



**DATE:** February 20, 2024

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Sale of Parcel Group 8 for Development of Affordable Housing: Adopt Two Resolutions 1) Approving the Government Code Section 52201 Summary Report for the Project; and Authorizing the City Manager to Execute the First Amendment to the Disposition, Development, and Loan Agreement with RCD GP IV, LLC and Parcel Group 8, L.P. for Transfer of Specified City Owned Properties and for the Development of Housing and Making Specified Findings in Association with Government Code Section 65913.4 Exemption from the California Environmental Quality Act; and 2) Authorizing the City Manager to Execute an Agreement with the Developer Associated with the State of California Affordable Housing and Sustainable Communities (AHSC) Program

## **RECOMMENDATION**

That the Council holds a public hearing and adopts the following:

1. A resolution (Attachment II) approving the Government Code Section 52201 Summary Report for the project (Attachment III) and authorizing the City Manager to execute the First Amendment to the Disposition Development and Loan Agreement (DDA) and related documents, with RCD GP IV, LLC and Parcel Group 8, L.P. (Developer) for the transfer of specified properties and for the development of new affordable housing and rehabilitation of units for affordable housing, finding the project is consistent with prior California Environmental Quality Act (CEQA) determinations; and
2. A resolution (Attachment IV) authorizing the City Manager to execute an agreement with the Developer associated with the State of California Affordable Housing and Sustainable Communities (AHSC) Program.

## **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 aligned with the City's land use policies and overall vision, the City negotiated a Purchase and Sale Agreement (PSA) with Caltrans in 2016 to manage the disposition and development of former right of way for

the now defunct 238 Bypass. The City-controlled State Route 238 properties are divided into ten “parcel groups.”

On September 15, 2020, the Council provided authorization for the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Resources for Community Development (Developer), to develop an affordable housing project on the 2.36-acre Affordable Housing Segment, including new construction of affordable housing on the portion of the property within the City (City Portion) and exploration and identifying the development approach for existing naturally occurring affordable housing on the County Portion (see Attachment II for map)<sup>1</sup>. At the same time, Council also adopted a resolution memorializing that the provisions of affordable housing and an expansion of Carlos Bee Park will satisfy the affordable housing and park dedications for Parcel Group 8. Shortly thereafter, Caltrans authorized the subdivision of Parcel Group 8 to allow for the disposition of the affordable housing, park, and market segments during separate transactions.

After extensive community and tenant engagement, the Developer determined that their development approach was to rehabilitate the existing improvements on the County Portion, consisting of at least 11 units of naturally occurring affordable housing. Additionally, the Developer’s project was anticipated to include up to 96 new affordable housing units, along with approximately 3,900 square feet of commercial space on the ground floor on the City Portion.

The Developer submitted their entitlements application under Senate Bill 330/Senate Bill 35 and Density Bonus on March 30, 2022. The project was deemed consistent with the objective standards for the Commercial/High Density Residential General Plan land use designation and related Commercial and Neighborhood Commercial/Residential zoning districts and the project entitlements were approved through the streamlined ministerial review with a Density Bonus and related concessions and waivers.

On June 28, 2022, the City Council authorized the City Manager to negotiate and execute a Disposition Development and Loan Agreement (DDA) and related documents, with the Developer for the transfer of specified properties and for the development of new affordable housing and rehabilitation of units for affordable housing and found the project is consistent with prior California Environmental Quality Act (CEQA) determinations.<sup>2</sup> Developer and City executed the DDA also dated June 28, 2022.

In 2023, the Developer requested that the City consider an amendment to the DDA: extending the required close of escrow date from December 31, 2024 to December 31, 2026 and revising

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<sup>1</sup> City Council Meeting, September 15, 2020, <https://hayward.legistar.com/LegislationDetail.aspx?ID=4640100&GUID=2E5B6162-784D-4B66-9E34-7BA309B81501&Options=&Search=>

<sup>2</sup> City Council Meeting, June 28, 2022, <https://hayward.legistar.com/MeetingDetail.aspx?ID=979872&GUID=8E6D4562-8FCA-4F56-8C3D-AC9D1FACCE57&Options=info|&Search=>

the number and size of units in the development plan. Staff has negotiated an amendment to the DDA discussed further in this staff report.

