

Supplemental Material

For

City of Sacramento

City Council
Financing Authority
Housing Authority
Redevelopment Agency

Agenda Packet

Submitted: 4/21/10

For the Meeting of: 4/22/10

- Additional Material
 Revised Material

Title: Promenade at Natomas Planned Unit Development [To Be Delivered]

Recommendation: Adopt a **Resolution** 1) confirming that Condition of Approval 2.e, in Resolution 2004-776, for the Promenade at Natomas Planned Unit Development has been satisfied; and 2) authorizing the City Manager to issue an estoppel certificate confirming the status of related agreements.

Contact Information: Gregory Bitter, Principal Planner, (916) 808-7816

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REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
April 22, 2010

**Honorable Mayor and
Members of the City Council**

Title: Promenade at Natomas Planned Unit Development (**To Be Delivered**)

Location/Council District: Promenade at Natomas, northeast of Truxel Road and Interstate 80; (District 1)

Recommendation: Adopt a **Resolution** that (1) confirms that Condition of Approval 2.e, in Resolution 2004-776, for the Promenade at Natomas Planned Unit Development has been satisfied; and (2) authorizes the City Manager to issue an estoppel certificate confirming the status of related agreements.

Contact: Greg Bitter, Principal Planner, (916) 808-7816

Presenter: Not Applicable

Department: Community Development

Division: Current Planning

Organization No.: 21001010

Description/Analysis:

Issue: On September 28, 2004, the City Council approved various entitlements for the Promenade at Natomas PUD (P00-033). Condition 2.e of the Resolution approving the PUD Guidelines and Schematic Plan (Resolution 2004-776) required the developer, Opus West Inc., to enter into an agreement with the City that would obligate Opus to perform nine tasks (as described in Attachment 1, Background). Opus and the City entered into such an agreement on February 28, 2006 (City Agreement 2006-0201).

By July 2009, Opus completed all but three of the tasks set out in the agreement. In that month, however, Opus filed for Chapter 11 bankruptcy protection. The three remaining tasks (described in the Background Section of this report) remain uncompleted, and the City has filed a proof of claim in the bankruptcy proceedings.

Kaiser Foundation Health Plan, Inc. ("Kaiser") is in escrow to purchase the remaining undeveloped office parcels within the Promenade PUD, comprising approximately 12.5 acres (the "Property"). Quality Properties Asset Management Company, an affiliate of Bank of America, is the current owner of the property, having acquired title from Opus West.

As part of its due diligence, Kaiser is attempting to determine what outstanding obligations are associated with the Property. To this end, Kaiser has asked the City to issue an estoppel certificate confirming that Kaiser would have no obligations under the following agreements if it purchases the Property:

- Subdivision Improvement Agreement / Public Improvement Proceeding No. P00-033 (City Manager Agreement No. 2005-0493).
- Agreement for Operation and Maintenance of Interim Drainage Facilities (City Agreement No. 2006-0122).
- Agreement By and Between City of Sacramento and Opus West Inc. Relating to the Promenade at Natomas Planned Unit Development (City Agreement 2006-0201, amended by City Agreement 2006-0201-1).

Under the development agreement for the Promenade PUD, the City is only obligated to give an estoppel certificate certifying that (1) the development agreement is in full force and effect; (2) there have been no amendments; and (3) there are no defaults to the development agreement. All other certifications in an estoppel certificate, including those Kaiser seeks, are made voluntarily by the City.

To facilitate Kaiser's purchase of the property, City staff has reviewed the status of the above-referenced agreements to determine if an estoppel certificate including the voluntary assertions can be issued. Here are the results of that review:

- Staff has determined that the Subdivision Improvement Agreement has been satisfied with the exception of the installation of landscaping and appropriate irrigation for the mow strip on the east side of Gateway Park Boulevard from North Freeway Drive to North Market Drive.
- Staff has also determined that the Agreement for Operation and Maintenance of Interim Drainage Facilities has been satisfied in its entirety.
- Regarding the Agreement Relative to the Promenade at Natomas, staff believes the City Council intended not only that Opus would satisfy Condition 2.e of Resolution 2004-776 by entering into the agreement but also that the obligations within Condition 2.e and the agreement would bind Opus alone unless future property owners voluntarily assumed them.

Kaiser has not assumed Opus's obligations under this agreement, nor will it, so staff believes that these obligations would not be binding on Kaiser were it to acquire the Property. The City Attorney's Office has opined, however, that ambiguous language within City Agreement 2006-0201 could create uncertainty as to whether the items listed in Condition 2.e apply to subsequent owners. Because of this ambiguity, and because the estoppel certificate Kaiser has requested goes beyond what the City is obligated to provide under the development agreement, the City Attorney's Office has further advised that City Council action should be sought to provide certainty.

