



City of Concord

# **Concord Naval Weapons Station Concord Reuse Project Area Plan Implementation**

**Request for Master Developer Qualifications 2023**

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Concord Reuse Project Area Plan  
Implementation**

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Qualifications 2023**

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Submittal Due Date:  
July 14, 2023, by 3:00 P.M. PST

Submittal will be electronic only – see Section 5

Mandatory (for Lead Developers) Pre-Response Conference: June 1, 2023, at 10:00 am Pacific Daylight Time to be held via Zoom; Respondents must e-mail the City's Local Reuse Authority administrative contact (Israel Mora) at [israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org) to receive a link by 3:00 pm Pacific Daylight Time on May 31, 2023, including their full name, job title, company name, and indication of whether they are considering a Lead Developer role or not.

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# 1 Introduction

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## 1.1 Purpose of This Request for Qualifications

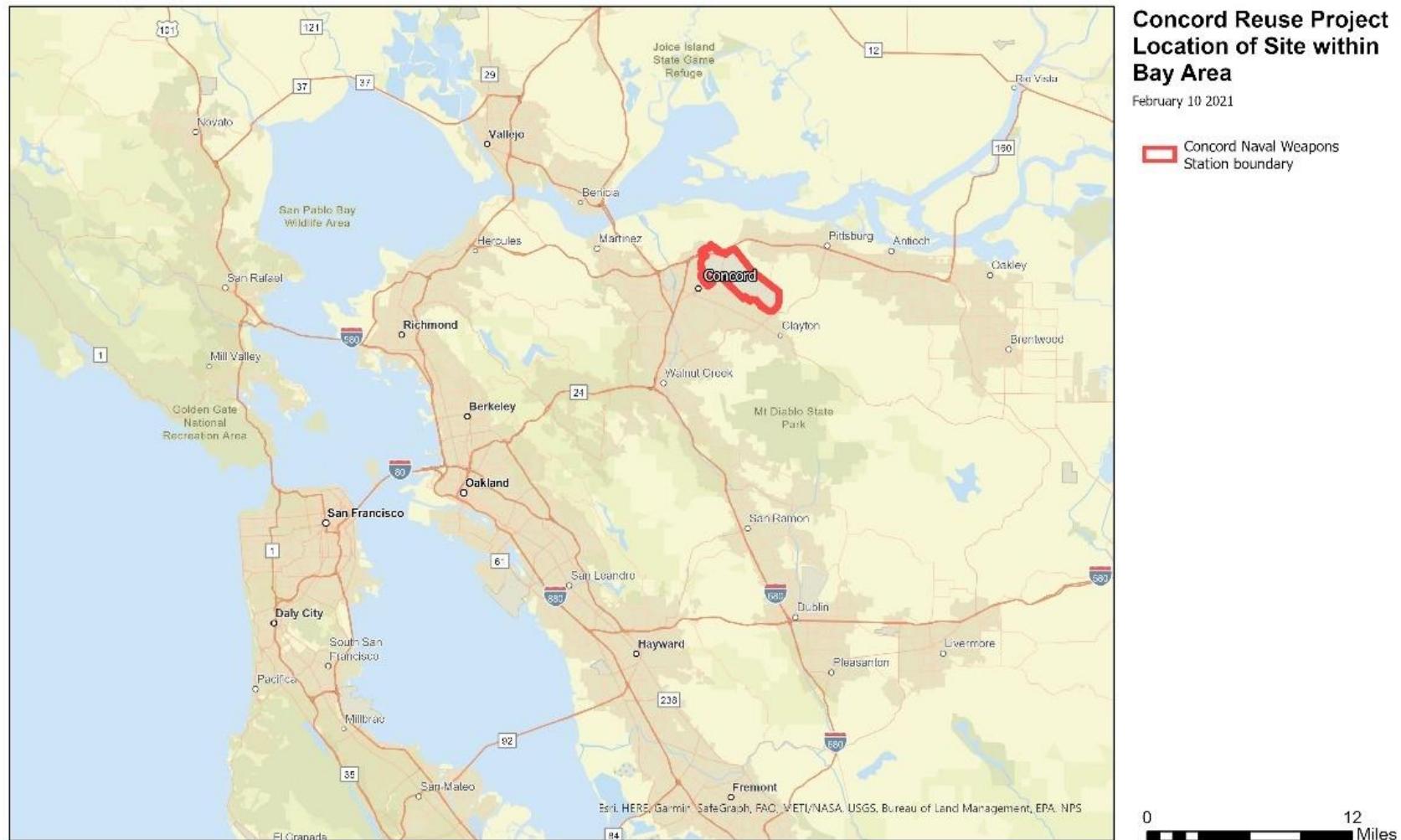
The City of Concord Local Reuse Authority (LRA) seeks Statements of Qualifications (SOQ) from qualified Master Developer real estate teams (Respondents) to respond to this Request for Qualifications (RFQ) for the development of approximately 2,300 acres (Development Footprint) comprising a portion of the 5,046-acre property formerly known as the Inland Area of the Concord Naval Weapons Station (CNWS), located in the City of Concord in Contra Costa County. The CNWS property is being disposed of through the federal Base Realignment and Closure Act (BRAC). See Figure 1 for a map showing the CNWS's regional context in the Bay Area.

According to Plan Bay Area 2050 (October 2021), the nine-county region is expected to grow from nearly 8 million to 10 million new residents by 2050. Contra Costa County employment is also expected to grow from 4 million to more than 5 million. The redevelopment of the CNWS will contribute significantly to that growth. It is one of the largest mixed-use, community-focused, and transit-oriented development (TOD) opportunities in the Bay Area and in Northern California.

Through this RFQ and interview process, the LRA seeks to select a Master Developer capable of planning, financing, and implementing the comprehensive redevelopment of the Development Footprint. The resulting development should include vibrant and walkable, mixed-use communities that are financially and fiscally self-sustaining. The LRA is also committed to making 25% of the new housing units available for housing affordable to lower-income households (see Section 3.15 below). The Project should maximize the amount of residential, business, and recreational uses within walking distance of existing and planned public transit, which are key elements of a Transit Oriented District (TOD).

The LRA intends to select a Master Developer with a demonstrated record of accomplishment developing the land uses sought by the Concord community and the LRA. The Master Developer must assemble a team that can design, secure permits for, finance, construct, and market multiple mixed and single use developments that are substantially compatible with the Concord Reuse Project (CRP) Area Plan, which was adopted as part of Concord's 2030 General Plan. The Master Developer must be familiar with real estate markets and development procedures in California generally and the San Francisco Bay Area in particular. Previous experience with the unique challenges and opportunities of redeveloping a former military facility is preferred, but not required.

Figure 1 Regional Location of the CNWS



## 1.2 Project Terminology

This section lists the common acronyms and terminology used throughout this RFQ and its Appendices.

### General terms:

- **ABAG:** Association of Bay Area Governments.
- **ACOE:** Army Corps of Engineers.
- **Base Closure Law:** Synonymous with BRAC
- **Base Realignment and Closure Act (BRAC):** Process by which the CNWS was officially approved for closure. Legislation stipulates that the Navy retain ownership of the CNWS until a Reuse Plan is completed by the LRA and agreements about property transfers are reached.
- **CCCSD:** Central Contra Costa Sanitary District.
- **CCWD:** Contra Costa Water District.
- **CDFW:** California Department of Fish and Wildlife.
- **CEQA:** California Environmental Quality Act
- **CFP: Concord First Partners, LLC**
- **CFP Term Sheet:** The proposed Term Sheet for Disposition and Development Agreement and Statutory Development Agreement between the City of Concord, in its capacity as LRA and Concord First Partners, LLC dated November 15, 2022, which the City Council rejected on January 28, 2023. The link to the CFP Term Sheet is found in Appendix H.
- **City of Concord Local Reuse Authority (LRA):** The designated entity pursuant to the BRAC process, acting through the Concord City Council, to coordinate with the Navy on the CNWS transfer and the community point of contact for redevelopment of the CNWS. The LRA is responsible for selecting the Master Developer.
- **City of Concord (City):** Generally synonymous with the LRA but referenced specifically when addressing land use entitlement activities.
- **Confidential Information:** Materials submitted not for public review, which must be appropriately identified as described in Appendix F and submitted in hard copy, sent via overnight courier service with signature required to Gerald J. Ramiza, Partner; Burke, Williams & Sorensen, LLP; 1999 Harrison Street, Suite 1650; Oakland, CA 94612-3520.
- **CRP:** Concord Reuse Project

- **CY:** Cubic yards (unit of measurement).
- **DDA: Disposition and Development Agreement**
- **EBRPD:** East Bay Regional Park District.
- **EDC:** Economic Development Conveyance
- **EIR:** Environmental Impact Report
- **ENA:** Exclusive Negotiation Agreement.
- **General Plan:** The City's 2030 General Plan, including the CRP Area Plan.
- **GSA:** U.S. General Services Administration.
- **HUD:** U.S. Department of Housing and Urban Development
- **LBA:** Legally Binding Agreement
- **Lead Developer:** The prime Master Developer of a Master Developer Team responding to this RFQ and submitting an SOQ.
- **LF:** Linear feet (unit of measurement).
- **LRA Team:** City staff and members of the LRA consultant team (listed in Section 1.3) who have collectively prepared this RFQ.
- **Master Developer:** The development company or team to be selected by the LRA pursuant to this RFQ, which will develop the Project.
- **Master Developer Team:** The Lead Developer plus any other developers and key professional team members, such as architects, engineers, affordable housing partners, contractors, equity providers, lenders and attorneys whose participation is considered critical for consideration by the LRA.
- **MG:** Million gallons (unit of measurement).
- **MGD:** Million gallons per day (unit of measurement).
- **MOA:** Memorandum of Agreement
- **MTC:** Metropolitan Transportation Commission.
- **Navy:** U.S. Department of the Navy.
- **NEPA:** National Environmental Policy Act.
- **NOP:** Notice of Preparation.
- **PDA:** Priority Development Area.

- **Respondent(s):** Master Developers or Master Developer Teams responding to this RFQ and submitting an SOQ.
- **RFQ:** Request for Qualifications
- **RW:** Recycled water.
- **RWQCB:** California Regional Water Quality Control Board.
- **SF:** Square feet (unit of measurement).
- **SLA:** Surplus Land Act
- **SOQ:** Statements of Qualifications.
- **TC:** Time-of-concentration values.
- **TOD:** Transit-oriented development.
- **USBR:** U.S. Bureau of Reclamation.
- **USFWS:** U.S. Fish and Wildlife Service

#### **Geographic terms:**

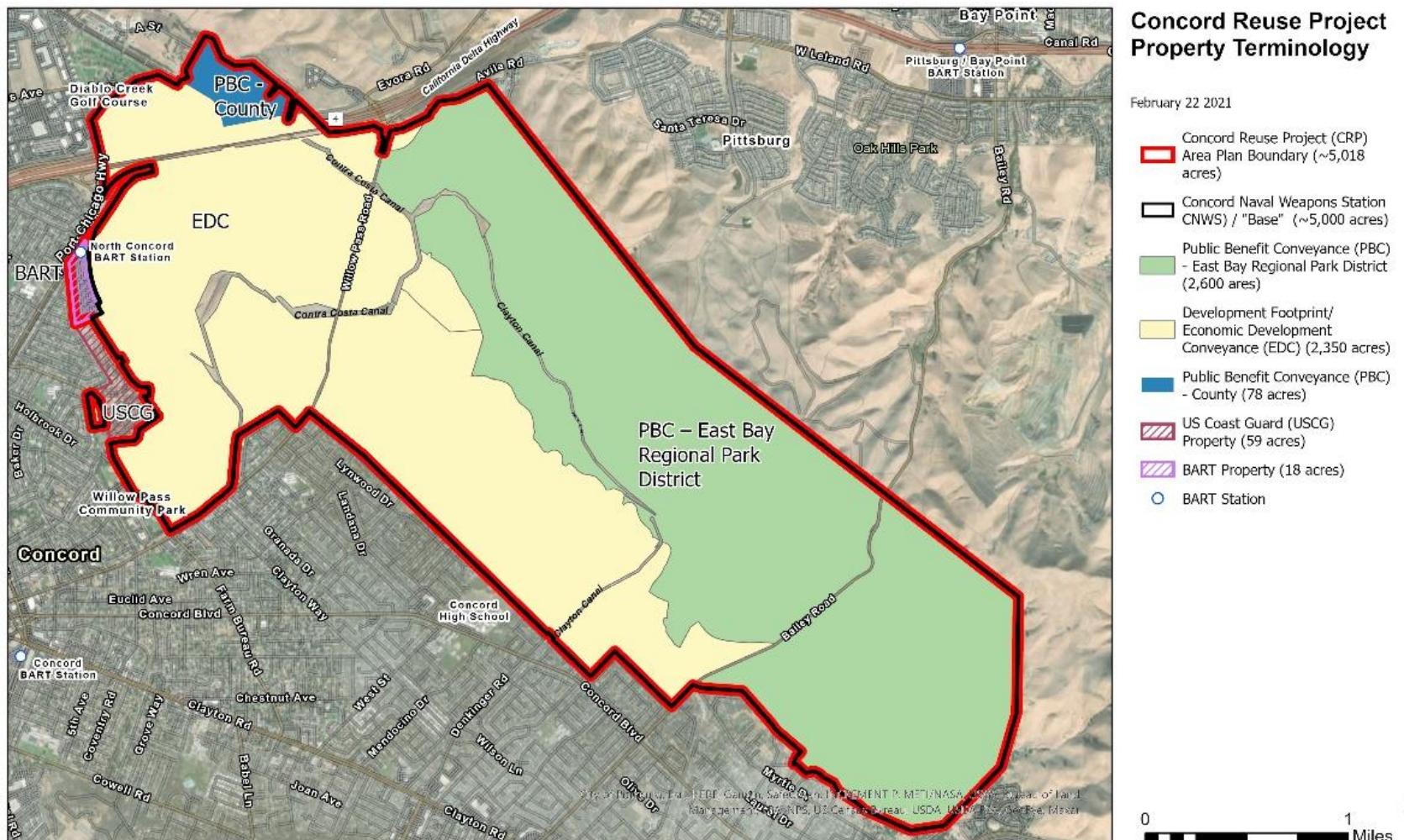
- **BART Property:** The North Concord Bay Area Rapid Transit (BART) station property, including a parking lot (approximately 18 acres). This property was included in the CRP Area Plan in anticipation of a coordinated approach with BART to transit-oriented development (TOD) around the station. This property was also included in the previous Lennar-led Specific Plan effort. The selected Master Developer will not develop this area but will coordinate closely with BART and its master developer.
- **Base:** Synonymous with CNWS.
- **Coast Guard Property:** The former Coast Guard property adjacent to the CNWS (approximately 59 acres) was not included in the CRP Area Plan but was included in the previous Lennar-led Specific Plan effort, prior to the auction of the property by the General Services Administration in 2021. The selected Master Developer will not develop this area but will coordinate with the new owner of the former Coast Guard site, who recently submitted an application to the City. The application is for a General Plan Amendment, Rezoning and Design and Site Review to renovate the 286 existing units within the northern and southern villages at the site.
- **Concord Naval Weapons Station (CNWS):** The approximately 5,000-acre Inland Area of the weapons station property. This includes the portion of the site available for redevelopment by the selected Master Developer. This also includes other property not available for redevelopment: the area designated for the East Bay Regional Park District (EBRPD) and Contra Costa County (see Public Benefit Conveyance). This property will eventually all be

transferred from the Navy to the LRA, EBRPD, and the County. Note that the entire Concord Naval Weapons Station is approximately 12,000-acres. For the purposes of this RFQ, CNWS refers to only the 5,000-acre Inland Area. The remainder of the property is occupied by the still-active Military Ocean Terminal Concord (MOTCO).

- **Concord Reuse Project (CRP):** The implementation of the Area Plan.
- **CRP Area Plan:** The Concord Reuse Project Area Plan, an adopted part of Concord's 2030 General Plan. The planning area defined by the CRP Area Plan and includes the Economic Development Conveyance (EDC)/Development Footprint and the BART Property. It does not include the Coast Guard Property/.
- **CRP Area:** The geographic area defined by the CRP Area Plan.
- **Development District:** in the CRP Area Plan, this term is used to designate portions of the site that are planned for future development.
- **Development Footprint:** Synonymous with Economic Development Conveyance area.
- **Economic Development Conveyance (EDC):** The portion of the CRP Area that will transfer from the Navy to the LRA via the BRAC Economic Development Conveyance process for reuse, with an emphasis on job creation (approximately 2,350 acres). The selected Master Developer will develop some or all of this area.
- **Inland Area:** Synonymous with CNWS.
- **Project:** Planning and development of the Development Footprint
- **Public Benefit Conveyance (PBC):** The portion of the CRP Area that will transfer from the Navy to two different parties via the BRAC Public Benefit Conveyance process. Approximately 2,600 acres is being transferred to the National Park Service who in turn will convey the property to the East Bay Regional Park District (EBRPD); the majority of these lands will serve as on-site mitigation for impacts of EDC-area development on special-status species. Approximately 78 acres is expected to transfer to Contra Costa County (Sheriff's Department/Contra Costa County Fire). The selected Master Developer will need to coordinate infrastructure development with PBC recipients.

See Figure 2 for a map corresponding to the geographic terms.

Figure 2 Property Terminology



## 1.3 LRA Consultants

In addition to staff from multiple City departments, the LRA has assembled the following consulting team to assist with overall implementation of the CRP Area Plan, as well as this RFQ process:

- ERS – Remediation/Risk Management
- HR&A Advisors – Real Estate Development Advisors
- ALH Economics – Real Estate Market/Fiscal Impact Advisors
- H.T. Harvey – Biological Resource Advisors
- Garrity & Knisely – Outside Counsel – BRAC Compliance
- ESA – Hydrology
- Lubin Olson & Niewiadomski – Outside Counsel – Endangered Species Act and other Natural Resource Permitting Compliance
- Johnson Marigot – Natural Resource Permitting Advisors
- Burke, Williams & Sorenson – Outside Counsel – Real Estate Transactional
- Jarvis Fay – Outside Counsel – Land Use/California Environmental Quality Act (CEQA) Compliance

None of these firms, subcontractors, or individuals may join Master Developer Teams or discuss any aspect of the RFQ with such teams during the RFQ process, except through formal communications authorized by the LRA Executive Director.

## 1.4 Overview of the CNWS Reuse Planning Process

The Navy officially placed the Inland Area of the CNWS on the BRAC military base closure list in 2005. The City of Concord, acting through its City Council, was designated as the LRA for redevelopment of the Base by the U.S. Department of Defense. The City Council formed a 21-member Community Advisory Committee (CAC) and Technical Advisory Groups (TAGs) to engage in this initial planning process. The LRA conducted a seven-year community-based visioning and planning process that culminated in the adoption of the CRP Area Plan detailing the community's desired future use of the property, certification of a Final Program Environmental Impact Report (EIR) and Mitigation Monitoring and Reporting Program, and amendment of the General Plan to include the CRP Area Plan. These actions were completed in February 2012.

The CRP Area Plan features a comprehensive vision that considers aspirations of the Concord community, the characteristics of the then-current local and regional real estate market, development requirements particular to reuse of a former

military facility, and the opportunity to establish a precedent-setting mixed-use, transit-oriented community with unparalleled regional open space resources.

Before new development can take place within the Development Footprint, a Specific Plan and project-level EIR will need to be prepared and approved by the City Council.

On August 22, 2018, the City Council reviewed a proposed land use diagram for the Development Footprint. The diagram was based on the CRP Area Plan but incorporated community comments, input from staff, CAC, City Planning Commission, and City Council, and results from a previous Master Developer's (Lennar) assessment of market feasibility. This diagram can be found on the Project website. Note that while the City Council directed Lennar to move forward with preparing an Administrative Draft Specific Plan in 2018, this diagram has not been approved by the City.

The Administrative Draft Specific Plan prepared by Lennar was not completed or published, nor did it address all issues of importance in the community.

Respondents interested in learning more about input from the community and City Council as the Administrative Draft Specific Plan was being developed should consult the Project website for summary notes from the community meetings and minutes from the August 22, 2018 City Council meeting. Video is also available from the City Council meeting. Given the passage of time and changes in the economy, including the COVID-19 pandemic and its impacts on demand, financial feasibility, and construction costs, the full document is best viewed as a reference and is not part of this RFQ. This document is also posted on the Project website; Respondents should review the City's comments on the Administrative Draft Specific Plan in parallel with review of the document.

After Lennar's Exclusive Agreement to Negotiate with the LRA expired at the end of March 2020, the City evaluated how to proceed with the project and eventually initiated a new Master Developer selection process in early 2021.

On August 21, 2021, the City Council, sitting as the LRA, selected the Concord First Partners, LLC (CFP) team as the potential Master Developer for the Development Footprint, subject to successful negotiation and LRA approval of an ENA.

At meetings on January 7 and January 28, 2023, the City Council considered the Term Sheet proposed by CFP. The CFP Term Sheet differs from the previous Lennar Term Sheet in that it covers the entire Development Footprint (approximately 2,300 acres) rather than a first phase of development (500 acres). As a result, the CFP Term Sheet addresses issues impacting future phases, like community benefits, that were only partially addressed in the Lennar effort. The CFP Term Sheet also differs from the adopted CRP Area Plan (2012) with a larger residential unit count (15,595 vs. 12,272) and an affordable housing strategy that addresses the additional units by using 879 Junior Accessory Dwelling Units to reach the 25% affordability goal, because both changes improved the financial

feasibility of the project according to CFP. The January 7, 2023 staff report and CFP Term Sheet are found at the link in Appendix H. The City Council ultimately rejected the CFP Term Sheet and directed the LRA staff to allow the ENA with CFP to expire on January 31, 2023.

