

Attachment A

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**Before the Board of Supervisors in and for the
County of Monterey, State of California**

In the matter of the application of:

UCP East Garrison, LLC (PLN030204-AMD1)

RESOLUTION NO. ----

Resolution by the Monterey County Board of Supervisors to:

- 1) Certify that the Board considered an Addendum together with the certified East Garrison FSEIR (EIR No. 04-04); and
- 2) Amend Condition of Approval No. 184 of the East Garrison Combined Development Permit (PLN030204).

[PLN030204-AMD1, UCP East Garrison, LLC, East Garrison Specific Plan area, Greater Monterey]

The amendment to an air quality mitigation measure [UCP East Garrison, LLC Combined Development Permit (PLN0304024) Condition of Approval No. 184] came on for a public hearing before the Monterey County Board of Supervisors on June 18, 2019, July 9, 2019 and February 11, 2020. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – The County has processed the subject amendment to Condition No. 184 (an air quality mitigation measure) of the UCP East Garrison LLC Combined Development Permit in compliance with all applicable procedural requirements. The mitigation measure was identified in the certified East Garrison Specific Plan Final Subsequent Environmental Impact Report (FSEIR) and adopted as Condition of Approval (COA) No. 184 of the East Garrison Combined Development Permit (Board of Supervisors’ Resolution No. 05-267 (RMA-Planning File No. PLN030204)) (“project”).
EVIDENCE: a) Certification of FSEIR – On October 4, 2005, the Board of Supervisors certified a FSEIR for the East Garrison Specific Plan project (EIR No. 04-04 (SCH 2003081086), Board of Supervisors’ Resolution No. 05-264) and adopted a Mitigation Monitoring and Reporting Plan and a Statement of Overriding Considerations for the East Garrison Specific Plan Project. As described in Finding 1, Evidence “b” of Resolution No. 05-264, the project analyzed in the FSEIR consisted of: 1) Amendments to the 1982 Monterey County General Plan (Policies 26.1.9 and A-1); 2) Amendments to Monterey County Code Title 21 (Section 21.08.060); 3) the East Garrison Specific Plan; 4) Combined Development Permit; 5) Adoption of a Mitigation Monitoring and Reporting Plan; 6) Allocation of 470 acre-feet per year of water from the County’s 560 acre-feet per year water allotment for the former Fort Ord; and 7) Development Agreement between the County of Monterey and East Garrison Partners I, LLC.

- b) Adoption of the East Garrison Specific Plan – On October 4, 2005, by separate resolution, the Board of Supervisors adopted the East Garrison Specific Plan (Board of Supervisors’ Resolution No. 05-266). The East Garrison Specific Plan area consists of 244 acres, located in the former Fort Ord in northwestern Monterey County in a planning region known as the Greater Monterey Peninsula Area. The Specific Plan includes up to 1470 residential units (including 70 second units) throughout the development; a town center with up to 75,000 square feet of neighborhood retail space; 11,000 square feet of institutional facilities, up to 100,000 square feet of existing buildings reused for artist studio and public uses, approximately 50 acres of open space and parks; and installation of infrastructure.
- c) Approval of the East Garrison Combined Development Permit – On October 4, 2005, by separate resolution (Board of Supervisors’ Resolution No. 05-267), the Board of Supervisors approved a Combined Development Permit consisting of a Vesting Tentative Subdivision Map for the subdivision of the afore-referenced 244 acres into parcels to create parcels for up to one thousand four hundred (1,400) dwelling units (plus up to seventy (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. As demonstrated in the resolution, the Board of Supervisors found that the project conforms with the plans, policies, requirements and standards of the Monterey County Subdivision Ordinance (Title 19), Monterey County General Plan, Greater Monterey Peninsula Area Plan, and Monterey County Zoning Ordinance (Title 21). Adoption of Resolution No. 05-267 included adoption of COA No. 184.
- d) 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).) On-site mitigation to reduce the impact to a less than significant level was found to be infeasible; therefore, air district staff was consulted to determine if off-site mitigation was available and/or feasible. The mitigation strategy suggested by the MBUAPCD at that time 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), and as demonstrated in Finding 3, Evidence “e”, the FEIR identified that implementation of Mitigation Measure No. 4.5-C-1 reduce potential air quality impacts to the extent feasible. As demonstrated in Finding 4, Evidence “b.2” of Resolution No. 05-264, the Board of Supervisors found that there were no feasible mitigation measures that will create sufficient emissions reductions to achieve a less-than-significant impact. Impacts should nevertheless be mitigated to the maximum extent feasible. Implementation of Mitigation Measure No. 4.5-C-1 would

