CNWS CFP Term Sheet Talking Points and Summary

Our Recommendation to Council

Do not accept this Term Sheet as presented on the 7th. There are a variety of issues that need to be resolved in order to move forward with this plan. These issues, in brief, are;

- This term sheet proposes only 3,020 units of realistic affordable housing, or 19% of the total units, falling short of the 25% requirement from the Area Plan, and risking state intervention for not complying with the Surplus Land Act.
- The proposed Junior Accessory Dwelling Units (JADUs) will not function as actual affordable housing given the difficulty of monitoring and income-certifying tenants, and the lack of controls to prevent these units being used for non rental purposes.
- The role of Related as the Affordable Housing Administrator is too large; the city should act as an impartial judge to select affordable housing developers and Related's share of the affordable housing construction should be decreased substantially from 75% to no more than 20%.
- The TOD phase must be moved up to the first phase of development, which will allow BART to complete their housing plans for the North Concord Station parking lot and ensure that residents and workers in the first phase will not negatively impact climate goals with increased car travel
- The process leading up to this meeting has not allowed any time to substantively address the concerns of residents and stakeholders.

In light of these, Council should either:

A. **Extend the ENA** and direct staff to work with CFP and key stakeholders to make substantive changes to the Term Sheet**, OR**
B. **Let the ENA expire** and seek a master developer who can deliver on the community's goals for the CNWS.

If this Term Sheet is passed as is, we will have serious concerns with the Project and would explore possible avenues to address these shortfalls.

More detail on each of these issue areas, as well as a summary of where we are now in the process can be found below.

Background

On Saturday January 7th The Concord City Council received a presentation from staff and the development team on the Term Sheet proposed by **Concord First Partners (CFP)** for the development of the **Concord Naval Weapons Station (CNWS)**. After a lengthy period of questions from Council and comment from the public, the Council decided to delay their discussion and vote on this item until **January 28th**. A Term Sheet is essentially the first binding step of putting CFP in charge of the development of the entire CNWS project. If it passes, CFP and the City will start developing a set of legal documents to give CFP control of the project area, formalize their duties to the City, and allow them to start developing. As the **Master Developer**, CFP would be responsible for constructing all of the infrastructure required for the project (roads, sewers, utility connections, etc.) as well as preparing sites for development of individual commercial and residential projects. They would also be in charge of contracting with sub-developers to build individual commercial and residential projects. Currently, CFP and the City have an **Exclusive Negotiating Agreement (ENA)**—a document allows them to negotiate with the City without the risk of another developer being considered. The ENA is currently set to expire on January 31, 2023.

Affordable Housing Percentage

1. **What the Term Sheet Proposes:** Constructing 3,020 units of affordable housing out of the 15,595 total units in the project (or 19%)
2. **Context:** The Area Plan—a document created by the City with stakeholder input in 2012 that sets out the expected character of the development of the CNWS including number of units, affordability, and open space—requires the housing in the project to be 25% affordable housing. At the time this was written, the overall number of units was 12,272 meaning the number of affordable units was expected to be 3,020.
3. **What are our issues:**
    a. The Area Plan was not meant to require 3,020 units of affordable housing *regardless* of the total number of units. Instead, it requires that 25% of the units built on the CNWS be affordable.
    b. CFP is upping the number of total units in the project to increase their earnings, while effectively lowering the percentage of affordable units by keeping only 3,020 when the correct number is 3,899
    c. An amended Term Sheet should include a commitment to construct 3,899 units of affordable housing
    d. Without such a commitment, the project's exemption from the **Surplus Land Act**—a state law which requires government owned land to be offered to affordable housing developers—is at risk, which may lead to legal issues for the Project down the line.

JADUs

1. **What the Term Sheet Proposes:** Constructing 879 Junior Accessory Dwelling Units—Otherwise known as JADUs, which are separate dwelling units constructed as part of a single family home. These JADUs will be restricted as affordable—meaning the deed for the house they are a part of will have a legal restriction that the attached JADU can only be rented to people below a certain income—while the homes they are attached to will be bought by private homeowners.
2. **Context:** This proposal is new to this term sheet, and while other cities have recently attempted to provide affordable housing with Accessory Dwelling Units (ADUs), none have done so close to this scale. CFP appears to be hoping to count these JADUs towards the 25% affordable unit requirement from the area plan, as, if they were counted, their plan would propose 3,899 units of affordable housing out of 15,595 (or 25%).
3. **What are our issues:**
    a. The city does not have the capacity to monitor 879 JADUs scattered across the CNWS area and the Term Sheet does not offer any ideas that support the development of such capacity
    b. Due to the need for residents of affordable units to have their incomes certified to establish they are eligible, private homeowners would have to undertake a large amount of work to rent these units

