



REPORT TO COUNCIL

City of Sacramento

11

915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

CONSENT
June 13, 2006

Honorable Mayor and
Members of the City Council

Subject: Resolution affirming effective date of development agreement for Sky Park at Natomas Field (P05-173)

Location/Council District:

East of East Commerce Way and south of Prosper Way. APN: 225-0150-015 and portions of 225-0150-018, -036. Council District 1.

Recommendation:

Staff recommends that the City Council adopt a resolution affirming the effective date of the Development Agreement between the City of Sacramento and Towne Development of Sacramento, Inc., approved under Ordinance 2005-096.

Contact: David Hung, Associate Planner, 808-5530; Gregory Bitter, Senior Planner, 808-7816

Presenters: None

Department: Development Services

Division: Planning

Organization No: 4875

Summary:

On December 13, 2005, the City Council enacted Ordinance No. 2005-096 that approved a Development Agreement (P05-173) between the City of Sacramento and Towne Development of Sacramento, Inc. The Development Agreement concerned Towne Development's project known as Sky Park at Natomas Field. The date on which the Sky Park Development Agreement would become effective was conditioned on Towne Development taking title to the property described in the Development Agreement, provided that such date occurred within 90 days of the date on which

Ordinance No. 2005-096 became effective (January 12, 2006). City ordinances are effective 30 days following adoption, meaning Towne Development had a total of 120 days following Council's approval of the development agreement to take title. However, on February 10, 2006, a wholly-owned subsidiary of Towne Development, known as Sky Park at Natomas Field LLC, took title within the required date. Staff takes the position that the acquisition of the subject property by Sky Park at Natomas Field LLC constitutes substantial compliance with the agreement and recommends that the City Council affirm the effective date of the Development Agreement to be February 10, 2006.

Committee/Commission Action:

None.

Background Information:

On March 22, 2005, the City Council approved the project entitlements for the Strawberry Field project (P03-134), including a Development Agreement ("Initial DA") between the City of Sacramento and Towne Development of Sacramento, Inc. ("Towne Development"). On July 21, 2005, the City Council approved Ordinance No. 2005-056 that postponed the effective date of the Initial DA from 90 days to 180 days due to unanticipated environmental conditions at the site that delayed Towne Development's acquisition of title. However, Towne Development's acquisition of title was delayed beyond the 180-day period and, hence, the Initial DA expired.

Towne Development submitted a new application (now known as Sky Park at Natomas (P05-173)) for a development agreement that was approved through Ordinance No. 2005-096 on December 13, 2005 (the "Existing DA"). At the time the Existing DA was approved by the City Council, Towne Development had not yet acquired title to all of the subject property. Accordingly, the Existing DA provides that its effective date hinged upon the date on which Towne Development acquired title to the entire property, provided that such acquisition of title occur within 90 days after Ordinance No. 2005-096 became effective (under the City Charter, city ordinances become effective 30 days after adoption by the City Council). If Towne Development does not acquire title within the required time, the Existing DA would be deemed void and unenforceable. In other words, Towne Development was required to obtain title to the property within a total of 120 days (by April 12, 2006) following adoption of the Existing DA under Ordinance No. 2005-096 or the Existing DA would have no force or effect.

Towne Development did not obtain title to all of the subject property within the time required under the Existing DA. Rather, title was taken by its wholly-owned subsidiary, Sky Park at Natomas Field LLC ("Sky Park"). Staff and the City Attorney's Office reviewed documents provided by Towne Development to confirm that (1) Sky Park is a wholly-owned subsidiary of Towne Development, and (2) Sky Park took title to 100% of the subject property on February 10, 2006, a date within the 120-day time period required to maintain the validity of the Existing DA. Staff and the City Attorney's Office believe that Towne Development's control and dominion over Sky Park is evident

factually and legally. Based upon the foregoing, staff believes that acquisition of the property by Sky Park constitutes substantial compliance by Towne Development with the provisions of the Existing DA dealing with the establishment of the effective date of the agreement and recommends adoption of a resolution affirming such effective date to be February 10, 2006, the date on which Sky Park took title to the property which will be subject to the Existing DA.