reduce air quality impacts to the greatest extent feasible; however, the impact would remain significant and unavoidable. A portion of Mitigation Measure No. 4.5-C-1 was adopted as COA No. 184 of the Combined Development Permit (Resolution No. 05-267).

- e) Amendments Pursuant to the Monterey County Subdivision Ordinance (Title 19) – Final maps for the East Garrison project have been filed in the Office of the Monterey County Recorder (Phase 1 is filed at Volume 24 of Cities and Towns Page 7; Phase 2 is filed at Volume 24 of Cities and Towns Page 41; and Phase 3 is filed at Volume 24 of Cities and Towns Page 54).
- f) Current Language of COA No. 184 – As adopted, COA No. 184 states, in relevant part: *“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)”* Although the FSEIR identified that project related ROG and NO_x 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 condition explicitly limited the allocation of funds. The condition 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. Due to the degree of specificity of the condition, MBARD cannot allocate funding to other projects that could result in an increased reduction of ROG and NO_x emissions in the area or allocate monies received towards matching funds for the Carl Moyer Program.
- g) Amendment of COA No. 184 –In August 2018, MBARD updated their Carl Moyer Program Policies and Procedures Manual, and projects that qualify for Carl Moyer funds 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. COA No. 184 explicitly limited the allocation of funds to agricultural pump retrofits and the purchase of school buses, which no longer provide the air quality benefit they once did. Because the degree of language specificity does not allow allocation of funding to other projects that would result in an increased reduction of ROG and NO_x emissions in the area, MBARD requests modification of COA No. 184 to allow funding to be used toward emission reduction programs, including matching funds for the Carl Moyer Program. In consultation with MBARD staff, County staff developed the proposed amendment of COA No. 184 to allow flexibility in funding allocation while maintaining the intended focus of reducing project related emissions of ROG and NO_x. Although this amendment was not at the request of the

project applicant, staff received written communication from the applicant, UCP East Garrison, LLC, verifying that they agree with the change. As amended herein, COA No. 184 shall state: *“The applicant shall pay to the County the sum of \$1,857.14 per residential unit for a total amount not to exceed \$2,600,000 for Air Quality mitigation. 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)”* There are no changes to the required compliance monitoring actions, responsible party for compliance, or timing of compliance with this condition, except that a reference to “Planning and Building Inspection” has been updated to refer to “RMA-Public Works” in the compliance action.

- h) This amendment was originally scheduled for the June 18, 2019 Board of Supervisors’ hearing. Notice of the hearing was published on June 6, 2019, in the Monterey County Weekly. At the request of staff with agreement by applicant, the Board of Supervisors continued the June 18, 2019 hearing to July 9, 2019.
- i) This amendment was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on July 9, 2019. Notices were mailed on June 25, 2019, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three (3) notices were posted at and near the project site on June 25, 2019. At the request of staff with agreement by applicant, the Board of Supervisors continued the July 9, 2019 hearing to a date uncertain.
- j) This amendment was timely brought to a duly-noticed public hearing before the Monterey County Board of Supervisors on February 11, 2020. Notices were mailed on January 28, 2020, to all property owners and occupants within 300 feet of the project site, and to persons who requested notice; and at least three (3) notices were posted at and near the project site on January 31, 2020.
- k) The materials for the proposed amendment found in Project File No. PLN030204-AMD1 and Clerk of the Board of Supervisors’ file(s) related to the amendment.