## 1.5 Changes in State Law Governing Surplus Land Disposition

Since the City's initial Master Developer selection process in 2014-2016, the State of California has substantially amended the State Surplus Land Act, Government Code sections 54220-54234 (SLA), which sets forth procedural requirements cities and other local agencies must follow when disposing of land that is no longer needed for the agency's use. As more fully explained below, the City has determined that: (1) at least with respect to Economic Development Conveyances, the SLA is preempted by the comprehensive and detailed scheme for transfer, disposition and development of former military base property set forth in BRAC, and (2) even if the SLA were deemed applicable to the City's disposition of the Development Footprint, the City's affordable housing requirements for the property as described in Section 3.15 below, meet the requirements for the Development Footprint to be considered "exempt surplus land" under SLA section 54221(f)(1)(F)(ii).

### 1.5.1 Federal Preemption

BRAC sets forth a comprehensive and detailed scheme for transfer, disposition and development of former military base property. BRAC provides for a variety of authorities for transfer of former military facilities. In the case of Concord, the Development Footprint is proposed to be transferred to the City, as LRA, pursuant to an EDC transfer mechanism because of the extensive job generation on the former installation (see Section 2.3.1). BRAC requires preparation of a Reuse Plan and Homeless Assistance Submission to explain the proposed reuses of the military installation. BRAC also requires that the Reuse Plan will achieve a balance in responding to the community's economic development needs, and the needs of the homeless. As required by BRAC, the LRA prepared a Reuse Plan, a regional homeless needs assessment and conducted extensive outreach to solicit interest from homeless housing and service providers to satisfy the homeless needs. The identified need was for multifamily transitional housing and job training. Federal regulations required the LRA to advertise the availability of surplus buildings and properties to state and local eligible parties, including homeless assistance providers, conduct a public workshop, and direct outreach to homeless assistance providers to define how the needs could be met. Compliance with BRAC was brought to closure through the development of legally binding agreements approved by the US Department of Housing and Development (HUD) with affordable housing providers in a collaborative (Contra Costa County Continuum of Care) and the Contra Costa/Solano Food Bank for dedication of

land for multifamily homeless housing and a food bank/warehouse training facility.

By adopting BRAC, Congress announced an intention to require LRAs to redevelop military base properties to provide for job creation and economic development to replace jobs lost as a result of base closure and to balance these economic development considerations with the needs of the homeless. Federal regulations also specifically require the Navy to consider a list of specified factors in determining whether to approve an EDC, including the “[e]xtent of short- and long-term job generation,” the “[f]inancial feasibility of the development and proposed consideration, including financial and market analysis and the need and extent of proposed infrastructure and other investments” and “[c]urrent local and regional real estate market conditions, including market demand for the property.”

The 2019 amendments to the SLA implemented by AB 1486 directly contravene BRAC requirements by, among other things, specifically excluding from the definition of “agency’s use” any development for “commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development” or dispositions for “the sole purpose of investment or generation of revenue.” Furthermore, the provisions in Government Code section 54230.5 requiring disgorgement of a percent of the gross sale price if the disposing agency fails to comply with the Act is in direct conflict with BRAC provisions requiring all proceeds obtained from the sale or use of former base property to either be paid to the federal government as consideration for the Economic Development Conveyance or used for specified listed purposes to support economic redevelopment of the former base for at least seven years under threat of recoupment from the federal government.

### **1.5.2 Consistency with Exempt Surplus Land Definition in Gov. Code Section 54221(f)(1)(F)(ii)**

While the SLA, as amended by AB 1486, directly conflicts with various requirements of BRAC and is therefore preempted, the City strongly supports the affordable housing goals embodied by AB 1486. Since the City first approved the CRP Area Plan, the City has been committed to a goal that 25% of the residential dwelling units developed on the Development Footprint be available to low-income households at an affordable rent or affordable housing cost.

SLA Section 54221(f)(1)(F)(ii) states that “exempt surplus land” includes “[s]urplus land that is put out to open, competitive bid by a local agency, provided all entities identified in subdivision (a) of Section 54222 will be invited to participate in the competitive bid process, for . . . [a] mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25 percent of the residential units to lower income households . . . with an affordable sales price or an affordable rent . . . for a minimum of 55 years for rental housing and 45 years for ownership housing”.

As set forth in Section 3.15 below, the City is seeking a Master Developer who can commit to support delivery of at least 25% of the total number of residential units as affordable units available to lower income households. Further, notice of issuance of this RFQ has been provided to the State Department of Housing and Community Development and all entities identified in Section 54222(a) of the SLA. Accordingly, the City has determined that even if the SLA were deemed to apply to disposition of the Development Footprint, this RFQ and the affordable housing requirements for the Project set forth in Section 3.15, meet the requirements for the Development Footprint to be deemed “exempt surplus land” under SLA section 54221(f)(1)(F)(ii).

## **1.6 Project Reference Material**

There are extensive background documents available on the Project website. Where possible, specific links have been embedded in this document, but they are not an exhaustive list of all available reference documents and Respondents should review the Project website for additional materials. If the desired reference materials are not available on the Project website, Respondents should follow the question submittal process described in Section 4 to request them.

## 2 Development Opportunity

### 2.1 Project Description and Goals

As reflected in the CRP Area Plan, the LRA has adopted the following goals for future development of the Development Footprint:

Figure 3 Project Goals

OVER-ARCHING GOALS	WORLD-CLASS PROJECT	BALANCED APPROACH	ECONOMICALLY VIABLE & SUSTAINABLE DEVELOPMENT		QUALITY OF LIFE
GOALS	PLANNING CONSIDERATIONS	COMMUNITY DEVELOPMENT	PARKS, RECREATION, & OPEN SPACE	ECONOMIC DEVELOPMENT	TRANSPORTATION
	<ul style="list-style-type: none"> <li>Inclusive, transparent, collaborative planning process</li> <li>Flexible Planning / Design requirements</li> </ul>	<ul style="list-style-type: none"> <li>Community benefits</li> <li>Community character</li> <li>Multi-generational &amp; inclusive</li> <li>Environmentally sustainable development</li> </ul>	<ul style="list-style-type: none"> <li>Resource conservation</li> <li>Land stewardship</li> <li>Community parks and recreation</li> </ul>	<ul style="list-style-type: none"> <li>Vibrant and diverse economy</li> </ul>	<ul style="list-style-type: none"> <li>Effective transportation system</li> </ul>

Source: CRP Area Plan, Book 1

### 2.2 The Project Opportunities

The Development Footprint and the adopted CRP Area Plan present significant development opportunities:

**The size and scope of the Project:** The Project is one of the Bay Area's largest mixed-use, TOD opportunities. The CRP Area Plan provides for up to 6.1 million SF of commercial space<sup>1</sup> and up to 12,200 housing units, oriented to take advantage of the North Concord BART station. It represents one of the greatest opportunities to shape the pattern of future growth in the Bay Area.

**Local regulatory prioritization:** The Development Footprint is designated as a Priority Development Area (PDA) by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC). The CRP Area is one of the largest MTC-designated PDAs. Plan Bay Area 2050, adopted by ABAG and MTC in October 2021, provides support for growth in the PDAs through financial resources, technical assistance, and political support with

<sup>1</sup> Note that the 2010 Reuse Plan EIR anticipated an additional 2.3 million square feet of campus/commercial uses.

strategies and implementation actions geared to support housing growth, including support for actions to secure new revenues to fund such strategies.

**A strong planning vision:** The CRP Area Plan outlines a clear vision for the Project, including overall development standards for each of its Development Districts. Each District has clearly articulated planning goals, allowable density and intensity of use, mix of uses, and “convenience standards” (i.e., transit stops, bike lanes, public gathering spaces, active open space, grocery stores, etc.).

**Significant environmental review has been completed:** A certified EIR for the CRP Reuse Plan (2010) and CRP Area Plan (2012 Addendum to the Reuse Plan EIR) provide program-level clearance and assurance that environmental review need not start from scratch for each development project or subsequent phase. Neither the EIR nor the 2012 Addendum were subject to litigation. The CRP Area Plan includes a Climate Action Plan, which has been reviewed and approved by the Bay Area Air Quality Management District. It could function as a greenhouse gas reduction plan for the purposes of future environmental review, potentially allowing environmental clearance with respect to greenhouse gas emissions to be documented by indicating how the plan or project is consistent with applicable requirements of the Climate Action Plan.

The Navy completed federal environmental review under the National Environmental Policy Act (NEPA) to eventually convey the Development Footprint to the LRA for development consistent with the CRP Area Plan. In addition, the Navy completed a sitewide Endangered Species Act consultation with the U.S. Fish and Wildlife Service (USFWS) culminating with issuance of a Biological Opinion and Incidental Take Statement that includes the Development Footprint.

A notice of preparation (NOP) for a planned Draft EIR for the Administrative Draft Specific Plan was circulated in 2018, and while significant work on certain chapters was done, the Draft EIR was not completed.

**Committed City and Regional leadership:** The LRA is committed to the full build-out of the Development Footprint as described in the CRP Area Plan. Furthermore, regional agencies such as the MTC, ABAG, and BART have all demonstrated support for the Project.

## 2.3 Development Area, Ownership and Conveyance

Located in Concord, California, the approximately 2,300 acre Development Footprint is adjacent to 18 acres of property owned by BART and 59 acres of property owned by Q Villages, LLC, which was the former Coast Guard site. These properties are described in Section 2.4. Refer to Figure 2 “Property Terminology” for ownership boundaries.

### 2.3.1 Economic Development Conveyance of Development Area

Two statutes govern the disposal of base closure property: the Federal Property and Administrative Services Act of 1949 as amended (“Federal Property Act”), and the Defense Base Closure and Realignment Act of 1990, as amended (“Base Closure Law”). These statutes provide alternative methods to dispose of surplus federal property to federal and non-federal recipients. Base Closure Law provides a range of different authorities that can be used to dispose of surplus property. At this time the LRA and the Navy are anticipating the use of the Economic Development Conveyance (EDC) authorities in the Base Closure Law, which emphasize job creation in recognition of the jobs that were lost due to the CNWS closure. Other methods of conveyance, including a public sale, auction or property exchange have been considered in the past, but are not currently under consideration by the Navy.

The Navy could transfer the Development Footprint to the LRA for less than fair market value but is seeking market compensation for the land based on the development potential envisioned by the CRP Area Plan. Navy compensation is subject to negotiation with the LRA and the selected Master Developer and will be memorialized in an Economic Development Conveyance Memorandum of Agreement (EDC MOA) between the LRA and Navy. See Section 3.2 for discussion of the Master Developer responsibilities in the EDC MOA negotiation. The EDC MOA will ultimately require approval of the Secretary of the Navy and the Department of Defense. The first land transfer is expected in 2026. For more about the remediation process, which is a key driver of the timing of land transfer, see Appendix C.

### 2.3.2 Public Benefit Conveyances

In 2006/2007, in accord with requirements of the Base Closure Law the LRA solicited interest in land to be conveyed for Public Benefit and land to be transferred for satisfying requirements for the homeless. The LRA accepted two complete applications for a Public Benefit Conveyance (PBC) totaling approximately 2,600 acres – one from the East Bay Regional Park District (EBRPD) totaling approximately 2,540 acres and one from the Contra Costa County Sheriff’s Department/Contra Costa County Fire totaling approximately 78 acres. The PBC land is not included in the Development Footprint and will not be available for development by the selected Master Developer.

### 2.3.3 Legally Binding Agreements

Pursuant to the federal surplus land disposition requirements described in Section 1.5.1, the City received 13 applications for land to support homeless needs. These were combined into one application coordinated by Contra Costa County. Legally Binding Agreements (LBAs) were approved by the federal Department of

Housing and Urban Development (HUD), which confirmed the transfer of 16 acres of land to the County and homeless providers for transitional multifamily housing and 10 acres to the Food Bank of Contra Costa/Solano for food bank purposes, including employment training for homeless persons and families. Both transfers will be at no cost. The LBAs will be physically located within the Development Footprint, deducting 26 acres of land to be transferred via the EDC. The relationship between the LBAs and overall affordable housing commitments for the Development Footprint are discussed in Section 3.15.

### 2.3.4 Canals

Two canals traverse the Development Footprint, but are not currently owned by the Navy, and will not be transferred to the LRA along with the rest of the Development Footprint. They are shown on Figure 2. Both are owned by the U.S. Bureau of Reclamation (USBR). Congress passed special legislation requiring USBR to offer the canals to the Contra Costa Water District (CCWD). This process is underway and expected to result in transfer of ownership to CCWD. The situation for each canal is different:

Contra Costa Canal – Currently operated by the Contra Costa Water District to convey raw water. The intent is for this use to continue and CCWD to own the canal following transfer from the USBR.

Clayton Canal – Not currently in use. This canal also traverses the EBRPD PBC area. CCWD has indicated it intends to transfer the canal property to EBRPD where it traverses the EBRPD PBC and to the City where it traverses the EDC and continues off the base along Denkinger Road.

### 2.3.5 Oil Pipelines

Easements for three oil pipelines were granted through the Base in the 1950s and 1960s. Today, three high-pressure pipelines are operated by Phillips 66 Pipeline, Kinder Morgan/SFPP, and Shell Pipeline. Each of the pipeline easements has a width of 16.5 feet and each runs in a largely parallel alignment from the southwestern end of the former CNWS north in the Green Frame along the western border, until reaching Willow Pass Road, at which point the pipelines head west across the Village Neighborhood in the airfield area and intersect the former Coast Guard Property between Victory Village and Quinault Village. The CRP Area Plan development program was designed to retain open space uses over the oil pipelines and pipeline easements. The pipelines do have implications for the availability of land for school siting due to State laws. Those implications are discussed in Appendix D.

## 2.4 Surrounding Areas

**BART Property:** The 18-acre North Concord BART station parking lot is immediately adjacent to the CNWS site. Transit-oriented development (TOD) with access to BART is a core tenet of the CRP Area Plan. The BART Property was included in the CRP Area Plan in anticipation of a coordinated approach to TOD around the station. The BART Property was also included in the former Lennar-led Specific Plan effort. BART is currently in the process of updating its TOD Work Plan for all of their stations to determine their station development priorities. BART has been working collaboratively with the LRA on planning for the BART Property. The BART Property's regulatory context has changed in recent years with the passage of AB 2923 in 2018. The bill changed how development on BART-owned property is regulated, requiring cities and counties to rezone for consistency with BART's TOD Guidelines. While the CRP Area Plan designation for the BART Property is consistent with TOD, the site is not yet zoned and will need to be zoned either through a rezoning or via a Specific Plan. BART TOD guidelines are the guiding document for future use of the site, consistent with AB 2923. The LRA, Master Developer, and BART will need to work together to agree on a path forward for planning for the BART Property and document that agreement together, in particular with respect to infrastructure and access.

**Coast Guard Property:** The 59-acre former Coast Guard site is adjacent to the Development Footprint but is not part of the property discussed in this RFQ. The site was not included in the CRP Area Plan but was included within the previous Lennar-led Specific Plan effort, prior to the public auction for the property which concluded in early 2021. The property currently is not zoned for development and will need a General Plan Amendment (current land use designation is Military) and rezoning prior to development. Coordination between the two projects will be necessary, given shared infrastructure and circulation needs. The former Coast Guard Property currently includes a mix of duplex units (built in 1965) on the northern half of the property and triplex units (built in 1989) on the southern half of the property for a total of 328 units. In March 2020, the GSA rejected the LRA's purchase offer and decided to move forward with an invitation for bids and auction process. On October 15, 2020, the auction was initiated by the GSA, and ended on March 4, 2021. The new owner of the property, Q Villages, LLC, recently submitted an application to the City for a General Plan Amendment, Rezoning and Design and Site Review to renovate the 286 units at the site.

**Surrounding Concord Area:** The site is bordered by BART and Highway 4 to the North, the City of Concord to the Southwest, and open space to the Northeast, where a recently approved project "Faria/Southwest" is planned pending annexation approval. Mount Diablo Creek runs through the middle of the Development Footprint.

Concord's population in 2021 was 125,410 with a total of 45,471<sup>2</sup> households. Median household income in 2021 was about \$100,011, which is slightly higher than the median for the State of California, but lower than the median incomes reported for Contra Costa and Alameda Counties of \$110,455 and \$112,017, respectively.

**Access to Transit:** The Development Footprint is anchored by the North Concord/Martinez BART station and is connected to surrounding communities via regional thoroughfares such as Willow Pass Road, Bailey Road, and State Highways 4 and 242 and Interstate 680. Concord is one of only eight cities in the Bay Area with more than one BART station – in addition to the North Concord station immediately adjacent to the Development Footprint, the Concord station in downtown Concord is accessible to the Development Footprint, particularly the southern portion. This wealth of transit supports the CRP Area Plan's development vision with a strong emphasis on transit-oriented development.

**Military History:** At one point, the CNWS was the United States Navy's primary ammunition port on the Pacific Coast. The Navy's presence began in 1942, after the United States entered World War II and at that time the naval presence was only comprised of the Tidal Area, which is outside the boundaries of the CNWS. In 1944 an ammunition detonation destroyed the Tidal Area's pier and the ships docked there and in so doing killed 320 people, including 200 African American sailors; this was the largest stateside disaster of the war. As a result of the disaster, the Navy purchased the 5,200 acres that would become the Inland Area referred to herein as the CNWS. In addition to the facilities necessary to store explosives and supplies, the Navy also built enlisted and officer military housing, a rail system, and small airfield within the Inland Area.

During the Cold War, the CNWS served as a weapons storage facility and during the Vietnam War it provided support for military efforts in Southeast Asia. While still active for military uses, smaller portions of the site were used for forest research and other environmental research activities. Due to changes in post-Cold War military strategy, the Navy vacated the Inland Area of the CNWS in 1997 and in 2005 the Department of Defense announced that it planned to close the entire Inland Area.

## 3 Master Developer Responsibilities

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This section outlines the LRA's expectations for the Master Developer's scope of work in the Development Footprint. Information about financial responsibilities is in Section 3.7.

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<sup>2</sup> Source: U.S. Census. Quick Facts, April 4, 2023

### 3.1 Remediation

As explained in Appendix C, Remediation, the Master Developer is not responsible for completing environmental remediation work. Those activities are the responsibility of the U.S. Government. The Master Developer will be responsible for collaborating with the LRA to understand the remediation activities and their potential impacts/risks on development in the form of land use controls or other restrictions on development activities.

### 3.2 Property Acquisition

The Master Developer will be expected to participate in two aspects of property acquisition: (a) LRA acquisition of the Development Footprint from the Navy, and then (b) Master Developer acquisition of Development Footprint property from the LRA. Both acquisitions will be phased. The negotiation process for LRA acquisition from the Navy is described in Section 2.3. For acquisition from the LRA, the Master Developer will be expected to negotiate price and payment terms, phasing, potential leasing and land take down schedules, all to be set forth in a comprehensive Disposition and Development Agreement (DDA). The Master Developer's terms documented in the DDA will include performance requirements associated with the phasing of land take-down and development; the Master Developer will need to demonstrate compliance with those requirements to proceed with work on the Project and access the full Development Footprint over time.

### 3.3 Specific Plan, Design, and Entitlements

The Master Developer will be responsible for conducting market and financial feasibility research and analysis and preparing a Specific Plan consistent with State law. The Specific Plan will be based on the standards and guidelines contained in the CRP Area Plan. The LRA intends to collaborate with the selected Master Developer to establish an approach to completing the Specific Plan preparation and approval processes expeditiously.

The Master Developer will be responsible for procuring all land use and regulatory approvals and permits, including any required subsequent or supplemental EIR necessary for implementation of the Project. Entitlement procedures will be a subject of negotiation with the selected Master Developer, but the City is open to expedited procedures consistent with a project of this scale and complexity. The City Council retains all legislative powers to approve City entitlements.

If plans are not consistent with the CRP Area Plan and other parts of the General Plan, the Master Developer will be responsible for preparation and environmental review of a CRP Area Plan amendment and assume risk for changes in the plan. In addition to the potential risks associated with processing such an amendment

locally, the Master Developer should make themselves aware of the risks associated with significant changes to the CRP Area Plan because it serves as the basis for the Navy's NEPA review of the federal land transfer action, as described in Section 2.2.

### 3.4 Community Facilities and Improvements

The Master Developer will work with the LRA to establish an acceptable approach to the following community facilities and improvements and documenting those in the Specific Plan or related master plans:

- K-12 Schools – Working closely with the Mount Diablo Unified School District. Important issues include location, type, and design of schools, which are constrained by existing oil pipelines and current enrollment patterns, phasing, and opportunities for joint development with the CRP Area Plan's Campus District. The 2010 Reuse Plan EIR estimated the project would need four elementary schools, one middle school, and one high school. See Appendix D for further details on K-12 schools.
- Community Centers – Up to two community centers in the Development Footprint, including a library facility, to be operated by the City or jointly with other public agency(ies).
- Veteran's Hall – Land set aside for a Veteran's facility, accessible to the public in the Development Footprint; Veterans groups to fund construction and operations.
- Tournament Sports Complex/City Park – This facility is intended to be sited on land set aside within the Development Footprint (approximately 175 acres according to the CRP Area Plan), with the City leading planning and seeking financing/partners for its implementation, consistent with the Tournament Sports Complex Concept Plan and Feasibility Report.
- Campus District – This would be land set aside within the Development Footprint (approximately 120 acres according to the CRP Area Plan) but separate from the Project. The City will take the lead in planning and seeking an appropriate partner for its implementation, consistent with the findings of the Blue Ribbon Committee.
- Parks – Greenways, parks, neighborhood green frame plus district open spaces as described in the CRP Area Plan, in locations to be determined through the Project Specific Plan. Key issue for planning will be to identify how all types of park facilities will be maintained.
- Fire Stations – Working closely with the Contra Costa Fire District on location and financing of fire stations. The City has engaged in discussions with the Fire District, which anticipates the need for two fire stations to support full buildup of the Development Footprint. The expectation, to be

confirmed, is that one station would be located on the County PBC property and the other would be located on the southern part of the Development Footprint.

