



DATE: July 17, 2018

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Authorization to Enter into an Exclusive Negotiating Rights Agreement for Caltrans Parcel Group 3, Generally Bounded by East 16th Street, Tennyson Road and Calhoun Street; and, Parcel Group 4, Generally Bounded by Westview Way, Harder Road and Calhoun Street; and a portion of Parcel Group 2 at Tennyson Road

RECOMMENDATION

That the Council adopts the attached resolution (Attachment II) authorizing the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and Pacific Companies, to develop conceptual development plans, and negotiate a Disposition and Development Agreement (DDA), for former Route 238 Bypass properties, Parcel Groups 3 & 4, and the remnant of Parcel Group 2.

SUMMARY

The purpose of this item is to review a summary of the proposals received for Parcel Groups 3 and 4, select the most appropriate development team for negotiations, and approve the terms for the exclusive negotiating rights agreement (ENRA) for the acquisition of Route 238 Parcel Groups 3 and 4 and the remnant of Parcel Group 2.

BACKGROUND

After abandoning the Route 238 Bypass Project, Caltrans began selling previously acquired parcels. In order to ensure that future development of these parcels aligns with the City's land use policies and overall vision, the City has negotiated a Purchase and Sale Agreement (PSA) with Caltrans to assume responsibility for the sale of some of these properties to private developers. The PSA provides the City with six years to sell the parcels or Caltrans may take them back.

In April, the City Council approved the issuance of Requests for Proposals (RFP) for Parcel Groups 3 and 4 for 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 for Parcel Group 3, and no proposals were independently received for Parcel Group 4 (one of the Parcel Group 3 proposers also offered to acquire Parcel Group 4 as part of its acquisition of Parcel Group 3).

DISCUSSION

Parcel Descriptions

Parcel Group 3 consists of three parcels located between the Tennyson Road extension on the south and Broadway St. on the north (See Attachment III). The parcel group consists of approximately 28.5 acres. The main parcel is primarily open space with barns and corrals for horses. The group also includes two smaller lots between Webster St. and Broadway St. that are currently vacant.

Parcel Group 4 consists of approximately 80.7 acres. The majority of the land is open grassland, with a cabin located in the middle of the parcel, and a barn at Calhoun Street used by the Mellow Mule Company (See Attachment IV).

Parcel Constraints

Both parcel groups have physical constraints that limit their utility including fault traces, landslides, wetlands and steep topography. Deducting areas that are recommended to remain open space due to the physical constraints results in a developable area of approximately 4 acres for Parcel Group 3, and a maximum of 4 homes for Parcel Group 4.

Zoning and Development Policies

Parcel Group 3

- **Zoning** – The zoning for Parcel Group 3 is a mixture of Single Family Residential for the two lots in the area north of Webster St; Limited Medium Density Residential for the western portion of the main parcel; and Open Space for the eastern portion of the main parcel (See Attachment III). For the Limited Medium Residential portion of the Parcel Group 3 properties, allowed and recommended uses are multifamily housing including townhouses, apartments and condominiums with a maximum density of 12 units per acre. Per the physical constraints discussed above, all of the areas zoned Open Space cannot be developed and will remain as open space. Approximately 4 acres of the area zoned Medium Density Residential is developable given current knowledge of soils conditions. The two lots zoned Single Family residential will require further site-specific geologic analysis to confirm they can be developed with homes.
- **La Vista Park Land Dedication** - A portion of the area zoned Open Space is currently planned to be part of the La Vista Park. Phase 3 of the park plan utilizes a portion of Parcel Group 3 that is zoned for open space. There are no Hayward Area Recreation and Park District (HARD) funds budgeted at this time for acquisition and improvement of this phase; however, the RFP required responsive proposals to assume the Parcel Group 3 open space area will be retained for public ownership for park purposes.

