

DATE: January 14, 2014
TO: Mayor and City Council
FROM: Assistant City Manager
SUBJECT: 238 Bypass Corridor Settlement Agreement Update

RECOMMENDATION

That City Council reviews and accepts this report updating the status of the City's obligations under the Route 238 Corridor Settlement Agreement.

SUMMARY

On December 11, 2009, lawsuits pending in the Superior Court of California related to the 238 Corridor were settled between 238 Corridor tenant representatives, the City of Hayward, and the California Department of Transportation (Caltrans). The settlement included provisions for the payment of lump-sum stipends to eligible Corridor residents, an opportunity to purchase single-family residences for qualified tenants, and a provision requiring the replacement of 237 low-income housing units. On October 6, 2009, Hayward City Council reviewed and approved the terms of the Settlement Agreement, prior to its final approval in Superior Court, in December 2009. This report provides an update on each of the elements of this Settlement Agreement.

BACKGROUND

As detailed within the [October 6, 2009 Council Report](#), the Settlement Agreement (SA) is tied to four specific and connected components: (1) the successful passage of AB 1386; (2) the successful conclusion of the State Court action referenced above; (3) the successful adoption of supporting policies and procedures by the California Transportation Commission (CTC); and (4) the dismissal of *La Raza v. Volpe* in Federal Court.

To summarize, the Federal lawsuit entitled *La Raza Unida of Southern Alameda County, et al. v. Samuel K. Skinner, et al.* (U.S.D.C. Case No. C-71-1166-THE) was dismissed on October 20, 2010. Section XV on page 37 of the SA sets forth the obligation of the parties to dismiss the Federal lawsuit. The dismissal of this federal lawsuit in October 2010 concluded that matter and the City has no further legal responsibility with respect to that action.

As part of the SA, the City agreed to take on payment of Lump Sum Stipends (LSS) to tenants, implementation of the Opportunity to Purchase a Home Program (OPHP), and provision of low-

income replacement housing as specified under Section III, "Substantive Settlement Terms." The City's obligations under the Substantive Settlement Terms are as follows:

- A. Complete a tenant survey to establish Eligible and Ineligible Corridor Single-Family Residents (SFRs) as these terms were defined in the SA;
- B. Facilitate communications with Corridor Tenants;
- C. Contribute cash to a maximum amount of \$6,000,000, including simple interest, to fund the LSS and OPHP/First-Time Home Buyers (FTHB) Program: \$5,000,000 allocated towards LSS and \$1,000,000 allocated towards FTHB. All administrative costs required to carry out the OPHP were to be funded through the proceeds from the sale of Excess 238 Corridor Properties and reimbursed to the City;
- D. Establish LSS eligibility and pay-out amounts calculated in accordance with procedures set forth within the SA and Caltrans existing policies; administer payment of LSS to each Eligible Tenant Household;
- E. Low-Income Housing - The City was also to develop, cause, or permit the development of 237 affordable housing units within the corridor to be made available to Low Income Households by 2023, including preference being given to eligible OPHP tenants;
- F. Notification to Corridor Tenants of property for sale by Caltrans; and
- G. OPHP – City to hire a Program Administrator to implement and administer the OPHP, support and partner with the Department through the California Transportation Commission (CTC) property disposition process, facilitate appraisals, and conduct home and pest inspections.

DISCUSSION

This report provides a brief update on the completion of the LSS payouts, OPHP, and low-income replacement housing that fulfills the City's obligations under the SA, Sections III A - G as set forth above. Addressing each of the Substantive Settlement Terms identified above, the following list highlights the substantial progress made in fulfilling the City's obligations under the SA.

- A. The tenant survey was completed in Spring 2010 and identified 253 Eligible 238 Corridor tenants.
- B. Through numerous public and one-on-one meetings, phone calls, emails, and various notifications, City staff was in continuous communication with tenants throughout the OPHP processes. In addition, the City, tenant counsel, and Caltrans mutually agreed to provide tenants with two extensions of the OPHP that resulted in four additional property purchases.
- C. Seven eligible tenants received FTHB assistance in purchasing a home in the Corridor or in Hayward. In addition, the SA allowed the City to recoup its costs for administering the OPHP. The Low-Moderate Income Housing Fund fronted the initial administrative cost allocation (\$1,477,344), which will be refunded by the proceeds from the sale of excess 238 Corridor properties. To date, Caltrans has reimbursed the City \$750,000. This initial \$750,000 actually reimbursed the City for legal costs related to the Settlement Agreement that the City agreed to pay up front. This money has been repaid to the Low-Mod housing

fund, leaving a current balance of \$727,344 in City administrative expenses that need to be reimbursed from the sale of the Corridor properties.