- Off-Site Improvements – Including street intersections, other infrastructure, resource mitigation requirements, and regional improvements as a fair share, proportional to the impacts of the Project.
- On-Site Improvements – Including oversized infrastructure to support later phases of development. This includes the widening of Willow Pass Road and demolition of the Kinne Blvd. bridge at the appropriate time.
- Diablo Creek Golf Course/Evora Road – Significant infrastructure is expected to route through the golf course. Additionally, the CRP Area Plan transportation network includes an extension of Evora Road through the southern portion of the existing golf course, connecting to Port Chicago Highway. The infrastructure and road extension work will impact the golf course and require restoration of the golf course following completion.
- Transit Service – The CRP Area Plan envisions a transit-rich community, including frequent transit within the Development Footprint and connecting to BART as well as other destinations. That level of transit service is beyond the level generally provided by County Connection, so an approach to delivering such service consistently will need to be established as part of the Project.

## 3.5 Community Engagement

The Master Developer must commit to working cooperatively with adjacent property owners, neighborhoods, labor organizations and other local and regional stakeholders in coordination with the LRA as applicable. This includes conducting strategic community meetings, providing meaningful and culturally competent opportunities for community involvement in the overall planning process, creating and maintaining channels for public information, and working with elected and appointed officials and the media.

## 3.6 Project Financing

The Master Developer will be responsible for devising a financing structure and obtaining financing for all infrastructure and all elements of vertical development proposed to be undertaken directly by the Master Developer. The Master Developer will be responsible for financing the cost of the Project, including predevelopment and entitlement costs such as design, planning, engineering, legal, environmental and related consulting and professional expenses, as well as development costs such as demolition, grading, site preparation, installation and construction of back-bone infrastructure, including utilities and off-site

improvements. The Project must be at least fiscally neutral (and preferably net positive) to the City. This includes demonstrating, for example, that any proposed Enhanced Infrastructure Financing District (EIFD), Community Facilities District (CFD), or similar financing mechanisms will have a neutral impact on the City's General Fund for both construction and ongoing maintenance.

### **3.7 Financial and In-Kind Contributions and Reimbursements**

In addition to financing the development, the Master Developer will be responsible for funding or ensuring the Project can fund both past (i.e. sunk) costs and those moving forward related to the following:

- Natural resource permitting – payment for on- and off-site mitigation, including costs associated with procuring site-wide natural resource permits, as described in Appendix E.
- Cultural resource permitting – payment for on-site mitigation, including costs associated with implementing cultural resource permit conditions, as described in Appendix E.
- LRA operations – payment for the LRA's operating costs.
- Pollution Legal Liability (PLL) insurance – the Master Developer will need to acquire such insurance and name the City as an additional insured party.

The LRA's costs in these areas up to this point are approximately \$15 Million. The approach to reimbursing the LRA for past expenditures will be a subject of negotiation with the selected Master Developer.

The Master Developer will also be responsible for reimbursing City for certain costs to be incurred by City during the Negotiating Period (as defined in the ENA), including costs of negotiating and drafting the proposed DDA term sheet and DDA, and costs incurred in connection with review and processing of a proposed Specific Plan and EIR and various ancillary agreements and approvals, all as set forth in a reimbursement agreement to be approved administratively by City and entered into by City and Developer concurrently with the ENA. The reimbursement agreement will include, among other terms, requirements for Master Developer to deliver a cash deposit or irrevocable standby letter of credit to secure Master Developer's cost reimbursement obligations.

### **3.8 Project Phasing**

The Master Developer will be responsible for working with the LRA to develop an approach to Project phasing that is responsive to the LRA's needs and the constraints associated with environmental remediation, among other issues, as

described in Appendix C. The approach to phasing, including performance requirements, will be documented in the DDA, as discussed in Section 3.2.

## 3.9 Project Development Schedule

The Master Developer will be responsible for developing detailed schedules for Project planning, design, financing, construction, and maintenance activities. This includes the coordination of all agencies, consultants, architects, engineers, contractors, sub-developers (if applicable), and property management functions.

## 3.10 Project Construction

The Master Developer will be responsible for the construction and coordination of all necessary off-site and selected on-site improvements, community facilities, including streetscapes, parks, utilities and roads and on-site landscaping and hardscaping. To the extent the Master Developer intends to undertake vertical construction of certain private improvements, the Master Developer will be responsible for those building cores and shells, fixtures and equipment. The Master Developer will also be responsible for packaging selected subdivisions, land parcels and/or building pads in the event of development by third party sub-developers or builders, who will be required to comply with all applicable City development regulations.

## 3.11 Construction Labor

The Master Developer will be required to comply with all applicable Concord First policy commitments. The City's Concord First policy commitment for the Project's construction workforce is as follows:

1. 40% local hire. "Local" means that hiring practices (e.g. first source programs, community benefits agreements) would first focus on Concord residents, and then on Contra Costa County residents, to the extent allowed by law
2. Payment of prevailing wages on all construction to ensure that project build out does not drive down area wage standards
3. Utilization of apprentices from State of California certified joint labor management programs
4. Program to recruit, train, and employ military veterans through the Helmets to Hardhats program or equivalent program

A project labor agreement (PLA) with the Contra Costa Building and Construction Trades Council which covers vertical and horizontal construction and the items listed above is required at the time of SOQ submittal and should indicate how Respondent will meet the City's Concord First policy. Please see

5.2.8 – Project Labor Agreement. In addition, Respondents shall explain how they intend to maximize development opportunities for local firms and purchases of construction materials from local businesses.

### **3.12 Participation by Small and Disadvantaged Businesses**

The Master Developer is encouraged to team with qualified small and local businesses, including disadvantaged business enterprises, and create opportunities for Concord-based goods and services suppliers, and developers who may participate in vertical construction and other business opportunities within the Project.

### **3.13 Interim Property Maintenance and Operations**

As property is transferred or leased to the LRA by the Navy prior to implementation of the Project, the Master Developer will assume responsibility for maintenance and coordination of security with the Concord Police Department. The LRA and Master Developer will collaborate on establishing appropriate interim activities, including potentially extending the current use of the Development Footprint by GoMentum Station for connected and automated vehicle technology testing. Any interim uses will need to be, at a minimum, fiscally neutral to the LRA.

### **3.14 Sustainability**

The Master Developer will develop flexible and innovative infrastructure that meets or exceeds the CRP Area Plan’s climate action goals (detailed in Area Plan Book Three) and can evolve with technology and market demand. State of California regulations have advanced significantly since the CRP Area Plan was adopted in 2012 – where those regulations exceed the requirements set out in Book Three, the LRA expects the Master Developer to demonstrate a strong commitment to sustainability reflecting current best practices. Similarly, the way certain environmental impacts are measured has changed, such as the shift of evaluating transportation impacts using level of service (LOS), which was used in the 2010 Reuse Plan EIR, to a vehicles miles traveled (VMT) analysis. The Master Developer will need to develop a circulation plan that is responsive to this different metric.

### **3.15 Affordable Housing**

While the City has determined that the SLA is preempted by BRAC at least with respect to Economic Development Conveyances (See Section 1.5), the LRA nevertheless desires to ensure that the Development Footprint and Project are consistent with the “exempt surplus land” definition under SLA section

54221(f)(1)(F)(ii). Accordingly, the Master Developer will be expected to deed restrict and contribute development ready pads to support development of, or otherwise facilitate or build, affordable housing with at least 25 percent of the residential units affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 or 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing and 45 years for ownership housing.

The resolution adopted by Concord City Council sitting as the LRA on January 24, 2012, calls for a total of 3,020 units affordable to lower income households, or about 25% of the Project's overall number of units. The resolution is reflective of the broad support and consensus of local and regional housing advocates to accommodate a diverse range of affordability levels and demographics. The resolution is flexible in terms of how this commitment can be achieved. It indicates most affordable units should be in dense (25+ units per acre), stand-alone projects built by non-profit affordable housing developers. Other units may be provided as "inclusionary" units within larger market-rate developments. The City does not have a set proportion of units that must be rental versus ownership housing or in stand-alone affordable projects versus inclusionary units. If self-help housing, such as that provided by Habitat for Humanity, is developed, those units would count toward the total.

Of the total number of affordable units, up to 260 units of multifamily transitional housing (but not fewer than 130 units) for homeless persons will be developed on the land set aside through the Legally Binding Agreement described in Section 2.3.3 above. Homeless housing and affordable housing commitments will be phased in over the life of what is expected to be up to a 30-year Project, as a portion of each development phase. Coordination with Other Public Agencies

### **3.16 Coordination with Other Public Agencies**

The Master Developer will need to work with the LRA and regional agencies to implement the CRP Area Plan, establish appropriate site zoning, and coordinate infrastructure development. The Master Developer will need to closely coordinate with the LRA and State/federal resource management agencies to support LRA-led efforts to complete and implement natural and cultural resource permitting, as described in Appendix E.

### **3.17 Potential Incentives**

Without the former State system of redevelopment, the LRA is highly constrained in its ability to provide any financial incentives to support implementation of the Project. Nevertheless, the LRA is willing to consider and/or pursue, in collaboration with the Master Developer, other forms of local, State and/or federal financial assistance that may further the CRP Area Plan goals and objectives.

## 4 RFQ Clarifications

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Respondents who submit an SOQ must make themselves fully informed regarding all circumstances, information, laws and any other matters that might in any way affect the Respondent's roles and responsibilities in the Project. Any failure to become fully knowledgeable of all matters that might, in any way, affect the Project will be at the Respondent's sole risk. The LRA assumes no responsibility for any actions taken by Respondents on the basis of information provided in this RFQ or through any other sources.

Any requests for answers to questions or clarifications must be submitted via the LRA's administrative contact Israel Mora ([israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org)), by June 9, 2023.

There will be a mandatory (for Lead Developers) Pre-Response Conference held via Zoom on June 1 at 10 am PDT. A representative of each Lead Developer must attend. Respondents must e-mail the City's Local Reuse Authority administrative contact (Israel Mora) at [israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org) to receive a link by 3 pm on May 31, 2023, including their full name, job title, company name, and indication of whether they are considering a Lead Developer role or not. A Zoom link will be emailed to those that sign up.

## 5 Selection Process and Submittal Requirements

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### 5.1 Master Developer RFQ Process

Selection Process and Timeline	Dates (all 2023)
Issuance of the RFQ	May 15
Mandatory Pre-response conference with LRA staff (see sign-up information in Section 4)	June 1 at 10am PDT
Deadline for questions on RFQ submitted in writing to LRA staff	June 9 at 5pm PDT
LRA Staff responses to submitted questions posted	June 23
SOQ due to LRA via electronic upload	July 14 by 3pm PDT
LRA Team reviews SOQs for responsiveness to Selection Criteria and prepares evaluation Summary Table	August 4

City Council reviews Summary Table, Redacted SOQs (with Confidential Information removed), and selects Respondents to interview. If three or fewer SOQs are received – all Respondents will be interviewed and this meeting will not be necessary.	August 15, Public Meeting, if necessary
Interviews with City Council and Selection	August 26, Public Meeting
Finalize Exclusive Negotiating Agreement (ENA)	September 19, Public Meeting

\*Dates following SOQ submittal are subject to change.

Based on past City Council direction, the LRA Team's participation in the selection process outlined above will be limited to the review of the SOQs for responsiveness to Selection Criteria and the preparation of a Summary Table conveying that analysis. The Summary Table will be an alphabetical list of all Respondents and how their responses address the selection criteria. The LRA Team will not be making any recommendations on which Respondents to interview.

Communications between Respondents and the LRA Team will only be via e-mail or via the pre-response conference. Any communications must be sent to the LRA's administrative contact (Israel Mora) at [israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org).

## 5.2 Submittal Requirements

The LRA invites the submittal of SOQs, including the information requested in this Section. Only responses to the specific SOQ items described in this Section will be considered at this stage in the process. The LRA seeks SOQs from organizations with demonstrated experience, skills and resources that can offer a compelling approach for achieving its goals for implementing the CRP Area Plan.

SOQs must be formatted to print on 8½" x 11" paper (with one exception as noted below) and use no smaller than 11-point font. Pages should be numbered (not including transmittal letter, title page, table of contents, and section divider pages). The SOQ will be evaluated on the basis of its content, not length. Concise expression is strongly encouraged. Total SOQ page count may not exceed 40 numbered pages, not including the transmittal cover page, table of contents, any section divider pages, joint venture verification letters, personnel resumes, financial reference letters, labor plan, and allowable appendix materials, as discussed below.

Any Confidential Information must be clearly identified consistent with the Standard Conditions (see Appendix F).

SOQs, except for Confidential Information, are to be submitted only via electronic file uploads as specified in Section 5.4

### 5.2.1 Transmittal Letter

The SOQ must include a cover letter transmitting the SOQ and acknowledging receipt of any and all addenda to the RFQ that may be issued. The letter must be signed by a Respondent representative who is legally capable of committing the Respondent to enter into an agreement with the LRA. The letter should be addressed to:

Guy Bjerke  
Director, Economic Development & Base Reuse  
City of Concord  
1950 Parkside Drive  
Concord, CA 94519

### 5.2.2 Master Developer Team

Introduce and describe the Master Developer Team. If the Lead Developer is a consortium, partnership, or any other form of an informal or formal joint venture, the SOQ must contain: (1) an executed teaming agreement, or if no such agreement exists yet, a summary of the key terms of the teaming agreement; and (2) a letter signed by each Equity Member indicating a willingness to accept joint and several liability until the point at which the selected Master Developer has created a special purpose entity to implement the Project.

Respondents should provide information explaining the relationship among Master Developer Team members, their respective roles and contributions to the Project, and the overall management structure for the team. If the structure includes an informal or formal joint venture or partner relationship, explain how decisions will be made during planning and financing phases of the Project. The team composition should reflect the Respondent's current understanding of the CRP Area Plan and the LRA's goals and objectives for the Development Footprint. Provide summary information about each firm within the Master Developer Team, their relevant firm experience, and resumes (not more than two pages each) for up to 15 Key Staff with primary responsibility for the Master Developer Team's performance. The LRA will expect people identified as Key Staff to work on the Project in the roles identified. Any changes to the Key Staff in the first two years of the Project will require written approval from the LRA.

### 5.2.3 Master Developer Team Experience

Describe the Master Developer Team's experience, with an emphasis on providing information about the Lead Developer's track record of success with comparable large-scale, multi-phase land developments. The description of each

comparable development should include all of the information listed below. Provide information on at least five projects and no more than ten. In addition to the reference information required below, the LRA reserves the right to contact additional references regarding performance of the Master Developer Team, particularly the Lead Developer.

1. Location and name of project.
2. Total development scope and size (including residential uses, commercial component uses, TOD elements and infrastructure improvements, if applicable); explain if or how the project included emerging technology and sustainability concepts; explain how affordable housing was incorporated into the project and if so, how it was financed; explain how vertical construction and horizontal infrastructure were financed for the first phase of development.
3. Development schedule, including time allotted to public processes and entitlements, including a forward look to project or phase completion (as appropriate).
4. Description of the role of the development entity and unique challenges of the development.
5. Note whether there was a Project Labor Agreement or any similar structure requiring participation of union or prevailing wage labor meeting and exceeding the requirements of State and federal law, and the extent to which the PLA applied to horizontal infrastructure, public facilities and/or vertical building construction and type of vertical construction.
6. The amounts of debt and equity funds used to finance the project. Please provide contact information for the primary lender and equity providers for the project. Identify any local, state and/or federal funding sources used to fund project costs. Also provide contact information for a representative of the entity providing the largest amount of any such public assistance.
7. An overview of the investment return thresholds that were established during the pre-development process, and the returns that were actually achieved, or have been achieved to date, including an identification of how long after the commencement of construction the project achieved a breakeven cash flow.
8. Involvement of the principal public agencies granting land use entitlements, and contact information for a senior staff representative of the jurisdiction or agency in which the project was constructed.
9. Description of community outreach and public participation processes.
10. Identify the Key Staff listed in the SOQ who worked on the project and their roles.

## 5.2.4 Responses to Questions

Provide written responses to the following questions. The level of detail for the responses is at the discretion of the Respondent, consistent with direction as to conciseness and the overall page limit.

1. What is your vision for the development of the Project? Will your vision be consistent with the CRP Area Plan? How does it build on the vision as presented in the CRP Area Plan and reflect your current thinking about the real estate market, Concord's competitive advantages, and your experience implementing complex development projects? In your assessment will an increase in the CRP Area Plan's residential unit count be necessary to achieve financial feasibility? What changes, if any, from the CRP Area Plan do you anticipate requesting of LRA and Navy and what circumstances or reasons would you cite to justify those changes?
2. Provide one color illustration not to exceed an 11" x 17" format expressing in a high-level schematic representation the development vision described in item 1, above. The illustration should highlight the proposed initial phase of development per the response to item 5, below. This illustration will be considered in the SOQ evaluation process but will be given less weight in the overall evaluation than other elements of the SOQ.

The illustration is intended to serve the dual purpose of: (1) helping to communicate the Respondent's general intentions for build-out of the Development Footprint; and (2) stimulating further public discussion and awareness about the future of the Development Footprint.

3. The LRA seeks a committed development partner for this Project. Please describe your preferred approach to working in partnership with the City Council and staff to complete detailed planning and entitlements through to Project implementation. Specify how you would approach partnering with the LRA to engage a broad spectrum of Concord residents and stakeholders as planning, entitlement, and development progress.
4. How would you expect to work with the LRA to achieve the 25% affordable housing commitment? The LRA's expectations for the Master Developer are described in Section 3, so this question focuses on how you would incorporate affordable housing into the planning and entitlement process and work with partners toward implementation.
5. How would you approach phasing the Project, taking into consideration the constraints of availability of land transfer from the Navy described in Section 3.2? Where would you expect to start development, and why do you think that is the right place to start? How would you view a phased transfer process from the LRA to the selected Master Developer?
6. Explain which real estate investment return metric you will use to determine project financial feasibility (e.g., Unleveraged Internal Rate of Return, or other), why that metric was selected, and the target threshold, or threshold

range, for that metric that will be used to guide your determination that the Project is financially feasible (e.g., an 18-20% Unleveraged Internal Rate of Return, or other).

7. Please explain how you would ensure that the Project achieves the Concord First policies (see Section 3.11). Responses to this question should reference an executed project labor agreement (Submitted PLA is not included in the page count).
8. How would you provide opportunities for local developers to participate in vertical construction and for local businesses to supply construction materials and services?
9. How would you approach accommodating GoMentum Station's interim uses of portions of the property and provide an opportunity for a potential permanent location in the project?
10. How would you propose to "jump start" uses in the CRP Area Plan's Campus District in order to attract jobs, academic institutions, and research and development opportunities?
11. Similarly, how would you expedite the TSC/Citywide Park to create early interest and attract interest to the project site?
12. How would you address the green frame (buffer) north of Willow Pass Road?
13. How would you propose to improve bicycle and pedestrian safety on the property's portion of Willow Pass Road at the earliest opportunity?
14. How would you propose to improve on the CRP Area Plan's Climate Action Plan and sustainability efforts using current best practices? (See Section 3.14)
15. How would you approach working collaboratively with the LRA to reach agreement with the Navy on an Economic Developer Conveyance Memorandum of Agreement? (See Section 3.2.) What previous experience do you have in BRAC conveyance projects?
16. How would you approach working with the LRA and Navy to ensure the Navy's remediation efforts are successful? (See Section 3.1) Please explain your experience in addressing remediation in other projects.
17. Please describe your anticipated approach to financing required infrastructure. (See Section 3.6.)

## 5.2.5 Financial Capability and Required Disclosures

All respondents, regardless of their status as public or privately held companies must provide evidence of sufficient financial strength to undertake and successfully complete a project of this scale, and certain disclosures including all of the following categories. Respondents may choose to provide some or all of

their responses to these items as “Confidential Information” and submit them as provided at the end of this section.

1. Current Financial Statements. Provide audited financial statements for the Lead Developer, including any Equity Members<sup>3</sup> or Financially Responsible Parties<sup>4</sup>, for the past three fiscal years, each of which includes a certified auditor’s report, balance sheet, income statement and statement of changes in cash flow. If audited statements are not available, provide unaudited financial statements for the relevant entity, certified as true, correct and accurate by the entity’s chief executive, chief financial officer or treasurer. This requirement to provide current financial statements applies to privately held companies as well as public companies.
2. Material Changes in Financial Conditions<sup>5</sup> Statement. Provide information regarding any material changes in financial condition for the Lead Developer, each Equity Member and each Financially Responsible Party for the past three fiscal years and any such material changes anticipated for the next financial reporting period.
3. Credit Rating Information. A statement about whether the Lead Developer has a credit rating, and if so a copy of the current credit rating from one or more of the major credit rating agencies (Moody’s, Standard & Poor’s and Fitch), the related credit rating report and a current Dun & Bradstreet commercial credit score rating, to the extent they are available.
4. Financially Responsible Party Confirmation. If financial statements of a Financially Responsible Party have been provided to demonstrate financial capability of the Lead Developer or an Equity Member, provide a letter from the chief executive, chief financial officer, or treasurer of that Financially Responsible Party confirming that it will financially support all of the Respondent’s obligations with respect to the Development Footprint.
5. Prior Transactions/Financial Partners. If the company is privately held and there is no available public information, provide a combination of documented evidence of prior transactions in which all or substantially all of the financing was provided by the Lead Developer, letters from banks and/or current or proposed financial partners indicating the scale of recent loans, the size of the credit line, or other information that will provide the

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<sup>3</sup> “Equity Member” means (1) an entity with a direct equity interest in the Respondent (whether as a member, partner, shareholder, joint venture member or otherwise); and (2) each entity proposed to have a direct equity interest in the Respondent.

<sup>4</sup> “Financially Responsible Party” means a parent company or Affiliate of a Respondent or Equity Member whose financial statements have been provided to demonstrate financial capability of the Respondent or Equity Member.

<sup>5</sup> “Material Change in Financial Condition” includes, for example, an event of default or bankruptcy; a change in tangible net worth of 10% of shareholder equity; a sale, merger or acquisition exceeding 10% of the pre-transaction value of shareholder equity; a credit rating downgrade; or non-payment of debt service or inability to meet material conditions of a loan or debt covenant.

LRA with assurance that the entity can fund a project of this scale without unduly stretching its resources. See below for submittal instructions for Confidential Information by privately held companies.

