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19 January 2016

Guy Bjerke
Director of Community Reuse Planning
City of Concord
1950 Parkside Dr., MS/56
Concord, CA 94519

Dear Mr. Bjerke:

I write to bring to your attention a substantial inconsistency between Concord's General Plan and the draft Term Sheets for negotiating a Disposition and Development Agreement for the Concord Naval Weapons Station. While the General Plan requires that at least twenty-five percent of all homes on the Weapons Station be affordable to *lower-income* households, both Term Sheets currently contemplate counting *moderate-income* units toward this requirement. The Term Sheets must be amended or clarified to ensure compliance with the twenty-five percent lower-income housing requirement and to bring them into conformity with the General Plan and other city documents. Doing so is essential to the legally sound and timely selection of a master developer and commencement of construction.

Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing and transit equity. The organization has been a core member of the Community Coalition for a Sustainable Concord for eight years, advocating for a comprehensive vision to preserve open space and the environment; cluster sustainable, affordable development around the BART station and other transit centers; and promote inclusiveness and a high quality of life for all.

City Policy Requires That Twenty-Five Percent of Homes on the Weapons Station be Affordable to Lower-Income Households

Concord's City Council established a twenty-five percent lower-income housing requirement for the Weapons Station in January 2012 after a long period of study and discussion about the housing needs of Concord's lower-income residents and workers. *See* Resolution No. 12-4823.3. The 3,020 affordable homes that will be provided through this requirement will ensure that thousands of low-income seniors, veterans,

teachers and other working families will be able to call Concord home for generations to come. The requirement of “[a]t least 25% of units below-market rate for *lower-income* households” is enshrined in the 2012 Area Plan in multiple places. Concord Naval Weapons Station Area Plan, Book 1, p. 100 *emphasis added*; *see also* p. 36. The lower-income housing requirement was incorporated into the city’s 2014 Housing Element as a key strategy in meeting state legal requirements to address the housing needs of lower-income households: 12,270 housing units are planned for the Weapons Station, “25 percent of which will be affordable to *lower-income* households” Housing Element, p. 3 *emphasis added*. This requirement was also included in the 2014 Request for Proposals from master developers for the Weapons Station. *See* Master Developer RFP: Clarifications to Housing Requirements.

Both state law and the city’s General Plan clearly define lower-income households as distinct from moderate-income households. Health & Safety Code §§ 50079.5, 50093, 50105, 50106. Lower-income households are those making 80% or less of the Area Median Income, in Concord, a family of three earning less than \$59,600. *See* Housing Element, p. 29. Moderate-income households are those making up to 120% of the Area Median Income, a three person household in Concord making \$101,000. *See id.*

The Current Term Sheets Do Not Appear to Comply with the City’s Lower-Income Affordable Housing Requirement

Despite Concord’s unambiguous requirement that at least twenty-five percent of the homes on the Weapons Station be affordable to *lower-income* households, both Term Sheets currently appear to contemplate counting *moderate-income* units toward this requirement. The Catellus Term Sheet states that “[d]eveloper’s proforma has assumed fifty eight percent (58%) of the affordable housing will be for low and very-low incomes.” Page 31. This appears to imply that forty-two percent of the affordable units (462 units) would be for households of moderate-income, which would be inconsistent with the General Plan and RFP. Similarly, the Lennar Term Sheet states that twenty-percent of the affordable units (165 units) “shall be affordable to moderate income households” and that the remaining affordable units shall be “at a range of affordability levels.” Page 7. This language explicitly counts some moderate-income units toward the lower-income housing requirement and fails to specify the affordability levels of the remainder, which is inconsistent with the General Plan and RFP.

Deviation from General Plan Requirements Would Introduce Legal Uncertainty and Delay into the Disposition Process

Deviation from the twenty-five percent lower-income affordable housing requirement could introduce delay and legal uncertainty into the process of developer selection, subsequent negotiations, and planning and environmental review for the Weapons Station. Among these issues, such action would be inconsistent with the General Plan, undermine the validity of the Environmental Impact Report on the Area Plan, and raise substantial questions regarding the state’s certification of the city’s Housing Element.

These serious issues have a simple solution: prior to selecting a master developer, amend or clarify the Term Sheets to require each developer to ensure that at least twenty-five percent of all homes built on the Weapons Station are affordable to *lower-income* households, exclusive of any *moderate-income* housing commitments.

We look forward to a prompt written response from the city about how it will resolve this issue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sam Tepperman-Gelfant". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

Sam Tepperman-Gelfant
Senior Staff Attorney