



LandWatch
monterey county

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February 3, 2003

Fernando Armenta, Chair [Sent by Email and FAX: 831-755-5888]
Monterey County Board of Supervisors and
Redevelopment Agency of Monterey County
240 Church Street
Salinas, CA 93901

RE: Proposed Option Agreement With East Garrison Partners, February 4, 2003 Agenda, Item #S-7

Dear Chairperson Armenta and Members of the Board:

LandWatch Monterey County has the following comments on the Option Agreement submitted to you for approval on your February 4, 2003 Agenda. We have reviewed a Draft dated 1/21/03, made available on the County's website.

1. The proposed Option Agreement transfers substantial control over a large amount of public property (property that the County anticipates receiving from the Fort Ord Reuse Authority) to a private entity.
2. The Agreement was negotiated in private, and has only recently been made available for public review. In fact, the "Draft" document that we have reviewed may not be exactly the same document that the Board is being asked to approve on February 4th.
3. The Option Agreement was negotiated with East Garrison Partners under an arrangement that permitted that entity the "exclusive" right to negotiate. The proposed agreement is extremely complex, and as indicated above, the negotiations were carried out in private. Entering into the proposed Option Agreement will fundamentally change the public's legal rights with respect to the Fort Ord property.
4. We believe that the Board should give the public at least two weeks (and preferably a month) for a full review of the document, prior to its approval, so that the Board can consider informed public comments prior to entering into an agreement that makes such a substantial commitment of an incredibly valuable public asset.
5. On Page 4 of the proposed Option Agreement, the County Redevelopment Agency extends its "Exclusive Negotiating Rights Amendment for Parker Flats (ENA)" to future possible developments on Fort Ord. It might be more prudent, and more in the public interest, to reserve a decision on that matter until a later time, when the developer's performance on the initial phases of the project can be evaluated.

6. On Page 4, the proposed Option Agreement notes that “it may be necessary to provide” various public facilities, including a school site, equestrian facilities, and an area for Native American uses. The Agreement does not require the developer to provide the facilities. Therefore, the inference is that the public will have to provide the facilities at a later date. If this is intended, why?
7. On Pages 4-5, the proposed Option Agreement notes unresolved issues relating to the interest of Monterey Peninsula College (MPC) in certain lands in the East Garrison Area that are proposed for development under the Option. The proposed Option Agreement also indicates that it is expected that these issues will be resolved by “March 2003.” Wouldn’t it be better to resolve these issues first, prior to entering into this binding Option Agreement? What is the need for an accelerated decision with East Garrison Partners, particularly in view of the fact that the subject property is not actually owned by the County?
8. Paragraph 3(a), on Page 5, establishes the purchase price to be paid to the public. This is done by incorporating an “Exhibit E,” entitled “Financial Terms.” The provisions of “Exhibit E” are complex, and difficult to understand, among other reasons because they are based on the developer’s “internal rate of return (IRR).Prior to signing away the public’s rights, the exact financial commitments by the developer should be better understood by the public.
9. “Exhibit E” also specifies that the development fees to be paid to FORA will be imposed on the ultimate purchasers of the homes to be constructed, through the establishment of a Mello-Roos District. Other infrastructure costs are proposed to be paid for by a “Community Facilities District” to be established on the property.In other words, these fees and infrastructure costs are not going to be paid for by the developer (as might normally be anticipated) but by purchasers of the homes to be built on Fort Ord. The effects of this, particularly on housing affordability, ought to be better understood, prior to Board action approving the proposed Option Agreement.
10. On Page 6, in Paragraph 3(b), the County Redevelopment Agency promises the developer not to “negotiate with any other person or entity relating to the use, leasing, acquisition or development of the property without prior written consent of the developer. This means that the developer will be substituted in, in place of the Board of Supervisors, with respect to all the other users of the property, including various nonprofit groups that have traditionally looked to the Board to assist them with respect to their future use of the lands located in the East Garrison Area. Do these groups understand that the County Redevelopment Agency will now not be able to work with them, but that they will have to work with the developer exclusively?
11. As we understand Paragraph 3(d), on Pages 6-7, the County Redevelopment Agency is granting the developer an almost unlimited right to “assign” the developer’s rights under the Option Agreement. It is not unusual for a local developer (who has the confidence of local elected officials, and the public), to obtain rights, which they then assign to other developers, who may not have either local ties, or local support. What is to prevent this happening in this case? If the ultimate developer isn’t Woodman Development, but some large construction conglomerate, based elsewhere, will the public still receive the kind of development that is now anticipated? If there is any danger of such a “substitution” of responsibilities (and the assignment provisions seem to indicate that this is a significant possibility) then it is imperative that the Option Agreement be “tight,” and strictly

describe what the public will get. Otherwise, there is a significant chance that the public will lose the benefit of its bargain.

12. On Page 14, the proposed Option Agreement indicates that the developer will protect the Redevelopment Agency and the County from third party liability claims, but only “to the extent that it is able to obtain environmental insurance on commercially reasonable terms.” This is not strictly defined. It is quite likely that this language provides no real protection to the Agency or the County.
13. Beginning on Page 15, the proposed Option Agreement outlines a series of “conditions precedent” to actual implementation of the arrangements outlined in the Agreement. They include a requirement that the County of Monterey will have entered into a Development Agreement with the developer, promising to approve the development outlined in Exhibit D. How the timing of this relates to the rest of the implementation program needs to be outlined with more specificity, since that step will take substantial time and, most likely, additional environmental review.
14. On Page 16, the “conditions precedent” list outlines a procedure that will allow a Disposition and Development Agreement to be signed prior to a project approval that includes full public participation and environmental review, with the DDA to be “conditional” on the subsequent project approval. This will unfairly burden the public review process with a “pre-commitment” to a particular project. It is legally questionable, and will certainly undermine the public’s belief that the project approval process will be fair and open.
15. On Page 20, the developer is given the right to “serve as the land development entity,” which means that public rights are being transferred to this private developer, specifically including the right to determine the style of the new development through a “Pattern Book.”
16. Paragraph 5(b), on Page 20, says that at least one-half of the market rate units in the project will be built by “members of the Developer.” This is not clear. What is clear is that the developer under the Proposed Option Agreement will be acting as a “wholesaler” of the property. The project level developments may be constructed by other firms, identified as “merchant homebuilders.” This could include large, out-of-county builders without local ties, and without the confidence of the local public.
17. The following sentence in Paragraph 5(c), on Page 20, is ambiguous: “...the Developer will enter into an agreement with the Agency whereby the Developer agrees to maintain and manage the Property at its expense....” Whose expense? The reference is unclear, and there is a major difference between maintaining and managing the property at the developer’s expense, or the Agency’s.
18. Paragraph 6(a) on Page 22 says that the “Agency and County” have already made a final and conclusive determination that the Redevelopment Plan is the controlling land use document for the property. This eliminates the public’s right to amend any item in that Redevelopment Plan, and is inconsistent with other language in the proposed Option Agreement that purports to preserve the County’s retained land use authority. The provisions relating to the General Plan Update now in process also eliminate any right for the County to adopt planning policies that may require a different approach from what the

developer is proposing, and short circuits the CEQA process in a way that is probably not legally appropriate.

19. Page 24 says that the “County Board of Supervisors has taken an appropriate action to reserve a sufficient water allocation [of 470 acre feet] exclusively for the Project, pending environmental review.” In fact, it would not be legal, under CEQA, for the County to make a decision prior to full environmental review.
20. On Page 24, the proposed Option Agreement limits completely the public’s ability to hear from anyone other than the developer about possible alternative development options for either the East Garrison and Parker Flats areas of Fort Ord. This prohibition goes beyond the Project Area, and transfers the public’s right to plan for the future of the County’s lands on Fort Ord to a private development partnership.
21. On Page 32, the proposed Option Agreement turns over public responsibility for legislative actions relating to the Redevelopment Plan to the developer.
22. Also in Paragraph 9(a), on Page 32, the proposed Option Agreement purports to promise that the Agency staff will not make any recommendations that have not been “pre-approved” by the developer. This gives the developer the right to review Agency staff reports, and to demand that they be changed.
23. A proposed “Consent and Agreement of the County of Monterey” is found on Page 36 of the proposed Option Agreement. The County of Monterey is not a party to the Agreement, which is between East Garrison Partners and the Redevelopment Agency. This page refers to “Woodman Development Company,” instead of East Garrison Partners, and is a pledge to carry out all if its future activities consistent with what the Redevelopment Agency has promised. This “consent” by the County signs away its legislative and police powers, and appears to be without consideration.

Conclusion

We hope that the above list of comments and concerns underscores for the Board our basic point: the proposed Option Agreement could have far-reaching impacts on the future of the County’s lands on the former Fort Ord. It is complex, and should be submitted to outside comment and analysis prior to execution.

We specifically urge the Board of Supervisors, acting as the Board of Directors of the Redevelopment Agency, to take the following actions:

1. 1. Ask County Counsel to prepare a thorough legal review of the proposed Option Agreement, responding to the concerns articulated in this letter, and any other concerns that he may identify himself, or that are identified by any other person.
2. 2. Continue consideration of the proposed Option Agreement for one month, to allow for a full legal and public review, prior to action entering into this legally binding commitment.

Thank you for taking our comments and concerns into consideration.

Very truly yours,



Gary A Patton, Executive Director
LandWatch Monterey County

cc: Woodman Development
County Administrative Officer
County Counsel
Nicholas Chiulos
Other Interested Persons