

## **REVIEW OF EAST GARRISON AGREEMENTS AND ENTITLEMENTS**

### **1) Health and Safety Code Section 34181:**

County staff asked us to look at the applicability of H&S Code Section 34181 to the project. That Section provides in relevant part that:

(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of such agreements where it finds that amendments or early termination would be in the best interests of the taxing entities.

The project is consistent with this Section because the proposed changes are in the best interests of the taxing entities due to the increased amount of tax revenue that will be generated by the project. The tax increment analysis clearly demonstrates that the proposed Final Phase will result in a substantial increase in tax revenue to the taxing entities in its proposed configuration. Increased tax revenue was one of the bases of the Oversight Board's approval of the 7<sup>th</sup> DDA amendment for the Hunter's Point project referenced above.

### **2) Entitlement Documents**

There are a number of legal documents related to the project, several of which refer to the development of the Town Center phase of the project. This section looks at these entitlement documents and, where applicable, highlights the specific language relating to the development of the Town Center.

#### **a. Fort Ord Redevelopment Plan (February 12, 2002):**

We do not believe that any modifications to the Redevelopment Plan will be necessary, and the 2007 Redevelopment Implementation Plan is advisory only, and only references that the Redevelopment Agency entered into the DDA for the development of the project described in the DDA.

#### **b. Development Agreement (October 4, 2005, recorded 2006):**

Section 2.6 of the Development Agreement addresses the amendment of the Development Approvals (essentially the permits for the E.G., project):

- Amendments to the project do not require revisions to the Development Agreement, even if the amendment is material. Per Section 2.6.2(c): “any future amendment or modification to a Development Approval or Subsequent Development Approval shall be incorporated in this Agreement without the need to amend this Agreement; provided that any development or other action under any such future Material Amendment under Section 2.6.2(b) shall be subject to the rules, regulations, official

policies, standards and specifications in effect on the effective date of the amendment.”

Based on the foregoing, no amendment to the Development Agreement is required for the proposed changes.

**c. Development and Disposition Agreement (October 4, 2005, recorded 2006, any amendment would require Successor Agency and County Approval):**

If an amendment to the project’s Development and Disposition Agreement is required, Section 702 allows amendments to the document, providing that, “the Developer and the Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the Parties hereto, lending institutions, or bond counsel or financial consultants to the Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein, and are consistent with applicable law, including CEQA.”

Attachment No. 4(G)(2) pertains to the “Financial Terms” of the East Garrison development and provides the following with respect to the Town Center:

- “Pursuant to the Option Agreement, Developer has the obligation to construct approximately 34,000 square feet of neighborhood serving retail, civic and other non-residential uses (“Town Center Construction Obligation”). Developer and County recognize that the retail portion of the Town Center Construction Obligation may not be economically feasible. Consequently, if no residual value is determined to exist pursuant to Section 3.b(ii)(2) of Part A of this Attachment No.4, no value may be attributable to the town center mixed use parcels and any subsidy which may be required from Developer to finance construction shall be considered a Project Cost, as defined in Section 3.d. of Part A of this Attachment No. 4. Developer will install all the infrastructure necessary to service the Town Center parcels, including the Town Center Park and parking lots. Developer may assign its rights and obligations to develop the Town Center mixed-use commercial and residential parcels (as described in Exhibit 2 to Attachment No. 9) to either Woodman Development Company, LLC ("Woodman") or a special purpose Affiliate of either the Developer or Woodman ("Assignee”).

An approximately 7,000 square foot Fire Station to be constructed on a site within Phase 1 comprises a portion of the Town Center Construction Obligation but is the subject of its own separate subsidy by Developer, described in Section 8 of Attachment No. 9, and shall not count toward satisfying the Developer's 34,000 square foot Town Center Construction Obligation. As provided in Section 6 of Attachment 9, 4,000 square feet of the Library/Sheriff’s Substation shall count toward satisfying the Developer's 34,000 square foot Town Center Construction Obligation. At least 20,000 square feet of the Town Center Construction Obligation must have been completed prior to the issuance of the first market rate unit permit

within Phase 3 of the Project and the remaining 14,000 square feet of the Town Center Construction Obligation must be completed prior to the issuance of the last certificate of occupancy for the last market rate unit in Phase 3.

Prior to the first market rate unit building permit being issued in Phase 3, Developer or Assignee shall post a completion bond with respect to any portion of the Town Center Construction Obligation which is not completed or under construction at that time.

Developer shall thereafter be allowed to continue to obtain all remaining building permits and certificates of occupancy for the market rate units of the Project without restriction. Timing of construction of the Town Center Construction Obligation shall be subject to Enforced Delays under Section 604 of this Agreement.”

Attachment 1(B) is a map that shows Phase 3/Town Center configuration. This map will change with the Final Phase configuration.

Attachment 9 is the “Scope of Development” and provides as follows regarding the Town Center development:

- The Parties recognize that the development of the Town Center is an important part of the design of the Project and agree that the market for retail and commercial space at East Garrison is uncertain and cannot accurately be predicted. Under the Development Approvals, the maximum amount of square footage allowed for the Town Center commercial mixed-use parcels is 120,000 square feet (including up to 75,000 square feet of commercial). The Town Center shall be developed with a minimum of 34,000 square feet of neighborhood serving retail, civic and other non-residential uses, as set forth in Section 2 of Part G of Attachment No. 4 hereto, provided that 4,000 square feet of the Library/Sheriff’s Substation that Developer is obliged to provide funding for under Section 8(i)(b) of this Attachment No. 9 shall count toward satisfying the Developer’s 34,000 square feet Town Center Construction Obligation.

