State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

M e m o r a n d u m

TAB 74

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: November 3-4, 2010

Reference No.: 2.3a.(3) - **REVISED**
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Terry Abbott
Chief Division of Design

Subject: **RESCISSION OF FREEWAY ADOPTION**
4-ALA-238 PM 9.2/14.8
RESOLUTION HRU 10-01

RECOMMENDATION:

Submitted for transmittal to the California Transportation Commission (Commission) is the Rescission of Freeway Adoption Resolution HRU 10-01. The Department of Transportation (Department) recommends that the Commission approve Resolution HRU 10-01 to rescind a portion of freeway adoption for State Highway Route 238 in the county of Alameda, Post Mile (PM) 9.2/14.8 in accordance with the recommendation of the Chief Engineer.

On December 9, 2009, the Commission adopted Resolution NIU 09-01 to notify all affected local, regional and State agencies of its intent to consider rescinding the freeway adoption. The resolution also allowed these agencies to submit within 60 days any additional information prior to the Commission's final consideration. The procedures for recycling, notifying 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. This report describes the current status of the un-constructed freeway and provides an evaluation of the proposed rescission and a summary of the comments received during the 60-day response period.

Recommended by: RICHARD D. LAND
Chief Engineer

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Background

There is no consensus 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. With the litigation matters referenced below settled and once this route rescission is approved, the Department and its local partners will be able to proceed with planned enhancements to relieve congestion in central Alameda County.

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.

In 1965, right of way acquisition started for the construction of the Hayward Bypass. In 1971, right of way acquisition was halted as a result of a court injunction obtained by Sierra Club and the Legal Aid Society of Alameda County. By that time, approximately 480 parcels or two-thirds of the right of way required to construct the Hayward Bypass had been acquired.

On April 25, 1980, at the request of the affected local agencies, the Commission rescinded that portion of the adopted SR 238 freeway location from SR 680 in Fremont 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.

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 in the county which was to be served by the planned State transportation facility (SR 238 freeway). The bill also authorized the Commission to approve the LATIP no later than January 1, 1986.

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.

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In 1985, Senate Bill (SB) 296 extended the LATIP approval by the Commission to January 1, 1988.

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

In May 1989, the parties in the federal action entered into a Consent Decree that was subsequently approved by the United States District Court which established the procedures for removal of the court injunction of 1971. The Consent Decree, included commitments from the Department and the City of Hayward for providing relocation benefits to the residents of the adopted SR 238 freeway 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 and Foothill Boulevard, in lieu of a bypass along the adopted SR 238 corridor.

In September 2004, SB 509 was signed into law extending the LATIP approval by the Commission to July 1, 2010. Funding for the LATIP will be from the proceeds of excess land purchased for the Hayward Bypass.

The LATIP includes a program of projects intended to relieve congestion in central Alameda County in travelled corridors 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 and Foothill Boulevard, to mitigate future traffic demand.

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 its Community Based Transportation Planning Grant.

On September 28, 2009, the Department, City of Hayward and the Public Interest Law Project (class counsel for the freeway corridor tenants), held a meeting with the Department's residential tenants residing in the adopted SR 238 corridor regarding settlement of longstanding claims by the tenant representatives. Provisions from a 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.

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Final settlement on the housing issues was reached by the Department, the City of Hayward and the tenant representatives on December 17, 2009 ("Settlement Agreement"). The Settlement Agreement included enactment of enabling legislation (AB 1386), the filing of a new class action lawsuit in Alameda County Superior Court in order to effectuate the terms of the settlement and dismissal of the 1971 Federal Court action. The settlement agreement and the various related legal actions set the stage for the adoption of the LATIP by the Commission at its May 20, 2010 meeting.

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. AB 1386 also included provisions for the relinquishment of traversable Route 238, the programming of LATIP projects, and use of proceeds from the sale of excess lands.

On March 23, 2010, the State Superior Court certified the class in the Alameda County class action lawsuit and granted final approval of the Settlement Agreement. The Federal District Court granted preliminary approval of dismissal of the 1971 federal lawsuit on August 13, 2010 and a final order of dismissal ~~is pending~~ **was October 20, 2010**.

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 the traversable Route 238 to accommodate future traffic demand.

On February 22, 2010, the Department concluded a 60-day public comment period regarding the Commission's Resolution NIU 09-01. Resolution NIU 09-01 stated intent to consider rescission of the adopted freeway covering the previously approved freeway alignment project on State Route 238 known as the Hayward Bypass.

Public notices detailing the proposal, availability of documents regarding the proposal and the process of solicitation of public comment were published in the Hayward Daily Review on December 27, 2009. The Hayward Daily Review covers the cities of Hayward, San Leandro, Union City, Castro Valley and San Lorenzo. Notification letters were sent to local elected officials and senior agency staff members. A letter was also sent to the State Clearinghouse requesting that the public notices be routed to all relevant agencies for their review and comment.

The Department received only one inquiry from a private citizen. The question concerns the Department's plan to sell vacant lands at the vicinity of Knoll Way in the unincorporated area near Gary Drive. The response was that the Department is working with County and City staff in the development of a land disposal process, and in its initial land use planning studies, City of Hayward has indicated an interest in keeping the area indicated as open space consistent with County plans.

