



CITY OF HAYWARD

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Cover Memo

File #: LB 16-007, **Version:** 1

DATE: January 12, 2016

TO: Mayor and City Council

FROM: City Manager

SUBJECT

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

RECOMMENDATION

That Council adopts the attached Resolution (Attachment I) declaring a public purpose for the City's purchase of Route 238 excess property and authorizing the City Manager to complete negotiations with the California Department of Transportation (Caltrans) for the City to acquire specific parcels of land along the 238 Corridor, which have been declared excess by Caltrans; said purchase to be in general accord with the terms set forth below.

SUMMARY

In the mid-1960s, Caltrans purchased over 400 parcels of property for the construction of the then-planned 238 Bypass Freeway project. In 1971, the community filed a lawsuit to stop the planned 238 Bypass Freeway: *La Raza Unida of Southern Alameda County, et al v. California Department of Transportation and the City of Hayward* (Alameda County Court Case No. RG 09476468.) As a result, Caltrans declared the project dead and abandoned.

Caltrans and the City have moved almost all residential parcels and a few commercial properties out of State ownership and back onto the property tax rolls through private ownership. Caltrans' normal land disposition process is to put each parcel up for auction for an "as is" purchase, which, for undeveloped property, poses several problems and creates lost opportunity for the City. As a result, over the last five years, staff worked with Caltrans on a proposal where the City would assume responsibility for disposing of the undeveloped properties in the 238 Bypass Freeway Project area. These conversations have resulted in the current terms for a Draft Purchase and Sales Agreement as presented herein for Council's consideration.

This report recommends to Council the adoption of a Resolution declaring a public purpose for this process and authorizing the City Manager to complete negotiations with Caltrans. The report also outlines the benefits and risks of the proposal.

BACKGROUND

In the mid-1960s, Caltrans purchased over 400 parcels of property for the construction of the then-planned 238 Bypass Freeway project. In 1971, the community filed a lawsuit to stop the planned 238 Bypass Freeway: *La Raza Unida of Southern Alameda County, et al v. California Department of Transportation and the City of Hayward* (Alameda County Court Case No. RG 09476468.) As a result, Caltrans declared the project dead and abandoned. Almost forty years later, in 2007, staff entered into negotiations with Caltrans, the CTC, Local Alternative Transportation Improvement Program (LATIP) partners, the Alameda County Transportation Commission, tenants' rights advocates, housing advocates, and interested legislators to resolve outstanding legal and other issues in an effort to divest Caltrans of the parcels they owned within the City of Hayward boundaries, to return these properties to the property tax rolls, and to start a productive development process for all undeveloped properties.

On December 11, 2009, after approximately two years of good-faith negotiations, the City entered into a Joint Stipulation of Class Settlement and Class Settlement Agreement and Release ("Settlement Agreement") with all applicable parties. At the conclusion of this process, and per the terms of the Settlement Agreement, Caltrans declared the parcels they originally purchased for the 238 Bypass Freeway project to be "excess" or "surplus" and began a process of land disposition, which included the City-funded Opportunity to Purchase a Home Program (OPHP) for those tenants living in Caltrans residential units.

Through the OPHP, City staff assisted twenty-four tenants to purchase the homes in which they lived or another eligible home in the Corridor project area; and assisted over two hundred other tenants to successfully move to other non-Caltrans housing in preparation for their properties being sold by Caltrans. This assistance was both financial per the terms of the Settlement Agreement and through staff support. Council will recall that the Settlement Agreement required a \$6M commitment from the City: up to \$1M for the First Time Homebuyers Program and up to \$5M for financial payments to tenants.

Per the terms of the 1982 LATIP legislation, all money received for these excess or surplus properties was not to go back to Caltrans, but rather to be placed in a special LATIP fund to fund a pre-determined list of local transportation projects in Hayward, San Leandro, Union City, and Unincorporated Alameda County. Caltrans determined that the amount of money going into the LATIP would be defined as the revenue from the sale of the properties less Caltrans' cost of selling the property.