## 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. The 10 parcel groups must be disposed of by 2027 and Table 1 provides the current status of these parcel groups.

**TABLE 1: STATUS OF 238 PARCEL GROUPS**

PARCEL GROUP	STATUS	ENTITY	EST. DISPOSITION TIMELINE	ESTIMATED UNIT COUNTS	AFFORDABLE UNIT COUNT
<b>1 &amp; 10</b>	Sold / Under Construction	William Lyon Homes (SOHAY)	August 2018	472 (approved)	48 (approved)
<b>2</b>	Sold / Under Construction	The True Life Companies (Mirza)	June 2020	189 (approved)	20 (approved)
<b>3</b>	Sold / Under Construction	Eden Housing and The Pacific Companies	December 2022	176 (approved)	176 (approved)
<b>4</b>	Master Development Planning	City of Hayward	2024+	3	0
<b>5</b>	Executed DDA	Trumark Properties, LLC	2024	92	18
<b>6</b>	Developer solicitation in future	City of Hayward	2024+	300	30
<b>7</b>	Lower lot – Sold and operating	One Subaru of Hayward	June 2020	0	0
<b>7</b>	Upper lot	City of Hayward	2024+	0	0
<b>8</b>	Affordable Housing: Execution of DDA pending approval Open Space: Under negotiations Market Rate: Developer solicitation in future	AH: Resources for Community Development  OS: HARD  MR: City of Hayward	2024+  2024+  2024+	96 (approved)   100	96 (approved)
<b>9</b>	Developer solicitation in future	City of Hayward	2024+	TBD	TBD
<b>TOTAL</b>				<b>1,428</b>	<b>388<sup>3</sup></b>

<sup>3</sup> Staff estimates 27% of total Route 238 Corridor Lands Development residential units will be affordable.

Between 2019-2022, City staff worked with the community to develop a vision and approach to the development for Parcel Group 8. This included outreach efforts with the Parcel Group 8 neighborhood, Castro Valley Municipal Advisory Council, the existing Bridge Court tenants, Eden Area Municipal Advisory Council, Grove Way Neighborhood Association, Eden Area Community Land Trust, Supervisor Miley's Office, Alameda County Housing and Community Development Departments, Hayward Area Recreation and Park District, and the private and nonprofit development community. Based on this extensive community and stakeholder feedback, staff developed an approach to the development of Parcel Group 8 to subdivide Parcel Group 8 into three major segments and move forward with three distinct community and development processes as follows:

1. Affordable Housing Segment – Engage RCD, a nonprofit developer, to build much-needed **affordable housing** on the Bridge Court/Grove Way properties that minimizes displacement of existing residential tenants.
2. Open Space Segment – Facilitate an **open space** dedication to HARD for expansion of Carlos Bee Park.
3. Market Rate Middle Segment – Solicit private developer interest in a lower density **market rate housing and trail expansion** project consistent with the County Housing Element in order to address neighborhood traffic concerns and satisfy the Caltrans purchase price.

Caltrans agreed to authorize the separate and independent subdivision and development of the three distinct segments described above and, on September 15, 2020, the City Council memorialized that the proposed affordable housing development and open space dedication for Parcel Group 8 satisfies the City's park dedication and affordable housing obligations for any new housing proposed on the Market Rate Middle Segment.

The Developer's mission is to create and preserve affordable housing for people with the fewest options, build community, and enrich lives. For 40 years, the Developer has grown from a small Berkeley-based special needs housing developer to owning and operating 64 developments through the Bay Area that provide affordable homes to 5,353 people. The Developer also works closely in partnership with the John Stewart Company, who provides experienced property management, a key to the success of affordable housing. The Developer builds energy-efficient and green buildings, outdoor areas, community rooms, community gardens, and services and property management offices that add greatly to the quality of housing. These amenities include space for a variety of resident services programs, such as community building social activities, educational workshops, and individual case coordination to help residents gain skills and access services at no additional cost.