6. Litigation Disclosures.
  - a. If, in the past 10 years, any funding source or financial institution has taken any adverse action against the Lead Developer or any joint venture partner, such as terminating or restricting the use of funds, include a summary of such action and the outcome of the same.
  - b. Respondents must also include a comprehensive list of any and all litigation (except for minor employment claims or minor private party business disputes) that is in any way related to its development projects or internal or counter-party organizational disputes, in which the Lead Developer or Equity Member or Financially Responsible Party has been involved over the last ten years, if any.
7. Reference Letters. Three letters of reference from lenders (public or private), including contact information, to demonstrate financial capacity to undertake this Project. (These letters are excluded from page count.) References signing these letters may be contacted by the LRA team for confirmation and clarifications.

Confidential Information will be kept confidential provided it is appropriately identified as described in Appendix F and submitted in hard copy, sent via overnight courier service with signature required to Gerald J. Ramiza, Partner; Burke, Williams & Sorensen, LLP; 1999 Harrison Street, Suite 1650; Oakland, CA 94612-3520.

### **5.2.6      Review of Exclusive Negotiating Agreement**

To expedite negotiations with the selected Master Developer, provide either a statement that the terms of the Form of Exclusive Negotiating Agreement (ENA) found in Appendix G are acceptable as drafted, or a list of material changes the Respondent would expect to be made before signing the ENA. If desired, this submittal can be designated as Confidential Information, consistent with Appendix F. (Comments on Form of ENA are not included in the page count.)

### **5.2.7      Comments on CFP Term Sheet**

For informational purposes, Respondents are required to submit comments on the CFP Term Sheet found at the link in Appendix H indicating areas where Respondent agrees or disagrees with particular terms and/or providing commentary on terms negotiated by the City and CFP negotiating teams. The CFP Term Sheet was a draft document that was not accepted by the City Council and the document's content, including land-uses, unit counts, and community benefits are neither accepted minimums nor maximums. If desired, this submittal can be

designated as Confidential Information, consistent with Appendix F. (Comments on CFP Term Sheet are not included in the page count.)

### 5.2.8 Project Labor Agreement

Respondents are required to submit an executed PLA with their SOQ submittal, which if desired, can be designated as Confidential Information, consistent with Appendix F, from the time of submittal until such time as the City is ready to release the staff report for the Master Developer Interview and Selection process meeting. The executed PLA, regardless of whether designated as Confidential Information for that interim period, will be released to the City Council and public as part of the documents issued for the City Council meeting.

## 5.3 Selection Criteria

The following selection criteria will be considered by the City Council when selecting the Master Developer. While they are presented in order of importance, the City Council will base its decision on the overall RFQ/SOQ process, including each SOQ as a whole, the LRA Team's Summary, oral and written staff reports, Respondent interviews, public input, and other relevant information and materials presented at the public meetings held to consider the Master Developer selection.

- Demonstrated understanding and commitments of the developer to satisfy the City's priorities for the CNWS, including development vision as expressed in the CRP Area Plan and community facilities in Section 3.4, including the Concord First commitment found in Section 3.11.
- Financial capability and history of successfully financing projects of a similar scale, particularly those with a large infrastructure component.
- Respondent's identified Internal Rate of Return threshold for the project.
- Experience of Lead Developer with successful completion of similar projects, including projects that are large-scale, mixed-use, military base reuse, and transit oriented.
- Organization of the Master Developer Team and any other members of the Project Team.
- Experience of principal technical subconsultants (Project Team members who are not the Lead Developer) – such as architects, engineers, permitting, and remediation specialists.
- Response to Review of Exclusive Negotiating Agreement
- Response to Comments on CFP Term Sheet

- Responses received from financial references provided as requested in #7 of Section 5.2.5 and public agency references provided as requested in #8 of Section 5.2.3.

## 5.4 SOQ Document Submittal via ShareFile Instructions

The City will be utilizing ShareFile for submittals of proposals. Representatives of Respondents attending the mandatory Pre-Response Conference meeting will be providing their e-mail address at the meeting and later provided with a unique link (via e-mail from the City) to the City's ShareFile account for the uploading of submittals, approximately one week prior to the proposal deadline. The LRA requests all files to be "zip-filed" prior to submittal. All Respondents must also e-mail the LRA's administrative contact (Israel Mora) at [israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org) upon submittal of files to confirm receipt.

## **Appendix A**

### **CRP Area Plan Summary**

## A1 CRP Area Plan Summary

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### A1.1 Development Program

About 2,700 acres of the CNWS site's total of 5,046 acres is set aside for habitat conservation/restoration, open space, and passive recreation lands. Another 800 acres (of the designated LRA's property) will be set aside for Greenways and Citywide Parks.

Of the approximately 1,500 remaining acres, development is expected to include a range of land uses, all connected to the North Concord/Martinez BART station, including mixed use areas: TOD Core, TOD Neighborhoods, Central Neighborhoods, Villages (neighborhoods that extend south and east from the Central neighborhoods, each with distinct characteristics and a mix of building types), the completion of Willow Pass Park, Commercial Flex uses adjacent to Highway 4, the Diablo Creek Golf Course (a municipal course run by the City), a campus district, and a proposed tournament sports complex. Also, part of the approximately 1,500 remaining acres is approximately 78 acres set aside for the Contra Costa County Sheriff/Fire District.

Figure A-2 is the approved CRP Area Plan Diagram showing district designations for these land uses.

The CRP Area Plan (2012) development program is summarized in the table below. The precise acreage, number of housing units, and commercial floor space in each District (each District is essentially a land use category) will be defined during subsequent planning phases and may vary somewhat from the program summary, so long as overall development remains within the maximum site-wide total. The selected Master Developer will have a major role in developing a Specific Plan to serve as that subsequent planning and develop a level of detail that can be entitled. District Open Spaces are included in the acreage shown for the Development Districts and total acreage includes the 18-acre BART property (refer to Figure A-1 for the overall site and BART property boundaries). As in the RFQ, the adjacent former Coast Guard Property is not included in the CRP Area Plan nor will the selected Master Developer develop this area.

Table A-1 CRP Area Plan Development Program

District	Approximate Acres	Approximate Housing Units	Approximate Commercial Floor Space (SF)
North Concord TOD Core	55	(housing not required)	3,000,000
North Concord TOD Neighborhoods (all)	90	2,200	150,000
Central Neighborhoods (all)	180	2,600	100,000
Village Centers (all)	70	500	350,000
Village Neighborhoods (all)	740	6,200	N/A
Commercial Flex	210	N/A	1,700,000
Campus	120	TBD	800,000
First Responder Training Center	80	N/A	N/A
Greenways and Citywide Parks	786	N/A	N/A
Conservation Open Space	2,715	N/A	N/A
Total	5,046	12,200	6,100,000
Maximum Sitewide Total	5,046	12,272	6,115,718

Note that these Area Plan development program acreages were gross district acreages that included acreage for roadways. Total acreages per district may decrease to account for roadway acreage.

Within the residential areas, the CRP Area Plan provides further guidance about the preferred neighborhood housing mix. Once again, the number and mix of housing units will be defined during subsequent planning and may differ from the program summary.

Table A-2 Neighborhood Housing Mix

District	Approximate Housing Units	Multi-Unit	Attached Single Unit	Mix of Detached and Attached Single Unit	Detached Single Unit
North Concord TOD Core	700	100%	-	-	-
North Concord TOD Neighborhoods (all)	2,200	80%	20%	-	-
Central Neighborhoods (all)	2,600	15%	75%	10%	-
Village Centers (all)	500	60%	40%	-	-
Village Neighborhoods (all)	6,200	-	35%	45%	20%
Total	12,200	25%	40%	25%	10%
Typical Residential Building Height (stories)		3-6	2-3	2	2

The CRP Area Plan further outlines standards for each District (“District Standards”). These standards include the District’s intent, allowable density, and

intensity of use, required mix of uses, additional appropriate uses, convenience standards, and parking locations. Please refer to the CRP Area Plan for these details. The CNWS site also encompasses wetlands and other natural resources, most within the open space but at least two seasonal wetlands in potential development areas. The CNWS site contains a significant amount of developed (Greenways and Citywide Parks) and undeveloped (Conservation) open space.

Figure A-1 Planning Area Boundary

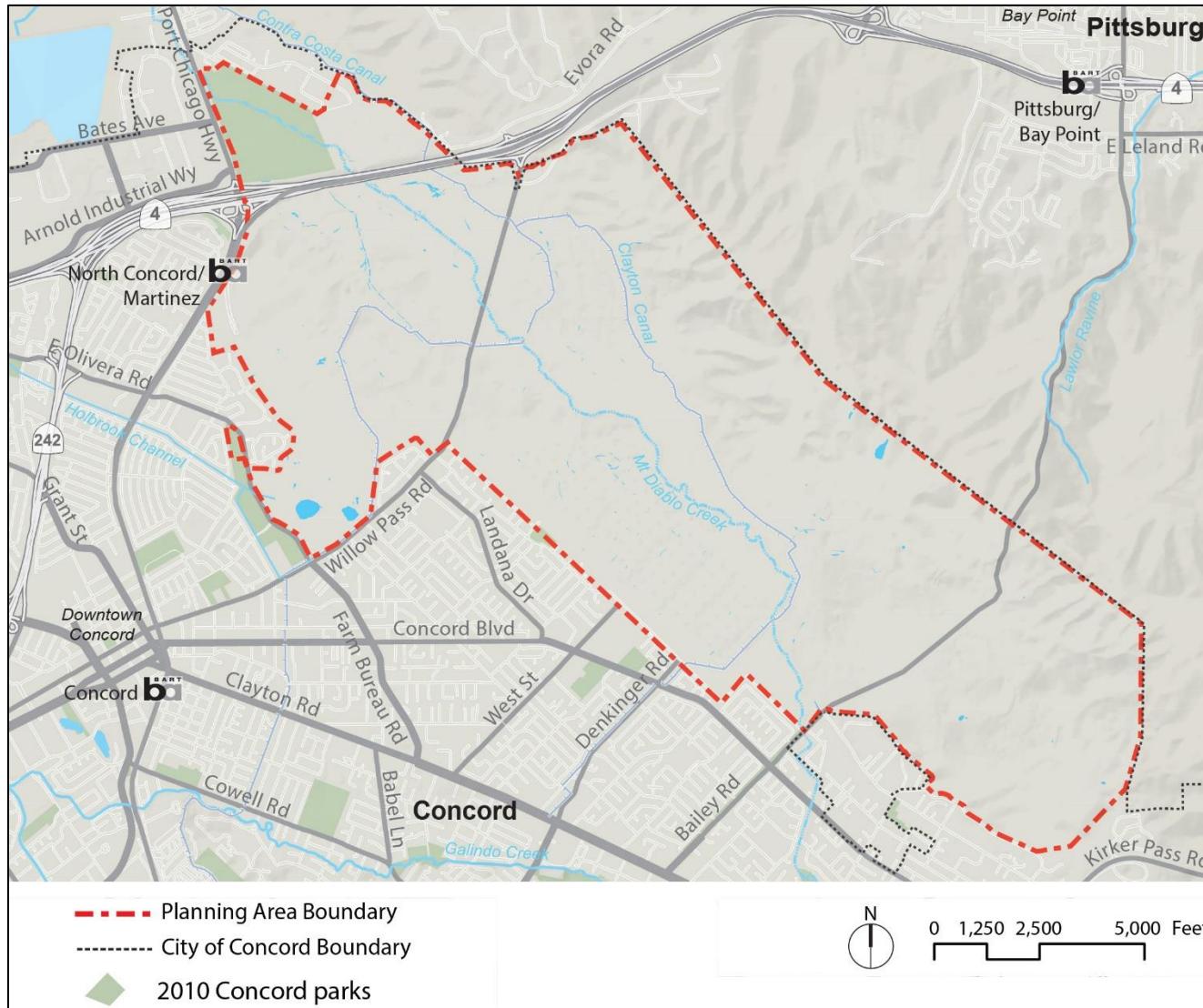
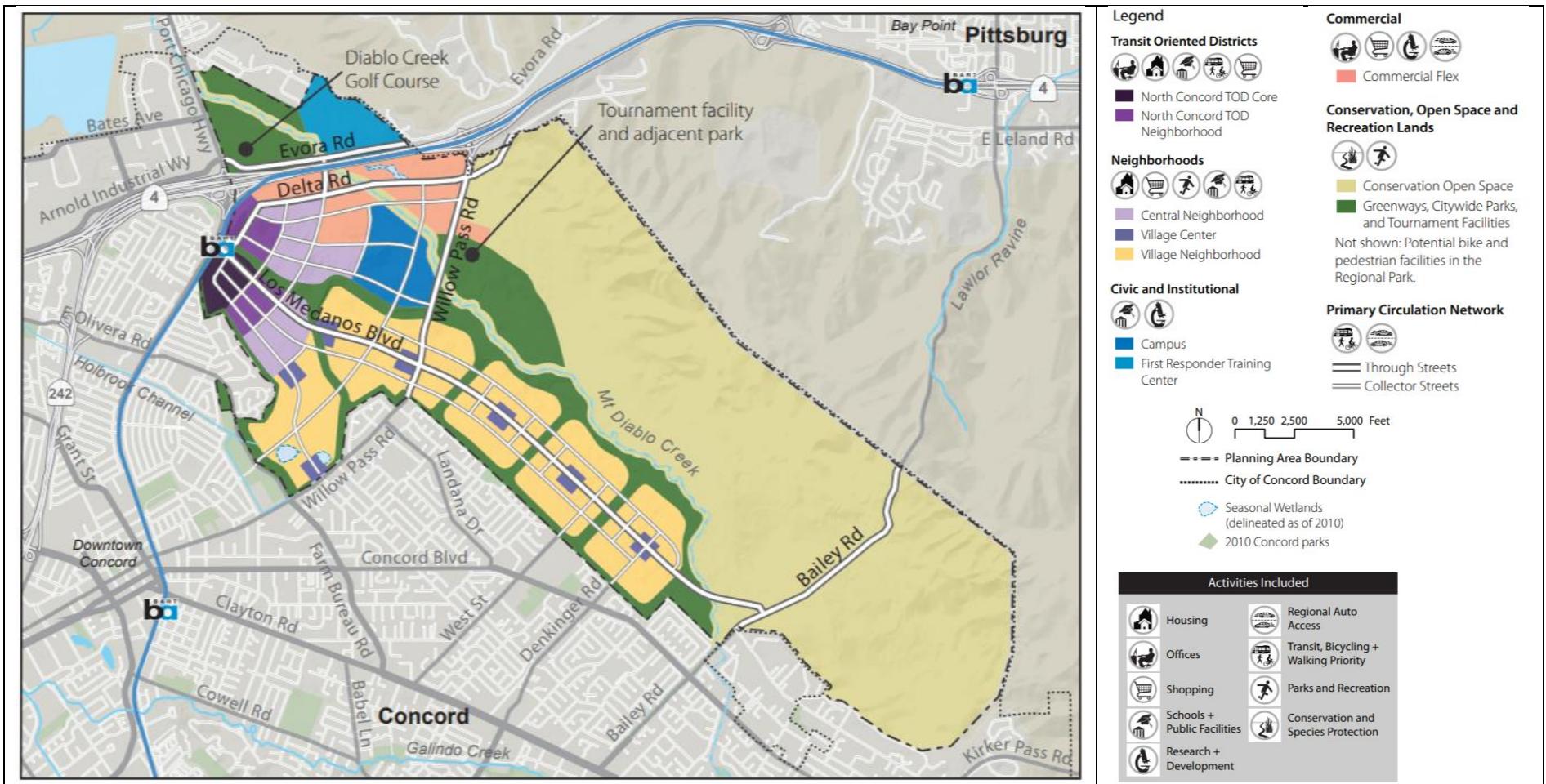


Figure A-2 CRP Area Plan Diagram



## A1.2 Conservation, Open Space and Recreational Lands

The CRP Area Plan designates approximately 69% of the CNWS site for habitat conservation/restoration, open space, and recreational land, creating an array of recreational opportunities while preserving valuable natural resources. The CRP Area Plan organizes open space into five categories: 1) habitat conservation/restoration; 2) passive recreation/ open space; 3) greenways; 4) citywide parks; and 5) district open space, serving neighborhoods and commercial districts. The Countywide Bike and Pedestrian Plan and the City of Concord Trails Master Plan provide a framework for integrating new trails with a citywide and regional trail network that extends throughout the Bay Area.

For more details and figures on habitat conservation/restoration, see Appendix E: Natural Resources Permitting Framework.

## A1.3 Community Facilities

The CRP Area Plan designates facilities such as a library, schools, and arts centers as community focal points. Some facilities may serve people living and working in the immediate surroundings, while others will attract people from throughout Concord or even the whole Bay Area. While the CRP Area Plan does not identify specific sites for most community facilities, their location and design will play a central role in creating vibrant and safe centers that support all modes of transportation and enhance quality of life for Concord's residents.

## A1.4 Circulation System Design

The CRP Area Plan includes three interrelated and overlapping circulation networks: complete streets, a bicycle network, and a transit network. Complete streets accommodate many modes of travel, including pedestrian, bicycle, transit, and automobile and truck circulation, as well as wheelchairs and strollers. The intent, function, and standards applicable to each street type are defined in the CRP Area Plan. The transit network facilities include the high-volume BART station and a high frequency bus that will travel within a dedicated lane between the BART station and the southern Village Centers and Neighborhoods along a new transit spine. The network will also include shuttles and other local bus routes, which will connect to the downtown Concord BART station and other major employment centers in the City. The intent, function, and standards applicable to each component of the transit network are defined in the CRP Area Plan. The bicycle network will serve bicyclists on a combination of dedicated and shared routes. Again, the intent, function, and standards applicable to each component of the bicycle network are defined in the CRP Area Plan.

Following completion of the CRP Area Plan, the Coast Guard decided to surplus their property adjacent to the CNWS. This has created an opportunity for an additional roadway connection to East Olivera Road not originally planned for in the CRP Area Plan.

## **Appendix B**

### **Infrastructure**

## B1 Introduction

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This report summarizes the preliminary planning, coordination, and engineering that has been done for the Concord Reuse Project (CRP) infrastructure. Arup completed initial planning and engineering for the CRP in support of the 2010 programmatic EIR and the CRP Area Plan. This initial work was validated and refined by the Lennar development team in preparation of the administrative draft Specific Plan, a draft of which was delivered to the LRA in 2019. See Section 1.4 of the RFQ for information on the administrative draft Specific Plan.

Arup prepared and updated most recently in 2017 an opinion of probable cost reflecting preliminary cost estimates for infrastructure to support buildout of the Project. It is available on the Project website.

The information provided in this report is preliminary in nature, based on high level assumptions and concept level engineering. This report may serve as general guidance for the new Master Developer Team, but all engineering assumptions and design will have to be validated and developed in subsequent phases of the Project.

## B2 Design Principles

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The following design principles govern infrastructure development for the CRP.

### B2.1 Infrastructure Layouts

Utility infrastructure shall be located underground within public rights-of-way or utility easements to provide for safe, visually unobtrusive, and environmentally sensitive utility systems that are compatible with adjacent land uses. Site utility systems shall be designed in a coordinated and holistic manner. Backbone utility corridors shall be laid out to match the site's primary roadway network with alignments that minimize encumbrance to the development areas and maximize long-term flexibility and operational efficiency.

### B2.2 Phasing

Utility infrastructure shall be designed and constructed to support the full build out of the Project. If the Project is developed in phases, the early phase infrastructure shall be constructed in a manner that supports the full build out of the Project, including backbone utility corridors, water storage tanks, electrical infrastructure, and offsite utility connections that are sized and located to adequately serve the entire Project.

## B2.3 Sustainability

The CRP infrastructure shall incorporate sustainability principles and climate action strategies into the design, operation, and management of utilities to the greatest extent feasible, including:

- Prioritizing use of renewable energy, recycled water, and low impact design principles.
- Designing utility networks to promote maximum efficiency and flexibility to adapt to future changes in user demands and source supplies.
- Selecting materials that minimize greenhouse gas emissions and conserve natural resources.
- Developing grading and storm water management strategies that preserve natural topography and hydrologic patterns.