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The Department did not receive any other comment or inquiry from local agencies, local elected officials or other State agencies notified through the State Clearinghouse.

On June 30, 2010, the Commission approved the relinquishment of the traversable SR 238, Mission and Foothill Boulevards, from Industrial Parkway to 0.3 mile south of SR 580 to the City of Hayward.

Subsequent activities, beginning in 2010 and continuing into 2014, include offering single family residential parcels for sale to tenant occupants at the individual parcel's fair market value and fair market value sales of other parcels in the corridor; ultimately returning all property acquired for the bypass project to the Alameda County tax roll. The approximately 480 parcels will be metered into the market place in order to preserve value, to maximize the net proceeds available for the LATIP projects, and to not negatively affect the local private real estate market.

In accordance with Resolution NIU 09-01, the Department recommends the freeway adoption be rescinded immediately.

Attachment

Resolution HRU 10-01
Vicinity Map
Copy of Public Notice Advertisement for NIU 09-01

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CALIFORNIA TRANSPORTATION COMMISSION

Rescission of Freeway Adoption
4-Ala-238 PM 9.2/14.8

Resolution HRU 10-01

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, county of Alameda, 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; and

WHEREAS, on December 9, 2009 the Commission adopted Resolution NIU 09-01 to notify all affected local, regional and State agencies of its intent 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; and

WHEREAS, Resolution NIU 09-01 also allowed the affected local, regional and State agencies to submit within 60 days any additional information prior to the Commission's final consideration of the State Highway Route 238 Freeway Rescission.

NOW, THEREFORE, BE IT RESOLVED by the Commission that pursuant to the authority vested in it by law, this Commission does hereby rescind the freeway adoption of State Highway Route 238 in the County of Alameda, from Industrial Boulevard in the city of Hayward to Route 580, effective immediately as shown on the Route Rescission Map.

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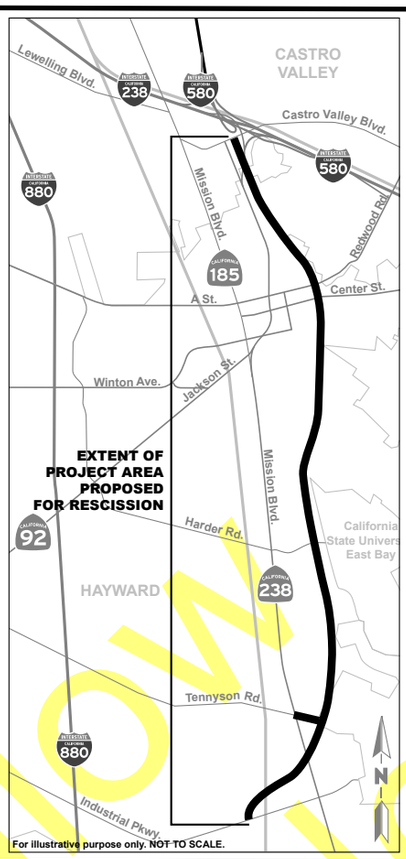
SR 238 Rescission Map
4-Ala-238 PM 9.2/14.8

PUBLIC NOTICE

NOTICE OF INTENT TO CONSIDER RESCINDING FREEWAY ADOPTION



WHAT'S BEING PLANNED

The California Department of Transportation (Caltrans) is proposing to rescind the adopted freeway covering the previously approved new freeway alignment project on State Route 238 known as the Hayward Bypass. The limits are from Industrial Parkway to I-580 in the City of Hayward, in Alameda County. The rescission of this freeway adoption will allow Caltrans to sell parcels of land originally purchased for the construction of the Hayward Bypass to local government agencies or other interested parties.

WHAT'S AVAILABLE

A report, Notice of Intent to Consider Rescinding Freeway Adoption, has been presented to and approved by the California Transportation Commission (CTC) last December 9, 2009. The report analyzed the original intent and plans for the construction of freeway segment and the subsequent determination that the construction of the freeway segment by Caltrans is not feasible. This report is intended to assist the California Transportation Commission (CTC) in their decision-making process.

WHERE YOU COME IN

You may review or obtain a copy of the report through the Caltrans District 4 Office of Public Affairs, 111 Grand Avenue, Room G-400, Oakland, CA 94611.

The report is also available via internet at http://www.dot.ca.gov/dist4/238hayward/

If you would like to make comments on the rescission proposal, please submit them in writing no later than February 24, 2010 to: Caltrans District 4, P.O. Box 23660 (MS9-C) Oakland, CA 94623-0660 Attn: Mark Zabaneh Comments can also be e-mailed to: mark_i_zabaneh@dot.ca.gov

CONTACT

Caltrans

For more information about this report or any transportation matter, call Caltrans at (510) 286-6445. Individuals who require documents in alternative formats are requested to contact the District 4 Public Affairs Office at (510) 286-6445. TDD users may contact the California Relay Service TDD line at 1-800-735-2929 or Voice Line at 1-800-735-2922.

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