c. The lack of oversight and difficulty to rent these units will likely result in many being rented to tenants who do not qualify for income restrictions
d. Many of these JADUs could be used by their owners for non-rental purposes, meaning they will be counted towards the affordable rental housing requirement without being used for affordable rental housing.
e. These units will be uniformly smaller than the other non-JADU units of affordable housing in the project, meaning they will be less suited to families

Related

1. **What the Term Sheet Proposes:** That Related—a national scale for-profit housing developer with an affordable housing section—act as the Affordable Housing Administrator for the entirety of the project. In this role they will select sites for affordable projects and help evaluate applications from other affordable housing developers. For this service, they will receive the right to develop 35% of all the affordable housing in the project by themselves, as well as an additional 40% of all affordable housing in the project to develop in partnership with other affordable developers.
2. **Context:** Related has worked with many nonprofit affordable housing developers before on projects in the Bay Area. It is also not unusual for local governments to contract with a consultant to administer a competitive process, however it is unusual for that contractor to be a developer themselves.
3. **What are our issues:**
   a. A developer, especially a for-profit one, should not be in charge of the competitive process to select other developers as there is a conflict of interest. Related cannot both be an applicant and a judge. The City or a non-developer contractor should fill this role.
   b. 75% of all the affordable units in this project is too much to give to one group, especially given that a variety of nonprofit affordable housing developers have been involved in this project for decades. This percentage should be reduced to no more than 20%.

Phasing

1. **What the Term Sheet Proposes:** That the Transit Oriented Development (TOD) phase—the phase which will be centered near the North Concord Bart Station and which includes the most housing—be the second phase to be developed after the Innovation District—the phase with the most commercial and office real estate. Efforts will focus on expanding Willow Pass Road—the main access route via car for the new area—as part of the first phase.
2. **Context:** with the timeline currently suggested, this would mean there would be no development around the North Concord BART Station for 10 or more years. CFP have given a variety of reasons for this delay, including; feasibility given infrastructure needs, lack of government funding, need for BART coordination. BART submitted a letter to the City on January 6 indicating that their development of the BART land adjacent to the North Concord BART Station and planned TOD area is dependent on infrastructure improvements that will be undertaken as a part of the CNWS development. They also contested the assertion that this phase should be dependent on their planning for the BART owned parcel, considering its small size relative to the rest of the TOD phase.
3. **What are our issues:**

a. The TOD phase is the most important phase of this project because it has the most housing, the most affordable housing, and connects this project with high quality transit
b. Delaying this phase means there will be no realistic access to the existing BART station for anyone living and working in the first phase. This will make it more difficult for low-income workers or residents to travel to and from the Innovation district, and ensure more people rely on cars.
c. State, Federal and regional funding for affordable housing usually prioritizes projects with access to high quality public transit. Delaying the TOD phase means affordable projects will be less competitive for this funding because they will not have access to the BART station.

Process

1. **What the Term Sheet Proposes:** CFP negotiated this term sheet with the City behind closed doors and without the involvement of key stakeholders. The Term Sheet was then released on November 30th with a possible vote on January 7th, meaning interested parties and residents had a little more than a month—with the interruption of the holidays—to review and submit any feedback.
2. **Context:** The City and CFP have a deadline of January 31st to either extend or let expire the Exclusive Negotiating Agreement (ENA)—a legal document that commits CFP and the City to exclusive talks in preparation for officially making CFP the Master Developer for this project.
3. **What are our issues:**
   a. The short timeline and holiday season have made it difficult to ensure necessary public engagement with this process.
   b. The truncated timeline and lack of inclusion of key stakeholders has made it difficult to ensure feedback from the community will be addressed and the Term Sheet will be meaningfully amended to reflect feedback.
   c. As reported on January 5th by the East Bay Times, Discovery Builders (one of the three developers that make up CFP with a 45% interest) is embroiled in a series of lawsuits between members of the Seeno family–the owners of Discovery Builders—regarding its leadership. The seriousness of the issues outlined in that article makes it doubtful that CFP will be able to deliver on the promises it has made in this Term Sheet and stick to the performance deadlines set by the City.