## B3 Grading

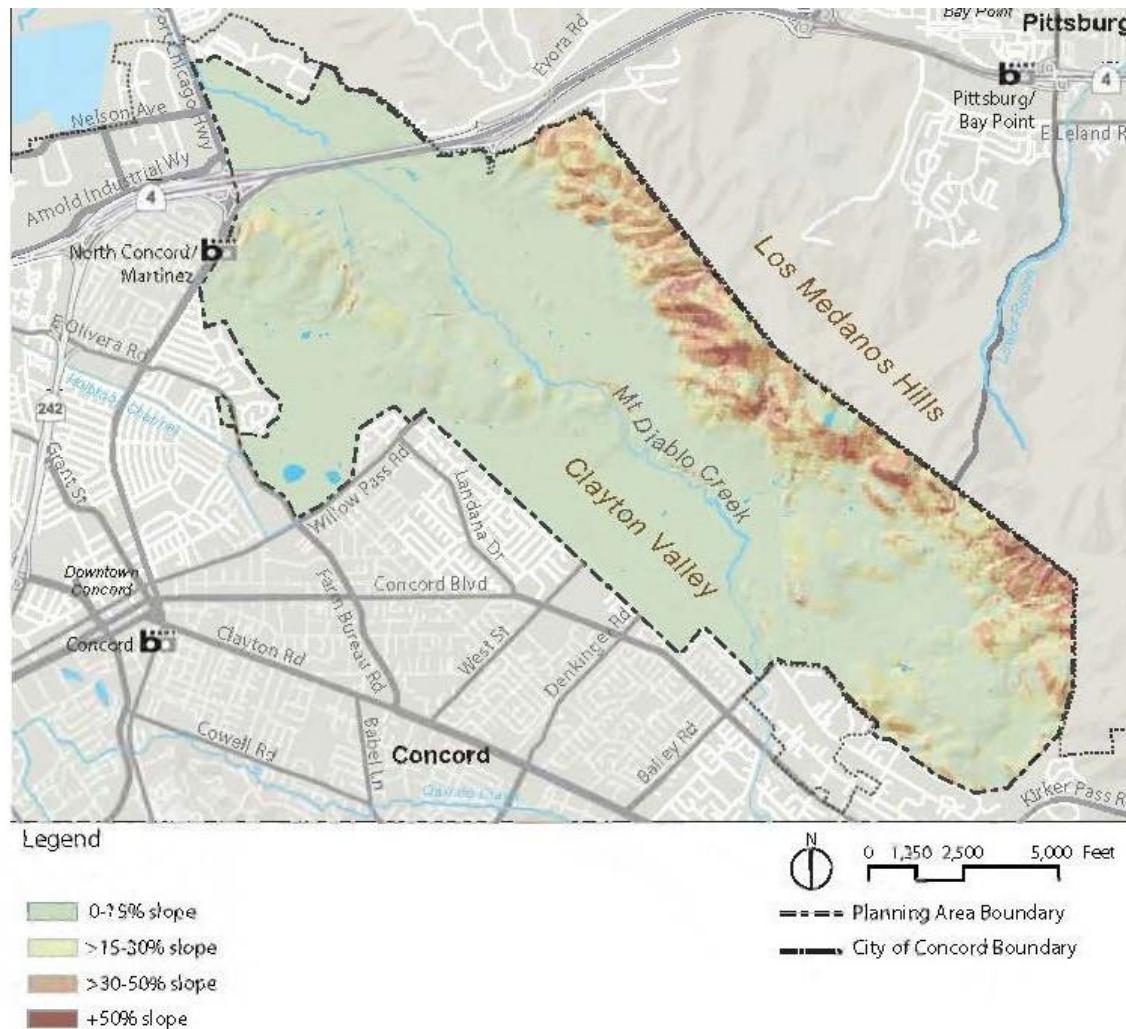
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### B3.1 Existing Site and Topography

The CRP Area ranges in elevation from 5 feet above sea level near State Route 4 to approximately 240 feet at the top of a knoll just south of Willow Pass Road. The site lies within the broad, flat Clayton Valley, although a ridge runs roughly along the center of the site starting near the North Concord/Martinez BART station. Slopes in the CRP Area range from zero across much of the southwestern area to more than 30% in the central ridge line. See the topography and landform from the Area Plan in Figure B-1.

Other notable existing features within the CRP Area include the Contra Costa Canal and Mt. Diablo Creek. Beyond the area's north-eastern boundary, the Los Medanos Hills rise to elevations of greater than 1,400 feet.

Figure B-1 Topography and Landform from the CRP Area Plan



Topography Data Sources: Percent slope derived from United States Geological Survey 10-meter digital elevation models, 1997. City of Concord General Plan, 2006.

## B3.2 Area Plan Policies

The CRP Area Plan locates most future development on the valley floor and preserves significant hillsides and steeper slopes as open space. Area Plan Policy “C-2.2: Slopes Over 30 Percent” states:

“Limit development on slopes that are 30% or greater. Where such slopes occur within the areas shown for urban uses on the Area Plan Diagram, they should generally be set aside as public or private open space in order to minimize the need for grading and earth movement. In the areas closest to the North Concord/Martinez BART station, some development on steeper slopes may be acceptable in order to maximize transit-oriented development opportunities.”

The site was planned to this CRP Area Plan policy and limits the need for excessive grading; the specific location of greenways and boundaries of districts were selected so that key topographic features could be incorporated into the greenways and mass grading could be avoided. Portions of Development Districts with significant topography will be designed to provide comfortable, convenient access to other portions of the site, and sections of it could be used for large-lot housing.

Arup developed a conceptual grading design for the CRP Area Plan. Grading parameters were developed for the different types of development planned, with TOD Core, TOD Neighborhoods, Central Neighborhoods, Village Neighborhoods, and Campus/Commercial Flex. Fifteen-foot-deep basement excavations were incorporated into the blocks in the TOD Core Neighborhood, TOD Core, and Central Neighborhood districts, with 50% of the block areas assumed to have basements. Basements in these districts resulted in significant cut volumes (approximately 1,360,000 CY). In the higher elevations of the Village Neighborhood district, grading was terraced, assuming the street network had greater flexibility than the denser TOD Core Neighborhood, TOD Core, and Central Neighborhood districts.

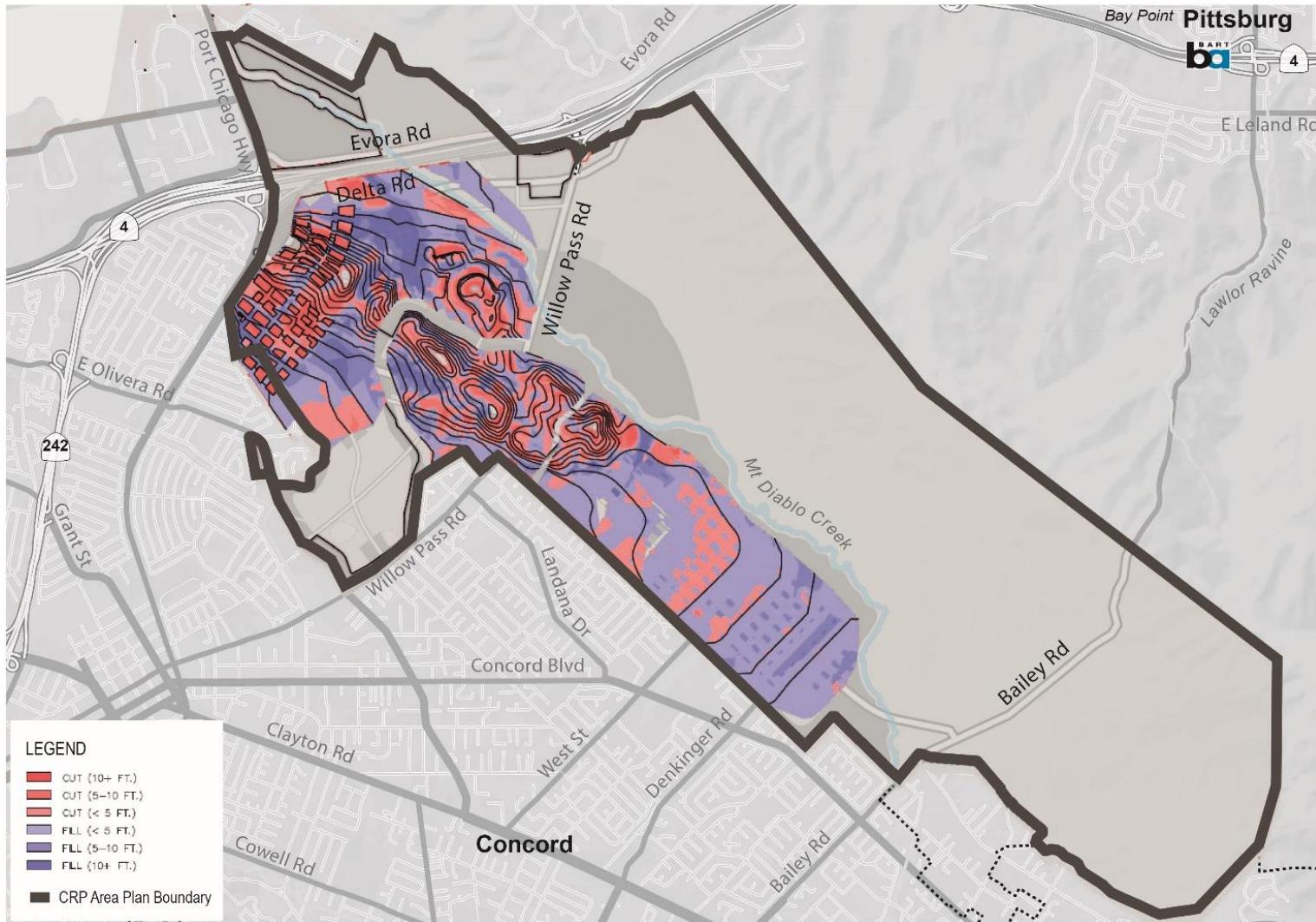
The total grading for the site per the CRP Area Plan is approximately 5,800,000 CY of cut and 5,800,000 CY of fill. The site has a net earthwork balance with flexibility to suit additional cut or fill. The following is a summary of the most significant areas of earthwork:

- 1,360,000 CY cut – TOD Core Neighborhood, TOD Core, and Central Neighborhood districts
- 420,000 CY cut – Re-grading of Mt. Diablo Creek to increase conveyance capacity for Reaches 1 and 3
- 200,000 CY cut – Potential detention basin for additional flood capacity for Mt. Diablo Creek
- 340,000 CY cut – excavation of contaminated soil within Site 22

- 790,000 CY fill – Campus and Commercial Flex districts
- 1,130,000 CY fill – Village Neighborhood bunker area

Arup's grading design considered the site holistically rather than by district or by phased development within the site. Grading was optimized to minimize the overall earthworks for the site. See the conceptual grading design in Figure B-2.

Figure B-2 Conceptual Grading



### B3.3 Lennar Specific Plan Grading Update

Lennar was tasked with taking the conceptual work of the CRP Area Plan and turning it into a Specific Plan for the CRP.

Lennar's initial grading plan differed from the CRP Area Plan in two key respects; first it detailed the principal of developing the Project in phases, and it planned for mass grading of the site into a much flatter plan – nearly eliminated the ridge line through the site and reduced the naturally rolling topography to typically under 4%, with much of it at 2%. This resulted in total grading quantities of 20 million cubic yards, with mass grading at 15.6 million cubic yards. Lennar provided the following reasoning for the revised grading design:

- High-intensity development was not feasible at the grades the CRP Area Plan envisioned for the TOD core. Stepped foundations and walls would place significant financial constraints on development.
- Steep grades significantly complicated the transportation strategy and would discourage active modes such as walking and biking.
- The initial proposed Phase 1 boundary (in the 2014 RFP/Q) cut across watersheds, resulting in duplicate infrastructure costs for the first phase without additional benefit.
- The LRA and Lennar worked collaboratively to find a compromise between the two grading plans. Ultimately, Lennar's revised grading plan included steeper development slopes and preserved more of the ridge and natural topography. The revised plan reduced the site earthwork to 11 million cubic yards while balancing the overall site earthwork.

### B3.4 Key Takeaways for Future Development

The densest development within the CRP Area Plan —the TOD core near the North Concord BART station—has the most significant grading challenges; the existing terrain is steep, at least half the buildings will be expected to have basements; and they will be larger scale buildings with strict foundation requirements. This portion of the site unavoidably generates excess cut regardless of development scenarios.

The volumes of earthwork generated by a site of this scale are best retained on site because they are far too large for major import or export. The site is also of a scale that development will likely be phased, potentially over decades. Balancing the earthworks for the overall site and within any project phases will require detailed planning and engineering. Cut from early phases of development can be stockpiled on site, but all site grading will need to be stabilized with full erosion control and consideration to drainage.

Development phase boundaries involving earthworks need to be considered with regard to the other infrastructure needed to serve the site. Phase boundaries that involve significant grade changes would complicate the connections of water, sewer, storm drainage, as well as the dry utilities. Early phases need to have full connectivity to infrastructure, ideally without a need for duplicative or re-built infrastructure.

## B4 Onsite Transportation Infrastructure

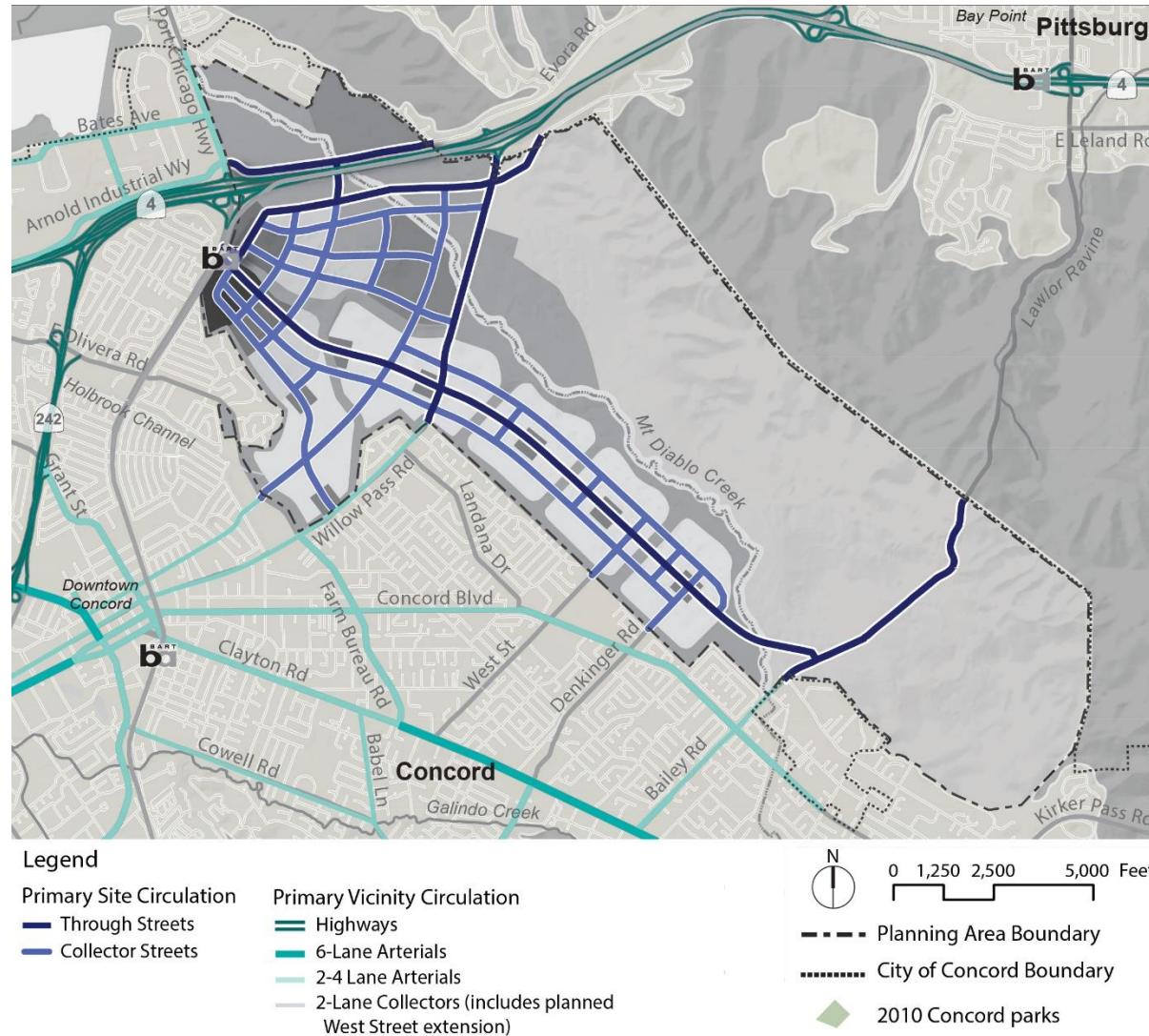
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The CRP Area Plan includes three interrelated and overlapping circulation networks: complete streets, a bicycle network, and a transit network. Onsite transportation infrastructure for the Development Footprint includes new roadways, intersections, and bike paths. Transit and offsite improvements are addressed in more detail in the Area Plan.

### B4.1 Roadway Design

Typical roadway sections are designed as complete streets and include the following components: mixed-flow travel lanes, dedicated transit lane where applicable, parking lanes, bike lanes (Class II), streetscape plantings and sidewalks, for each travel direction. The Development Footprint is anticipated to have approximately 8 miles of through streets and 16 miles of collector streets. See the conceptual complete streets network from the CRP Area Plan in Figure B-3.

Figure B-3 Complete Streets Network from the CRP Area Plan



## B4.2 Intersection Improvements

Existing intersection improvements will be required at the interface between the existing roadway at the site boundary and new roadways to be built on site. The work is assumed to include added turn lanes, upgrades to existing traffic control systems, new traffic signals at the intersection, repaving at the intersection, and minor modifications to sidewalk, curb, and gutter.

## B4.3 Bike / Pedestrian Trails

The bike network will serve bicyclists on a combination of dedicated and shared routes. A significant bike/pedestrian Class I trail network is planned for the Development Footprint. The network will consist of approximately 18 miles of 10 – 12-foot-wide paved travel ways with associated lighting, signage, and pavement markings.

# B5 Sanitary Sewer

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## B5.1 Existing Conditions

There is no sanitary sewer infrastructure within the CRP Area. A new wastewater collection system will have to be constructed as part of this Project.

The CRP Area is roughly split between the wastewater service area of Central Contra Costa Sanitary District ('CCCSD') and the area served by the City of Concord. The boundary between these service areas generally follows the ridgeline that bisects the Project site from northwest to southeast. The northern area is within the CCCSD area. The southern area is served by the City.

The City owns and maintains the existing wastewater collection facilities within its service area, including pipelines within existing, developed areas southwest of the CRP Area. The City's system includes a series of gravity pipelines that convey wastewater from the City and other surrounding areas within its service district to the CCCSD treatment plant.

CCCSD owns and maintains separate wastewater collection facilities in its service areas in North Concord. These facilities include pipelines, pumps, and lift stations that also convey wastewater to the treatment plant. The existing CCCSD collection facilities nearest to the CRP Area are located near the intersection of Bates Avenue/Port Chicago Highway

Both service providers collect and convey wastewater to the wastewater treatment plant owned and maintained by CCCSD, located near the I-680/Highway 4 interchange, approximately 3 miles northwest of the CNWS site.

## B5.2 Projected Wastewater Peak Flows

The peak wastewater flow estimated in the Area Plan for full Project buildout is 7.1 MGD (million gallons per day). The peak flow rate was calculated by multiplying the average daily dry weather wastewater demand by a peaking factor of 2. The Area Plan peak flow estimate is conservative. Refinements to the CRP's development program and more detailed system modeling may yield a lower a peak flow.

CCCSD has indicated that the wastewater treatment plant has adequate available treatment capacity to accommodate the full CRP build-out. The measured dry weather flow into the CCCSD treatment plant in Fiscal Year 2008 was 35.2 MGD, while its maximum operating capacity was approximately 125 MGD. The plant's effective capacity is capped at a maximum dry weather flow of 53.8 MGD by its National Pollution Discharge Elimination System (NPDES) permit, which is intended to limit effluent discharge into San Francisco Bay. CCCSD's treatment plant capacity will need to be reconfirmed by the development team during subsequent design phases.

## B5.3 Project Wastewater Infrastructure Improvements

As discussed in both the CRP Area Plan and Draft Specific Plan, there are 4 scenarios for the Project's overall wastewater system design.

- Convey Project wastewater to both the CCCSD and City, based on their respective current service area boundaries.
- Convey all Project wastewater to CCCSD's system to the north.
- Convey all Project wastewater to the City of Concord's system to the southwest.
- Rearrange service area boundaries to maximize available capacities and minimize downstream improvements.

Selection of one of the above scenarios will depend on the results of ongoing discussions with CCCSD and the City. Both the City and CCCSD have evaluated and identified necessary improvements to their respective existing downstream collection systems to accommodate future peak wastewater flows from the Project. The sanitary sewer system serving the Project should be configured to minimize the extent of downstream system upgrades needed within either the CCCSD or City service areas while still ensuring adequate pipeline capacity.

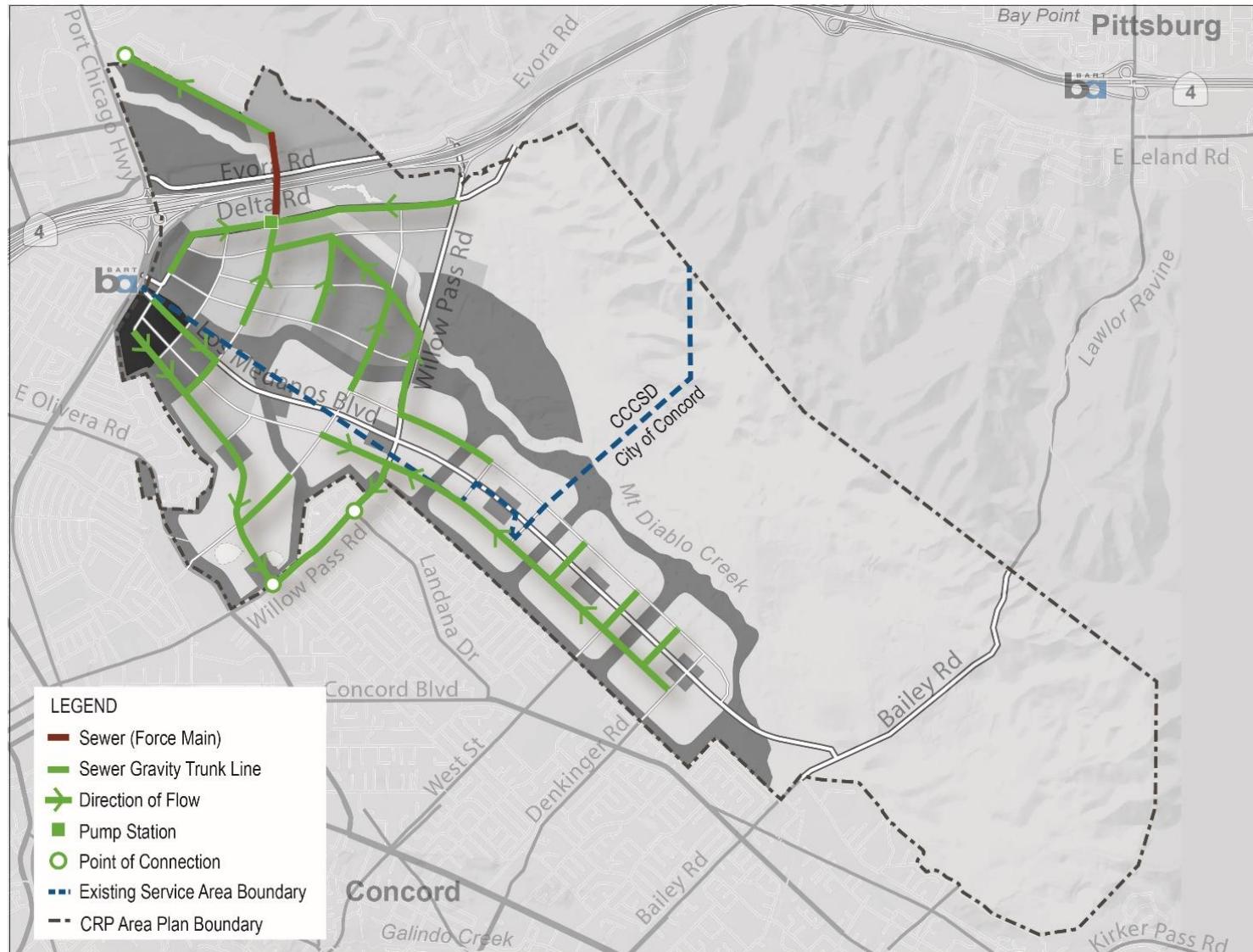
Connections to the City sewer system are anticipated at Willow Pass Rd. and Port Chicago Highway. Both connections will require upgrades to the existing City mains to support the CRP. The extent of these upgrades will depend on which scenario is selected for the Project.