Based on these results, staff recommends that the City Council adopt the resolution attached to this report, thereby—

- (1) affirming that Opus satisfied Condition 2.e for the Promenade at Natomas PUD (Resolution 2004-776) when it entered into the Agreement Relating to the Promenade at Natomas (City Agreement 2006-0201); and
- (2) authorizing the City Manager to issue an estoppel certificate confirming the status of that agreement and of related agreements (i.e., that if Kaiser acquires the Property, then Kaiser will have no obligation under the three agreements, with one exception: Kaiser will remain obligated under the Subdivision Improvement Agreement for the mow strip, as noted above).

Policy Considerations: This action is consistent with the existing entitlements of the Promenade at Natomas Planned Unit Development.

Environmental Considerations: There are no environmental considerations associated with the proposed action.

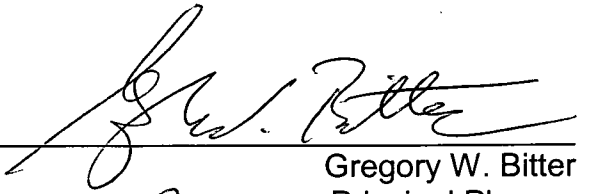
Sustainability Considerations: No sustainability consideration is associated with this action.

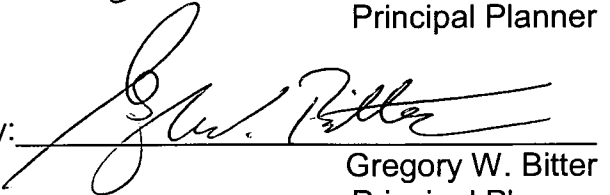
Committee/Commission Action: None.

Rationale for Recommendation: The proposed resolution will provide City Council direction and clarity as to the status of Condition 2.e of the Promenade at Natomas PUD (Resolution 204-776). This action will provide certainty to the future purchasers of property within the Promenade at Natomas PUD with regard to the aforementioned Condition 2.e.

Financial Considerations: There are no financial considerations associated within this report.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

Respectfully submitted by: 
Gregory W. Bitter
Principal Planner

Approved by: 
Gregory W. Bitter
Principal Planner

Recommendation Approved:


GUS VINA
Interim City Manager

Table of Contents:

Staff Report Pg 1

Attachments

- 1. Project Background/Summary Pg 5
- 2. Resolution Related Estoppel Certificate Pg 8
 - Exhibit A – Draft Estoppel Certificate Pg 10

Attachment 1 – Project Background/Summary**Background:**

On September 28, 2004, the City Council approved the Promenade at Natomas Planned Unit Development (PUD), which included approximately 663,200± square feet of retail uses, 108,000± square feet of hotel uses (two hotels with approximately 180± total rooms), 490,000± square feet of employment center uses, and 100,000± square feet of office uses.

One of the entitlements approved with this project was the establishment of the Promenade at Natomas PUD (Resolution 2004-776). Condition 2.e of this resolution required that prior to the issuance of the first certificate of occupancy of the first building onsite, the applicant, Opus West, Inc., enter into an agreement with the City that imposed the following obligations:

- i. A Corridor Analysis to coordinate and optimize signal timing on Truxel Road from San Juan Road to Del Paso Road will be performed to the satisfaction of the Department of Transportation;
- ii. The applicant shall provide communications equipment, junction boxes, and fiber optic cabling from San Juan Road to Del Paso Road to the satisfaction of the Department of Transportation;
- iii. The applicant shall modify the traffic signals at the intersections of Truxel Road/Gateway Park Boulevard and Truxel Road/Arena Boulevard to provide all facilities and appurtenances needed for CCTV cameras, and then install the cameras to the satisfaction of the Department of Transportation;
- iv. The applicant shall provide for the planting of up to 100 trees along the Interstate 80 frontage in South Natomas on public property and other such land as designated in agreement, and shall provide for a program for the watering of such trees for the first three years (non-irrigated);
- v. The applicant shall either construct or provide funding for the construction of a Regional Youth Baseball facility in South Natomas up to a cost of \$1,000,000;
- vi. The applicant shall participate in a Jobs training/internship program with Natomas, Inderkum, and Grant High Schools and with SETA for retail, food service, etc., to provide trained work force and applicant pool;
- vii. The applicant shall encourage tenants to be civic minded and contribute to area charities;
- viii. The applicant shall provide funding for a South Natomas shuttle equal to the North Natomas shuttle; and

ix. The applicant shall provide for the paving of all park-n-ride spaces.

