



Monterey County

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Board Report

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December 15, 2015

Introduced: 12/4/2015

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Current Status: Agenda Ready

Matter Type: General Agenda Item

- a. Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG BLUFFS, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- b. Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG GROVE, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- c. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12424 with BMC EG GARDEN, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- d. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12425 with BMC EG BUNGALOW, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County; and
- e. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12426 with BMC EG VILLAGE, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG BLUFFS, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- b. Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG GROVE, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- c. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12424 with BMC EG GARDEN, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County;
- d. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12425 with BMC EG BUNGALOW, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of

- the East Garrison project in the former Fort Ord area of the County; and
- e. Approve and authorize the Chair to sign Amendment No. 1 to Advanced Funding Agreement No. A-12426 with BMC EG VILLAGE, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County.

SUMMARY:

The recommended action will provide for developer at the East Garrison Project to continue to provide funding to cover the County's costs of monitoring and reporting on the developer's responsibilities to pay prevailing wages for construction, consistent with the terms of the East Garrison Disposition and Development Agreement.

DISCUSSION:

In 2006, the County's Redevelopment Agency entered into a Disposition and Development Agreement ("DDA") and the County entered into a Development Agreement ("DA") with East Garrison Partners I, LLC ("EGP") for a development (the "East Garrison Project") of up to 1,470 dwelling units, some 34,000 square feet of commercial, retail and community uses, and the rehabilitation of the Historic District. The entire area was graded, a final subdivision map for Phase I was recorded, and Phase I infrastructure for "wet" utilities (e.g., water, sewer and storm drain) was installed.

During the "Great Recession", the East Garrison Project was acquired by Union Community Partners ("UCP"), which became the new Master Developer pursuant to a First Implementation Agreement approved in June, 2011. UCP has been working to fulfill the terms of the DDA and DA since that time and has transferred certain parcels for sale to affiliated entities for the actual construction and sale of homes.

Under the DDA, the Master Developer is allowed to transfer portions of the Project to third party builders, including affiliated entities, for the actual construction of residences ("vertical developers"). In order to do so, the vertical developers must agree to assume obligations of the DDA with respect to the parcels transferred. Pursuant to Section 321 of the DDA, the Master Developer (UCP) or any successor or assign (e.g. BMC EG for vertical development) have the obligation to pay prevailing wages for all construction on the parcels as well as the obligation to bear the County's costs of monitoring and reporting to ensure compliance with prevailing wage requirements. There has already been a legal determination that all initial development in the East Garrison Project (including the residences to be developed by the vertical developers) is subject to the requirement to pay prevailing wages. The payment of prevailing wages for vertical development is assumed by UCP's affiliated BMC EG as required by the FORA Master Resolution.

The Fort Ord Reuse Authority (FORA) has been discussing prevailing wage enforcement practices by the various jurisdictions and looking at different alternatives to help ensure compliance and consistency across the jurisdictions. While these conversations are on-going, it is staff's experience that the County's prevailing wage monitoring program has been working well at East Garrison since its inception in 2013, and we plan to continue implementing this program as is.

In order to meet its construction schedule, UCP has sought permits to begin vertical construction on a limited number of lots in advance of transferring these properties to its affiliated BMC EG companies pursuant to the DDA. UCP has prevailing wage obligations and will continue to fulfill these obligations until the lots are sold to the respective BMC EG affiliate. As such the recommended Agreements - three amendments to existing AFAs and two new AFAs to cover two new product types - formalize this obligation and require a deposit be made to cover the County's costs.

In reviewing the County's costs to date for monitoring prevailing wage compliance under the Phase 1 AFAs, staff feels that increased deposits for the three amended agreements is not be necessary. For the two new agreements, staff suggests an initial deposit of \$100 per unit proposed. If the deposit goes below a certain amount, the developer must replenish the deposit.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel has reviewed the Advanced Funding Agreements and Amendments and approved them as to form. RMA-Planning, Building, Public Works, and the CAO are involved in monitoring compliance with the conditions of the East Garrison project and implementation of the DDA.

FINANCING:

The recommended action will have no impact on the County General Fund. Pursuant to the East Garrison DDA and these Agreements, the vertical developer is required to provide funding for the County's obligations to monitor and report on the developers' prevailing wage obligations.

There are sufficient appropriations within the FY 2015-16 adopted Budget in the East Garrison Fund 182-1070-8431-DEO028 to pay for the County's initial costs for this work, subject to reimbursement from the required deposits.

Prepared by: G.H. Nichols, P.E., Special Projects Engineer
Melanie Beretti, Special Programs Manager

Approved by: Carl P. Holm, AICP, Director, Resource Management Agency

Attachments (On file with the Clerk of the Board):

1. Advanced Funding Agreement with BMC EG BLUFF, LLC
2. Advanced Funding Agreement with BMC EG GROVE, LLC
3. Amendment No. 1 to Advanced Funding Agreement No. A-12424 with BMC EG GARDEN, LLC
4. Amendment No. 1 to Advanced Funding Agreement No. A-12425 with BMC EG BUNGALOW, LLC
5. Amendment No. 1 to Advanced Funding Agreement No. A-12426 with BMC EG VILLAGE, LLC