



**DATE:** June 28, 2022

**TO:** Mayor and City Council

**FROM:** Acting Assistant City Manager

**SUBJECT:** Sale of Parcel Group 8 for Development of Affordable Housing: Adopt a Resolution Approving the Government Code Section 52201 Summary Report for the Project; and Authorizing the City Manager to Negotiate and Execute a 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

## **RECOMMENDATION**

That Council holds a public hearing and adopts a resolution (Attachment III) approving the Government Code Section 52201 Summary Report for the project (Attachment IV) and authorizing the City Manager to negotiate and execute a Disposition Development and Loan Agreement (DDA) and related documents, with Resources for Community Development (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.

## **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 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 the 11 units of 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.

During the second phase of the negotiating period, Developer explored three potential scenarios for the County portion, including: (1) Partnering with a community land trust to rehabilitate the existing improvements on the County portion; (2) Rehabilitating the existing improvements on the County portion, consisting of the naturally occurring affordable housing and managing the units as rental units; and (3) Demolishing existing improvements on the County Portion and constructing new rental housing. After extensive community and tenant engagement, Developer determined that their development approach is to rehabilitate the existing improvements on the County Portion, consisting of at least 11 units of naturally occurring affordable housing. Additionally, Developer's project includes total of 96 new affordable housing units, along with, along with 3,900 square feet of commercial space on the ground floor on the City Portion.

Developer submitted their entitlements application under Senate Bill 330/Senate Bill 35 and Density Bonus and on March 30, 2022. Given that 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, the proposal was approved through the streamlined ministerial review with a Density Bonus and related concessions and waivers.

Now that the planning entitlements have been approved, City staff recommend entering into a DDA with the Developer for the disposition from the City to Developer for a total purchase price of \$0 for the 2.36-acre Affordable Housing Segment of Parcel Group 8 for 96 new affordable housing units, with 3,900 square feet of commercial space on the ground floor on the City Portion, and 11 rehabilitated units on the County Portion.

## **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

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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=>

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>	Executed DDA	Eden Housing and The Pacific Companies	2022	176 (approved)	176 (approved)
<b>4</b>	Master Development Planning	City of Hayward	2023+	3	0
<b>5</b>	Executed DDA	Trumark Properties, LLC	2022	92	18
<b>6</b>	Developer solicitation in future	City of Hayward	2023+	300	30
<b>7</b>	Sold / Grand Opening on June 29th	One Subaru of Hayward	June 2020	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	2023	96 (approved)	96 (approved)
		OS: HARD	2034		
		MR: City of Hayward	2023+	100	
<b>9</b>	Developer solicitation in future	City of Hayward	2023+	TBD	TBD
<b>TOTAL</b>				<b>1,428</b>	<b>388<sup>2</sup></b>

Over the course of the last few years, 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.

<sup>2</sup> Staff estimates 27% of total Route 238 Corridor Lands Development residential units will be affordable.

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 in 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 almost 40 years, 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 Steward 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. Given that 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, the proposal was approved through the streamlined ministerial review with a Density Bonus and related concessions and waivers.

Now that the planning entitlements have been approved, City staff recommend taking actions to facilitate the transfer of the property to the Developer, as described below.

## **DISCUSSION**

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 the major findings of the Government Code Section 52201 Summary Report required for the sale of the property.

### **I. Key Terms of the DDA**

City staff recommends that the Council authorize the City Manager to enter into a DDA with the Developer with the following key terms:

- **Parties** – City of Hayward, RCD GP IV, LLC (“Company”), and Parcel Group 8 L.P. (“Partnership”) as the Affordable Housing Developer.
- **Purchase Price** – \$0 to be paid by the Developer to the City in exchange for the Affordable Housing Parcel. At the time of the transfer, the City is not obligated to pay Caltrans for the PSA purchase price for Parcel Group 8.
- **Project Description** – Parcel Group 8 Affordable Housing Segment City Portion includes 96 deed restricted rental units, including 42 very low-income units and 53 low-income units; approximately 3,900 square feet of commercial uses along Foothill Boulevard. Additionally, 11 naturally occurring affordable housing units on the County Portion will be rehabilitated and offered as low income units. The City will retain ownership of the Open Space Segment and of the Market Rate Middle Segment. It is the intent of the City that these affordable housing units will satisfy the inclusionary obligation created by the future development of the Market Rate Middle Income Segment in satisfaction of the Affordable Housing Ordinance.
- **Land Transfer** – Closing on the land transfer requires the affordable housing development on both the City and County portion to have secured necessary financing. The City, the Company, and the Partnership desire to enter into the DDA to allow the City to convey the Affordable Housing sites to the Company to enable the Partnership to acquire a leasehold interest in the City Housing Parcels and acquire a fee interest in the County Housing Parcel.
- **Infrastructure Improvements** – The developer is required to ensure all infrastructure systems necessary to support the development of the housing are constructed or upgraded as part of the Improvements. EBMUD has determined it is not able to provide sufficient fire flow volume to the Affordable Housing Segment, therefore the developer has agreed to extend a City water line to the project site to provide an additional fire flow to the City Housing Parcels.
- **Voluntary Affordable Housing Covenant** - The Housing Developer voluntarily agrees to restrict the affordable housing units in the housing development for occupancy by low-income households at an affordable rent in perpetuity with the City as a named third-party beneficiary.
- **Financial Assistance** - The City will contribute up to \$2M from its Inclusionary Housing Fund as a loan. The loan funds will be used to pay 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.

- **Minimize Impact on Existing Tenants** – Developer to work with existing tenants on the County Portion to minimize displacement impacts. Developer should integrate the tenants into the new project to the extent eligibility criteria is met and a tenant is interested. If a tenant is not income eligible for an affordable housing unit or prefers to relocate, Developer will provide resources to aid in moving.
  - In 2010 and 2011, all tenants received relocation benefits required under federal and state law
  - Tenants will be required to move out during construction
  - Tenants will be screened for eligibility six months prior to construction
    - Eligible tenants can choose relocation options:
      - Option A: Temporary Relocation:
        - Developer will provide temporary housing, pay moving costs, and pay rent differential
        - Tenant continues to pay current rent to Developer
      - Option B: Permanent Relocation:
        - Developer provide advisory assistance (i.e. referrals) to replacement housing
        - Developer pays \$20,000 for moving/rental/home purchase assistance
    - Ineligible tenants will be permanently relocated under Option B to comply with tax credit requirements

## II. 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 (2021), 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 96 affordable housing units to the City's housing stock, which would help the City to meet over 7.5% of the RHNA goal for low-income households and 7% 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 2021		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	168	20%	293	34%	26	3%	487	57%	364	43%
<b>Low</b>	480	174	36%	226	47%	4	1%	404	84%	76	16%
<b>Moderate</b>	608	128	21%	60	10%	0	0%	188	31%	420	69%

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

**TABLE 3. 2022 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>Very low 50% AMI*</b>	\$50,000	\$57,150	\$64,300	\$71,400	\$77,150	\$82,850	\$88,550	\$94,250
<b>Low 80% AMI*</b>	\$76,750	\$87,700	\$98,650	\$109,600	\$118,400	\$127,150	\$135,950	\$144,700

\* 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/docs/grants-and-funding/inc2k22.pdf>

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

The actions contemplated under the DDA 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, 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 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 units of 107 affordable housing (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.

### IV. 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 DDA

and a summary report that describes and contains specific financing elements of the proposed transaction is required to be 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 of the DDA to the City, 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 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.

## **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 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 provide 96 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 \$67million 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 5, Part 5.a-c: Facilitate disposition and development of Route 238 Corridor lands.

## **NEXT STEPS**

Following Council approval, staff will take the necessary steps to convey the property to the Developer in accordance with the DDA.

*Prepared by:* Monica Davis, Community Services Manager  
Christina Morales, Housing Manager

*Recommended by:* Dustin Claussen, Acting Assistant City Manager

*Approved by:*

A handwritten signature in black ink, appearing to read 'Kelly McAdoo', with a long horizontal stroke extending to the right.

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Kelly McAdoo, City Manager