



Monterey County

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

Legistar File Number: 20-053

February 11, 2020

Introduced: 1/15/2020

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Public Hearing to consider:

- a. Amending East Garrison Combined Development Permit (PLN030204) Condition of Approval No. 184 [air quality mitigation measure] clarifying the type of qualifying projects under the program to reduce emissions; and
- b. Approving and authorizing County Counsel to execute the Agreement Between the County of Monterey and Monterey Bay Air Resources District to provide for indemnification.

Project: PLN030204-AMD1/UCP EAST GARRISON, LLC

Project Location: Southeast of the intersection of Reservation Road and Inter Garrison Road, approximately 2 miles north of the City of Marina East Garrison Specific Plan Area, Greater Monterey Peninsula Area Plan

Proposed CEQA Action: Consider an addendum together with certified Final Subsequent Environmental Impact Report (FSEIR) for the East Garrison Specific Plan Project.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt a resolution to:
 1. Certify that the Board considered an Addendum together with the previously certified FSEIR for the East Garrison Specific Plan project (EIR No. 04-04); and
 2. Amend East Garrison Combined Development Permit [Board of Supervisors' Resolution No. 05-267 (PLN030204)] Condition of Approval No. 184, Mitigation Measure 4.5-C-1, as follows:

"PWSP-NON-STANDARD-TRAFFIC AND CIRCULATION - AIR QUALITY FEES. The applicant shall pay to the County Planning and Building Inspection Department the sum of \$1,857.14 per residential unit for a total amount not to exceed \$2,600,000 for Air Quality mitigation. The \$2,600,000 will be distributed by the Air District as follows:— \$1,565,806 for funding agricultural pump retrofits and \$1,034,194 for purchase of school buses. The funds will be distributed to the Monterey Bay Air Resources District (District) to use toward emission reduction grant programs including, but not limited to, the installation of electric vehicle charging infrastructure, incentive programs promoting the purchase of electric vehicles (including school buses), and grant projects following the District's Policies and Procedures Manual for the Carl Moyer Program. (Public Works)"

A draft resolution, including findings and evidence and subject to 3 conditions, is attached for consideration (**Attachment A**).

- b. Approve the Agreement Between the County of Monterey and Monterey Bay Air Resources District (MBARD) to provide for indemnification and authorize County Counsel to execute the Agreement.

SUMMARY

The East Garrison Combined Development Permit was approved with a mitigation measure to reduce project related air quality impacts (i.e. Reactive Organic Gases and Nitrogen Oxides). The adopted language of the mitigation (Condition 184) was specific to where and what appropriated funds could be spent on, resulting in an action too restrictive for successful implementation. To correct this, Monterey Bay Air District staff requested to amend the language to meet the intent of the mitigation. The project applicant, UCP East Garrison, LLC, has agreed to the amendment. As discussed below, the amended language meets the intent of the original mitigation and is equally or more effective than the original language. Therefore, the amendment to the mitigation measure is allowable under CEQA, and an addendum to the FSEIR is appropriate in this case.

DISCUSSION:

On October 4, 2005, the Board of Supervisors certified a Final Subsequent Environmental Impact Report (FSEIR) for the East Garrison Specific Plan project (EIR No. 04-04 (State Clearinghouse No.2003081086), Board of Supervisors Resolution No. 05-264) and adopted a Mitigation Monitoring and Reporting Plan and a Statement of Overriding Considerations for the project. As part of the entitlements for the project at the former Fort Ord, the Board approved a Combined Development Permit consisting of a Vesting Tentative Subdivision Map for the subdivision of 244 acres into parcels to create parcels for up to 1,400 dwelling units (plus up to 70 second units, each on the same lot as a residential unit), 75,000 square feet of commercial buildings, 11,000 square feet of public buildings, and 100,000 square feet of artist studio/public uses; Use Permit for tree removal; General Development Plan; Use Permit to allow development on slopes over thirty percent (30%); and Design Approval. (Board of Supervisors' Resolution No. 05-267.) The Combined Development Permit was subject to numerous conditions, including Condition No. 184 to mitigate air quality impacts. The amendment before the Board would modify that condition at the request of the Monterey Bay Air Resources District with language that would be equally or more effective at reducing air quality impacts.