The LATIP was established and approved through Assembly Bill 1391, which added Sections 14528.5 and 14528.6 to the Government Code on highways. It was later amended through additional legislation in 2004 (SB 509), 2005 (AB 1462) and in 2009 (AB 1386). It was further impacted by the terms and agreements contained in the Settlement Agreement.

Caltrans and the City have moved almost all residential parcels and a few commercial properties out of State ownership and back onto the property tax rolls through private ownership, which generated approximately \$36,000,000 for the LATIP. Hayward projects are at the top of the pre-determined LATIP list. So far, the City has received \$10,100,000 in LATIP funds: \$8.1M for Phase I of the Mission Corridor Improvement Project and \$2M for Phases II (Mission south of Industrial) and III (Mission north of A Street) planning and design. The entire Mission Corridor/Route 238 project has an identified allocation of \$30,000,000. Therefore, the balance of \$19.9M will be applied toward the completion of Phase II and III to supplement other funds such as funds from Measure BB. Other Hayward-oriented projects on the

LATIP list include: auxiliary lanes along I-880 between Paseo Grande and Winton and between Whipple and Industrial; new interchanges at I-880/Whipple, I-880/Industrial, I-880/Winton, I-880/A Street, and Whitesell/Clawiter/SR92. Most of these projects are projected to be funded by a combination of Measure BB and LATIP money.

While Caltrans has started the disposition process for commercial and undeveloped properties, and the disposition of the occupied commercial properties (e.g., the remnant parking lot for the Taco Bell on Foothill) was a welcome action for the property owners and the City, sale of the undeveloped land poses a problem. Caltrans' normal land disposition process is to put each parcel up for auction for an "as is" purchase. Parcel, as they define it, is usually based on how they originally purchased the land with no regard for County Assessor parcels or historical lot lines. Nor do they extend any effort to assemble properties for improved development opportunities and potential increased value.

Selling properties in this manner poses several issues:

1. It leaves a large amount of money "on the table" out of the LATIP fund and out of public benefit, and allows private speculators to potentially profit by "flipping" the properties without adding any value. For example, a group of parcels on the west side of Mission Blvd. between Valle Vista and Industrial were bought from Caltrans in July 2014 through this process for \$1,191,000 and were immediately listed back on the market by the new owner for \$3.1M, actually selling in September 2015 for \$2.7M. Another example is the property located at Second and Walpert, which Caltrans sold for approximately \$600,000 per acre. However, estimates from experts in the field indicated that had the City added even a minimum amount of entitlement certainty to the property, the price would have been closer to \$1.2M per acre.
2. It does not allow for logical assemblage of properties to encourage desired development in a given area, either residential or commercial. For example, as can be seen in Attachment III, the above defined parcel on the west side of Mission Blvd. was in the middle of what could and should have been a "grouped" number of Caltrans parcels to encourage the development of the City's vision for that area.
3. It takes "front-end" control away from the City and the community. Certainly, the City still holds control related to basic land use approvals. However, it does not allow the community to shape development and to actively seek preferred projects such as was common under Redevelopment. It only allows project approval or denial after the fact based on applicable zoning, General Plan designation, and related laws, and only for the specific parcels or properties on which the project is being proposed.
4. It prevents collaborative negotiations with developers. A good example of what could be accomplished if the City controlled the property on the front-end is the development of an Exclusive Negotiating Agreement (ENA) with a particular developer willing to work in partnership with the City to produce a desired project or achieve a specific vision for a neighborhood.

As a result, staff approached Caltrans in 2011 with a proposal that the City assume responsibility for disposing of the undeveloped properties in the 238 Bypass Freeway Project area. Those conversations did not prove productive. In January of 2014, staff again approached Caltrans with a specific written proposal, which was also not productive. Most recently, in January 2015, staff renewed the conversation with Caltrans, exploring the possibility of the City assuming responsibility for disposition of undeveloped 238 Bypass Freeway properties. With the active participation of staff from the CTC, these recent conversations have resulted in a tentative agreement as to the terms being presented to Council for consideration through this report. The final agreement is scheduled to be considered for approval by the

CTC on January 20-21, 2016.

