



Legislation Details (With Board Report)

**File #:** 19-0011      **Name:** FOC - EG Affordable Housing Completion Guranttee

**Type:** General Agenda Item      **Status:** Agenda Ready

**File created:** 1/28/2019      **In control:** Fort Ord Committee

**On agenda:** 2/8/2019      **Final action:**

**Title:** a. Receive a status update on East Garrison affordable housing;  
and  
b. Recommend that the Board of Supervisors approve Completion Guarantees for Phases 2 and 3 very-low and low income rental affordable housing units.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Fort Ord Committee Report, 2. Attachment 1 – Completion Guarantee for Phase 2 (Draft), 3. Attachment 2 – Completion Guarantee for Phase 3 (Draft), 4. Attachment 3 – Phase 2 CHISPA Affordable Apartments Designs, 5. Attachment 4 - CHISPA Letter, 6. Attachment 5 – MidPen Letter dated 1/10/19, 7. Attachment 6 – Artspace Letter dated 9/19/18, 8. Attachment 7 – UCP Letter dated 10/5/18, 9. Attachment 8 – Affordable Housing Detailed Timeline

Date	Ver.	Action By	Action	Result
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- a. Receive a status update on East Garrison affordable housing;  
and
- b. Recommend that the Board of Supervisors approve Completion Guarantees for Phases 2 and 3 very-low and low income rental affordable housing units.

**RECOMMENDATION:**

It is recommended that the Fort Ord Committee:

- a. Receive a status update on East Garrison affordable housing;  
and
- b. Recommend that the Board of Supervisors approve Completion Guarantees for Phases 2 and 3 very-low and low income rental affordable housing units.

**SUMMARY:**

The Disposition and Development Agreement for East Garrison (DDA) includes timing “triggers” or milestones by which the affordable housing apartments must be completed. Union Community Partners East Garrison, LLC (UCP) is on track to hit the first milestone for the Phase 2 apartments in March 2019, and the next two milestones for Phase 2 and Phase 3 apartments, respectively, in 2020. There has been concern by UCP and the Successor Agency that the timing triggers were not going to be able to be met, which was formally brought to the Successor Agency’s attention in fall 2017. UCP, Successor Agency, and non-profit partners Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) and Artspace Projects, Inc. (Artspace) have been working diligently to explore options to come up with solutions to address the timing concerns, however, due to the lack of availability of local, state and/or federal funds to pay for the necessary gap funding needs for the Phase 2 and Phase 3 affordable housing apartments it was not feasible to meet the milestones contemplated in the DDA.

To enable the continued building and sale of market rate units in light of the affordable housing funding challenges, in its letter dated October 5, 2018 (Attachment 7), UCP invoked its right to deliver a guarantee to complete the Phases 2 and 3 rental affordable housing units pursuant to the DDA. UCP provided a draft Completion Guarantee for Phase 2 (Attachment 1) and a separate draft Completion Guarantee for Phase 3 (Attachment 2); the guarantees propose a completion date for the Phases 2 and 3 affordable apartments by no later than March 31, 2025. By approving the Completion Guarantees, the County will accept the guarantee as condition to the continued issuance of building permits and certificates of occupancy for the market rate units. By separate action, the Successor Agency will be considering the Completion Guarantees, and the Successor Agency will be agreeing to waive UCP's compliance with the affordable housing milestones in the DDA and will accept the guarantee as condition to the continued issuance of building permits and certificates of occupancy for the market rate units.

Staff anticipates bringing this item before the Board of Supervisors in February, tentatively on February 26, 2019. Staff asks that the Committee consider supporting that the Board of Supervisors approve Completion Guarantees that provide for completion of the affordable housing units for Phases 2 and 3 by no later than March 31, 2025.