Under any of these scenarios, the Project's wastewater system development will include an off-site pipeline extension to connect the site to the existing CCCSD Concord Industrial Pump Station facilities in North Concord. This off-site extension will occur within the same alignment as the recycled water pipeline extension, where feasible, to minimize disturbance.

For both options, preliminary studies indicated that pump stations are required to tie into the City and CCCSD systems based on the site grades and assumed pipe depths at the proposed points of connection

The Project's internal wastewater conveyance system will consist of approximately 40,000 linear feet of gravity pipes and force mains ranging from 8-24 inches in diameter: a conceptual layout is presented in Figure B-4. Pump stations may be necessary depending on which service scenario is selected. Interim pump stations may also be necessary to address new development phasing.

Figure B-4 Conceptual Wastewater Conveyance System



## B6 Electrical Distribution

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### B6.1 Existing Conditions

PG&E owns and operates several transmission level electrical lines within proximity of the CRP Area, including the 230-kilovolt ('kV') Pittsburg-Tidewater transmission line, which runs roughly parallel to the Project's eastern border at the top of the Los Medanos ridge line and the 115kV Pittsburg-Clayton transmission line along Kirker Pass Road.

Existing uses on the CNWS site receive electricity directly from the Western Area Power Administration, which is distributed using 4.16 kV overhead lines. In addition, PG&E has a 21 kV overhead line that generally follows the Mt. Diablo Creek Corridor and a 12 kV overhead line that runs parallel to Willow Pass Road. These distribution lines provide utility feeds to the cities of Concord and Clayton and do not provide direct service to the CRP Area.

PG&E indicated as recently as 2018 that the local 21 kV and 12 kV distribution system has approximately 5 – 10 MW of extra capacity, which could be used for initial development. Availability and access to this capacity are on a first come first served basis and will need to be reconfirmed by the future Master Developer if they intend to use it.

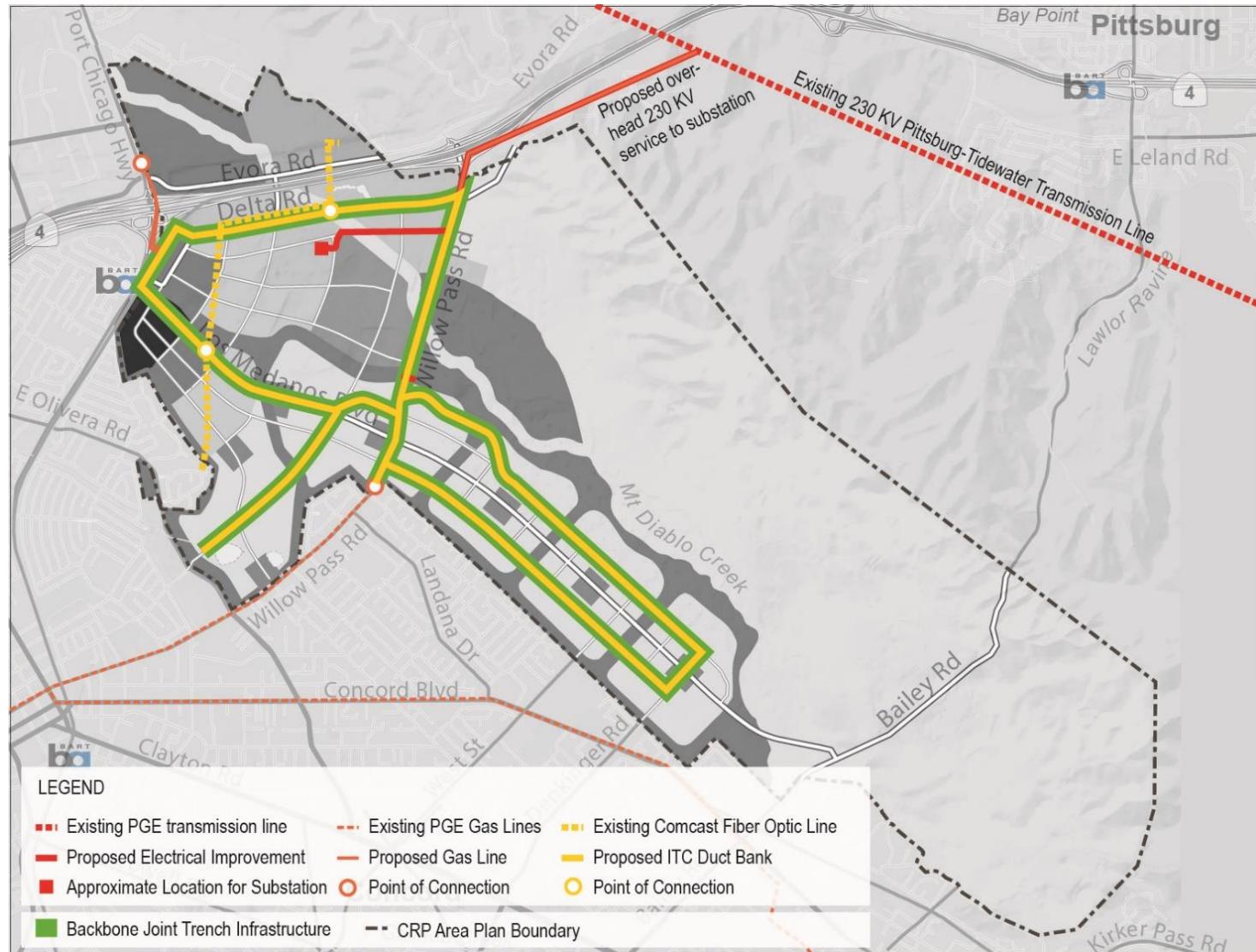
### B6.2 Proposed Electrical Supply and Distribution

The CRP development will require the construction of a new PG&E substation to provide electricity for the Project. PG&E's preferred alternative for electric service to the site is from the 230 kV Pittsburg-Tidewater Transmission Line, with the assumed point of connection just south of SR-4. The connecting 230 kV transmission line will be located on overhead cables running parallel to SR-4 or along the Avila Road ROW. The 230kV overhead line will terminate at a new PG&E substation where the voltage is reduced from 230 kV to 12 kV for site distribution. Based on the total electrical demand estimate for the Project, two 33 MVA transformers are assumed for the substation and will provide a total capacity of 66 MVA. This demand estimate will need to be verified during design.

The new substation will require a site of approximately 5 acres, including land necessary for ingress and egress to the incoming transmission line and outbound distribution lines. The substation site will need to be relatively flat and outside of wetlands, areas with liquefaction potential, and known fault locations. Several potential substation locations have been discussed with PG&E, including sites north of Highway 4 and along Avila Road. It is generally agreed that the substation will be located in the northeastern portion of the CRP Area, but the final location has not been determined.

Electrical distribution for the CRP will consist of a network of underground 12 kV circuits constructed in a joint trench with site telecommunications and natural gas infrastructure. A conceptual layout of this joint trench infrastructure is presented in Figure B-5.

Figure B-5 Conceptual Joint Trench Infrastructure



## B7 Natural Gas

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### B7.1 Existing Conditions

PG&E owns and operates existing natural gas transmission pipelines along the north side of Highway 4 and north of Kirker Pass Road as well as gas distribution facilities within Port Chicago Highway and Willow Pass Road.

The CRP Area does not have existing natural gas infrastructure in place.

### B7.2 Proposed Natural Gas Service and Infrastructure

PG&E will provide gas service for the CRP, which has a projected natural gas demand at full buildout of approximately 1730 thousand cubic feet per hour.

PG&E has proposed the construction of a new feeder main from the existing 24" high pressure transmission line near Port Chicago Highway and SR 4 to the south to a gas regulator site that would be located near the southern edge of the TOD area or on Willow Pass Road near planned community facilities. PG&E has stated that their existing transmission facilities have sufficient capacity to support the full buildout of the Project.

The CRP natural gas distribution system will then service the site from this main connection with a secondary connection at Willow Pass Road for resiliency. Preliminary engineering indicates that the site's natural gas distribution will consist of approximately 50,000 linear feet of 6-inch and 8-inch gas pipes with smaller localized service connections: A conceptual layout is presented in Figure B-5.

## B8 Telecommunications

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### B8.1 Existing Conditions

AT&T is the major telecommunications provider in Concord. Comcast and Astound Broadband also provide telecommunications as well as cable television services. The CRP Area is within the franchise agreement area between Comcast and the City. Comcast maintains an existing aerial line running through the site, and a 2-inch fiber optic cable that runs across the site in the area between Port Chicago Highway and Willow Pass Road.

The CRP Area does not contain telecommunications or fiber backbone networks.

## B8.2 Proposed Telecommunications Infrastructure

Backbone telecommunications and fiber optic service for the CRP will be constructed in a joint trench with PG&E's electric and natural gas distribution services. The duct bank will be designed with capacity for multiple service providers as well as the City. Points of connection, service providers, and network strategies will need to be developed as part the overall Project infrastructure plan. A conceptual layout is presented in Figure B-5.

## B9 Storm Drainage

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### B9.1 Existing Conditions

The CRP Area is largely undeveloped and is comprised of two major watersheds. The larger Diablo Creek Watershed encompasses the northern and eastern portions of the site. The Holbrook Channel Watershed encompasses the western portion of the site. Downstream of the CRP Area, the 100-year flood zones for both Mt. Diablo Creek and Holbrook Channel extend beyond their banks and into neighboring developed areas, indicating that these channels do not have capacity to accommodate increased storm water runoff.

### B9.2 Proposed Storm Water Management

In accordance with the Contra Costa Clean Water Program, the CRP will be required to treat all site storm water runoff prior to discharge to existing drainage ways and provide storm water detention so that the post-development peak flow rates from the site do not exceed predevelopment flow rates.

Detention basins and storm water treatment areas will need to be strategically located throughout the site to utilize site topography and maintain the existing character of predevelopment runoff patterns. The number and location of new detention facilities and storm water outfall locations should strive to balance the optimization of site watershed sizes and development planning with the preservation of existing drainage pathways and natural outfall locations.

### B9.3 Proposed Storm Water Infrastructure

Arup developed and modeled a preliminary backbone storm drainage network for the CRP Area Plan using InfoWorks CS (Collection Systems) software.

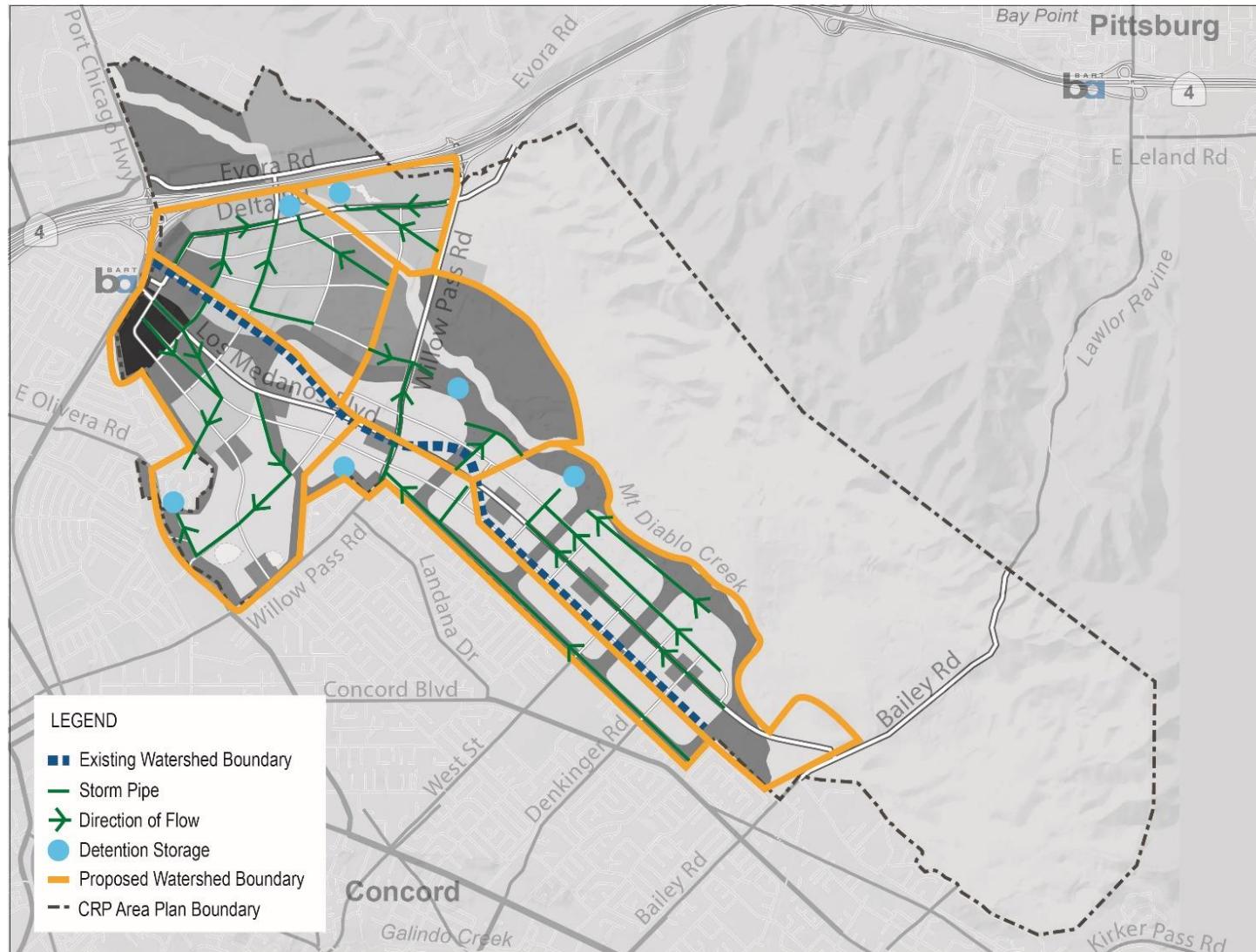
Due to the increased imperviousness of the proposed site surface, detention storage will be needed throughout the Project so that post-development peak flows do not exceed predevelopment peak flows. Storm pipes were assumed to be sized to accommodate the 10-year rainfall event in open channel condition, with a Manning roughness 'n'=0.013. Detention storage is sized to attenuate the

100-year event, assuming through and collector streets will serve as emergency overland flood control, and runoff in the streets is carried the same direction as underground storm pipes.

The Contra Costa County Public Works Department (CCCPWD) duration-frequency-depth curves were consulted to develop representative 10-year and 100-year, 30-minute duration rain curves. A 17.5-inch average rainfall depth was taken from the Mean Seasonal Isohyetal Map (B-166), also provided by CCCPWD. The peak 10-year and 100-year rainfall intensity is estimated at 1.12-in/hr. and 1.60-in/hr., respectively. For time-of-concentration (Tc) values, the InfoWorks CS modeling software uses the Passini method, resulting in Tc-values in the range of 8-60 minutes, typical of watersheds of this size and soil characteristic.

For the preliminary model, a total of six detention facilities were assumed, however it is likely that these detention volumes may be subdivided among the development areas based on land use, development type, and project phasing. Arup's model indicated that approximately 21 MG (million gallons) of onsite detention will be required to attenuate the 100-year storm event, and the backbone storm drainage system will consist of approximately 50,000 lf of 36 – 60-inch storm piping: a conceptual layout is presented in Figure B-6.

Figure B-6 Conceptual Storm Water Infrastructure



## B10 Domestic Water

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### B10.1 Existing Facilities

Potable water will be supplied to the Development Footprint by CCWD. CCWD owns and maintains the treatment, storage, transmission, and distribution facilities that provide potable water to this service area.

The major source of CCWD's water is the Sacramento–San Joaquin Delta. CCWD has a contract with the Central Valley Project ensuring water supply through 2045. Other water sources available to CCWD include the East Contra Costa Irrigation District, Mallard Slough, recycled water (discussed in Section B11), local groundwater from offsite wells, and water transfers.

CCWD operates multiple pressure or service zones within its potable water distribution system. The CRP Area is located within Zones 1 and 2. Zone 1 serves areas with elevations up to 110 feet, and Zone 2 serves areas with elevations between 110 feet and 220 feet.

### B10.2 Project Water Demands

The potable water demand for full build out of the Project is estimated to be 2.8 – 3.2 MGD (1,000 – 1,200 MG per year). In 2010, at the request of the City of Concord, CCWD prepared a Water Supply Assessment (WSA) for the CRP, which affirmed that CCWD's currently available and planned water supplies were sufficient to meet CRP's estimated water demands. CCWD reconfirmed the WSA in 2019.

### B10.3 Proposed Infrastructure

Proposed potable water infrastructure for the CRP Area falls into three groupings: offsite improvements, new storage tanks, and onsite distribution. Descriptions of each follow:

#### Offsite Improvements

The primary domestic water feed to the CRP will be a new 42-inch transmission water main. The new transmission line will connect to an existing CCWD water transmission main within North Concord near Bates Avenue and Port Chicago Highway then run along the alignment of the Evora Road Extension and under Highway 4 to the northern portion of the CRP. Planning and preliminary cost estimates for this work were included in the CCWD's 2015 "Treated Water Masterplan." The CRP will have secondary domestic water connections to the CCWD system at several locations along the western boundary of the site.

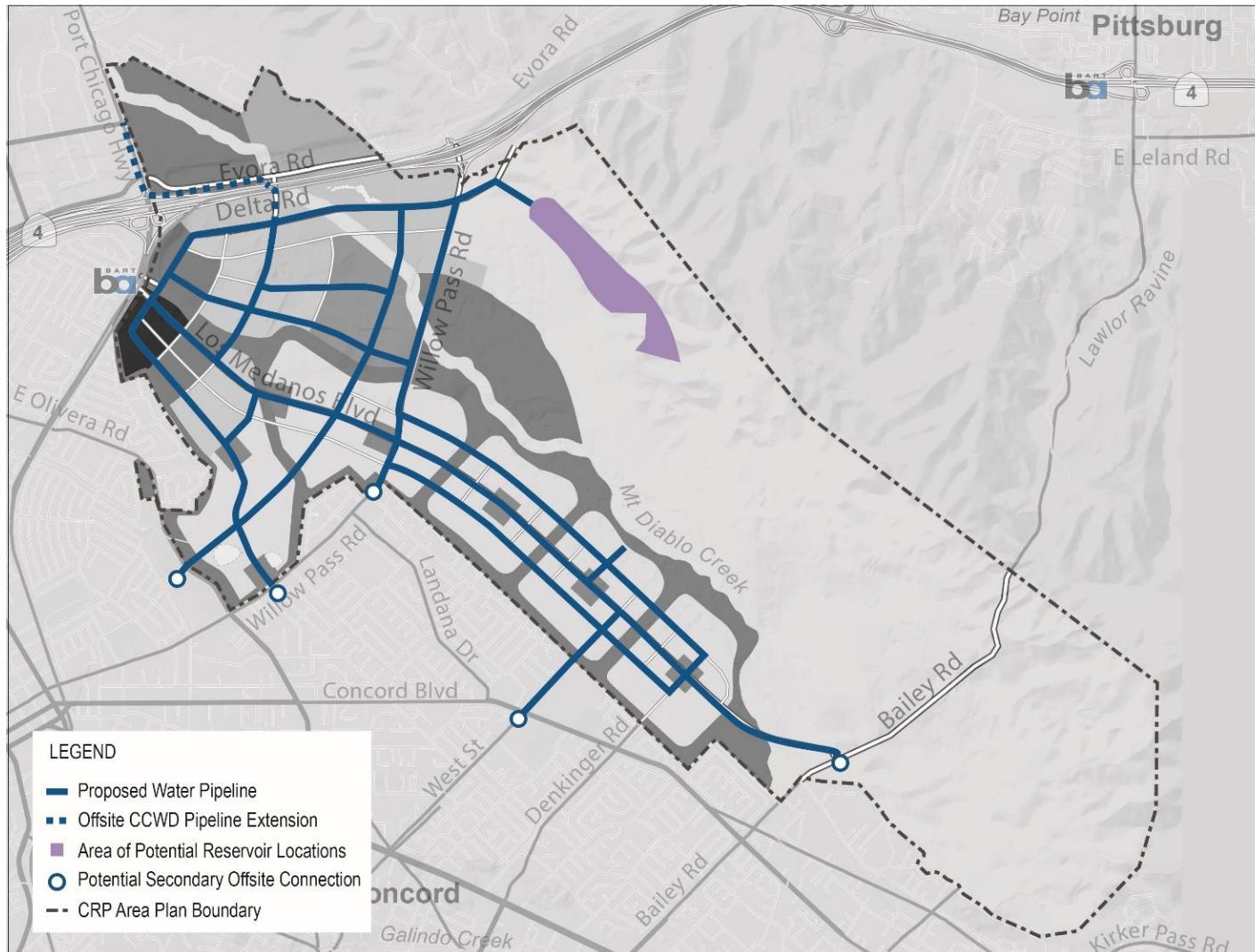
## Storage Tanks

New potable water storage tanks with a total volume of approximately 6.6 MGD will need to be constructed as part of the EDC to mitigate peak flow variations and provide additional fire water storage. To provide sufficient system pressure, the required water surface elevation for the tanks is approximately 320-ft. The tanks will be located in the Los Medanos Ridge area at a site acceptable to CCWD, the City, and the East Bay Regional Park District ('EBRPD'). Multiple locations for these water storage reservoirs are being evaluated based on considerations that include availability of or improved access to the reservoir site, the extent of disturbance to EBRPD lands, and seismic stability. The storage reservoir site will be owned and maintained by CCWD. The access road and pipeline corridor to the reservoir site will be within EBRPD or City lands with an easement in favor of CCWD.