DISCUSSION

The benefits of the City assuming the disposition responsibilities of the Corridor properties are many. The lack of investment and development activity in the Caltrans properties has negatively impacted land values and limited the vibrancy throughout the neighborhoods adjacent to or incorporating the state owned properties. Through this process, the Council could provide a vision and a development pathway to revitalizing the entire corridor in a proactive manner.

Another major potential benefit could be the ability to generate cash over and above the purchase price to Caltrans. This is possible by adding entitlement value to the property before reselling it. The purpose of the “excess” cash would be to fill the gap created by the dissolution of the City’s Redevelopment Agency by the State. Such cash would allow the City to provide additional funding to economic development, have cash to use as an incentive for land uses desired by the Council and community, allow the City to be a proactive partner in development possibilities, and even to assist property owners in attracting new and innovative tenants. Other benefits to this deal are: better land use planning; elimination of blight; greater City control; keeping more cash in the public arena; and having the direct ability to more successfully achieve the Council’s development vision in certain geographic areas.

Along with benefits, come risks. The biggest risk is potentially not reselling the properties at an increased value so that the City’s General Fund is put at risk to make up the difference. The most likely way that might occur is if the economy slows down or again collapses during the period the City is trying to resell the property; or if the City cannot effectively and efficiently add value to the property through improved entitlement efforts as planned. The risk of a softening market has increased with the amount of time it has taken to agree on the terms of the property transfer with Caltrans. Therefore, time remains of the utmost essence.

Other notable areas of risk include the large amount of land in the group of properties currently zoned open space, as well as the geological and topographical constraints of each property. Clearly, staff will need to move expeditiously to assess key properties for geological and topographical constraints, as well as for possible existing environmental contamination. This will be done in parallel to the appraisal process, which would start next week.

The Draft Purchase and Sale Agreement contains the following major points:

1. Allows the City to buy the agreed upon properties (See Attachment II for a partial list reflecting the major parcels) from Caltrans with an option to return the unsold properties in five years without penalty.
 - a. Defines a process by which value will be determined.
 - b. Defines how and when the City will pay for the properties.
2. Applies the Caltrans statutory process of selling the property “as is”.
3. Assures that all proceeds of the sale from Caltrans to the City are deposited in the LATIP fund according to existing laws.
4. Allows the City to sell to third parties as deemed prudent by the City and to retain the full amount received in such a sale over and above the agreed upon/appraised “as is” price, which is determined according to the process defined in the Draft Purchase and Sale Agreement.

5. Provides a five-year time period in which the City can sell the properties.
 - a. Allows the City to return unsold properties at the end of five years per the definitions and processes defined in the Draft Purchase and Sale Agreement.
 - b. Five-year deadline can be extended according to specific guidelines spelled out in the Draft Purchase and Sale Agreement.
6. Assigns a small number of existing leases to the City along with the sale of the properties.

The acquisition of this property from Caltrans by the City serves a major public purpose as described above. The piecemeal auction of these properties lot-by-lot by the California Department of Transportation will lead to fractionalized ownership and will not provide for sufficient or timely investment to develop the needed infrastructure to promote harmonious communities in a timely manner. This includes sewer service, water service, parks, open space, roads, and other required infrastructure. The piecemeal auction of the extensive Route 238 properties will not allow the residents of the City of Hayward opportunity to express their vision for these areas in a comprehensive manner consistent with quality community development.

The City's purchase of the Route 238 properties will allow the public to weigh in on their vision for these areas on a more meaningful level and allow the City, at an accelerated pace, to remediate the blight caused by the lack of investment and underdevelopment of the properties. It will ensure that the needed infrastructure is built, and will allow the City to select development that will put the land to the highest and best use consistent with years of community planning and visioning for the area.