**DISCUSSION:**

The Disposition and Development Agreement for East Garrison (DDA) calls for a total of 196 very-low and low rental affordable housing units that are to be jointly funded by the developer (Union Community Partners East Garrison, LLC or "UCP") and the Successor Agency tax increment. Sixty-five (65) units were constructed in Phase 1 by MidPen. These units were completed approximately 5 years ahead of the schedule in the DDA and are occupied and managed by MidPen. CHISPA has been identified as the non-profit to build 65 units that are planned in Phase 2, and Artspace Projects, Inc. (Artspace) is the non-profit to build the remaining 66 units in Phase 3. The DDA establishes timelines, linked to development pace of market-rate units, for completion of the rental affordable housing units.

The DDA requires construction (to the point of weatherproofing and enclosure) of at least 50% of the affordable rental housing units (low and very-low) for Phase 2 prior to issuance of building permits for the 89<sup>th</sup> market rate unit in Phase 3, UCP anticipates it will apply for that permit in March 2019. The DDA also requires that certificates of occupancy be issued for all rental affordable housing units in Phase 2 and construction (to the point of weatherproofing and enclosure) of at least 50% of the rental affordable housing units in Phase 3 prior to issuance of the 191<sup>st</sup> market rate unit building permit in Phase 3. UCP anticipates applying for the 191<sup>st</sup> building permit in December 2019.

There has been concern that the DDA milestones for completion of the affordable rental housing components of Phase 2 and Phase 3 will not be met within the timeframes set forth in the DDA due to numerous factors. UCP formally raised these concerns to the Successor Agency in fall of 2017, and the Successor Agency has been working with the UCP, CHISPA and Artspace to evaluate and address these concerns. Staff presented the timing concern to the Fort Ord Committee at its March 22, 2018 meeting.

CHISPA has invested approximately \$350,000 today in the design and the County has completed design review for CHISPA's 65-unit low and very-low rental apartment building for Phase 2 (Attachment 3), and the estimated project cost is \$22 million. The funding identified in the DDA from the developer and Successor Agency would only provide approximately \$13.7 million, resulting in a shortfall of \$8.3 million that still needs to be raised. CHISPA is committed to constructing the East Garrison apartments and has been working with the Successor Agency and UCP to develop a funding-strategy for the project. Unfortunately, there are few fund assistance programs available to fully fund this project at this time and public funds are not anticipated to become available for this project until 2020 (See Attachment 4).

To determine if a larger non-profit such as MidPen might have other funding resources to leverage, that could advance the Phase 2 project more rapidly, UCP requested to MidPen to consider CHISPA's summary of affordable housing financing options. MidPen concurred that the funding sources identified and challenges facing CHISPA are the same that MidPen would have (See Attachment 5).

Also limiting the project is that the Successor Agency tax increment funds are insufficient at this time to fund the Agency's portion of the units. Staff is updating its tax increment projections to determine when funding for the affordable housing units is anticipated.

For Phase 3, Artspace is committed to constructing the East Garrison affordable housing apartment project, however, the project is likewise dependent on the availability of state and local funding. Because Artspace's Phase 3 development will utilize very similar funding resources as the Phase 2 project, Artspace cannot proceed until Phase 2 has secured its funding commitments to avoid competing for the same funding resources (See Attachment 6).

The DDA contemplated the possibility of such delays and Section (B)(7) of Attachment No. 3 of the DDA provides:

“In the event that Rental Affordable Housing Development does not secure timely financing or experiences construction delays or other Enforced Delay under Section 604 of this Agreement, notwithstanding its best efforts, or is in default under the terms of this Assignment and Assumption Agreement entered into between Developer and such Rental Affordable Housing Developer such that there could be a withholding of building permits and/or certificates of occupancy for market rate units in the Project under Part B of this Attachment No. 3, William Lyon Homes, Inc. [*UCP's predecessor in interest*] (“Guarantor”), in its sole and absolute discretion, may execute and deliver to the Agency one or more guarantees, as applicable, of the completion of the Rental Affordable Housing units through a completion guaranty substantially in the forms attached to this Agreement as Attachment No. 18, and upon delivery of such guarantee(s) to the Agency, the Agency and County shall waive, without further condition, compliance with the conditions to issuance of building permits for market rate units in paragraphs 2 through 5, inclusive, and the issuance of certificates of occupancy for market rate units in paragraph 6, to which such guarantee(s) may be applicable.”

To enable the continued building and sale of market rate units considering the affordable housing funding challenges, UCP has invoked its right to deliver a guarantee to complete the Phases 2 and 3 rental affordable housing units pursuant to the DDA (Attachment 7). UCP provided a draft Completion Guarantee for Phase 2 (Attachment 1) and a separate draft Completion Guarantee for Phase 3 (Attachment 2) proposes a completion date for the Phases 2 and 3 affordable apartments by no later than March 31, 2025. Assuming that funding will be available and contracted by mid-2020, preliminary timelines suggest it is possible the Phase 2 CHISPA project could be completed as early as 2022 (See Attachment 8). If local, state and federal funding options continue to be available for the Phase 3 project, we could see the Artspace apartments completed as early as 2023. UCP has proposed 2025 date to provide a reasonable cushion for possible further funding delays and unforeseen design/construction issues that may arise.

By approving the Completion Guarantees, the Successor Agency would agree to waive UCP's compliance with the affordable housing milestones in the DDA, and the County and the Successor Agency accepts the guarantee as condition to the continued issuance of building permits and certificates of occupancy for the market rate units.

Staff anticipates bringing this item before the Board of Supervisors in February, tentatively on February 26, 2019. Staff asks that the Committee consider recommending that the Board of Supervisors approve Completion Guarantees.

**OTHER AGENCY INVOLVEMENT:**

The Office of County Counsel is reviewing the draft Completion Guarantees. CHISPA and Artspace are the non-profit affordable housing developers identified in the DDA for the Phase 2 and Phase 3 rental apartment units, respectively.

**FINANCING:**

The East Garrison Disposition and Development Agreement (DDA) obligates the (now) Successor Agency to use tax revenues (“tax increment”) generated from the East Garrison project to provide financial assistance for DDA administration, affordable housing, public facilities, and historic building rehabilitation. The Successor Agency has requested \$2 million for affordable housing (Item No. 19 East Garrison Housing Subsidy) on the Recognized Obligations Payment Schedule (ROPS) for FY2019-2020. The Consolidated Oversight Board to the Successor Agency considered and approved the County’s ROPS 19-20 at its January 17, 2019 meeting. The ROPS 19-20 is due to the DOF on February 1, 2019. Staff is in the process of re-evaluating the calculations for affordably housing subsidy per the terms of the East Garrison DDA updating its tax increment projections. Staff anticipates making adjustments to the housing subsidy costs in future ROPS.

**BOARD OF SUPERVISORS STRATEGIC INITIATIVES**

The East Garrison Project achieves the following Board of Supervisors’ Strategic Initiatives:

- Strategic Initiative for Economic Development, “Through collaboration, strengthen economic development to ensure a diversified and healthy economy”, by “Creating better paying jobs... (and adding to the economic vitality of the County.”
- Strategic Initiative for Infrastructure, “Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results”, by “Improving the conditions of ...roads...”, and by “Providing for adequate...infrastructure.”

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

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**Attachments**

- Attachment 1 - Completion Guarantee for Phase 2 Affordable Rental Housing Units (Draft)
- Attachment 2 - Completion Guarantee for Phase 3 Affordable Rental Housing Units (Draft)
- Attachment 3 - Phase 2 CHISPA Affordable Apartments Designs
- Attachment 4 - CHISPA Letter
- Attachment 5 - MidPen Letter dated January 10, 2019
- Attachment 6 - Artspace Letter dated September 19, 2018
- Attachment 7 - UCP Letter dates October 5, 2018
- Attachment 8 - Affordable Housing Detailed Timeline