- **Additional Land from Parcel Group 2** - Adjacent to and south of Parcel Group 3 is Parcel Group 2, a portion of which is separated from the balance of Parcel Group 2 by the extension of Tennyson Road (.77 acres). It is appropriate to combine the Parcel Group 2 remnant with Parcel Group 3, which will require Caltrans approval of the subdivision. This requirement was included in the Parcel Group 3 RFP. The zoning for the Parcel Group 2 remnant is the same multi-family Limited Medium Residential zoning as the portion of Parcel Group 3 it will be combined with. The topography however is steep, and the added area may be more useful for on-site open space than development.

Parcel Group 4

- **Zoning** – Approximately 90% of the Parcel Group 4 property is zoned open space due to physical constraints. This zone does not allow any residential development. The remaining 5.58 acres north of Harder Rd. is zoned Suburban Density Residential, which allows low-density single-family development.
- **Development Restriction**– The physical constraints make the parcel largely undevelopable resulting in a low appraised value. The City and Caltrans agreed that Parcel Group 4 would be re-sold with a development restriction of 2 residential units maximum (which would be located on the parcels zoned for residential).

Both Parcel Groups

- **Parkland Dedication Fees**– There is an opportunity with development of Parcel Group 3 to generate park dedication in-lieu fees that could support constructing a portion of the La Vista Park. The planned park and Parcel Group 3 are in the same Fee Zone B, and development of residential units could generate park fees to pay for a portion of the park construction costs.
- **Foothills Trail** – The Hayward Foothill Trail Special Design District has a requirement for a walking and bike trail to transverse the parcel groups.
- **Affordable Housing** – The affordable housing ordinance requires a portion of the units to be set aside as affordable or the payment of in-lieu fees.

Caltrans Purchase and Sale Agreement

All of the parcel groups have been acquired pursuant to the Caltrans Purchase and Sale Agreement (PSA). The City's obligation to make the payment of the purchase price for the properties does not occur until the City has resold the parcels to developers. The PSA sets forth an agreed upon methodology to determine the sales price for each parcel group based on the appraised value and approved unit count. Parcel Groups 3 and 4 were assumed to have nominal development value due to topography and fault constraints. Under the PSA, the purchase price for Parcel Group 3 was established at \$2.3 million, and the purchase price for

Parcel Group 4 was established at \$1.533 million. These are the amounts the City must pay Caltrans when the parcel groups are sold. Unlike the other parcel groups, these amounts are fixed and are not subject to adjustment based on residential unit count. When the City issued the RFPs, the minimum price included a 5% administrative fee to cover City sales costs which made the minimum price for Parcel Group 3: \$2.415 million, and Parcel Group 4: \$1.61 million.

Adjacent to and south of Parcel Group 3 is Parcel Group 2, a portion of which is separated from the balance of Parcel Group 2 by the extension of Tennyson Road (.77 acres left over). Although this remaining land may not be developable due to its topography, it is appropriate to combine the Parcel Group 2 remainder with Parcel Group 3 so that the City does not have a remnant parcel under City ownership. This subdivision of Parcel Group 2 and combining with Parcel Group 3 will require Caltrans approval per the Caltrans PSA. The payment for the remnant will be made through the resale of main Parcel Group 2.

Responses to Parcel Group 3 RFP

Three proposals were received for Parcel Group 3 as follows:

1. **DR Horton** – This proposal contemplates the development of town homes with the following elements:
 - 75 three-story units.
 - 1,425 – 2,100 square feet unit sizes at prices of \$750,000 - \$870,000.
 - Extensive development experience including adjacent La Vista residential.
 - Strong financial capacity (but no proforma or financing plan submitted).
 - Close of escrow after entitlements are completed.
 - Above minimum land acquisition offer at a fixed land price, no adjustment for additional units that may be approved.
 - \$50,000 deposit at start of negotiations; \$250,000 deposit at purchase agreement.
 - Will comply with affordable housing ordinance, but no affordable units proposed.
 - No discussion of possible site sharing with school.
 - Least responsive proposal in terms of providing requested information.

2. **Eden Housing, Pacific Companies** – This proposal contemplates the development of mixed income housing and a charter school with the following elements:
 - Two and three story residential units of 150 to 235 units.
 - Two story charter school of approximately 49,000 square feet (K-8 or 9-12).
 - Development team of non-profit affordable housing developer (Eden) mixed income housing developer (Pacific) and charter school developer (subsidiary of Pacific).
 - Pacific will coordinate school and residential development.
 - Strong development experience for residential, seven charter schools developed.