## Onsite Distribution

- The CRP onsite potable water distribution will be designed and constructed in accordance with CCWD regulations. The system will have 2 pressure zones which align with CCWD's overall system design. Zone 1 will serve areas below elevation 110'. Zone 2 will serve the higher elevations. Interconnections between the two systems, including booster pumps, pressure regulating valves, and backflow devices will be determined as part of the Project infrastructure design. Preliminary modeling indicates that the EDC backbone water system will consist of approximately 50,000-feet of 18 – 30-inch water pipes: a conceptual layout is presented in Figure B-7.

Figure B-7 Conceptual Domestic Water Infrastructure



## B11 Recycled Water

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### B11.1 Existing Facilities

In 1996, CCCSD and CCWD reached an agreement allowing CCCSD to supply recycled water from the wastewater treatment plant to parts of its service area.

In August 2009, CCCSD provided a “Will Serve” letter to the City of Concord indicating its commitment to be the supplier of recycled water to the EDC. The letter acknowledges that the precise amount of recycled water has yet to be determined but cites CCCSD’s ability and intent to provide up to 2,000 MG per year. The State Water Resources Control Board has granted CCCSD the authority to provide up to 82,000 MG of recycled water per year for irrigation and industrial purposes throughout its service area, which is far greater than CCCSD’s 2009 delivery of 230 MG of recycled water a year.

A recycled water system is required for the CRP Area to reduce total water demand and avoid the need to use drinking water for irrigation and other non-potable purposes.

### B11.2 Proposed Infrastructure

Delivery of recycled water to the CRP Area will require construction of a pipeline connecting CCCSD’s treatment facility to the site, and expansion and renovation of CCCSD’s existing tertiary treatment facility.

CCCSD developed the “Concord Naval Weapons Station Recycled Water Facilities Plan” in 2011, which included plans for upgrades to their treatment facilities and proposed five possible alignments for the new recycled water pipeline that will serve the CRP. After the 2011 facilities plan, CCCSD and CCWD agreed that CCCSD will be the supplier of recycled water (RW) and CCWD will own and operate the RW distribution system. The specific needs and associated costs for recycled water facilities require further coordination with CCCSD and CCWD.

The proposed CRP recycled water system will provide recycled water as the primary water source for:

- Irrigation of public spaces, open space, and parks.
- Irrigation of all private outdoor spaces within multi-family, commercial, and institutional developments.

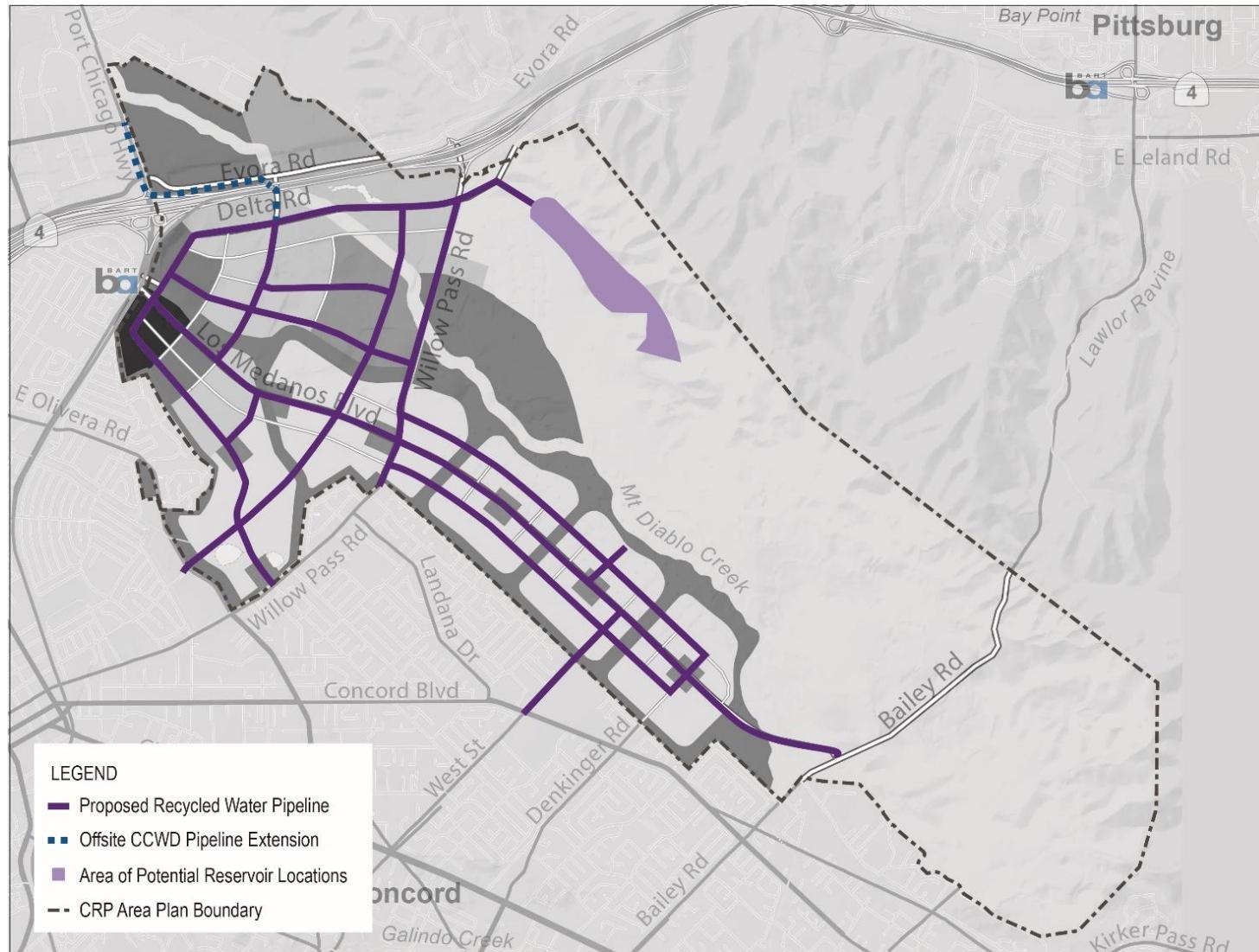
Based on updated calculations by Lennar, the average daily recycled water demand is estimated to be 1.6 – 2.1 MGD (600 – 760 MG per year) at build-out, well below CCCSD’s RW supply capacity.

RW storage tanks will be required to mitigate peak system demands. The tanks will be constructed within Concord Hills Regional Park along the Los Medanos Ridge adjacent to the potable water storage reservoirs. See discussion of location in Section B10. The storage reservoir site will be owned by CCWD like the potable water reservoir site. The tanks for Zone 1 and 2 have been preliminarily sized at 40,000 and 75,000 gallons respectively assuming that the required storage is equivalent to one hour of average irrigation demand.

As with the potable water network, the recycled water network is assumed to be split into two zones with the 110 ft elevation as the boundary. The system is anticipated to have sufficient pressure to serve the lower elevations in Zone 1. A pump station will be required for Zone 2.

- The CRP backbone RW distribution system will consist of approximately 50,000 lf of 12 – 18-inch pipes: a conceptual layout is presented in Figure B-8.

Figure B-8 Conceptual Recycled Water Infrastructure



## **Appendix C**

### **Remediation**

## C1 Overview

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Because this development opportunity involves a former military facility, it is important that any Master Developer fully understand the status of the clean-up efforts on the CNWS site.

The following paragraphs provide a broad overview of the programs and regulations that guide Navy performance on site clean-up for transfer. Specific documents are italicized when referred to in this Appendix, and a bibliography of documents prepared by, or for, the Navy and received by the LRA can be found here to assist bidders in conduct of due diligence. Interested parties are encouraged to review these documents and to consult with technical, regulatory and legal advisors as appropriate in order to evaluate risks associated with development at the CNWS. Please contact the LRA's administrative contact Israel Mora ([israel.mora@cityofconcord.org](mailto:israel.mora@cityofconcord.org)) to request any of the documents in this Appendix and/or in the bibliography.

Please note that the information provided below is for general reference purposes only, and the LRA makes no representations of any kind about the above-referenced documents, or with regard to Navy legal or regulatory obligations or requirements, or program, or statutory content or requirements. The information provided by the Navy represents an evolving program and the completion dates are estimates subject to change.

The CNWS was listed as a Superfund Site by the Environmental Protection Agency (EPA) in 1994 primarily as a result of the contamination within the Tidal Area of the Base, near Port Chicago. The Tidal Area remains operational as a military facility and is not part of the BRAC transfer. A range of pre-development clean-up, monitoring, and site management requirements apply. Generally, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR 300) and applicable state law establish requirements and procedures for the federal government's environmental cleanup of hazardous materials on the CNWS site. CERCLA, furthermore, requires that a deed for federally owned property being transferred outside the government contain covenants regarding the remediation of hazardous materials. The covenants also frame a process for determination of liability for unknown contaminants found post-transfer.

The Resource Conservation and Recovery Act (RCRA) requires a number of safe and secure procedures for treating, transporting, storing, and disposing of hazardous wastes and sets forth permitting requirements for hazardous waste management activities, including closing a facility. In 2003, the State Department of Toxic Substances Control (DTSC) closed the permitted hazardous waste

facilities on the CNWS site. Several individual sites continue to undergo clean up, and closure will be processed under CERCLA.

Not all of the areas requiring remediation are known at this time, as the Navy needs to undertake additional phases of site characterization and investigation. In regard to MEC (Munitions and Explosives of Concern), the Navy is entering a refined phase of investigation in an effort to more precisely determine the nature and extent of the potential munitions-related contamination and develop remedies for future use scenarios.

Bunker and building demolition and abatement of asbestos and lead-based paint on buildings will be the responsibility of the Master Developer. Cost estimates prepared for the LRA are included in the preliminary unit costs.

Since being listed as a Superfund Site, the Navy has followed a clean-up process in accordance with DOD remediation programs. These programs are listed below and more information on them can be found in Book Two of the CRP Area Plan.

1. Military Munitions Response Program (MMRP) addresses areas where MECs might be present in the environment
2. Installation Restoration (IR) Program identifies, investigates, and remediates contamination from hazardous substances, pollutants, and contaminants

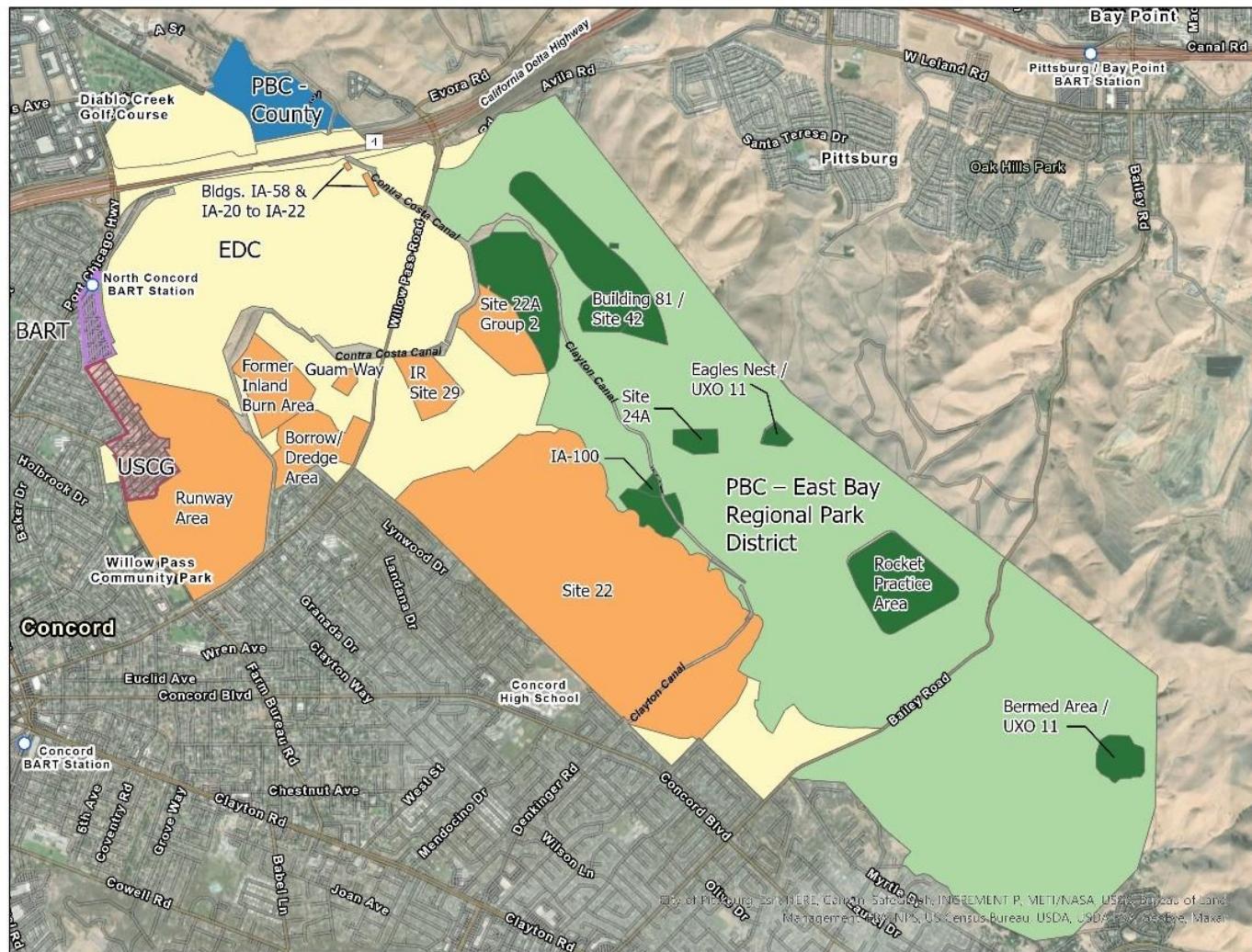
Before any property comprising the CNWS site may be conveyed to the LRA for subsequent conveyance to the Master Developer, the Navy must complete a “Finding of Suitability for Transfer” (FOST), and will seek concurrence on the FOST from EPA and the California Department of Toxic Substance Control (DTSC) and the Regional Water Quality Control Board (RWQCB). At this time approximately 1,100 acres (shown in Figure C-1 in yellow) has been documented as the first FOST. A second FOST was completed in 2019 for the Borrow/Dredge Area (Figure C-1). The Navy anticipates that a third FOST may be approved for the Former Inland Burn Area (FIB) in 2024. Actual transfer of these two areas is dependent on submittal by the LRA, and approval by the Navy, of an EDC application. That process is projected to be completed in fiscal year (FY) 2024/2025. Guam Way and Site 29 would likely be suitable for transfer in FY 2029. FOST preparation and transfer of Site 22 and the Runway Area, as shown on Figure C-1 are unknown at this time as characterization and remedy selection are still in preparation. At the time of preparation of this RFQ, the Navy is conducting a site wide investigation of a chemical of emerging concern (designated by the EPA) Polyfluoroalkyl substances (PFAS). The Navy’s draft preliminary assessment which is undergoing regulatory review indicates there are no PFAS areas of concern within the first two FOST areas. The LRA has not independently reviewed these findings and is not aware of concurrence by regulators of these preliminary findings.

Under BRAC regulations the Navy gives deference to future land use designations in the reuse plan (or in Concord’s case its Area Plan) in defining cleanup

standards. Based on existing data, there are a number of areas planned for residential use that will require the Navy to consider a remedy that allows for such land use, with State and federal regulatory concurrence.

Following is a discussion of the sites, shown in orange in Figure C-1, including current status and estimated timelines for transfer.

Figure C-1 Remediation Boundaries



## Concord Reuse Project Remediation Carveouts Boundaries

February 23 2021

- Development Footprint/  
Economic Development  
Conveyance (EDC) - Finding of  
Suitability to Transfer (FOST 1)
- Development Footprint/  
Economic Development  
Conveyance (EDC) - Parcels to  
be Transferred at a Later Date
- Public Benefit Conveyance (PBC)  
- East Bay Regional Park District
- Public Benefit Conveyance (PBC)  
- East Bay Regional Park District  
- Parcels to be Transferred at a  
Later Date
- Public Benefit Conveyance (PBC)  
- County
- US Coast Guard (USCG)  
Property
- BART Property
- BART Station

0 1 Miles

## C1.1 UXO Sites 9 and 3 and IR Site 13 – “Former Inland Burn Area”

The Former Inland Burn/Railroad Sidings Excavation Site (FIB/RSE) is located in the western portion of the Concord Reuse Project (Figure 1), and includes UXO Sites 9 and 3, and IR Site 13. The Final Record of Decision for the FIB/RSE was completed September 24, 2020, describing Land Use Controls (LUC) for the site (*Final Record of Decision for Former Inland Burn/Railroad Sidings Excavations (UXO Sites 9 and 3 and IR Site 13) at the former Naval Weapons Station Seal Beach Detachment (NAVWPNSTA) Concord in Concord, California. September 2020*). The Navy is currently in the process of completing the LUC Remedial Design for the site. Transfer is projected as part of FOST 3 in 2024.

## C1.2 MMRP Site 11 Guam Way

Guam Way is located in the west-central portion of the Concord Reuse Project (Figure 1). The site was potentially used for storage or disposal. Buried debris, including munitions, were excavated from the site during a trenching operation conducted as part of the initial site investigation.

The investigations and removal actions at Guam Way are summarized in *Final Remedial Investigation, Guam Way (UXO 11) Naval Weapons Station Seal Beach Detachment Concord, Concord, California (NOREAS, February 2017)*. Ground Water and soil gas monitoring is ongoing at the site. Results of the continued monitoring will be incorporated into a Remedial Investigation Addendum and Feasibility Study for the site. Transfer is projected for 2030.

## C1.3 Site 29 Plume Area (Building IA-25)

IR Site 29 is located within the west-central portion of the Concord Reuse Project area (Figure 1) and was the site of munitions development and reworking. The site includes Buildings IA-19, IA-25, and 263. A sink and sanitary sewer system was constructed with Building IA-25 that drained through a 6-inch clay pipe into a partially buried septic tank and associated leach field, decommissioned in 1997. Disposal of chemicals from this area is the presumed source of a chlorinated solvent plume in groundwater beneath the site. Investigations and remedial activities at the site are ongoing. Transfer dates are unknown at this time but likely 2029.

## C1.4 RAD Sites (IA-58, IA-20, IA-21, IA-21A, IA-22)

The Radiological Sites within the EDC are located in the northwestern portion of the Concord Reuse Project (Figure 1). They include five buildings: IA-20, IA-21,

IA-21A, and IA-22, which were evaluation laboratories, and Building IA-58, an X-ray facility.

Complete radiation scoping surveys were completed in 2011 and are reported in: *Draft Final Status Survey Reports IA-21, IA21A, IA-22, IA-58. Base-wide Radiological Survey* (Gilbane, 2013). These reports document the methods and standard procedures for survey design. Building IA-58 is specifically evaluated in: *Revised Final Site Inspection Report. Building IA-58 Radiological Survey* (Gilbane, 2017).

The radiological survey results demonstrate that the levels of radioactivity are below the derived concentration guideline levels and are comparable to background levels represented by a reference area. Based on the results of the radiological survey, the reports recommended no further action for radiological contaminants under CERCLA. This resulted in a “no further comment” letter from the California Department of Public Health Radiological Division. However, EPA has delayed providing comments pending resolution of radiological technical issues at Hunters Point Naval Shipyard that may be relevant to the Concord Work Plan. In March 2023, EPA issued a concurrence for No Further Action at Building IA-58. The Navy is now preparing additional scoping surveys for the remaining buildings. Transfer dates currently unknown.

## C1.5 Runway Debris Area

The Runway Debris Area (RDA) is approximately 150 acres and is located in the western portion of the Public Benefit Conveyance (Figure 1). This area includes a separately identified area known as the Southern Railroad Revetment Area (SRRA). In 2013, munitions-related items were observed in the area during a preliminary detector-aided visual survey. Based on a review of historical aerial imagery, the former airfield was constructed in the early 1940s. Historical photographs also indicate that the former airfield was used to store and sort aircraft and related materials, because metal debris was identified in several areas along the former runways and taxiways. The airfield consists of a north-south-oriented runway and an east-west-oriented runway. Until 1946, portions of the RDA were used for maintenance and synchronization of aircraft-mounted machine guns.

The southern portion of RDA is located south of the east-west oriented runway and includes land surrounding the former Runway Apron Fuel/Septic System Area and land to the west-southwest where munitions-related items certified as material documented as safe (MDAS) were encountered in 2013 during a preliminary detector-aided visual survey.

A supplemental Site Inspection was performed in 2019 (*Final Supplemental Site Investigation for the Runway Debris Area and Southern Railroad Revetment Area* (December, 2020)). The supplemental inspection included detector-aided surface clearance, digital geophysical mapping and subsurface investigation and removal.

The SI found no munitions-related debris in the SRRA, in the northern portion of the RDA, and recommended no further actions for this 61-acre area. The SI did recommend further investigation and removal within the remaining 76 acres of the RDA as well as chemical investigation of soil and ground water.

The Navy completed an Engineering Evaluation/Cost Analysis for the site in February 2023, and an Action Memorandum and Removal Action Work Plan are currently in progress. The schedule for transfer of this area is unknown at this time but estimated to be 2030 or later.

## C1.6 Site 22 Group 6 Magazine Area

IR Site 22 is located in the central portion of the Concord Reuse Project (Figure 1) and is approximately 531 acres, including 14 buildings and 116 ammunition magazines connected by a series of parallel roads and railroad spurs. All bunkers and magazines have been empty and sealed since 2001, and the site is used for cattle grazing.