On February 28, 2006, the City Council approved Resolution 2006-157, authorizing the City Manager to execute the Agreement By and Between the City of Sacramento and Opus West, Inc. Relative to the Promenade at Natomas Planned Unit Development (City Agreement 2006-0201) to fulfill Condition 2.e of the Promenade at Natomas PUD. On April 3, 2007, the City Council approved Resolution 2007-194, which authorized the City Manager to execute Amendment No. 1 to that agreement. The amendment (City Agreement 2006-0201-1) revised Opus's obligation under Condition 2.e regarding the Regional Youth Baseball facility (item v. above) so that it now reads as follows: "Upon written request by the City, [Opus] shall pay the City or a third party designated by the City an amount equal to the estimated cost to construct a regional youth baseball facility in South Natomas pursuant to plans and specification approved by the City; provided, however, [Opus] shall not be required to pay more than \$1,000,000. [Opus] shall make full payment within 90 days of the City's written request for payment."

There are two other agreements relevant to this matter. On June 14, 2005, the original owner and subdivider of the Promenade at Natomas PUD, the Fong Ranch Liquidating Trust, had entered into a Subdivision Improvement Agreement (City Manager Agreement No. 2005-0493). And on January 19, 2006, Opus West Corporation entered into an Agreement for Operation and Maintenance of Interim Drainage Facilities (City Agreement No. 2006-0122). These agreements ensured that construction of infrastructure facilities would be consistent with City standards and would be financially secure.

In July 2009, Opus West Inc., filed for Chapter 11 bankruptcy protection, and the City has filed a proof of claim. As of July 2009, there were three items from the Agreement Relative to the Promenade at Natomas (City Agreement 2006-0201) that remained uncompleted: (1) construction or funding for the baseball facility; (2) paving of the park-n-ride spaces (note that the area for these park-n-ride spaces has not been developed); and (3) payment for, or planting of, the 100 trees along Interstate 80.

Kaiser Foundation Health Plan, Inc. ("Kaiser") is currently in the process of purchasing the remaining undeveloped office parcels within the Promenade PUD (specifically, APN Nos. 225-2110-028, 225-2110-055, 225-2110-056, and 225-2210-059) (the "Property"). As part of its due diligence, Kaiser is attempting to determine if, as owner of the Property, it will have any obligations under City Agreement 2006-0201. To this end, Kaiser has asked the City to issue an estoppel certificate confirming that it would have no obligations under the following three agreements if it purchases the Property:

- The Subdivision Improvement Agreement / Public Improvement Proceeding No. P00-033, dated June 14, 2005 (City Manager Agreement No. 2005-0493), except that Kaiser would be obligated for landscaping and appropriate irrigation for the mow strip on the east side of Gateway Park Boulevard from North Freeway Drive to North Market Drive.

- The Agreement for Operation and Maintenance of Interim Drainage Facilities dated January 19, 2006 (City Agreement No. 2006-0122).
- The Agreement By and Between the City of Sacramento and Opus West Inc. Relative to the Promenade at Natomas Planned Unit Development, dated February 28, 2006 (City Agreement 2006-0201, as amended by City Agreement 2006-0201-1).

Attachment 2 –Resolution Related to Estoppel Certificate

RESOLUTION NO.

Adopted by the Sacramento City Council

April 22, 2010

**CONFIRMING THAT CONDITION 2.E. OF THE RESOLUTION
APPROVING THE ESTABLISHMENT OF THE PROMENADE AT
NATOMAS PLANNED UNIT DEVELOPMENT (RESOLUTION 2004-776)
HAS BEEN SATISFIED, AND AUTHORIZING THE CITY MANAGER TO
ISSUE AN ESTOPPEL CERTIFICATE CONFIRMING THE STATUS OF
CONDITION 2.E AND OF RELATED AGREEMENTS**

BACKGROUND

- A.** On September 28, 2004, the City Council approved the Promenade at Natomas Project (P00-033).
- B.** Condition 2.e of Resolution 2004-776, approving the Promenade Planned Unit Development, required the developer, Opus West, Inc., to enter into an agreement under which it would provide certain benefits to the community. Among those benefits was construction of a Regional Youth Baseball facility in South Natomas up to a cost of \$1,000,000.
- C.** On February 28, 2006, the City Council approved Resolution 2006-157, authorizing the City Manager to execute an Agreement By and Between the City of Sacramento and Opus West Inc. Relative to the Promenade at Natomas Planned Unit Development (City Agreement 2006-0201) to fulfill condition 2.e of Resolution 2004-776 for the Promenade at Natomas Planned Unit Development. The City and Opus West, Inc. subsequently entered into that agreement.
- D.** On April 3, 2007, the City Council approved Resolution 2007-194, authorizing the City Manager to execute Amendment No. 1 to City Agreement 2006-0201 with Opus West Inc. The amendment (City Agreement No. 2006-0201-1) addressed the construction of a regional baseball facility, providing as follows: "Upon written request by the City, [Opus] shall pay the City or a third party designated by the City an amount equal to the estimated cost to construct a regional youth baseball facility in South Natomas pursuant to plans and specification approved by the city; provided, however, [Opus] shall not be required to pay more than \$1,000,000. [Opus] shall make full payment within 90 days of the City's written request for payment."