The Developer submitted their entitlements application under Senate Bill 330/Senate Bill 35 and Density Bonus on March 30, 2022. The project was deemed consistent with the objective standards for the Commercial/High Density Residential General Plan land use designation and related Commercial and Neighborhood Commercial/Residential zoning districts and the

project entitlements were approved through the streamlined ministerial review with a Density Bonus and related concessions and waivers.

On June 28, 2022, the City Council authorized the City Manager to negotiate and execute a Disposition Development and Loan Agreement (DDA) and related documents, with Developer for the transfer of specified properties and for the development of new affordable housing and rehabilitation of units for affordable housing and found the project is consistent with prior California Environmental Quality Act (CEQA) determinations. The DDA was executed by the City Manager.

## **DISCUSSION**

Since the execution of the DDA, staff and the Developer have been working collaboratively to prepare the site for development and secure financing for the project. Key activities have included:

- Evaluating competitiveness for various state funding
- Performed environmental testing
- Obtaining a grant for removal of equipment associated with a former gas station on the property. Work is expected to begin by next month.
- Monitoring market conditions.

Due to increase in interest rates, construction costs, and competitiveness for affordable housing financing, the Developer approached the City to discuss an amendment to the DDA to address its anticipated funding gap. The proposed amendment will likely improve competitiveness for funding and allow the Developer two additional tax credit funding cycles to secure all funding for the project.

### **A. Proposed First Amendment to the DDA**

The following section summarizes the key terms of the DDA; housing element compliance and progress reports; the findings from the 52200.2 analysis regarding Creation of Economic Opportunity/Common Benefit; and updated major findings of the Government Code Section 52201 Summary Report required for the sale of the property.

City staff recommends that the Council authorize the City Manager to execute DDA Amendment 1 with the Developer with the following key modified terms:

- *Project Unit Count City Parcel*

Original DDA – required 96 unit project including the development of 42 very low-income units and 53 low-income units with 46 studios, 19 one-bedroom units, 23 two-

bedroom units, and 8 three-bedrooms units; approximately 3,900 square feet of commercial uses along Foothill Boulevard.

Amendment 1 – Reduces the unit count to 82 units but increases the unit size. Under the current proposal, the number of studios would be reduced substantially, and the unit size mix will be more equally distributed. This change in design will serve more people, provide more housing for larger families, and improve competitiveness for State funding.

- *Project Unit Count-County Parcel (existing housing)*

Original DDA – Required the rehabilitation of 11 naturally occurring affordable housing units on the County Parcel. While all tenants received relocation benefits under state and federal law in 2010 or 2011, the Developer was required to minimize displacement impacts on eight households that occupied the property by assisting tenants with relocation.

Amendment 1 – Since the execution of the DDA, one tenant household has moved from the property. The amendment acknowledges that the Developer’s obligation would be to rehabilitate the numbers of units occupied at the time of property transfer, but in any event the mixed use residential and commercial building that fronts Grove Street. Currently, there are seven occupied units. There is no change to the commitments to existing tenants currently living on the property.

- *Land Transfer*

Original DDA – Required transfer of the land by December 31, 2024.

Amendment 1 – proposes to extend the deadline until December 31, 2026. This extension would provide the developer an opportunity to pursue various state funding sources and compete at least two times for each depending on whether applications are accepted once or twice annually.

- *Financial Assistance*

Original DDA - The City committed up to \$2M from its Inclusionary Housing Fund as a loan to assist with project financing. The loan funds would support acquisition, predevelopment, and construction costs. The loan accrues three percent simple interest annually, payments are made through surplus cashflow, and is due and payable in 57 years. The predevelopment funds were capped at \$750,000.

Amendment 1 – The proposal increases the predevelopment funds cap of \$750,000 to \$1.25M. Predevelopment costs have increased as the developer redesigns the project to be more competitive in the next application funding cycles. This change would support the Developer’s continued investment in the project.