Financial Considerations:

The proposed resolution has no fiscal considerations.

Environmental Considerations:

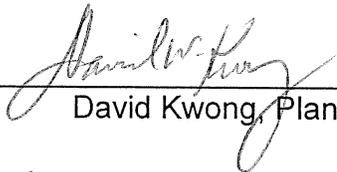
On March 22, 2005, the City Council approved a Mitigated Negative Declaration for the originally proposed project (P03-134). Potentially significant environmental issues regarding biological resources, hazards, and cultural resources were discussed and mitigated in this document. The current request to affirm the effective date of the Existing DA does not result in any impacts over and above what was previously analyzed. Section 15162 of the Guidelines for Implementation of the California Environmental Quality Act Public Resources Code provides that an additional Negative Declaration (or Environmental Impact Report) need not be prepared unless subsequent changes are proposed in the project, substantial changes occur with respect to the project circumstances, or new information of substantial importance to the project becomes known or available. Thus, a previously adopted Negative Declaration is considered for staff's recommendation set forth herein. The applicant has reviewed the previously adopted Mitigation Monitoring Plan and has signed a Mitigation Agreement in acceptance of the imposed mitigation measures.

Policy Considerations:

The Sky Park at Natomas Field project, formerly known as the Strawberry Field project, has been determined to be consistent with applicable City policies, including the Inclusionary Housing Policy, the City's Smart Growth Principles, as well as the City's Strategic Plan three-year goals of achieving sustainability and enhance livability, and increasing opportunities for all Sacramento residents to live in safe and affordable housing. The City Council and Planning Commission twice have approved development agreements for the project proposed by Towne Development. Affirmation of the effective date of the Existing DA will allow the project to proceed without the delay that would be caused by otherwise requiring Towne Development to submit and process yet another application for a development agreement through Planning Commission and City Council approvals.

Emerging Small Business Development (ESBD):

No goods or services are being purchased under this report.