- Strong financial capacity and realistic proforma assumptions for development costs and income.
 - Will close escrow prior to entitlements at an acquisition offer above the minimum and will pay additional monies per unit above 150 units if close occurs after entitlements.
 - Will also acquire Parcel Group 4 at the minimum RFP price for two to four residential single-family homes.
 - Strongest and least complex financing proposal for the affordable units and school.
 - No City financial assistance proposed except delay in paying impact fees until end of construction.
 - Mixed income allows both affordable and moderate-income housing. Preference for teachers may be possible in a portion of the project not financed by tax credits.
 - Charter school not selected, willing to negotiate with Leadership Public Schools, two other schools are candidates as well.
 - See attached conceptual site plan for site utilization (Attachment V).
3. **Leadership Public Schools, CHOC and PCSD** – This proposal contemplates the development of 100% affordable residential and a charter high school with the following elements (See Attachment VI):
- 75 units of affordable housing of two and three bedrooms in a three-story design over podium parking.
 - Charter high school of approximately 40,000 square feet, including multi-purpose space, resource center and play fields.
 - Development team consists of charter school developer (Pacific Charter School. Development), school operator (Leadership Public Schools), and affordable housing developer (Community Housing Opportunities Corporation).
 - School and residential to be developed independently.
 - Strong charter school development experience, adequate affordable housing experience (Mostly Sacramento area), proven charter school operating experience.
 - Complex and lengthy financing proposal for residential component.
 - Will require cash assistance from City for tax credit financing and equity.
 - Will close escrow after entitlements and financing are completed at the minimum price and may consider paying additional monies if additional units are possible.

Evaluation of Parcel Group 3 Responses

A team of staff including the City Manager’s office, Planning, Economic Development, Public Works, and Management Partners evaluated the three proposals based on the criteria set forth in the RFP and rated the proposals as follows:

1. Eden Housing/Pacific Companies
2. Leadership Public Schools/PCSD/CHOC
3. D.R. Horton

After interviewing the top two development teams, the evaluation team unanimously recommends the City Council select the Eden/Pacific team as the best proposal for exclusive negotiations for the following reasons:

- Eden/Pacific has the best mix of uses: both charter school and mixed-income housing. The mixed income could allow a portion to be moderate-income units with possible preference for teacher housing (LPS/CHOC is 100% affordable housing at 80% and below, teachers may not qualify).
- Eden/Pacific proposes the highest utilization of the property with a minimum of 150 apartment units, and potentially using the density bonus provisions of state law allowing up to 235 units (LPS/CHOC proposes 75 units).
- Eden/Pacific is financially the strongest in terms of assets, and their simpler financing proposal uses 4% tax credits for low income units that have less competition, monthly application windows, and no local match requirements (LPS/CHOC will be more complex with use of more competitive 9% tax credits with semiannual funding rounds, and will require additional public financing including Cap & Trade competitive funding, which must be coupled with a City infrastructure project, as well as City cash assistance).
- Eden has the most affordable housing experience (LPS charter school partner Pacific Charter Schools has more school development experience than Eden's school partner).
- Project coordination will be stronger with Eden/Pacific. The school development entity is a subsidiary of the housing development entity Pacific Companies (LPS and CHOC will develop their respective school/housing projects independently).
- Eden/Pacific offers a higher land base price with immediate close of escrow, and additional payments per unit above 150 units for close of escrow after entitlements (LPS offers base price with unspecified enhancement formula if parking requirements are reduced and will pay base price or enhanced price after entitlements are complete).
- Eden/Pacific is open to the school operator. They will consider a middle school if City desires and will consider LPS, which allows both proposals to potentially be realized (LPS proposes high school only).
- Eden/Pacific capital and operating proforma assumptions are more realistic than LPS/CHOC.
- Eden/Pacific will acquire and develop Parcel Group 4 as well, for open space and two to four high-end residential units for the minimum price (LPS did not offer on Parcel Group 4).