ECONOMIC IMPACT

The economic impact of Caltrans getting out of land ownership and property management within the City limits is significant. They have not been an attentive landlord and many properties were run down, poorly maintained, and subject to long-term trespass. As a result of these last eight or nine years of negotiations, almost all residential properties have been sold or the uninhabitable structures on the property demolished. This has helped improve the overall quality of life for affected neighborhoods.

If the City is able to gain control of the property on the front end, it will be possible for Council to proactively define a specific vision for a community or neighborhood, rather than simply react to a proposed project; and, it will allow staff to creatively work with developers to achieve that vision.

Getting all these developable parcels of land under development will add vibrancy and tax dollars to the community as a whole. With the goal of having quality, sustainable projects including retail, recreation, housing, and open space, this will allow the Council to clearly define the corridor's future development direction.

A wrinkle occurred late in this process when Caltrans determined that not all the properties under discussion were actually purchased for the 238 Corridor By-Pass project. Rather, they were purchased for the original SR 92 Extension project, which has also been abandoned. Therefore, Caltrans, CTC staff, and City staff are discussing a second agreement (or Phase II of this agreement) that will incorporate those SR 92 properties at a later date. This is likely to impact the Quarry site and a few others.

FISCAL IMPACT

Clearly, there are both positive and negative financial impacts possible with this project. The benefits include dramatically improved property tax revenue, as well as increased cash for economic development and related activities. It is not possible to accurately project the dollar amounts at this time. However, one rough calculation of Property Tax benefit is that each residential unit sold into private ownership in the Corridor area could generate an average of approximately \$5,000 a year in additional gross Property Tax (i.e. not all of that returns to the City. For even 150 existing units, that alone could equal \$750,000 in additional taxes. This does not take into account any newly constructed units resulting from the new projects.

As stated earlier, there could also be negative impacts to the City's General Fund if the entitlement efforts and sales to third parties are not successful in generating cash over and above the agreed upon base purchase price from Caltrans plus the presale/entitlement costs. As with the beneficial amounts, it is not possible to calculate or project what the financial exposure could be here. As stated earlier, the largest factors that could negatively impact the financial outcome of this effort is the development economy: if the City suffers another huge recession during the period we are trying to market these properties, the City will likely suffer short-term financial loss. Similarly, the possible "delta" to be garnered from sale to a third party may be small to none if the appraisal process establishes a higher-than-expected base price for the properties (from Caltrans to the City).

After due consideration of all the factors, staff continues to recommend moving forward due to the enormous benefit this effort could have to the entire community and for the control this action provides Council in proactively setting and accomplishing their vision for the affected neighborhoods.

PUBLIC CONTACT

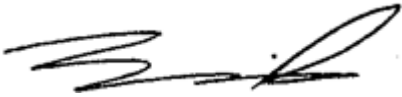
There has been no public contact on this project due to the confidential nature of the negotiations with Caltrans. This report is the first public exposure of the proposal. As projects are identified and/or are in development, staff will assure that affected and impacted neighborhood residents are involved in the project definition and the related overall conversations.

NEXT STEPS

If Council approves the attached Resolution authorizing the City Manager to complete negotiations with Caltrans and execute a Purchase and Sales Agreement for the City to acquire specific parcels of land along the 238 Corridor as described in this report, staff will move expeditiously to complete the administrative process, begin land appraisals, and to gain control of the identified Caltrans properties. Once that has occurred, including agreed upon pricing, staff will continue the visioning, entitlement, and marketing process for all parcels with the intent of concluding land disposition within five years of the date of the property transfer.

Prepared and Recommended by: Fran David, City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I

Attachment II

Attachment III

Resolution

Partial List of Properties to be Purchased from
Caltrans by the City Reflecting Major Parcels
Map of Valle Vista Concept Area and Auctioned
Properties