



## REPORT TO COUNCIL City of Sacramento

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www.CityofSacramento.org

Consent  
December 18, 2007

Honorable Mayor and  
Members of the City Council

**Title:** Natomas Central CFD – Suspend Bidding Requirement of Acquisition-and-Shortfall Agreement (two-thirds vote required)

**Location/Council District:** North Natomas, located in Council District 1.

**Recommendation:** Suspend competitive bidding for construction of public improvements under an acquisition & shortfall agreement with K. Hovnanian Forecast Homes Northern Inc.

**Contact:** Janelle Gray, Public Finance and Banking Manager, City Treasurer's Office, 808-8296; and Mark Griffin, Manager – Public Improvement Financing Division, Planning Department, 808-8788.

**Presenters:** Not Applicable

**Department:** City Treasurer's Office

**Division:** Finance

**Organization No:** 0900

### Description/Analysis

**Issue:** To finance the construction of public infrastructure in North Natomas, the City often forms a community facilities district, or CFD, under the Mello-Roos Community Facilities Act of 1982. Through the CFD, the City levies a special tax and issues bonds to raise funds needed to finance the acquisition of public facilities constructed by the developer of land within the CFD. On occasion, the City also uses those funds to reimburse the developer for various development-impact fees.

In connection with the acquisition of facilities, the City and the developer must enter into a standard acquisition-and-shortfall agreement that prescribes how the

developer is to construct the facilities and specifies how the City will reimburse the developer from special-tax revenues and bond proceeds. Among other things, the standard agreement specifies the contracts must be awarded through competitive bidding. It also requires that all improvements be constructed in compliance with the city's standards and specifications and that the contractor pay prevailing wages.

Because of the circumstances described in the attached **Background**, the developer of Natomas Central, K. Hovnanian Forecast Homes Northern Inc. (Forecast Homes), has requested that the city council suspend the bidding requirement for public improvements that were constructed at a cost of approximately \$9.4 million. Suspension will allow the city to reimburse Forecast Homes for these improvements using special-tax revenues and bond proceeds generated through the CFD. All other requirements of the acquisition-and-shortfall agreement, including the requirement that prevailing wages be paid, have been satisfied.

**Policy Considerations:** Section 3.60.170 of the Sacramento City Code authorizes the city council to suspend competitive bidding by a two-thirds vote if the city council determines that suspension is in the best interests of the city. Although it was initially envisioned that bond proceeds would be used chiefly to reimburse Forecast Homes for various development fees, the circumstances have changed considerably. Suspending competitive bidding in this case will provide the flexibility to use bond proceeds for acquiring the improvements, thereby facilitating continued development and investment in the community during this challenging time. Bond counsel has advised the City Treasurer's Office that the Mello-Roos Community Facilities Act of 1982 does not require competitive bidding.

**Environmental Considerations:** The city council's action is for the purpose of enabling the use of a CFD to finance the acquisition and construction of public infrastructure and thus is not a project for purposes of the California Environmental Quality Act.

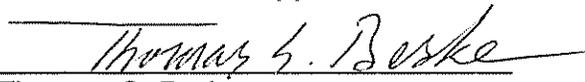
**Rationale for Recommendation:** Suspension of the competitive bidding requirement will allow the city the flexibility to reimburse Forecast Homes for approximately \$9.4 million of an estimated \$35 million in slated improvements and fees using special-tax revenues and bond proceeds generated through the CFD. All other requirements of the acquisition-and-shortfall agreement, including the requirement that prevailing wages be paid, have been satisfied.

**Financial Considerations:** Developers who enter into an acquisition-and-shortfall agreement will construct public improvements with their own funds and be reimbursed at a later time with available special-tax revenues or bond proceeds generated through a CFD. Payment of principal and interest on the bonds is secured and funded exclusively by the special-tax lien on land within the CFD; the city is **not** obligated.

**Emerging Small Business Development (ESBD):** The city council's suspension of public bidding in this case is not affected by city policy related to the ESBD Program.

Approved by:   
Janelle Gray  
Public Finance & Banking Manager

Recommendation Approved:

  
Thomas S. Berke  
Interim City Treasurer

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## Background

When the city forms a community facilities district (CFD) to finance the construction of public improvements through the issuance of bonds, the developer of land within the CFD must sign an acquisition-and-shortfall agreement before any bonds are sold. Exhibit D of the standard acquisition-and-shortfall agreement (titled "Guidelines for Special District Acquisition Projects") requires, among other things, that the developer use competitive bidding to award all construction contracts for the improvements that will be financed through the CFD.

K. Hovnanian Forecast Homes Northern, Inc. (Forecast Homes) is the developer of the Natomas Central subdivision, which is bounded by Fisherman's Lake on the west and south, Del Paso Road on the north, and El Central Road on the east. The subdivision consists of approximately 398 gross developable acres divided into several components: residential, parks, open space, fire station, and schools. In particular, it comprises approximately 1,693 single-family lots, 4 parcels for multi-family development, a 5-acre park, a 6-acre park, a 13-acre joint park/school site, a 7-acre private recreation center, a 26-acre detention basin/lake, a 2-acre fire station, and 28 acres of open space. As of the end of October 2007, there were approximately 80 families residing in Natomas Central.

In October 2004, Forecast Homes asked the Public Improvement Financing Division of Planning to begin proceedings to form the Natomas Central CFD. Various complications ensued, however, and as a result formation was delayed for over two years. First was the controversy over a buffer along Fisherman's Lake. Following that, in late 2006, FEMA announced that it intended to revise the Flood Insurance Rate Maps for Natomas, an event that renders the sale of new bonds problematic until the municipal-bond market knows what building restrictions will apply. Finally, this past summer the market for residential development experienced a severe downturn.

In late summer 2006—after the Fisherman's Lake matter was resolved but before FEMA's announcement—Forecast Homes faced a dilemma. To complete the public improvements before the winter rains, Forecast Homes had to award a construction contract immediately, without bidding. But under the city's policy, set out in Exhibit D, any public improvements constructed under a contract that was not competitively bid would not be eligible for financing with bond proceeds. Unwilling to lose another construction season, Forecast decided to award a construction contract to Teichert Construction, which was already on site to perform mass grading. A key fact behind this decision was that the amount of development fees to be financed through the CFD exceeds the amount of bonds that can be issued. In other words, Forecast Homes chose to use the CFD's bonding capacity to finance the development fees rather than the public improvements. This made sense at the time, as Forecast Homes believed that it would be paying a large percentage of its fees and issuing bonds in 2007. But then came FEMA and the housing slump.

Forecast Homes cannot predict when it will be able to resume constructing houses and paying development fees. Meanwhile, it has already invested millions of dollars for public improvements in Natomas Central—improvements that will be turned over to the city. Forecast Homes thus requests that the city council suspend the competitive-bidding requirement so that the CFD can be used to finance these improvements. This financing could occur in two ways. First, the city can use special-tax revenues from the CFD to reimburse Forecast Homes for the costs. Second, the city can issue bonds through the CFD and reimburse Forecast Homes from the bond proceeds (the City Treasurer’s Office is investigating the feasibility of issuing bonds if Forecast provides a letter of credit to secure payment). The estimated amount to be financed is as follows:

Construction of detention basins	\$1,680,823
Traffic Signals & Intersection Widening	\$2,112,000
Collector Roadways	\$3,805,274
Landscaping, equipment, & facilities for nature park/open space	<u>\$1,796,870</u>
<b>Total Estimated Cost</b>	<b>\$9,394,967</b>