



# CITY OF HAYWARD

Hayward City Hall  
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## Cover Memo

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**File #:** CONS 16-017, **Version:** 1

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**DATE:** January 19, 2016

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

### **SUBJECT**

Authorization to Enter into an Exclusive Right to Negotiate Agreement with William Lyon Homes, Inc. for a Proposed Development Located in South Hayward Near Dixon and Valle Vista Avenues

### **RECOMMENDATION**

That the Council adopts the attached resolution (Attachment I) authorizing the City Manager to enter into an Exclusive Right to Negotiate Agreement (ERNA) with William Lyon Homes, Inc. for an initial period of four months (120 days) to develop conceptual development plans for certain properties in South Hayward within the former Route 238 corridor.

### **BACKGROUND**

Since 2011, the City has been working in earnest with the California Department of Transportation (Caltrans) on the disposition of the undeveloped properties within the 238 Bypass Freeway Project area. Extensive background on this project was presented to the Council on January 12, 2016 when the Council considered and ultimately approved a Purchase and Sale Agreement with Caltrans (see related file LB 16-007: Draft Purchase and Sale Agreement with the California Department of Transportation for the City of Hayward to Acquire Excess Property in the 238 Bypass Corridor). This agreement will transfer certain undeveloped properties within the Route 238 corridor to the City. The City will now have the responsibility for preparing these properties for transfer/sale to third parties in a manner that will provide the most value to the community and cause the most expeditious funding of the Local Alternative Transportation Improvement Program (LATIP).

In anticipation of this transfer of properties, the City hired Dutra Cerro Graden (DCG) to assist with a conceptual land planning exercise for certain properties in South Hayward near Dixon and Valle Vista Avenues, which included some of the Caltrans-owned 238 properties. Attachment II shows the properties that were the subject of the DCG planning effort and their current ownership and land use designations. The DCG work resulted in a market feasibility study and a suggested conceptual land use plan (Attachment III).

Caltrans has continued to auction off some 238 corridor undeveloped properties until fairly recently. As such, the development community has been aware of the land use opportunities in the corridor. In the fall of 2015, the City received an unsolicited offer from William Lyon Homes, Inc. to purchase and develop 17.76 acres of land in roughly the same area as where the DCG concept plan had been

developed, 9.46 acres of which would be residential development and 8.30 acres of which would be parkland.

## DISCUSSION

Since October, a team of staff and consultants has been negotiating the terms of the ENRA with representatives of William Lyon Homes and staff is now presenting this to Council for approval. The ENRA is only the first step in the land disposition process. The developer will need to go through the typical City planning and environmental review processes required for the land use proposal that is ultimately put forth for consideration. The ENRA simply gives William Lyon Homes reassurance that the City will not negotiate with another entity while they are expending significant funds during the due diligence and land use planning processes. Ultimately, the City would negotiate a Disposition and Development Agreement (DDA) for final disposition of the properties if the proposed development receives the required land use entitlement and environmental approvals.

### *Key Terms of the ENRA*

- 1) The properties under consideration in the ENRA are identified on Attachment IV.
- 2) The initial term of Phase One of the ENRA will be 120 days. During Phase One, William Lyon will also perform its due diligence on the Development Property. Phase One can be extended for an additional thirty days if sufficient progress on the work items has occurred as determined by the City Manager. The work plan items in both Phase One and Phase Two are identified in Attachment V.
- 3) Phase Two will commence immediately following Phase One if sufficient progress towards a Preliminary Project Plan has occurred. The primary tasks of Phase Two will be to negotiate and execute a mutually acceptable DDA and to complete the required California Environmental Quality Act (CEQA) review for the proposed project. Phase Two will terminate after sixty days or upon execution of a DDA with William Lyon Homes, Inc. Phase Two can be extended for two additional thirty-day periods if sufficient progress has been made towards a DDA as determined by the City Manager.
- 4) There will be substantial community outreach during both Phases of the ENRA.
- 5) The Developer will submit a good faith deposit of \$80,000 to cover the City's expenses in Phase One. The developer will be responsible for all ordinary permitting, entitlement, and development application fees and these will be in addition to the good faith deposit. In Phase Two, any City expenses (other than ordinary permitting expenses) will be covered by a Reimbursement Agreement between William Lyon Homes and the City.
- 6) The ENRA will outline specific performance milestones. The key milestones are the submission of a proposed "Land Use Plan" to the City within sixty days of execution of the ENRA. This will show general locations for residential land uses (including densities), retail land uses and open space/park land uses. During the 120 day period of the agreement, the Developer will prepare and ultimately submit to the City a more refined site plan that includes lot and building dimensions, roads, massing diagrams, and preliminary landscape concepts. By the end of the 120-day period, the Developer will also provide a detailed project schedule of performance (including dates for obtaining Planning Approvals and financing commitments for the project) along with a detailed financial pro forma for the City's review.
- 7) The Preliminary Project Plan shall include substantial retail, residential, and green building components.