- E. On June 14, 2005, a Subdivision Improvement Agreement (City Manager Agreement No. 2005-0493) was executed by the City of Sacramento and Opus's predecessor in interest, the Fong Ranch Liquidating Trust. This agreement was recorded June 23, 2005, with the Sacramento County Clerk/Recorder in Book 20050623 at Page 1817; a related assignment was subsequently recorded with the Sacramento County Clerk/Recorder in Book 20061130 at Page 485.
- F. On January 19, 2006, an Agreement for Operation and Maintenance of Interim Drainage Facilities (City Agreement No. 2006-0122) was executed by the City and Opus West Corporation. This agreement was recorded on February 17, 2006, with the Sacramento County Clerk/Recorder in Book 20060217 at Page 1415.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Condition 2.e of Resolution 2004-776 was satisfied when the City and Opus West, Inc. entered into City Agreement No. 2006-0201.

Section 2. The City Manager (or his designee) is authorized to issue an Estoppel Certificate to Kaiser Foundation Health Plan, Inc. using a form substantially the same as the form attached to this resolution as **Exhibit A**.

Table of Contents:

Exhibit A: Draft Estoppel Certificate – 2 Pages

Exhibit A – Draft Estoppel Certificate

Recording requested by and
when recorded return to:

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ESTOPPEL CERTIFICATE

Effective Date: April __, 2010

The City of Sacramento (the "City") and the Fong Ranch Liquidating Trust (the "Fong Trust") were parties to a North Natomas Development Agreement dated September 28, 2004, and recorded on November 10, 2004, with the Sacramento County Clerk/Recorder in Book 20041110 at page 1460 (the "Development Agreement"). Quality Properties Asset Management Company (the "Company"), an Illinois corporation, is a successor to the Fong Trust and currently owns a portion of the land subject to the Development Agreement, namely Assessor Parcel Numbers 225-2110-028, 225-2110-055, 225-2110-056, and 225-2210-059 (the "Property"). Kaiser Foundation Health Plan, Inc. ("Kaiser"), a California nonprofit public benefit corporation, desires to acquire the Property from the Company and has requested that the City deliver this certificate in connection with the proposed acquisition.

On the City's behalf, and based solely on my actual knowledge, I certify to Kaiser that the following statements are true as of the effective date of this certificate:

- A. The Development Agreement is in full force and effect and a binding obligation of the City and the Company.
- B. The Development Agreement has not been amended or modified, either orally or in writing.
- C. The Company is not in default in the performance of its obligations under the Development Agreement.
- D. If Kaiser acquires the Property, then Kaiser will have no obligations under the following agreements except as otherwise indicated:
 - 1. City Manager Agreement No. 2005-0493 (Public Improvement Proceeding No. P00-033 / Subdivision Improvement Agreement) between the City and the Fong Trust, dated as of June 14, 2005, and recorded June 23, 2005, with the Sacramento County Clerk/Recorder in Book 20050623 at Page 1817; and related assignment

recorded with the Sacramento County Clerk/Recorder in Book 20061130 at Page 485. Kaiser remains obligated, however, to fulfill Condition E45 (to the 2008 approval to develop a three-story, 120,000-square-foot office building) requiring installation of landscaping and appropriate irrigation for the mow strip on the east side of Gateway Park Boulevard from North Freeway Drive to North Market Drive.

2. City Agreement No. 2006-0122 (Agreement for Operation and Maintenance of Interim Drainage Facilities) between the City and Opus West Corporation, dated as of January 19, 2006, and recorded on February 17, 2006, with the Sacramento County Clerk/Recorder in Book 20060217 at Page 1415.
3. City Agreement No. 2006-0201 (Agreement By and Between the City of Sacramento and Opus West, Inc. Relative to the Promenade at Natomas Planned Unit Development), dated as of February 28, 2006, and recorded May 16, 2006, with the Sacramento County Clerk/Recorder in Book 20060516 at Page 1696; as amended by City Agreement No. 2006-0201-1 (Amendment No. 1 to Agreement by and Between the City of Sacramento and Opus West, Inc. Relative to the Promenade at Natomas Planned Unit Development).

The City acknowledges that Kaiser, acting in good faith, may rely on the statements in this certificate.

City of Sacramento

Gus Vina
Interim City Manager