Parcel Group 4 RFP Responses

No direct responses were received for Parcel Group 4. The distribution of the RFP included bay area open space conservation groups, land brokers, and developers. The current tenant who is renting the property for grazing decided not to make an offer on the property. The City did receive the indirect offer from Eden/Pacific to acquire Parcel Group 4 if they are selected to acquire Parcel Group 3.

Staff recommends this parcel group be sold to Eden/Pacific (if they are chosen for Parcel Group 3), as it will allow preservation of most of the area as open space without the City having to pay the cost to acquire and maintain the property.

ENRA Terms

The following terms are recommended for approval for the ENRA:

Parcel Group 3

1. Term – 365 days; two 90 administrative extensions by City Manager possible if Developer is showing progress on meeting performance responsibilities, and additional non-refundable negotiating deposits are made per #2.
2. Good Faith Negotiating Deposit - \$10,000 due at execution of the ENRA, which is applicable to the purchase price if a DDA adopted and retained by City if the project is terminated; additional deposits of \$10,000 will be required for each 90-term extension approved by City Manager.
3. City Costs Reimbursement Deposit - \$40,000 deposit due at execution of ENRA to pay for planning, engineering, legal, CEQA, project coordination, and other consultant costs for entitlements and assessment district planning. City to provide estimate of costs as part of ENRA. Fund to be replenished by developer upon demand by City and accounting of expenditures to date.
4. Development team to consist of Eden Housing and Pacific Companies (including Strategic Growth Partners).
5. Site area for Parcel Group 3 may include remnant from Parcel Group 2 if approved by Caltrans.
6. DDA to include retention of area zoned Open Space by City for Phase 3 of La Vista Park.
7. Proposed development plan will include a minimum 150 residential mixed-income multi-family rental units, with additional units possible depending on environmental analysis, geologic restraints, and density bonus.
8. Mix of one, two and three-bedroom units affordable to households from 40% to 80% AMI; Developer will consider making a portion of the units for moderate income (up to 120% AMI); and provide preferences for teacher housing.
9. Developer to entitle the two single family zoned parcels for single family homes as part of the project approvals, provided geotech report confirms parcels can be developed.
10. Development plan will include 49,000 square foot charter school serving up to 600 students with a community room and play fields open for community use when school not in session. Size of facility and community room/play fields to be dependent upon school tenant ability to pay.
11. Developer to negotiate with Leadership Public Schools to determine if an LPS high school can be the occupant and operator of the school, with an option to purchase.
12. Development concept plan by Architect Orange to be attached to ENRA.
13. Above minimum sales price for 150 units or less; additional per unit payment above 150 base units.
14. Developer to undertake all investigations to determine feasibility including soils and geology at its own cost and provide copies of the reports to the City.

15. Developer to submit conceptual plans to the Planning staff and a Planning Commission study session for pre-application identification of issues and potential density.
16. Conceptual plans for Parcel Groups 3 and 4 to include Hayward Foothill Pedestrian Bike Trail and trail links to Parcel Groups 2 and 5.
17. Developer to submit preliminary plans with project description to Planning with application for entitlements. Plans to include description of green building elements.
18. Developer to submit a statement of sustainability measures that will be incorporated into the design and operation of the project as part of project description.
19. Developer submits preliminary financing plan including sources and uses of funds for predevelopment costs and construction costs; private equity, publicly issued bonds, and 4% tax credits.
20. Developer submits 5-7 year proforma of project operating revenues, expenditures and rates of return.
21. Developer to undertake community outreach efforts during design process per a community outreach plan submitted to the City. City to assist in defining appropriate community outreach methods.
22. City to process subdivision approval with Caltrans to combine Parcel Group 2 remnant with Parcel Group 3.
23. DDA to include requirement for Developer to pay Park In-Lieu fees, for City use to construct portion of La Vista Park, at certificate of occupancy for residential portion of the project.
24. DDA to include agreement by Developer to participate in creation of assessment district on property sold to developer for maintenance of open space/park areas in development and areas retained by City. Estimated amount of assessment and annul escalation to be determined by City during negotiating period.
25. DDA to include requirement for preference in the rent up of affordable units for persons displaced from Parcel Groups 5 (Bunker Hill) and 9 (Foothill/Oak).
26. Close of escrow after entitlements have been approved.
27. Developer to submit development schedule during ENRA period.
28. Product of negotiations – Disposition and Development Agreement.