- D. Two Hundred Thirty-six (236) Eligible Corridor Tenants have received their Lump Sum Stipends (LSS), totaling \$3,429,271.
- E. The goal of creating 237 affordable housing units will be partially achieved with the proposed South Hayward BART affordable-housing project. Upon completion, this development will provide eighty-six units of housing affordable to low, very low, and extremely low-income families, and sixty-five units of housing for low-income seniors for a total of 151 affordable units. In addition, the SA specifically identifies the South Hayward BART project and required that the City make a good faith effort to secure an agreement with the developers of this project to provide priority access to the new units for Corridor tenants who meet appropriate income and eligibility requirements. These terms were negotiated with Eden Housing and were incorporated in the Regulatory Agreement and Declaration of Restrictive Covenants for the South Hayward BART project.

In addition, several other affordable housing projects in the pipeline will count towards the 237 unit requirement: sixteen new affordable units within the Leidig Ct. Project; fifty-four current affordable units available within the Cypress Glen Project (Eden Owned); twenty-two new affordable units available within the Grand & B St. project with anticipated occupancy in two years; and ten new affordable units within the A & Walnut Project with anticipated occupancy in two to three years. With a total of 253 affordable housing units available, the City will have met and exceeded its obligation of 237 affordable housing units to be constructed as approved projects, with the goal that 237 “low income” units will be constructed by 2023;

- F. One Eligible Corridor Tenant opted to purchase an eligible property in the Corridor, which he did not occupy. The occupant of this particular property was not interested in purchasing and thus under the SA was required to vacate so the interested party could move forward with the purchase.
- G. OPHP – The City-assigned administrator has facilitated the completion of all Eligible corridor property appraisals, home and pest inspections, secured all CTC approvals for property purchases except one, and facilitated the final phases of property purchase for twenty-four Eligible Corridor Tenants. The twenty-four OPHP property sales amounted to \$5,612,360.

Although there are a few minor administrative matters to complete, including the closing of the remaining property escrow and final administrative cost reimbursement from Caltrans, the OPHP has been successfully concluded and the City has met all of its obligations under the 238 Corridor Settlement Agreement.

Property Disposition Update:

As per the SA, Caltrans is required to sell the Excess 238 Property, the proceeds of which will be used to fund certain local highway improvement projects pursuant to Government Code 14528.5 *et seq.* As

of December 5, 2013, Caltrans has completed seventy-five corridor property auctions totaling \$21,632,360 in sales and has conducted eight property demolitions, with nineteen property demolitions pending. From this, the City has received \$8.1 million towards the 238 Public Works Transportation/Corridor Improvement Project as well as reimbursement for administrative costs as noted within this report. Caltrans currently holds the balance of these funds and will be issuing further reimbursements to the City.

The City has also been working with Caltrans and CTC staff to determine if there is a more effective mechanism for selling priority non-residential 238 Corridor properties. These discussions are ongoing and staff will continue to report to Council on this process going forward.

FISCAL IMPACT

As per the Substantive Settlement Terms, the City's actual cash contribution for the OPHP was capped at \$6,000,000. This program contribution did not include any costs that may be associated with producing or causing the production of the 237 new low-income units between now and 2023. To date, the City has received \$943,388 in SA reimbursements and \$8.1M in 238 Corridor Improvement Project reimbursements from the LATIP process. Staff will return to Council in the Spring with a full accounting of expenses and reimbursements for both the Settlement Agreement and the 238 Corridor Improvement Project.

PUBLIC CONTACT

Hundreds of meetings, phone calls, written communications, and other day-to-day contact with tenants and program partners occurred throughout the process of satisfying the City's obligations under the Settlement Agreement.

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Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I	OPHP map
Attachment II	Photos

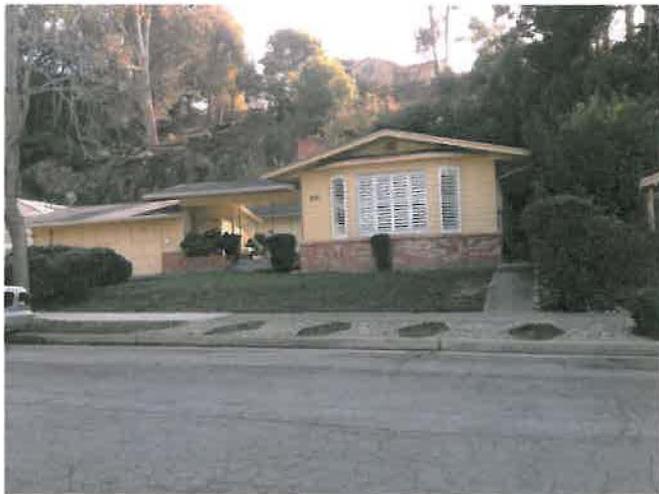
238 Corridor OPHP



238 OPHP- NEW HOME OWNERS



1055 REDSTONE PLACE



1069 REDSTONE PLACE



1316 HIGHLAND BLVD