the 238 corridor with the remaining property restricted from being used for housing programs. Under the SLA, the remaining excess property would have to be offered for affordable housing, in direct conflict with the terms of the Settlement Agreement and LATIP statutes. Not only is this a conflict between the two statutory schemes, it also does not recognize the City's efforts in generating the 237 affordable units or the need in the corridor for jobs and services. Additionally, the sale of the properties to third parties is subject to California Environmental Quality Act (CEQA) pursuant to *Government Code* §§14528.65(a)(3). However, if the SLA applied to the properties, the resultant affordable developments could be exempt from CEQA in direct conflict with the LATIP statutes. The requirements of the LATIP Statutes and implementing contracts supersede the Surplus Lands Act, making it inapplicable to the disposition of the 238 properties, and, as a result, staff recommends that the Council adopts the resolution and Exhibit A to the resolution (Attachments II and III) finding a statutory conflict between the LATIP Statutes and the Surplus Lands Act. Exhibit A to the resolution in Attachment III includes legal descriptions for Parcel Groups 3, 4, 5, 6, 8, and 9.

II. Declaration of Exempt Surplus Land

While the LATIP Statutes make the Surplus Lands Act inapplicable to the 238 properties, City staff recommends nonetheless that Council take an action to adopt a resolution (Attachment II) declaring the properties as exempt surplus land. The 238 properties are exempt surplus land pursuant to the following Government Code sections:

(1) Surplus Lands Act, Government Code Section 54234(a), stating that if a local agency, as of September 30, 2019, has executed legally binding contracts to dispose of property, the provisions of AB 1486 shall not apply, so long as the dispositions are completed no later than December 31, 2022:

As referenced above, the City and Caltrans entered into the 2016 PSA. The 2016 PSA would make transfers of the 238 Properties exempt because the agreement requires and authorizes the City to sell the 238 Properties.

(2) Government Code Section 54221(f)(1)(H) because the land was granted by Caltrans in trust to the City:

In this instance, the City has an established fiduciary relationship regarding the 238 properties. Under the terms of the 2016 PSA, the City received title to the 238 properties with the duty to deal with the properties for the benefit of Caltrans. While the City holds title to the 238 properties, the following terms of the 2016 PSA provide evidence that the land is being held in trust for the benefit of Caltrans:

- The City is restricted from selling the land without the prior approval of Caltrans;
- The City is not allowed to subdivide the land without Caltrans approval (See Section 1.3 of the 2016 PSA);
- The deeds conveying the properties from Caltrans to the City expressly retain and record a Power of Termination (POT) to assure that the City fulfills its obligations under the Purchase Agreement for the benefit of Caltrans and ultimately the LATIP fund;
- Caltrans will only release the POT at the time the City conveys the properties in compliance with the terms of the 2016 PSA (see Sections 3.1, 3.2, 4.1, and 5.1 of the 2016 PSA);
- Requires the City to use Caltrans documents in leasing the properties (See Sections 6.1 and 6.2 of the 2016 PSA);
- Properties must be sold “as-is” at fair market value and subject to the requirement that proceeds from those sales, less authorized federal reimbursements, and costs of sale, be deposited into a Special Deposit Fund established for use as provided for in the LATIP Statutes to fund certain local alternative transportation improvement projects; and
- The Properties revert to Caltrans if the City has not sold the properties within the Term of the Purchase Agreement.

In sum, staff recommends that Council adopts a resolution and Exhibit A to the resolution (Attachments II and III): (1) finding a statutory conflict between the LATIP Statutes and the Surplus Lands Act; and (2) declaring City-owned properties associated with the former 238 Bypass Project, and subject to the 2016 PSA, as exempt surplus lands. Exhibit A to the Resolution in Attachment III includes legal descriptions for Parcel Groups 3, 4, 5, 6, 8, and 9.

ECONOMIC IMPACT

Resale of the 238 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, providing jobs in an area suffering from years of under investment.

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 properties are required to be used by Caltrans to fund certain local alternative transportation improvement projects.

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

Upon approval of the resolution, the City Manager will transmit a copy of the resolution to the California Department of Housing and Community Development immediately.

Prepared by: Monica Davis, Community Services Manager
Jennifer Ott, Assistant City Manager

Recommended by: Jennifer Ott, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager