



**DATE:** June 15, 2021

**TO:** Mayor and City Council

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

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Negotiate and Enter into an Amendment to Extend the Exclusive Negotiating Rights Agreement with Eden Housing Inc. and Pacific Companies (Parcel Groups 3 and 4)

### **RECOMMENDATION**

That the Council adopts the attached resolution (Attachment II) authorizing the City Manager to negotiate and enter into an amendment to extend the Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and Pacific Companies until June 30, 2022, allowing completion of entitlements and related environmental analysis and negotiation of a Disposition and Development Agreement (DDA) for former Route 238 Bypass properties, Parcel Groups 3 and 4.

### **SUMMARY**

The City of Hayward entered into a Purchase and Sale Agreement (PSA) with the California Department of Transportation (Caltrans) in January 2016 to manage the disposition and development of former right of way for the now defunct 238 Bypass. This land is divided into 10 parcel groups and must be disposed of by 2027. This report covers Parcel Groups 3 and 4.

A Request for Proposals (RFP) for developers for Parcel Groups 3 and 4 was issued in April 2018, and in July 2018, the Council provided authorization for the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with Eden Housing Inc. and Pacific Companies (Development Team), to develop over 150 units of affordable housing and a school distributed over 14 acres.

On May 5, 2020, the Council adopted a Resolution extending the ENRA period for another year due to unforeseen delays and significant site planning issues and the slowdown caused by the COVID-19 crisis. Following that extension, the Development Team submitted their entitlement application in May 2020. Since that date, the Development Team has resubmitted multiple times and worked diligently with City staff to revise the site plan due to fire access issues while conducting environmental analysis on the proposed project. The environmental analysis revealed significant geotechnical and slope stability issues that require expensive capital improvement work to make the project roadways stable and safe. City staff is working

with the Development Team to coordinate public and private improvements to ensure that the project remains feasible.

Given the amount of cost and effort expended thus far in analyzing and working through these issues as well as the applicant’s commitment to completing project approvals, staff recommends authorizing the City Manager to enter into an amendment to extend the ENRA with the Development Team for six months to December 20, 2021, with two three-month administrative extensions at the City’s sole discretion which, if exercised, would extend the ENRA to June 30, 2022.

If approved, the proposed project will add a total of 180 affordable housing units to the City’s housing stock, which would help the City to meet over 23% of the Regional Housing Needs Allocation (RHNA) goal for low-income households and 4% of the RHNA goal for very low-income households. In addition, the site will be developed with The Primary School, a pre-school through elementary school that integrates education, health care, and family support services into their educational model.

## BACKGROUND

### Route 238 Corridor Lands Development

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 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 the desires of the surrounding neighborhood and larger community, the City entered into a PSA with Caltrans to manage the disposition and development of these properties. The PSA divides the properties into 10 parcel groups, which must be disposed of by 2027. Table 1 below 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
1 & 10	Sold / Under Construction	William Lyon Homes (SOHAY)	August 2018	472 (approved)	48 (approved)
2	Executed Purchase & Sale Agreement	The True Life Companies (Mirza)	June 2020	189 (approved)	20 (approved)
3	Under Negotiation	Eden Housing and The Pacific Companies	Winter 2021	180	180
4	Under Negotiation	Eden Housing and The Pacific Companies	Winter 2021	3	0
5	Under Negotiation	Trumark Properties, LLC	Fall 2020	82	8

<b>6</b>	Under Negotiation	Integral	Spring 2022	300	30
<b>7</b>	Sold	One Subaru of Hayward	June 2020	0	0
<b>8</b>	Master Development Planning	Resources for Community Development	Winter 2021	196	96
<b>9</b>	Master Development Planning	City of Hayward	Winter 2021	TBD	TBD
<b>TOTAL</b>				<b>1,422</b>	<b>382<sup>1</sup></b>

### Parcel Groups 3 and 4

Parcel Group 3 consists of three parcels located between the Tennyson Road extension on the south and Broadway St. on the north. 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.

On April 3, 2018, the City Council approved the issuance of a 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. When the City issued the RFP, 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.

On July 17, 2018, the City Council reviewed the summary of proposals from the RFP and provided authorization for the City Manager to negotiate and enter into the ENRA with Eden Housing Inc. and Pacific Companies, to develop conceptual development plans, pursue entitlements, and negotiate a DDA for Parcel Groups 3 and 4. After execution of the initial ENRA on November 30, 2018, the Development Team engaged in seismic trenching work to better understand the topography and suitability of Parcel Group 3. The trenching took longer than anticipated because of the rain and the results raised challenges to the feasibility of the Development Team's initial designs. The site exploration uncovered additional environmental concerns such as fault traces and areas that are prone to landslides. These findings necessitated a redesign of the proposed project and site plan and the development program has been refined to include approximately 180 units in addition to the charter school, dedicated open space, and site improvements.

On May 5, 2020, the City Council adopted the first extension to the ENRA to allow the Development Team to submit the entitlement package based on the updated development program and to conduct environmental analysis on the proposed project. Through the entitlement process, City staff and the Development Team have worked through fire access and geotechnical and slope stability issues, which further delayed the entitlement process and resulted in several resubmittals of the application. Site modifications have also resulted in various updates to the environmental analysis related to geotechnical and slope stability issues that require expensive capital improvement work to make the project roadways stable and safe. City staff is currently working with the Development Team to coordinate public and

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<sup>1</sup> Staff estimates 18% of total Route 238 Corridor Lands Development residential units will be affordable.

private improvements to ensure that the project remains feasible. At this point, most issues are close to resolution and the project is slated to go before the Planning Commission for a first public hearing in June 2021.

## **DISCUSSION**

### **Key Elements of ENRA Extension Terms**

The primary terms of the ENRA remain in place, with the following change in key terms recommended for approval for the ENRA Extension:

1. *Negotiating Period* – Through June 16, 2022, which includes two 90-day administrative extensions by the City Manager possible if the Developer is showing progress on meeting performance responsibilities, and additional non-refundable negotiating deposits are made per #2.
2. *Extension Payments* – \$10,000 will be required for each 90-term extension approved by City Manager, which is applicable to the purchase price if a DDA is adopted and which would be retained by City if the project is terminated.

### **Housing Element Compliance and Progress Reports**

Local jurisdictions report their progress meeting their RHNA goals to the State. Table 2 (below) reflects the progress made towards meeting Hayward's RHNA goals as of the last report year (2019), estimated progress based on number of units entitled, and progress based on projects seeking approval, for the period between 2015-2023. Table 3 provides the income limits associated with each income category for Alameda County. Permits to construct the units must be issued in order to count toward the City's RHNA goals.

The proposed Project will add a total of 180 affordable housing units to the City's housing stock, which would help the City to meet over 23% of the RHNA goal for low-income households and 4% of the RHNA goal for very low-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.

**TABLE 2. 2015 -2023 RHNA GOAL PROGRESS IN THE CITY OF HAYWARD**

Income Category*	Unit Goal	Reported 2019		Approved		Pending** Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal
<b>Very low</b>	851	65	8%	204	24%	87	10%	355	42%	495	58%
<b>Low</b>	480	153	32%	70	15%	122	25%	345	72%	135	28%
<b>Moderate</b>	608	72	12%	55	9%	10	02%	135	22%	472	78%

\* The City has achieved the Above Market Rate housing goals for the 2015-2023 RHNA cycle.

\*\* The project units are not reflected in the above table because the entitlement application is still pending.

**TABLE 3. INCOME LIMITS BY INCOME CATEGORY AND HOUSEHOLD SIZE FOR ALAMEDA COUNTY AS ESTABLISHED BY CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

Income Category	Household Size							
	1	2	3	4	5	6	7	8
<b>Extremely Low 30% AMI*</b>	\$28,800	\$32,900	\$37,000	\$41,100	\$44,400	\$47,700	\$51,000	\$54,300
<b>Very low 50% AMI*</b>	\$47,950	\$54,800	\$61,650	\$68,500	\$74,000	\$79,500	\$84,950	\$90,450
<b>Low 80% AMI*</b>	\$76,750	\$87,700	\$98,650	\$109,600	\$118,400	\$127,150	\$135,950	\$144,700
<b>Median 100% AMI</b>	\$87,900	\$100,500	\$113,050	\$125,600	\$135,650	\$145,700	\$155,750	\$165,800
<b>Moderate 120% AMI</b>	\$105,500	\$120,550	\$135,650	\$150,700	\$162,750	\$174,800	\$186,850	\$198,900

\* Percent area median income (AMI) is used to identify income and rent levels; however, the method for calculating income limits involves assessment of multiple data points and is not necessarily a percent of the median income. For more information see <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income%20limits%202021.pdf>

## 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.

## FISCAL IMPACT

This is the initial phase of potential property disposition and development. There are no anticipated fiscal impacts with the ENRA/DDA negotiations as the developer deposit will pay for staff time and consulting costs. The estimated amount of new tax revenue that will be generated will be estimated at the conclusion of the negotiating period.

## STRATEGIC ROADMAP

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

Project 5, Part 5.a and 5b: Facilitate disposition and development of Route 238 Corridor lands; Finalize planning on redevelopment of 6 remaining parcel groups; Finalize disposition and development agreements for all parcels.

## SUSTAINABILITY FEATURES

The proposed development will comply with the City's Reach Code and Building Code, which encourages all-electric construction for high density development projects and inclusion, at minimum, EV ready/capable parking spaces. In addition, the project will generally incorporate green building standards into design and operation of the project per the RFP.

## PUBLIC CONTACT

No public notice is required with this action. However, additional community outreach will be conducted by the Development Team and the City throughout the remainder of the entitlement review and approval process. In addition, there will be standard hearings before the Planning Commission and City Council as the City considers the necessary approvals for the proposed project.

## NEXT STEPS

### Subsequent Actions and Estimated Timing

The following Table 4 is a summary of the proposed schedule. These dates will be subject to discussion with the developer and may change during negotiations of a Disposition and Development Agreement.

**TABLE 4: PROPOSED DEVELOPMENT SCHEDULE**

ITEM	ESTIMATED TIMING
Council Approves Second Amendment of Exclusive Negotiating Rights Agreement to Extend Agreement	June 15, 2021
Planning Commission Vote on CEQA & Entitlements	June 2021
City Council DDA Approval	September 2021
Submit Grading Permits	July 2021
Submit for Building Permits for School	August 2021
Close on Land	November 2021
Submit Building Permit for Housing	November 2021
Funding Commitments for School	December 2021
TEFRA Hearing	February 2022
Pull Building Permit and Start School Construction	March 2022

Funding Commitments for Housing	April 2022
City Council Financing Approvals	June 2022
Close on Construction Financing for Housing, Pull Building Permits, and Start Housing Construction	August 2022

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

*Approved by:*



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Kelly McAdoo, City Manager