Exhibit 1 to Attachment 9 provides the minimum # of units and maximum square footage for the Town Center Condos.

**d. DDA Implementation Agreement (First Amended and Restated) dated August 30, 2016; if amended, likely to require Successor Agency and County Approval:**

This document was executed following UCP’s acquisition of the property and was intended to identify which portions of the DDA remained applicable to UCP. Section 1.3 provides, “[t]he Parties acknowledge and agree that UCP EG was not the original Developer under the DDA and, as such, there are a number of DDA provisions that do not apply to UCP EG given that EGP purchased the Site from the Agency in 2005...” The Implementation Agreement provides, among

other things, that Attachment No.4 (G)(2) and Attachment No. 9, Section 6 of the DDA still apply to UCP.

The Implementation Agreement further provides at Section 10.5 that in the event of a conflict between the DDA and the Implementation Agreement, the Implementation Agreement will control. Therefore, an amendment to the implementation plan may be all that is required, as opposed to amending the DDA itself.

- Section 5 pertains to the Town Center and reads as follows:
  - o “The Parties agree that UCP EG shall implement its obligations for the development of the Town Center under the DDA, including Paragraph G, Section 2 of Attachment No. 4, in the following manner: (i) before the time that escrow has closed on the sale of the 1st lot in Phase 3, UCP EG shall post a completion bond with respect to 34,000 square feet of the Town Center, sized sufficiently to compensate for costs related to the construction as well as cost related to accessing the bond; (ii) UCP EG shall complete construction of at least 20,000 square feet of the Town Center by the time that escrow for the sale of the 200th lot in Phase 3 has closed, and shall complete construction of an additional 14,000 square feet of the Town Center by the time the escrow for the sale of the last lot in Phase 3 has closed; (iii) if UCP EG shall not have constructed at least 20,000 square feet of the Town Center by the time that escrow has closed on the 200th lot in Phase 3, then UCP EG shall cause the bond funds to be released to the Successor Agency, and shall deliver to the Successor Agency a Right of Entry onto the Town Center property, so that the Successor Agency or designee may cause the completion of the Town Center.”

The Implementation Agreement contemplated amendments, stating at Section 10.5 that “[n]o amendment or modification to the DDA or any Implementation Agreement will be effective unless contained in a writing signed by both Parties.

**e. East Garrison Specific Plan (As described in the DDA, amendment would follow County process laid out in the Specific Plan which is summarized below):**

Several sections/figures and tables highlighting the existing configuration of the approved Phase 3/Town Center portions of the project may need modification.

- o Same process as amendment of General Plan
- o Early assessment of amendment submitted to LUAC
- o After LUAC, Planning Commission reviews amendment for recommendation to Board of Supervisors
- o Board of Supervisors ultimately votes on the amendment and makes requisite findings

**f. Final Map/CDP (Amendment requires County and likely Successor Agency Approval)**

If the amendment of the map and CDP is packaged with any necessary DDA/implementation plan amendments, then Successor Agency and County process would be the same.

- If no Final Map has been filed, demonstrate “substantial conformance” with VTM, or amend VTM and permit approvals.
  - If amendment necessary, would require approval by Planning Commission and Board of Supervisors.
- Certain VTM/CDP conditions which refer to the Town Center directly may need revising as well.
  - Condition 85 (parking spaces in town center lots)
  - Condition 129 (sidewalk enhancement relating to town center specifically)

**3) Case Studies of other projects where a Successor Agency’s DDA has been amended, resulting in changes to the project:**

If the DDA needs to be amended to achieve the requested amendments in question, there are a number of examples elsewhere in California where this has taken place, as demonstrated by the case studies below.

- Hunter’s Point Shipyard Redevelopment Plan in San Francisco (2018): project has amended its Disposition and Development Agreement 6 times. The latest amendment in 2018 approved a reallocation of development rights (172 residential units and 71,000 SF of commercial space), to an adjacent (but separate) project area, which necessitated the revision of the underlying area plan. This action required Oversight Board approval, which was authorized on the basis that the revision was in the best interests of the taxing entities as it would maintain or increase the amount of revenues to the taxing entities by allowing for the full buildout of the project, among other things.
- City of Buena Park (2016): The DDA for the development of retail/entertainment/restaurant uses in connection with a mixed use development that, at the end of the project phases, would also include an office, a hotel and up to 600 residential units was amended to extend the deadline by which certain retail components of a redevelopment plan were to be constructed, and was approved, following DOF input, on the basis that the extension would not further extend the financial obligations of the successor agency and that the built-out project would generate significant tax revenue to the taxing entities.
- Suisun City (2015): The Fourth Amendment to the DDA for the development of an old middle school site for residential/commercial and mixed-use purposes provided for an updated Schedule of Performance, a reduced Developer Reinvestment fee per residential

unit, a contingent Downtown Economic Development Impact Fee was added, successor developer provisions were added, and the loan limit was lowered and the repayment provisions were revised.