2. **FINDING:** **AMENDMENT** – The amendment to Condition of Approval No. 184 meets the requirements set forth in Government Code section 66472.1 (Subdivision Map Act) and Monterey County Subdivision Ordinance (Title 19) section 19.08 for amendment of a condition of the final map. The Board finds that there are changes in circumstances that make the existing wording of Condition of Approval No. 184 no longer appropriate and that justify revision of the wording of Condition No. 184. The Board further finds that the revision in wording of Condition of Approval No. 184 does not impose any additional burden on owners of the real property of the subdivision and does not alter any right, title

or interest in the real property recorded on the final maps for the East Garrison development.

- EVIDENCE:**
- a) In accordance with Section 19.08.015.A.7 of Title 19 (Subdivision Ordinance) of the Monterey County Code, modifications to a final map where changes would make any the conditions of the map no longer appropriate or necessary shall be considered at a public hearing by the decision making body that approved the original tentative map. The appropriate decision making body shall confine the hearing to consideration of, and action on, the proposed modification. As stated in preceding Finding 1, Evidence “a” and “c”, the Board of Supervisors was the hearing body that certified the FSEIR and approved the Combined Development Permit. Therefore, the Board of Supervisors is the appropriate authority to consider the amendment of COA No. 184.
 - b) This amendment to COA No. 184 would not affect any of the lots or boundary lines established by the final maps or would not impose any additional burden on the present fee owners of the properties, nor alter any right, title or interest in the real property reflected on the recorded map. Rather, the amendment serves the same purpose as the original COA No. 184 but does so in a manner that is more effective, as it allows MBARD to allocate funds in the best manner possible to achieve the purpose. The change to the condition does not alter the amount of the fee to be paid or the manner of payment. (See also explanation at Finding 1 above.)
 - c) Amendments Pursuant to the Monterey County Zoning Ordinance (Title 21 of the Monterey County Code) – In accordance with Section 21.76.120.B of Title 21, amendments to a Combined Development Permit, other than a “minor amendment”, shall be considered by the original hearing body. As stated in preceding Finding 1, Evidence “c”, the Board of Supervisors was the hearing body that certified the FSEIR and the Combined Development Permit. Therefore, the Board of Supervisors is the appropriate authority to consider the amendment of COA No. 184 .

3. **FINDING:** **CEQA (Addendum)** – In accordance with CEQA Guidelines Section 15164(d), the Board of Supervisors considered the addendum (**Attachment B** to the February 11, 2020 Staff Report to the Board of Supervisors) with the FSEIR (**Attachment C** to the February 11, 2020, Staff Report to the Board of Supervisors) prior to approving the amendment to COA No. 184. The Board finds that the amended Condition of Approval (COA) No. 184 does not cause substantial changes to the project and that there are no substantial changes in circumstances or new information of substantial importance that would require major revisions to the adopted FSEIR.

- EVIDENCE:**
- a) A FSEIR for the East Garrison Specific Plan Project (EIR No. 04-04, SCH No. 2003081086) was certified by the Board of Supervisors for the East Garrison Specific Plan and related entitlements. (Board Resolution No. 05-264).
 - b) An Addendum to the previously certified Final Subsequent Environmental Impact Report for the East Garrison Specific Plan application (FSEIR) has been prepared pursuant to CEQA Guidelines

Section 15164 (CCR, tit. 14, sec. 15164). The Addendum attached as **Attachment B** to the February 11, 2020, Staff Report to the Board of Supervisors reflects the County's independent judgment and analysis.