Parcel Group 4

1. Developer to acquire Parcel Group 4 as part of transaction to acquire Parcel Group 3 if development of Parcel Group 4 is feasible.
2. Developer may terminate negotiations for acquisition if project is determined to be infeasible; negotiations are non-exclusive for this parcel group, City may discuss potential acquisition with other parties.
3. Developer to pay minimum sales price for parcel acquisition.
4. Developer to submit concept plans during ENRA period for development and of 2 – 4 single-family homes with proposed subdivision map.
5. Developer to submit time schedule for acquisition and development of parcels.
6. Developer plans to include proposed location of the Hayward Foothill Pedestrian Bike Trail and trail links to Parcel Groups 3 and 5.
7. Developer to submit information on development entity to undertake construction.

ECONOMIC IMPACT

No property taxes are currently being paid on these 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.

The sale of the parcel groups will be made pursuant to SB 470, which allows cities to sell public land for private development if the sale creates economic opportunity. Economic opportunity includes the creation and retention of jobs, increasing property tax revenues to all taxing entities, creation of affordable housing, implementation of a sustainable communities' strategy, and implementation of a transit related project. The disposition agreement for the project will need to include one or more of these elements as an obligation and/or outcome of the development.

FISCAL IMPACT

The estimated amount of new tax revenue that will be generated if the Eden/Pacific development proposal is selected will be estimated at the conclusion of the negotiating period when the number of housing units has been identified. The estimated \$13.3 million school value will be tax exempt, and a portion of the residential value may also be tax exempt for the affordable units. The land sale proceeds are projected in Table 1.

TABLE 1: LAND SALE PROCEEDS

PARCEL GROUP	CALTRANS PRICE	MINIMUM PRICE*
#3	\$2,300,000	\$2,415,000
#4	\$1,533,000	\$1,610,000
Total	\$3,833,000	\$4,025,000

* Includes 5% administrative fee for City incurred sales costs

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goals:

- Goal 1: Improve the quality of life for residents, business owners, and community members in all Hayward Neighborhoods, and
- Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

In addition, the sale and development of the parcel groups will support the policies in the Economic Development Strategic Plan for the Central Mission Boulevard Corridor.

SUSTAINABILITY FEATURES

The RFP required information on sustainable development features including incorporating green building standards into design and operation of the project. If Eden/Pacific is selected for negotiations, this element will be included as part of the plans required by the terms of the ENRA.

PUBLIC CONTACT

The selected development proposal and agreement to negotiate is a public agenda item, as well as the required noticing of the public hearings by the Planning Commission (and City Council when applicable) for any entitlements. The Eden/Pacific proposal suggested several ideas for conducting community outreach during the design process including a series of meetings with local stakeholders/community groups, a community design charrette, and tours of Eden/Pacific projects in the area.

NEXT STEPS

Subsequent Actions and Estimated Timing

The following Table 2 is a summary of the proposed project schedule, which includes information from the Eden/Pacific proposal. These dates will be subject to discussion with the developer and may change during negotiations of a Disposition and Development Agreement.

TABLE 2: PROPOSED DEVELOPMENT SCHEDULE

ITEM	ESTIMATED TIMING
Council Approves Exclusive Right to Negotiate Agreement	July 17th
Exclusive Right to Negotiate (12 Months)	August – August 2019
Entitlement and Planning Commission Submittal	September 2018
City Approvals Complete	June 2019
Execution of Disposition & Development Agreement	July 2019
Close Escrow on Land	August 2019
Application & Approval of Tax Credit Financing	January – March 2020
Building Permits & Start Construction – School & Residential	August 2020
Completion All Construction	August 2022

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Recommended and Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager