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September 24, 2015

VIA E-MAIL (valerie.barone@cityofconcord.org) AND U.S. MAIL

Valerie Barone
City Manager
City of Concord
1950 Parkside Drive
Concord, CA 94519

Re: Demand for Investigation of Lennar Concord LLC's Violation of Agreement to Negotiate and to Allow Evaluation Board to Communicate its Recommendation for the Master Developer for the Disposition and Development of the Inland Area of the Concord Naval Weapons Station.

Dear Ms. Barone:

On behalf of our client, Catellus Development Corporation ("Catellus"), we demand that you conduct an immediate investigation into whether Lennar Concord, LLC ("Lennar") has violated the terms of the Agreement to Negotiate ("Agreement") with the City of Concord by lobbying the City Council in contravention of explicit provisions of the Agreement. We believe these activities have unfairly influenced the selection process, which by contract was to focus on the merits of the Master Developer candidates and be free from political influence. This letter will supplement information that has already been provided to City Attorney Mark Coon in August. Mr. Coon refused our request to investigate at that time.

We also request an immediate explanation justifying the City Council's direction to the Local Reuse Authority ("LRA") Evaluation Board to change the terms of the protocol established for this RFP process. Specifically, the City established a robust selection process and appointed an Evaluation Board¹ to carefully vet the Master Developer candidates for the Inland Area of the Concord Naval Weapons Station on the merits of their qualifications and to make a written recommendation to the Council as to the preferred candidate. We have been advised that the City Council directed the Evaluation Board to remove that recommendation from its report to the City Council, suppressing its recommendation from public view. This is an unsupportable change in the agreed upon protocol and raises serious questions about the fairness of this process as well as the City's adherence to the terms of the Agreement. Catellus requests that any consideration of the Evaluation Board's report and any decision on the Master Developer be delayed until an investigation is completed and the Evaluation Board's report is restored to its

¹ According to the City's reports, the Evaluation Board consists of Michael Wright, Executive Director of the LRA, Mark Coon, City Attorney, Jovan Grogan, Deputy City Manager, Victory Walker, Director – Community and Economic Development, John Montagh, Manager – Housing and Economic Development, Steve Voorhies, Parks Manager, Craig Labadie, Special Counsel to the LRA, and Paul Silvern, Real Estate Advisor to the LRA.

original form, which included a recommendation to the Council for its preferred Master Developer.

Investigation of Lennar's Violation of the Lobbying Provisions of the Agreement

The redevelopment of the 5,000 acre property known as the Inland Area of the Concord Naval Weapons Station, also known as the "CRP Area," is a landmark project for the City of Concord and the selection of a well-qualified Master Developer who can lead the effort in a way most beneficial to the City and the people who live there is of paramount importance. The City has gone to great lengths to design the process for selection of the Master Developer in a manner that would ensure that the selection was made on the merits of the Developer and the strength of each Developer's proposal rather than on political considerations. To this end, the City established a robust selection process and established an Evaluation Board to carefully vet the Master Developer candidates on the merits of their qualifications.

That process led to the selection of two final Master Developer candidates, Catellus and Lennar, each of whom was required to deposit \$250,000 with the City, which Catellus did in good faith. The Developers were also required to sign an Agreement with the City that required that all discussions regarding the project take place with the LRA Executive Director and the City's legal, financial, and planning advisers to support the evaluation of the Developer candidates on the merits of their qualifications. More importantly, the Agreement contains a "Lobbying Prohibition" which states that Developer candidates "...shall not engage in discussion, negotiations or lobbying..." of any members of the City Council. (Agreement to Negotiate, Section 11.) This provision prohibited direct or indirect discussions with the excluded City parties, regardless of whether those discussions pertain to the development of the Concord Naval Weapons Station.

On August 17th, Catellus received a call from a concerned citizen of Concord suggesting that Catellus investigate contributions to Mayor Grayson's campaign and alleging that some of the major donors are connected to Lennar. We investigated this claim and discovered donations that raised serious concerns that Lennar was not complying with the terms of the Agreement and was engaged in a lobbying campaign that included the donation of large campaign contributions to Mayor Grayson and the employment of former San Francisco Mayor Willie Brown, a high powered out-of-town lobbyist, to influence the decision making process. We immediately brought this information to the attention of City Attorney Mark Coon and requested an investigation.

We advised Mr. Coon that our research indicated that Lennar may have violated the Lobbying Prohibition. Section 11 of the agreement clearly prohibits Lennar from engaging in direct or indirect discussions or contacts with any member of the City Council. We advised Mr. Coon that it appeared several associates and advisors of Lennar have donated approximately \$21,000 in campaign contributions to Mayor's Grayson's campaign for State Assembly. In addition, we alerted him to the fact that there are indications that Lennar may have arrangements with several prominent local companies that are also lobbying on its behalf, which would also be a violation of the Lobbying Prohibition. This donation activity represents a significant portion of the funds that Mayor Grayson has raised for his Assembly campaign. The fact that several individuals and entities affiliated with Lennar who have no contact to Concord have made significant contributions to Mayor Grayson's campaign strongly suggests that Lennar is

attempting to influence the Mayor with these contributions and suggests that Lennar either directly or through its representatives has also engaged in discussions with Mayor Grayson or his representatives about his campaign and perhaps has discussed the development.

In addition to the campaign contributions, we advised Mr. Coon of our belief that Lennar has engaged in discussions with third parties regarding their participation in the project in exchange for their support of Lennar's proposal. Catellus made the City aware of these concerns earlier this year and in response the City requested that each Developer candidate sign an amendment to the Agreement which prohibits the Developer candidates from negotiating with vertical developers or other third parties. Notwithstanding the amendment, we are concerned that such arrangements with Lennar exist and are influencing the decision making process in contravention of the Agreement.

Lastly, Lennar has apparently hired former San Francisco Mayor Willie Brown, a registered lobbyist, to lobby local officials in support of Lennar. Mayor Brown has a long history with Lennar. He was Mayor of San Francisco when the San Francisco Redevelopment Agency **overruled the recommendation of its own consultant/staff** and selected Lennar as the Master Developer of the Hunters Point Shipyard. In addition, Mayor Brown is a principal at Golden Gate Global, the EB-5 immigrant investment fund which Lennar is using to fund the Hunter's Point project. We understand that Mr. Brown has presented to the City Council on behalf of Lennar, and we are concerned that there have been other improper lobbying activities as well. We would like you to disclose any contact or knowledge of any contact with Willie Brown or other parties acting on behalf of Lennar with any City Councilmember or their representatives.

Since our contact with Mr. Coon, the issue of the political contributions to the Mayor became the subject of several blog posts and newspaper articles and the Mayor elected to return some of the contributions but decided he would not recuse himself from the Council's deliberation of this matter. However, to our knowledge there has been no investigation of Lennar's breach of the Agreement. Again, Mr. Coon declined our earlier request that the City conduct an investigation. We urge you to immediately investigate whether Lennar has violated the terms of the Agreement. If your investigation should determine that Lennar directly or indirectly has had discussions with or attempted to influence Mayor Grayson or any other member of the City Council, we urge you to immediately terminate the Agreement with Lennar in accordance with Section 11.

Suppression of the Evaluation Board Recommendation

The City initiated a written RFP process for the selection of a Master Developer for the disposition and development of the Inland Area of the Concord Naval Weapons Station. The Final RFP included detailed information about the selection process and the role of the Evaluation Board in that process, culminating in a recommendation to the City Council for the Master Developer. The RFP also included a draft of the proposed Negotiation Agreement, making it clear that the final process would be free from lobbying activities and would be based on the merits of the proposals.

The RFP states that the last stage of the selection of the Master Developer will proceed as follows:

The LRA anticipates that one of the two Candidate Master Developers, will be recommended for designation by the City Council as the Master Developer eligible to negotiate with the LRA a proposed Disposition and Development Agreement to be consistent with the negotiated Term Sheet and the form of Disposition and Development attached hereto with such modifications as have been requested by Respondent in its proposal and agreed to by the LRA in its discretion.

The final RFP also included a specific date for the "Recommendation and Selection of Master Developer."

Throughout the RFP process, it was made clear to the candidates and the public that a key function of the Evaluation Board would be to make a recommendation to the City Council based on the comprehensive effort and many years of work it has put into the project and the evaluation of the Master Developers candidates. Catellus participated in this process in good faith reliance on this protocol, with the understanding that politics would not influence the decision and that the Evaluation Board's recommendation was a key aspect of the process and an important precedent for the final decision of the City Council. In addition to depositing \$250,000 with the City to cover its costs, Catellus also invested significant money and time pursuing this opportunity in reliance on the integrity of the process.

Catellus was advised that the written report and recommendation of the Evaluation Board would be issued early this week (Monday or Tuesday). Then on Monday, when we followed up on the timing, we were advised that the report would be delayed because the Evaluation Board was directed by the City Council to remove its recommendation of the Master Developer from the report. This unprecedented direction is at complete odds with the RFP's requirements and with fundamental principles of fairness that must govern any City action. It is inconceivable to us how it is in the public interest--and particularly in the interest of Concord's citizens--to not have the City Council (and the public, at-large) benefit from a recommendation from their hand-picked Evaluation Board after its exhaustive effort evaluating the merits of the two final Master Developer candidates consistent with the protocols and process dictated by the RFP.

Further, we question whether this indefensible change in the RFP process complies with the Brown Act, as we cannot find any indication it was properly noticed or agendaized at a meeting of the Council. The only publicly noticed meeting during the relevant time period was a special meeting of the City's Infrastructure and Franchise Committee held on September 21. The agenda for that meeting does not include any item even remotely connected to this project. Nor does this item fall within the jurisdiction of the September 17 Planning Commission meeting. The only recent meeting of the entire Council was a special meeting on September 16, during which the Council met in a closed session conference with its real property negotiator. Under the Brown Act, the only permissible topic of discussion in that closed session would have been the price and terms of payment of the purchase of the real property at issue. Discussion of the RFP process in general, and in particular any official action or direction to alter the staff recommendation regarding a Master Developer would have violated the Brown Act. Finally, even if such action were

taken, it would need to have been reported out at the conclusion of the closed session, which reporting did not happen.

We do not know whether the Council took action during its September 16 closed session or whether it did so after that date without any notice to the public. But either way, based on our information that the City Council has recently directed the Evaluation Board to alter its report, we can only conclude that the public has been deprived of its right to monitor and participate in the City's business as required by the Brown Act. Any such violation must be cured by allowing the City Council to consider, in open session, the complete Evaluation Board's recommendation.

Finally, and also disturbingly, given the concerns noted above about Lennar's likely breach of the Lobbying Provision of the Agreement, we are concerned that this last minute effort to suppress the Evaluation Board's recommendation is the result of prohibited lobbying activities.

Conclusion

An investigation of Lennar's activities is necessary in order to ensure that each Master Developer candidate has complied with the terms of the Agreement with the City. And the City Council's last minute direction to suppress the Evaluation Board's recommendation of its preferred Master Developer is a violation of the RFP process and a breach of its obligation to deal in good faith with Catellus. More importantly, the people of the City of Concord deserve that the selection of the Master Developer, which will have an enormous impact on the future of the City, is the result of a fair and equitable process untainted by the appearance of backroom dealings and political influence, which is expressly prohibited by the Agreement and the RFP.

We trust that the City is committed to ensuring a level playing field for the selection of a Master Developer and will immediately investigate Lennar's Lobbying activities and restore the Evaluation Board's original report and its important role in making a recommendation to the Council of its preferred Master Developer. Until this occurs, Catellus requests that any consideration of the Evaluation Board's report and any decision on the Master Developer be delayed.

Very truly yours,



Andrew G. Giacomini

AGG/cr

cc: Members of City Council