## B. Housing Element Compliance

The proposed Project will add a total of 82 affordable housing units to the City's housing stock, which would help the City to meet approximately 5% of the RHNA goal for lower-income households. Additionally, the project helps the City meet the following goals established in the City's Housing Element:

- Assist in the development of housing affordable to low- and moderate-income households; and
- Promote equal housing opportunities for all persons.

## C. 52200.2 Analysis - Creation of Economic Opportunity/Common Benefit

The actions contemplated under the DDA as amended will create economic opportunity in the Hayward community. Section 52200.2 of the California Government Code defines "economic opportunity" as any of the following:

- (a) Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that create, retain, or expand new jobs, in which the legislative body finds that the agreement will create or retain at least one full-time equivalent, permanent job for every thirty-five thousand dollars (\$35,000) of city, county, or city and county investment in the project after full capacity and implementation;
- (b) Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that increase property tax revenues to all property tax collecting entities in which the legislative body finds that the agreement will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the government entity;
- (c) Creation of affordable housing, if a demonstrated affordable housing need exists in the community, as defined in the approved housing element or regional housing needs assessment;
- (d) Projects that meet the goals set forth in Chapter 728 of the Statutes of 2008 and have been included in an adopted sustainable communities strategy or alternative planning strategy or a project that specifically implements the goals of those adopted plans; and
- (e) Transit priority projects, as defined in Section 21155 of the Public Resources Code.

Under the DDA as amended, the City is providing a \$2M loan from the Inclusionary Housing Fund as financial assistance to the Developer. The City has identified the following benefits that will be generated through the implementation of the DDA as amended and that will create economic opportunity as defined in Government Code Section 52200.2.

### *Creation of Affordable Housing*

The creation of affordable housing to meet demonstrated affordable housing needs identified in the Housing Element of the City's General Plan constitutes an economic opportunity. The proposed project will be subject to the requirements of the City's Inclusionary Housing Ordinance and has also applied for additional density under the State Density Bonus Law, and will thus increase, improve, or preserve the supply of quality affordable housing in the community. The Affordable Development will create a total of 82 newly constructed affordable units and additional rehabilitated affordable units (including one unrestricted manager's unit).

### *Creation of New Jobs*

Under Section 52200.2(a), economic opportunity is achieved if an agreement results in the creation, retention, or expansion of new jobs, at least one full-time equivalent, permanent job for every thirty-five thousand dollars (\$35,000) of City investment in the project. The sale of the Property under the DDA will result in job creation as a result of the anticipated construction of the Affordable Housing Development. During the construction of the Proposed Project, it is anticipated approximately 136 full-time equivalent (FTE) temporary construction jobs will be generated. Upon completion and full implementation, the Proposed Project is also anticipated to generate an estimated 33 permanent jobs.

### *Public Purpose/Common Benefit*

The transfer of the property and construction of the Proposed Project will further the public purpose of economic development by creating jobs and affordable housing and contribute to the vibrancy in an area of the City that has suffered from historic underdevelopment as a result of the proposed and now defunct SR 238 freeway project.

### D. Government Code 52201 Summary Report

Government Code Section 52201 authorizes the City to sell or lease property to which it holds title for the purpose of creating economic opportunity. The City must first secure approval of the proposed sale from the City Council after a public hearing. A copy of the proposed First Amendment to the Disposition and Development Agreement and an updated 52201 summary report that describes and contains specific financing elements of the proposed transaction as contemplated in the DDA and proposed amendment has been made available for public inspection prior to the public hearing. Staff prepared the Government Code Section 52201 Summary Report in compliance with the code (the "Section 52201 Summary Report"). The Section 52201 Summary Report is attached to this report as Attachment IV and is incorporated herein by this reference.