The FSEIR identified that project-related temporary air emissions would generate Reactive Organic Gases (ROG) and Nitrogen Oxides (NO_x) in excess of Monterey Bay Unified Air Pollution Control District (MBUAPCD) thresholds, resulting in a potential impact to the environment. [MBUAPCD is now known as Monterey Bay Air Resources District (MBARD)]. The FSEIR determined that on-site mitigation that would reduce the impact to a less than significant level was infeasible due to the limited area of the project; therefore, district staff was consulted to determine if off-site mitigation was available and/or feasible. The mitigation strategy suggested by the MBUAPCD was that project related ROG and NO_x emissions could be reduced through the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program). The FSEIR determined that implementation of this mitigation would reduce air quality impacts to the greatest extent feasible; however, the impact would remain significant and unavoidable.

The Carl Moyer Program provides grant funding for cleaner-than-required engines and equipment. The program achieves reductions in emissions of key pollutants which are necessary for California to meet its clean air commitments under regulatory requirements. Eligible projects include cleaner on-road trucks, school and transit buses, off-road equipment, marine vessels, locomotives, agricultural equipment, light duty vehicle scrap, and lawn mowers. At the local level, MBARD administers the

grant and selects which projects to fund. Funding for this program is awarded by the California Air Resources Board through Carl Moyer Program Grant and State Reserve Funds, the Funding Agricultural Replacement Measures for Emission Reductions Program, Voluntary NOx Remediation Funds, and AB134 Community Air Protection Funds. Air districts that request grant funding of more than \$200,000 through the Carl Moyer Program are required to provide match funding, typically provided from other available sources or local mitigation fees.

Although the FSEIR identified that project related ROG and NOx emissions could be reduced through a fair share contribution to off-site programs to convert heavy equipment to less polluting engines, such as the Carl Moyer Program, the final adopted language of the mitigation measure incorporated into the project as Condition of Approval (COA) No. 184 explicitly limited the allocation of funds. As demonstrated below, COA No. 184 specifies the total amount of funds to be collected and the allocation of those funds to agricultural pump retrofits and the purchase of school buses. The degree of specificity of the COA does not allow MBARD to allocate funding to other projects that could result in an increased reduction of ROG and NOx emissions in the area, nor does it identify if the fees could be used towards matching funds for the Carl Moyer Program.

The adopted COA No. 184 reads, in relevant part, as follows:

*“PWSP-NON-STANDARD-TRAFFIC AND CIRCULATION - AIR QUALITY FEES
The applicant shall pay the Planning and Building Inspection Department
\$1,857.14 per residential unit for a total not to exceed \$2,600,000 for Air Quality
mitigation. The \$2,600,000 will be distributed by the Air District as follows:
\$1,565,806 for funding agricultural pump retrofits and \$1,034,194 for purchase of
school buses. (Public Works)”*

Pump retrofits and school bus purchases no longer provide the air quality benefits that they did in 2005. In addition, Senate Bill 513 (Beall, 2015) added new opportunities for the Carl Moyer Program to contribute significant emission reductions alongside implementing regulations, advance zero emission and near-zero emission technologies, and combine program funds with those of other incentive programs. In August 2018, MBARD updated their Carl Moyer Program Policies and Procedures Manual, and projects that would qualify for Carl Moyer funds were identified to include: marine vessel engine repower or alternative fuel repower, off-road equipment repower and replacement, agricultural irrigation pump repower or electrification, zero-emission school bus replacement, and infrastructure (e.g. battery charging stations). On September 18, 2018, the County received correspondence from Richard A. Stedman, Air Pollution Control Officer for MBARD requesting to modify COA No. 184 to allow better allocation of funds for the benefit of air quality in the region and local area (see **Attachment E**). In consultation with MBARD staff, staff proposed revisions of the language of COA No. 184 to allow flexibility in funding allocation while maintaining the intended focus of reducing project related emissions of ROG and NOx.

The amended COA No. 184, as proposed to be modified, reads as follows:

*“PWSP-NON-STANDARD-TRAFFIC AND CIRCULATION - AIR QUALITY FEES
The applicant shall pay to the County Planning and Building Inspection*

Department the sum of \$1,857.14 per residential unit for a total amount not to exceed \$2,600,000 for Air Quality mitigation. The \$2,600,000 will be distributed by the Air District as follows: \$1,565,806 for funding agricultural pump retrofits and \$1,034,194 for purchase of school buses. The funds will be distributed to the Monterey Bay Air Resources District (District) to use toward emission reduction grant programs including, but not limited to, the installation of electric vehicle charging infrastructure, incentive programs promoting the purchase of electric vehicles (including school buses), and grant projects following the District's Policies and Procedures Manual for the Carl Moyer Program. (Public Works)''

Compliance Monitoring Actions to be Performed: Applicant shall pay required fees and provide proof of payment to RMA-Public Works Planning and Building Inspection.

