

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 9-10, 2009

Reference No.: 2.3a.
Action Item

From: NORMA ORTEGA
Chief Financial Officer (Interim)

Prepared by: Terry Abbott
Chief
Division of Design

Subject: **NOTICE OF INTENTION TO CONSIDER RESCINDING FREEWAY ADOPTION
4-ALA-238 PM 9.2/14.8
RESOLUTION NIU 09-01**

RECOMMENDATION:

Submitted for transmittal to the California Transportation Commission (Commission) is the Notice of Intention to Consider Rescinding Freeway Adoption Resolution NIU 09-01. The Department of Transportation (Department) recommends that the Commission approve Resolution NIU 09-01 to initiate recycling procedures to consider rescinding a portion of the freeway adoption for State Highway Route 238 (Route 238) in the county of Alameda, Post Mile 9.2/14.5 in accordance with the recommendation of the Acting Chief Engineer.

This report describes the current status of the unconstructed freeway and support from local agencies to rescind the freeway adoption for Route 238. The procedures for recycling, notifying the public of the Commission's intention to consider rescinding a freeway route adoption and disposing of acquired right of way were established by the Commission in Resolution No. G-15, adopted on November 17, 1978 and amended on February 29, 1980. According to the Resolution, the recycling process cannot be initiated without consent from the Commission. With the Commission's approval of Resolution NIU 09-01, the Department will notify all affected local, regional and State agencies of the rescission proposal, and ask the agencies for any additional pertinent information that might be helpful to the Commission in making a final decision.

Recommended by: 
MALCOLM DOUGHERTY
Chief Engineer (Interim)

BACKGROUND:

There is a lack of community support to construct a freeway on a new alignment to provide an alternative route to Interstate 880 in Alameda County. Consequently, the Department is proposing to rescind the freeway route adoption along State Route (SR) 238, also known as the Hayward Bypass, from Industrial Parkway to SR 580 in the city of Hayward, in Alameda County. Once this route rescission is approved and litigation matters are settled, the County of Alameda will be able to proceed with planned enhancements to relieve congestion in central Alameda County. These enhancements will include improvements along the traversable Route 238, also known as Mission Boulevard, through the city of Hayward. Litigation matters are expected to be resolved by the end of December 2009.

On June 21, 1961, the California Highway Commission (CHC) adopted a location for SR 238 as a Freeway in Alameda County between SR 680 and SR 580 through the cities of Fremont and Hayward. The CHC also adopted as a freeway other segments of SR 238 through Alameda County on June 21, 1961, December 15, 1965, and July 20, 1967.

Following those actions by the CHC, the Department executed freeway agreements with the City of Fremont on December 21, 1966 and April 24, 1967; the City of Hayward on October 5, 1965 and March 13, 1984; and the County of Alameda on October 9, 1964, January 14, 1967, and March 13, 1984.

The Department acquired much of the right of way for construction of the adopted SR 238 in the late 1960's and early 1970's. A lawsuit was filed opposing this project. In November of 1971, a preliminary court injunction to halt the project was issued by the United States District Court for Northern California and reaffirmed on appeal in November 1973.

On April 25, 1980, the Commission rescinded that portion of the adopted SR 238 freeway location from SR 680 to Industrial Parkway in the city of Hayward. In addition, the Commission's rescission resolution obligated the portion of SR 238 from Industrial Parkway to SR 580 to have a funding plan in place within two years. Subsequent to this resolution, legislation was passed to allow additional time to develop a funding plan for the remaining SR 238 location. Current Government Code Section 14528.5 requires that a funding plan be approved before July 1, 2010.

In 1982, the Legislature passed Assembly Bill (AB) 3197, which established the Local Alternative Transportation Improvement Program (LATIP) concept. This concept was designed to address congestion on the traversable Route 238 and to provide flexibility to the locals to use the sales of land purchased for the rescinded route on another alternative project or projects.

In the 1984 State Transportation Improvement Plan, the Commission approved the adopted SR 238 project (Hayward Bypass) for inclusion in the Special Studies category to initiate the environmental studies.

In 1986, Alameda County voters passed Measure B, a transportation sales tax measure that called for constructing the Hayward Bypass.

In January 1990, the United States District Court approved a Consent Decree that established the procedures for removal of the court injunction of 1971. The Consent Decree, which is still in effect, included commitments from the Department and the City of Hayward for providing relocation benefits to the residents of the adopted SR 238 corridor, replenishment housing, and replacement parks along with other corridor enhancements.

However, in 1997, another lawsuit was filed against the project. This suit disallowed the use of Measure B funds. This suit, along with the subsequent appeals, made construction of the adopted SR 238 (Hayward Bypass) infeasible.

In November 2002, Measure U was passed by the City of Hayward supporting improvements along the traversable Route 238 (Mission Boulevard) in lieu of a bypass along the adopted SR 238 corridor. The Hayward Bypass will not be constructed as a State freeway within the foreseeable future as it is not acceptable to local stakeholders, does not conform with most recent local and regional plans, and local funding of the project through Measure B has been withdrawn.