The Section 52201 Summary Report contains the following information:

- The cost to the City of the DDA as amended, including land acquisition costs, clearance costs, relocation costs, and the costs of any improvements to be provided by the City, plus the expected interest on any loans of bonds to finance the agreement;



- The estimate value of the interest to be conveyed, determined at the highest and best use permitted under the general plan and zoning;
- The estimated value of the interest to be conveyed in accordance with the uses, conditions and covenants, and development costs required under the proposed PSA, i.e., the fair reuse value of the property;
- An explanation of why the sale of the property will assist in the creation of economic opportunity; and
- If the sale price is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the general plan and zoning, then the City must provide as part of the summary an explanation of the reasons for the difference.

The conclusion of the Section 52201 Summary Report reflects that the estimated total cost to the City is projected to be higher than the purchase price received from the Developer. However, the DDA as amended and Regulatory Agreement impose extraordinary controls on the housing sites. The impacts created by these requirements reduce the value of the housing sites to a negative fair reuse value.

E. City Manager authorization to execute an agreement with Developer regarding the State of California Affordable Housing and Sustainable Communities (AHSC) Program

The Developer anticipates submitting an application for AHSC fundings in a future funding cycle. The AHSC program funds Projects that implement land-use, housing, transportation, and agricultural land preservation practices that reduce greenhouse gas (GHG) emissions. A component of the grant application would fund infrastructure in the public right of way adjacent to the site (e.g. sidewalks). This will require a separate agreement between the City and the Developer.

**Environmental Review**

Pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") and its implementing guidelines, the approval of the DDA as amended and construction of the City Housing Improvements and rehabilitation of the County Housing Improvements is eligible for streamlined, ministerial approval pursuant to Government Code Section 65913.4, and is therefore exempt from review pursuant to Public Resources Code Section 21080(b)(1), which states the general rule that CEQA does not apply to ministerial projects.

**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 rehabilitate existing units that require infrastructure investment, and this would beautify the site and increase surrounding property values. The proposed development is expected to provide 89 new

affordable housing units. Development of the project is also expected to generate temporary construction jobs and an estimated 33 permanent jobs.

Developers will leverage the City's investment in their project to secure funding from the County, the State, and private sources. The project will leverage approximately \$84 million dollars.

Additionally, social research indicates that access to affordable housing can improve education outcomes, increase health and wellbeing, boost economic activity, and lower the costs for state and local governments to provide emergency housing, mental health crisis services, emergency medical care, and other services to assist the homeless or families and individuals with a housing crisis. The rent for affordable housing is relative to income levels versus market prices which reduces rent burden. This increases available income to pay for other basic needs or save for other financial goals such as furthering education or homeownership. Stabilizing housing costs can be the first step to creating opportunities for personal economic advancement.

## **FISCAL IMPACT**

The sale of the Affordable Housing Segment will help satisfy the affordable housing requirements for the future Market Rate Segment, enhancing the future purchase price of the Market Rate Segment. The future sales proceeds for the Market Rate Segment 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.

While no property taxes are currently being paid on this Parcel Group, the proposed approach to development is expected to result in new market rate development on the Market Rate Middle Segment, which will generate new property tax revenue to the City. If the Affordable Housing Segment is developed and managed by Developer, it will generate little property tax revenue since an affordable housing development owned by a nonprofit organization is eligible for a welfare exemption which reduces its tax obligation. That said, the proposed project would provide an opportunity for new residential development needed to address the goals of the City's and County's Housing Elements. If HARD takes ownership of the Open Space Segment, it will not generate property tax revenue, but will create important public open space and trails for the neighborhood and Hayward community.

There is no additional fiscal impact related to the \$2 million loan from the City Inclusionary Housing Fund. Funding for this project was approved by City Council on May 4, 2021 and the funds have already been encumbered.

## **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 E13: Continue to work on Route 238 Corridor lands disposition and development.

**NEXT STEPS**

Following Council approval, staff will take the necessary steps to execute Amendment 1 to the DDLA and convey the property to the Developer in accordance with the DDLA.

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Christina Morales, Housing Manager

*Recommended by:* Dustin Claussen, Assistant City Manager

Approved by:



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Kelly McAdoo, City Manager