Responsible Party for Compliance: Applicant.

Timing: The fees shall be paid at the time of issuance of building permits.

Although this amendment was not at the request of the project applicant, the amendment is to the project applicant's Combined Development Permit. Staff has received written communication from the applicant, UCP East Garrison, LLC, that they agree with the change. (See **Attachment G.**) At its October 16, 2019 meeting, MBARD approved an indemnification agreement requested by County Counsel for MBARD to defend, indemnify, and hold the County harmless against third party challenges to the approval of this amendment. (See **Attachment F.**) As part of the today's actions, staff is requesting the Board of Supervisors approve and authorize County Counsel to execute the indemnification agreement.

California Environmental Quality Act (CEQA)

Public Resources Code Section 21166 and CEQA Guidelines Section 15162(a) state that when an EIR has been certified, no subsequent or supplemental EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that substantial changes are proposed in the project which will require major revisions of the previous EIR, substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the previous EIR, or new information not known at the time the EIR was certified becomes available that shows the project may have a significant environmental effect or a substantial increase in the severity of previously identified significant effects. As stated above, the FSEIR identified that the project would have an adverse impact to air quality and that off-site mitigation (payment of fees to the air district) would reduce that impact, but the impact would remain significant and unavoidable. As also discussed above, MBARD has updated their Carl Moyer Program Policies and Procedures Manual to include additional qualifying projects that would qualify for funding under the program. The mitigation measure, as modified, remains consistent with the total fair share contribution of the project and with the distribution of funds to MBARD, but it allows flexibility in funding allocation while maintaining the intended focus of reducing project related emissions of ROG and NOx. Therefore, the amendment to COA 184 does not present a substantial change to identified environmental impacts previously discussed and addressed in the FSEIR (EIR No. 04-04, SCH No. 2003081086) certified for the East Garrison Specific Plan/Combined Development Permit (PLN030204) and qualifies for an addendum to the FSEIR pursuant to CEQA Guidelines

Section 15164. The addendum reflects the County’s independent judgment and analysis and is provided for the Board to consider (**Attachment B**). In accordance with CEQA Guidelines Section 15164(d), the FSEIR is provided to the Board (**Attachment C**) so that the Board of Supervisors may consider the addendum together with the FSEIR prior to making a decision on the amendment to COA No. 184. The FSEIR has been made available to the Board of Supervisors and the public via the weblink listed as “**Attachment C**” below.

OTHER AGENCY INVOLVEMENT:

Monterey Bay Air Resources District (MBARD) requests that the Board amend this mitigation measure, and has consulted with County staff on recommended language, in order to be able to effectively implement this mitigation. MBARD approved an indemnification agreement (**Attachment F**) on October 16, 2019. County Counsel has approved the indemnification agreement as to form.

FINANCING:

Funding for staff time associated with this project is included in the FY2018-19 Adopted Budget within the RMA-Planning's General Fund 001, Appropriation Unit RMA001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The intent of condition of approval 184 is to fund improvements in air quality with a focus toward development and transportation.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Anna Quenga, RMA Planner

Reviewed by: Brandon Swanson, RMA Chief of Planning

Approved by: John M. Dugan, FAICP, Deputy Director of Land Use and Community Development

The following attachments on file with the Clerk of the Board:

Attachment A - Draft Resolution including:

- Amended Condition of Approval No. 184

Attachment B - Addendum to the FSEIR for the East Garrison Specific Plan Project

Attachment C - East Garrison Specific Plan Project FSEIR, available for public review at RMA

and at www.co.monterey.ca.us/home/showdocument?id=24600

[<http://www.co.monterey.ca.us/home/showdocument?id=24600>](http://www.co.monterey.ca.us/home/showdocument?id=24600)

Attachment D - Board of Supervisors Resolution No. 05-264 Certifying the FSEIR

Attachment E - MBARD Letter Dated September 13, 2018

Attachment F - Indemnification Agreement

Attachment G - Correspondence from Applicant_062019