In September 2004, Senate Bill 509 was signed into law allowing for the development of a local alternative project, such as Mission Boulevard enhancements, to replace the Hayward Bypass. Funding for the alternative project will be from the proceeds of excess land purchased for the Hayward Bypass in the 1960's and 1970's. The local alternative must be submitted to the Commission for approval no later than July 1, 2010.

Following provisions of the 1990 Consent Decree, the City of Hayward completed a land use study on June 30, 2009, to guide the redevelopment of properties within the freeway corridor. The Department funded the land use study through a Community Based Transportation Planning Grant.

On September 28, 2009, relative to the housing element resolution following provisions of the 1990 Consent Decree, the Department, the City of Hayward and the Public Interest Law Project, held a meeting with the Department's residential tenants residing in the adopted SR 238 Corridor. Provisions from the Draft Settlement Agreement were presented to the tenants. The agreement includes programs to provide: (1) monetary and other assistance to all eligible corridor tenants, (2) 237 new, low-income housing units, and (3) a home purchase program for eligible corridor tenants, currently renting eligible detached single family residences.

On October 6, 2009, following the tenant meeting, the City of Hayward approved the Settlement Agreement. The Final Settlement Agreement is expected to be signed by the end of December 2009 by the two remaining parties--the Department and the Public Interest Law Project. Superior Court Approval of the final Settlement Agreement is anticipated thereafter.

AB 1386, signed into law October 11, 2009, enacted provisions relating to the disposition of excess properties acquired for the SR 238 Hayward Bypass project. This law will become operative on the date on which the Superior Court issues the final approval order for the Settlement Agreement signed by the Department, the City of Hayward, and the Public Interest Law Project, or on January 1, 2010, whichever occurs later. AB 1386 also includes provisions for the relinquishment of traversable Route 238, the programming of LATIP projects, and use of proceeds from the sale of excess lands.

The LATIP includes a program of projects intended to relieve congestion in central Alameda County in the same corridor that would have been affected by the SR 238 Hayward Bypass. One of the LATIP projects, as proposed by the City of Hayward, is the improvement of the traversable Route 238 (Mission Boulevard) to mitigate future traffic demand. The portion of the traversable Route 238 from Industrial Parkway to SR 580 is a candidate for relinquishment.

Rescission of the adopted SR 238 is appropriate for several reasons. The route segment is not needed for system continuity. The need for a freeway corridor parallel to Interstate 880 to handle interregional traffic can be served by improving the adjacent facilities including the traversable Route 238. The traversable highway traffic is local versus interregional, and improvements can be made to Route 238 to accommodate future traffic demand.

In the adopted Route 238 corridor, there are 464 parcels estimated to be worth between \$90 million and \$125 million, based on current market value and best use assumptions. The valuation estimate assumes that the parcels will be released to the market over a reasonable absorption period and that the market for financing real estate development improves together with a corresponding increase in demand. Return of these parcels to the county tax rolls will enable the City of Hayward to plan and develop its community. This rescission will enable the City of Hayward to generate additional revenue from the taxable properties.

The Department has been collaborating with the City of Hayward, Alameda County, the Alameda County Transportation Improvement Authority, and the Alameda County Congestion Management Agency in formulating the funding plan as required in Government Code Section 14528.5. These local agencies support this proposed rescission recommendation.

With the Commission's approval of Resolution NIU 09-01, the Department will notify all affected local and regional agencies of the rescission proposal and ask the agencies for any additional pertinent information that might be helpful to the Commission in making a final decision. The Department will also notify the State Clearinghouse so that other State agencies may be notified. Following a 60-day comment period, a follow-up meeting will be scheduled with the Commission to present the Department's recommendation for final disposition.

Attachments

Resolution NIU 09-01
Vicinity Map

CALIFORNIA TRANSPORTATION COMMISSION

**Notice of Intention to Consider Rescinding Freeway Adoption
4-Ala-238 PM 9.2/14.8**

Resolution NIU 09-01

WHEREAS, a location for State Highway Route 238 was previously adopted and declared a freeway on June 21, 1961, December 15, 1965, and July 20, 1967, between Route 680 and Route 580; and

WHEREAS, a portion the aforementioned freeway was rescinded from Route 680 to Industrial Boulevard in the city of Hayward on April 25, 1980; and

WHEREAS, a portion the aforementioned freeway is not likely to be constructed as a State highway within the foreseeable future because of lack of operational need, local support and funding; and

WHEREAS, retention of the freeway adoption may not be desirable and would subject the California Transportation Commission (Commission) to possible future expense for acquisition and maintenance of property or future expense for acquisition of property on a hardship basis; and

WHEREAS, there is excess rights of way to dispose of.

NOW, THEREFORE, BE IT RESOLVED by the Commission that pursuant to the authority vested in it by law, this Commission does hereby authorize and direct the Department of Transportation to give public notice of the Commission's intention to consider rescinding the freeway adoption of State Highway Route 238 in the County of Alameda, from Industrial Boulevard in the city of Hayward to Route 580, as shown on the Route Rescission Map, and to give notice to local and regional agencies, and other affected State agencies, of such intention; and agencies so notified are to be requested to furnish within 60 days any additional information that the Commission should have prior to final consideration of the Route 238 Freeway Rescission.

SR 238 Rescission Map

4-Ala-238 PM 9.2/14.8