- 8) The Project is not considered a public project or to have any public participation; and as such is not subject to any Project Labor Agreement requirements.
- 9) If the City willfully enters into an agreement with another party that materially impacts the feasibility of the proposed development project during the term of the ENRA, the City would be considered in default under the terms of the Agreement and subject to repayment of the initial deposit plus up to \$100,000 in reimbursable costs of the developer as remedies.

### *Developer Background and Experience*

William Lyon Homes is one of the largest Western U.S. regional homebuilders. Headquartered in Newport Beach, California, the Company is primarily engaged in the design, construction, marketing, and sale of single-family detached and attached homes in California, Arizona, Nevada, Colorado, Washington, and Oregon. Its core markets include Orange County, Los Angeles, San Diego, the San Francisco Bay Area, Phoenix, Las Vegas, Denver, Seattle, and Portland. The Company has more than fifty-nine years of homebuilding operations, over which time it has sold in excess of 93,000 homes. In northern California, they have developed communities in Morgan Hill, Brentwood, Mountain View, Tracy, Antioch, Dublin, and Pittsburg. Although they do not have specific retail development experience, they will be selecting a seasoned development partner to ensure the retail elements of the project are positioned for success.

### **ECONOMIC AND FISCAL IMPACT**

As mentioned in the previous staff report regarding the transfer of the former 238 parcels from Caltrans to the City, there are many potential economic benefits that could result from this transfer; the primary being the ability for Council and staff to work creatively and proactively with a developer to develop a shared vision, and ultimately successful projects, for these significant areas of the Hayward community.

In terms of the specific financial impacts of this particular project, these will be determined as part of the negotiation for the ultimate DDA related to the project. The DDA will outline the sales price of the properties along with any deductions to this price based on those specific amenities that the City will desire and/or require to be a part of the project that will create value for the community, including but not limited to the acquisition of land projected to accommodate any retail components of the plan. All costs associated with negotiating this agreement and for ultimately processing the planning applications will be covered by the developer.

### **PUBLIC CONTACT**

To date, there has been no public contact associated with this project. As the developer begins to put together the preliminary land use plan, significant community outreach will be an expectation of this process. In addition, there will be the standard public hearings before the Planning Commission, and likely the City Council, as the City considers the necessary planning and environmental approvals for the proposed project.

### **NEXT STEPS**

If the Council authorizes this action, the City Manager will execute the ENRA and staff will proceed to work with the developer on the tasks outlined in Phase One of this agreement. Staff intends to schedule a Council work session for Council to provide input on the Preliminary Project Plan prior to the

expiration of Phase One. Should staff be successful in the negotiations with the developer, the proposed terms and conditions of the Disposition and Development Agreement would come back to the Council for approval.

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*Recommended by:* Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution Authorizing ENRA with William Lyon Homes, Inc.
Attachment II	Existing Conditions Map - Valle Vista Planning Area
Attachment III	Conceptual Land Use Plan - Valle Vista Planning Area
Attachment IV	Properties Subject to the ENRA
Attachment V	Work plan tasks for Phases One and Two of ENRA