Respectfully Submitted by: 
David Kwong, Planning Manager

Approved by: 
William Thomas
Director of Development Services

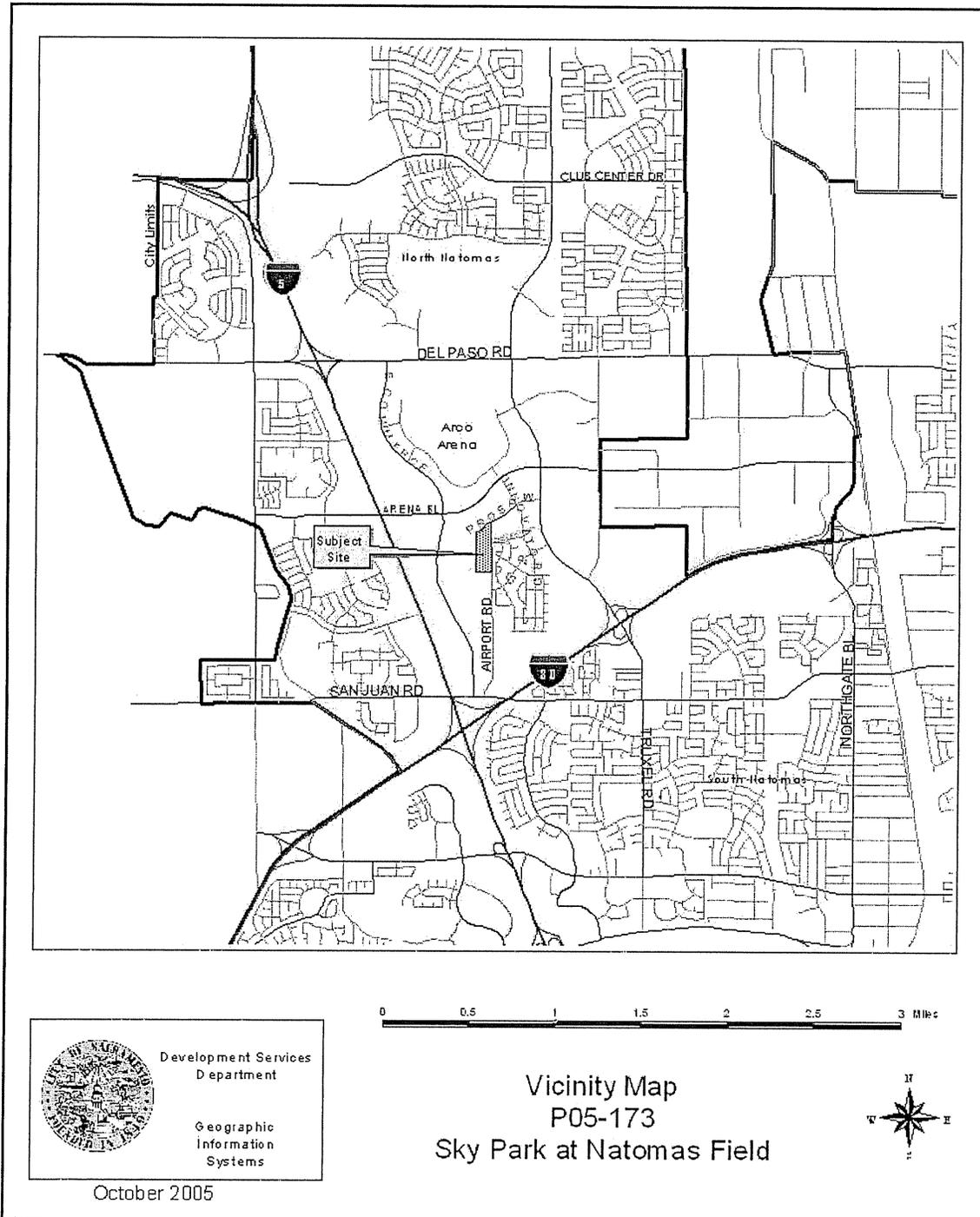
Recommendation Approved:


RAY KERRIDGE
City Manager

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Attachment 1 – Vicinity Map



RESOLUTION NO. 2006-XXXX

Adopted by the Sacramento City Council

June 13, 2006

RESOLUTION AFFIRMING THE EFFECTIVE DATE OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND TOWNE DEVELOPMENT OF SACRAMENTO, INC.

BACKGROUND

1. On December 13, 2005, through Ordinance No. 2005-096, the City Council approved a development agreement between the City and Towne Development (the "DA").
2. The effective date of the DA is based on the date on which Towne Development acquired title to all of the property described in the DA, provided that Towne Development acquires such title within 90 days of the effective date of Ordinance No. 2005-096.
3. Ordinance No. 2005-096 became effective 30 days after its adoption by the City Council. Accordingly, Towne Development was required to obtain title to all of the subject property within 120 days following adoption of Ordinance No. 2005-096, or by April 12, 2006.
4. On February 10, 2006, a wholly-owned subsidiary of Towne Development, known as Sky Park at Natomas Field LLC, acquired title to the subject property. February 10, 2006 falls within the 120-day time period required by the DA for acquisition of all of the subject property.
5. Staff recommends that City Council make a finding that the acquisition of the subject property by Sky Park at Natomas Field LLC, a wholly-owned subsidiary of Towne Development, constitutes substantial compliance with the DA for purposes of establishing the effective date of the DA and adopt a resolution affirming February 10, 2006 as the effective date of the DA.

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

Section 1. The acquisition of the subject property by Sky Park at Natomas Field LLC, a wholly-owned subsidiary of Towne Development, constitutes substantial compliance with the DA for purposes of establishing the effective date of the DA.

Section 2. The effective date of the DA shall be February 10, 2006.

A copy of the Development Agreement
is available for review at:

City of Sacramento
Development Services Department
915 I Street, 3rd Floor
Sacramento, CA 95814
(916) 808-5381

8 a.m. - 5 p.m.
Monday through Friday