- c) In accordance with Public Resources Code Section 21166 and CEQA Guidelines Section 15162(a), the preparation of a subsequent or supplemental FSEIR is not required for the amendment of COA No. 184. The County has determined, on the basis of substantial evidence in light of the whole record, that amendment of COA No. 184 would not result in substantial project changes that would require major revisions of the FSEIR. There are no changes in circumstances and no new information, not known at the time the FSEIR was certified, that shows the amendment to the condition may have a significant environmental effect or a substantial increase in the severity of previously identified significant effects. As described in Finding 1, Evidence "d," 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 to the greatest extent feasible. However, the impact would remain significant and unavoidable. Mitigation Measure 4.5-C-1 identified that project contributions to fund air quality mitigation programs, encouragement of future site access by transit or para-transit systems, incorporation of bicycle connections between amenities in the area, wiring of homes with 220 volts for electrical vehicle charging, and wiring of homes with multiple data channel access to assist in in-home employment would reduce potential impacts to the extent feasible. The payment of fees to the district to fund air quality mitigation programs was incorporated into the project as adopted COA 184. The remaining action measures were incorporated into the project as adopted COA 39. As demonstrated in Finding 1, Evidence "f" and "g", the mitigation measure, as amended, 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 NO_x. The amended air quality mitigation measure is equally or more effective as the original measure at reducing project related air quality impacts. 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 Project (PLN030204) and qualifies for an addendum to the FSEIR pursuant to CEQA Guidelines Section 15164.
- d) The materials for the proposed amendment found in Project File No. PLN030204-AMD1 and Clerk of the Board of Supervisors' file(s) related to the amendment.

3. **FINDING:** **APPEALABILITY** - The decision by the Board of Supervisors on the amendment to Condition of Approval No. 184 is final and may not be appealed.
- EVIDENCE:** a) MCC Title 19 Section 19.16.025.A states that an appeal may be made to the Appeal Authority by any person aggrieved by a decision of an

Appropriate Authority decision making body other than the Board of Supervisors.

- b) MCC Title 21 Section 21.80.050.A states an appeal may be made to the Appeal Authority by any person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.

DECISION

NOW, THEREFORE, based on the above findings and evidence, and the administrative record as a whole, the Board of Supervisors does hereby:

A. Certify that the Board considered an Addendum together with the previously certified East Garrison Final Subsequent Environmental Impact Report certified for the East Garrison Specific Plan project (EIR No. 04-04, SCH No. 2003081086); and

B. Amend East Garrison Combined Development Permit (Board of Supervisors’ Resolution No. 05-267 (PLN030204)) Condition of Approval No. 184, 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)”

This amendment to Condition No. 184 is subject to the conditions attached hereto and incorporated herein by reference.

PASSED AND ADOPTED upon motion of Supervisor _____, seconded by Supervisor _____, and carried this _____ day of _____, 2020 by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book _____ for the meeting on February 11, 2020.

Date:
File Number:

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN030204-AMD1

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This amendment to East Garrison Combined Development Permit Condition of Approval No. 184, Mitigation Measure 4.5-C-1 (PLN030204-AMD1) allows revising an air quality mitigation measure clarifying the type of qualifying projects under the program to reduce temporary air emissions. All other conditions approved with Board of Supervisor's Resolution No. 05-267 remain in full force and effect. The property is located within the East Garrison Specific Plan area. This amendment was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:
"An amendment to East Garrison Combined Development Permit (PLN030204) Condition of Approval No. 184, Mitigation Measure 4.5-C-1 (Resolution Number _____) was approved by the Board of Supervisors on February 11, 2020. The permit was granted subject to 3 conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of grading and building permits, Certificates of Compliance, or commencement of use, whichever occurs first and as applicable. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits, certificates of compliance, or commencement of use, whichever occurs first and as applicable, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PWSP-NON-STANDARD-TRAFFIC AND CIRCULATION – AIR QUALITY FEES

Responsible Department: RMA-Public Works

Condition/Mitigation Monitoring Measure: This Condition replaces Condition of Approval No. 184 adopted with Board of Supervisors' Resolution No. 05-267 for the East Garrison Combined Development Permit.

The applicant shall pay to the County the sum of \$1,857.14 per residential unit, for a total not to exceed \$2,600,000 for Air Quality mitigation. The funds will be distributed by the County 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 or Monitoring Action to be Performed: Applicant
The fees shall be paid at the time of issuance of building permits.
Applicant shall pay required fees and provide proof of payment to RMA-Public Works.

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