Multiple investigations conducted to delineate the nature and extent of arsenic contamination are summarized in *Final Remedial Investigation Report for Installation Restoration Site 22, Naval Weapons Station Seal Beach Detachment Concord, Concord, California. Tetra Tech EM Inc., 2007.*

Surface soil was identified in the investigation as the medium of concern at Site 22, and arsenic was identified as the chemical of concern for potential future residents. The Navy has committed to the City and the EPA to a clean-up standard of unrestricted use where an exposure pathway exists. The Navy is currently evaluating the effectiveness of phytoremediation as a remedy and preparing a Work Plan for Pre-Remedial Design Characterization. Transfer schedule for this property is unknown.

## C1.7 Site 22A (Group 2)

IR Site 22A consists of five separate groups of munitions storage magazines connected by roads and railroad spurs and surrounding open grassland in the central portion of the CRP Area (Figure 1). Of these five magazines, only a portion of Magazine Group 2 is within the EDC. Magazine Group 2 contains 39 magazines and is approximately 154 acres.

The Navy, EPA, and the State signed a ROD for IR Site 22A in 2015 (*Final Record of Decision for Installation Restoration Site 22A Former Naval Weapons Station Seal Beach Detachment Concord, Concord, California October 7, 2015*). The ROD documents that no action is necessary for arsenic in soil at Site 22A (Magazine Group 2) and acknowledges further investigation under the radiological program is required at 35 magazines within Site 22A (Magazine Group 2). All of the magazines within IR Site 22A (Magazine Group 2) are in a

Site Investigation/Scoping Survey phase. Potential transfer dates are unknown at this time.

## Appendix D

### Schools

## **D1 Purpose**

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This memo documents the background research and correspondence with the Mt. Diablo Unified School District (MDUSD) regarding anticipated new student generation (kindergarten through 12th grade, K-12) and the school facilities needed to support the students as a result of the Concord Reuse Project (CRP), which will result in development on portions of the former Concord Naval Weapons Station (CNWS). The LRA and selected Master Developer will continue this conversation with MDUSD as the planning progresses. Further details on student generation and supportive school facilities will be documented in the Specific Plan and/or future planning documents.

## **D2 Background**

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### **D2.1 Prior planning**

The LRA has collaborated with MDUSD to understand the expected number of K-12 students as the CRP is built out and school facilities needed to support the project's population throughout the CRP planning process, including during the Reuse and Area Plan stages. Those documents were adopted in 2010 and 2012 respectively. See the RFQ for more details on the CRP planning process overall but note that the total number of projected housing units has not varied between the Reuse Plan and Area Plan, with both allowing up to approximately 12,200 housing units.

The 2010 Reuse Plan Environmental Impact Report (EIR) documented the existing public-school facilities served by MDUSD and calculated the approximate number of K-12 students generated and facilities needed to support new student generation based on the Reuse Plan development program. Because there are no existing public schools in the CRP Area, new facilities may be built on-site (up to four elementary schools, one middle school, and one high school) and/or students may fill the capacity at existing nearby schools. The 2010 Reuse Plan EIR calculations are provided below. The Preferred Alternative referenced in the table is the Reuse Plan, and also served as the basis for the CRP Area Plan (General Plan document adopted in 2012) development program. See Appendix A for details of the Area Plan development program.

**Table 14-5: Student Generation Factors - Percentage of Students by Level of Education**

Alternative	Household Type	Student Generation Factor (per household)	Number of Students (grades K-5)	Number of Students (grades 6-8)	Number of Students (grades 9-12)	Acres Allocated for Schools
Preferred Alternative	Multi-family	0.20	2,113	999	1,247	98.8
	Single-family attached	0.19				
	Single-family detached	0.62				
Concentration and Conservation Alternative	Multi-family	0.20	1,594	756	938	74.5
	Single-family attached	0.19				
	Single-family detached	0.62				

Source: 2010 EIR.

**Table 14-6: School Allocation**

Type of School	Acres Allocated for Schools in the Preferred Alternative	Acres Allocated for Schools in the Concentration and Conservation Alternative	Recommended Acres per School	Assumed Number of Schools in the Preferred Alternative	Assumed Number of Schools in the Concentration and Conservation Alternative
Elementary school (grades K-5)	40.2	30.3	10	4	3
Middle school (grades 6-8)	25.0	18.9	20	1	1
High school (grades 9-12)	33.7	25.3	30	1	1

Source: 2010 EIR.

Consistent with the Reuse Plan, the Area Plan assumed that new school facilities will be integrated into the districtwide system to serve the residents of CRP Area neighborhoods as well as neighborhoods throughout the district.

## D2.2 MDUSD 2018 Facilities Master Plan

MDUSD's 2018 Facilities Master Plan does not refer to the CRP and resulting new student generation. However, the plan does indicate future campus growth and enrollment in its master plan diagrams and demographic projections.

## D3 Recent (2019-2021) LRA-MDUSD Discussions

In February 2019, the LRA met with MDUSD during the Lennar-led Specific Plan process. While progress was made in 2019, the process did not result in a definitive conclusion as to the number or location of schools required to serve the new population as a result of the CRP. The LRA and selected Master Developer will need to meet further with MDUSD to come to conclusion on these issues.

The LRA and MDUSD discussed updated student generation rates, school siting, and MDUSD's Facilities Master Plan. This meeting resulted in a set of follow-up action items. In June 2019 the LRA responded to these action items in a memo.

The memo (dated May 10, 2019) includes:

- The number of new K-12 students the LRA expects would be generated from the CRP (updated from the 2010 EIR and based on Lennar's development program).
- Available capacity for new students to enroll in existing (2019) MDUSD schools.
- Total square feet (sf) and number of new school facilities the LRA expects would be needed to support the Project's student generation.
- A list of follow-up questions to the MDUSD based on the memo's findings.

The memo findings are based on:

- Lennar's August 15, 2018 proposed residential unit development program, which was consistent with the Area Plan at approximately 12,000 residential units. Note the adjacent Coast Guard Property, which was not included in the Area Plan, was previously included in the Specific Plan. At this time the LRA now expects the Coast Guard development to run separately on its own timeline from the Project, upon conclusion of the General Services Administration (GSA) auction of the property.
- 2018-2019 MDUSD enrollment numbers and total square feet per school from LPA (MDUSD consultant)
- A 2018 MDUSD report including student generation factors (SGFs); square feet/student assumptions; number of students/school assumptions.

Note that this memo assumed and responded to Lennar's administrative draft Specific Plan development program. The assumptions for student generation and site facilities will need to be revisited after the selected Master Developer creates a new proposed development program. However, the findings will help inform a new developer because the maximum buildout number of housing units, as well as distribution of types of units, were based on the Area Plan, which continues to regulate development of the CRP.

### D3.1 Student generation

Based on Lennar's Specific Plan development program, the CRP would have generated approximately 3,876 K-12 students at full buildout. Table D 1 shows breakdown by phase and school type.

Table D 1 Summary of student generation

School type	Phase 1*	Phase 2	Phase 3	Total
Elementary school	820	648	490	1,958
Middle school	380	303	228	911
High school	418	335	254	1,007
Total	1,618	1,286	972	3,876

\* Phase 1 included the BART and Coast Guard residential units.

## D3.2 School facilities

The 2010 EIR assumed growth in the districtwide student population through the duration of CRP buildout. However, in 2014, MDUSD confirmed with the City a decline in enrollment and the closing of two schools (Holbrook Elementary and Glenbrook Middle, both located near the Base) due to the decline. MDUSD reopened Holbrook Elementary in 2017. Capacity of existing schools is an important component in calculating the demand for new schools, and this section used the information available in 2019 to connect existing capacity with projected demand.

Arup used the sf/student and number of students/school assumptions from MDUSD to identify:

- amount of sf needed
- number of schools needed
- available capacity for new students at existing schools.

The findings showed that existing elementary, middle, and high schools had limited capacity for a portion of the students generated per Lennar's development program. The 2019 memo identified existing schools that could accommodate students from the CRP during different phases of development that would result in the least amount of distribution of CRP students among different schools. For example, if an existing school has capacity for a portion of Phase 1 students and a portion of Phase 2 students, but has capacity for all Phase 3 students, it may be more appropriate to have students enroll at the existing school in Phase 3 only.

Note that as of January 2021, MDUSD entered into a 15-year lease agreement for Glenbrook Middle to be utilized as a charter school. Glenbrook Middle is just west of the Project site and a prime location for new middle school students.

### D3.3 Total sf and number of schools needed for students generated

Arup calculated total sf and number of schools needed using student generation, remaining capacities in existing schools, sf/student, and number of students/school assumptions.

The calculations indicated three elementary, one middle, and one high school are needed. It was found at that time, if existing schools enrolled students, the sf needed per new school could be reduced.

The 2010 EIR identified that the Project would require four new elementary schools, one new middle school, and one new high school. The 2019 memo reflected a smaller number of students based on more current assumptions than the 2010 EIR. The lower student generation resulted in a lower number of schools needed.

Because the student generation and number of schools calculated in this 2019 memo differ from 2010, the LRA asked MDUSD the following questions:

- Do the SGFs (student generation factors) in the 2018 MDUSD report reflect household trends? The 2018 SGFs are lower than the 2010 EIR SGFs, which seems counterintuitive to the rising cost of housing and growing household sizes, particularly in multi-family housing.
- Multiplying the sf/student by the number of students/school assumptions results in an assumed size (in sf) of schools. The calculation results in much larger sf than the actual existing elementary and middle schools. This could be because the sf/student and students/school assumptions include all facilities and not just classroom square footage, however this is not clear from the MDUSD report. It is worth checking these assumptions and if they are the most accurate assumptions to use.
- For elementary and middle schools, is there a push to build more, smaller schools (instead of fewer schools but with larger capacities)? Report findings show sf that are higher than all the existing elementary and middle schools reviewed in this memo. If schools are built at sizes similar to or smaller than existing schools, a fourth elementary school could be needed, consistent with the 2010 EIR projections.

### D3.4 Student Demographics

The MDUSD retained Davis Demographics to provide updated enrollment projections and trends. Those recent population projections can be found in their latest document, *Ten Year Student Population Projections*, dated February 22, 2022 linked here, or can be obtained from the district. Student generation and capacity within the MDUSD schools, specific to the CRP, will need to be re-examined for the CRP Specific Plan.

## D4 Oil Pipeline Siting Considerations

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While the LRA was working with Lennar on their administrative draft Specific Plan, the more detailed planning included a review of the three oil pipelines that cross the CNWS property. They are located in a parallel alignment from the southwestern end of the CNWS along the western border, until reaching Willow Pass Road, at which point the pipelines head west across the Village Neighborhood in the airfield area and intersect the former Coast Guard Property between Victory Village and Quinault Village. California regulations set the minimum distance between sites for school facilities and pipelines. Section 14010 of Title 5 of the California Code of Regulations establishes standards for construction of school facilities which prevent a school site from being located within 1,500 feet of a pipeline easement that poses a safety hazard as determined by a risk analysis study.<sup>6</sup> School properties must be sited to maintain this minimum setback distance. This regulation limits the places in the CRP Area where schools may be sited and will need to be considered in locating schools moving forward.

## D5 Development Considerations

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The CRP needs to bear the expense for new school capacity needed based on projected student yield. The district's bond is currently encumbered for other facility needs, and statutory development impact fees are not adequate.

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<sup>6</sup> California Code of Regulations Title 5 School Facilities Construction standards is available on the Department of Education website: <http://www.cde.ca.gov/ls/fa/sf/title5regs.asp>. The Department of Education also provides a guidance protocol on assessing school site pipeline risk: <http://www.cde.ca.gov/ls/fa/sf/pipeline.asp>.

## **Appendix E**

### **Natural Resources Permitting Framework**

## **E1 Development of Master Natural Resources Permitting Framework**

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The concept of addressing natural resource impacts and permitting for the Concord Reuse Project (CRP) through a comprehensive, sitewide permitting process – as opposed to having future individual development projects address these issues separately on a project-by-project basis – was requested by several state and federal resource agencies and community groups during the City of Concord’s (City) reuse planning process. The City Council committed to pursue this approach in February 2010 when it adopted the Reuse Plan and again in 2012 when it adopted the Concord Reuse Project Area Plan (CRP Area Plan).

The City crafted a sitewide permitting approach by reaching out to the U.S. Army Corps of Engineers (ACOE), U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (now California Department of Fish and Wildlife) (CDFW), and San Francisco Bay Regional Water Quality Control Board (RWQCB). The following sitewide permitting framework describes the City’s approach to sitewide natural resources permitting, including roles and responsibilities as they are likely to be distributed between the City and the selected Master Developer for continuing the permitting process and implementing sitewide permits; the permitting status; and issues that will require further evaluation and cooperation between the City and its Master Developer for completing and implementing sitewide resource permits.

## **E2 Sitewide Permitting Framework**

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### **E2.1 Overall Approach**

The City is the applicant and permittee for all sitewide resource permits and will continue to take the lead in negotiating with the resource agencies, preparing applicable permitting documents, and implementing (or overseeing implementation of) the permit conditions. Specific conditions that are applicable to development activities will be included in the City’s conditions of approval and other applicable entitlements. As part of the City’s entitlement process, the City will also include conditions that require the Master Developer (and any future Master Developers) to pay resource mitigation fees. The City expects all future developers to pay a pro rata share of the resource compliance costs, including fees to reimburse the City, regardless of which specific activities or phases of development impact specific resources. See the RFQ for further discussion of previous expenditures in support of the Project and expectations for reimbursement of the City by the Master Developer. The Master Developer’s role in implementing specific conservation measures contained in the biological and

aquatic resource permits will focus on implementing avoidance and minimization measures applicable to development activities.

As described in more detail below, the City is nearly done with the sitewide permitting for biological resources and does not anticipate the need for coordination with the Master Developer on addressing items such as the preparation of species habitat management or restoration plans. The aquatic resource permitting is not as advanced and will require coordination between the City and the Master Developer to address infrastructure and other improvements located in or near aquatic resources, such as Mt. Diablo and Willow Pass creeks, and future water infrastructure that will be located in ecologically sensitive areas east of Mt. Diablo Creek. This will require coordination with the East Bay Regional Park District.

## **E2.2 Summary of Likely Sitewide Permits**

The City anticipates the following regulatory documents will be issued for the CRP, and a summary of the status of these is provided below (controlling regulatory agency in brackets):

- Federal Clean Water Act Individual Permit (ACOE)
- Federal Clean Water Act Water Quality Certification/State Waste Discharge Requirements (RWQCB)
- Lake or Streambed Alteration Master 1600 Agreement (CDFW)
- Federal Endangered Species Act Biological Opinion and Incidental Take Statement (USFWS)
- California Endangered Species Act Incidental Take Permit (CDFW)
- National Historic Preservation Act Memorandum of Agreement (Navy/SHPO)

## **E3 Aquatic Resources (e.g., Mt. Diablo Creek, Willow Pass Creek, drainages, wetlands)**

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### **E3.1 Framework/Permitting Status**

The City applied to the ACOE for a Clean Water Act, Section 404 Individual Permit authorizing fill of approximately 7 acres of wetlands (4.6 acres) and other jurisdictional waters (2.3 acres), and although the ACOE has suspended the application, the City intends to reactivate it once a Master Developer is selected. The City will receive permit authorization, which it will extend to future individual developers. The City will create, enhance and preserve aquatic features, and recoup appropriate expenses through entitlements and associated agreements. The City will apply to the RWQCB for a Section 401 Water Quality Certification

and State Waste Discharge Requirements and will be responsible for the permit conditions and mitigation in the same manner as the 404 permit.

The City plans to apply to CDFW for a master Section 1602 Lake or Streambed Alteration Agreement that covers modifications to Mt. Diablo Creek, Willow Pass Creek, and other drainages associated with development and flood attenuation actions, as well as ecological restoration activities. The City will be responsible for permit conditions and mitigation in the same manner as the 404 permit.

The City anticipates securing the aquatic resource permits by Summer 2025, although additional coordination with the Master Developer, regarding development plans affecting Willow Pass Creek, are needed to further the ACOE and RWQCB permitting. The Lake or Streambed Alteration Agreement (1600 Agreement) may trail the ACOE and RWQCB permits. Discussions with CDFW regarding a 1600 Agreement are less advanced and require additional restoration/flood attenuation planning before the City engages in more detailed discussions regarding the timing, phasing of work, and specific actions that will be covered by a 1600 Agreement.

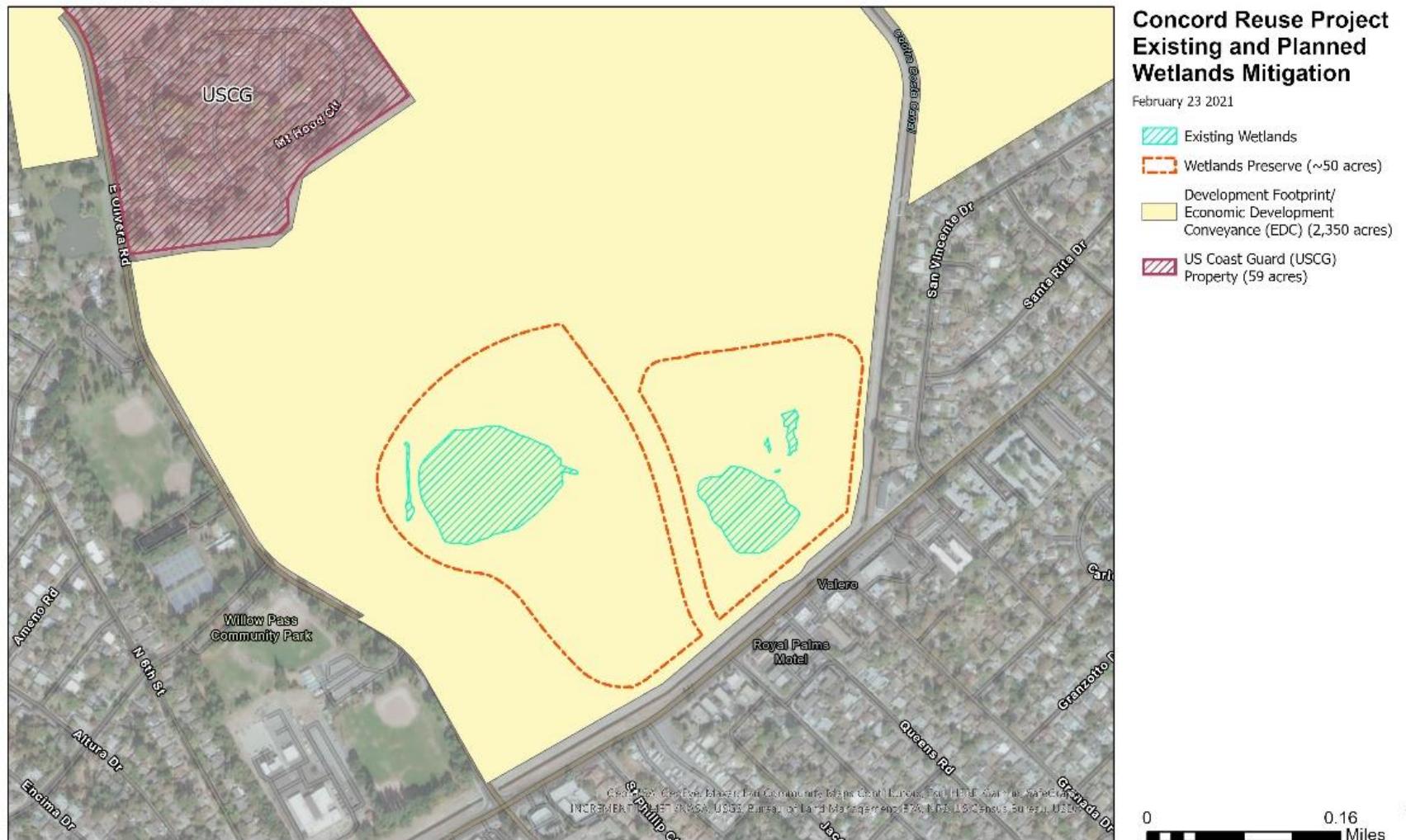
### **E3.1.1 Wetlands**

The City anticipates the CRP development will fill approximately 4.6 acres of wetlands. The City is proposing 2:1 onsite wetland creation and 1:1 preservation of existing wetlands prior to -or concurrent with- groundbreaking for the first phase of development. Both the existing wetlands and planned mitigation wetlands are located at the former airfield. The CRP Area Plan commits to preserving approximately 8.0 acres of existing wetlands at the former airfield, and hydrological modelling and evaluation indicate this area can feasibly accommodate an additional 9.2 acres of wetland creation within an approximately 50-acre wetland “preserve” shown for illustrative purposes on Figure E-1 that includes both the existing wetlands and planned mitigation wetlands. No development will be permitted within the wetland preserve, and new development will need to maintain some buffer from existing/planned wetlands. The planned mitigation wetlands and preserved wetlands will require interim and long-term management.

The City is proposing to include all of the authorized fill of wetlands as early as possible in the development, including wetlands that are outside of the area initially being developed. The intent is to provide all the wetland mitigation concurrent with initial development. This approach to wetland fill and mitigation is included in the City’s ACOE Section 404 Individual Permit application and will be included in the City’s request to the RWQCB for water quality certification. The City continues to discuss this approach with the ACOE and RWQCB, but both agencies have expressed general support for consolidating wetland fill in the first phase of development along with concurrent mitigation.

The former airfield is the site of remediation activities by the Navy, which are addressed further in Appendix C. However, the City anticipates the Navy will be able to complete the remediation activities in time to allow the wetland mitigation described in this section to occur concurrent with the first phase of development.

Figure E-1 Wetlands



### **E3.1.2 Other Waters (Creeks)**

The City anticipates the CRP development will fill approximately 2.3 acres of “other waters.” This includes filling (and realigning) portions of Willow Pass Creek and other, smaller drainages to accommodate commercial development and fill within Mt. Diablo Creek to facilitate stormwater attenuation. In total, the loss of approximately 2.3 acres (9,823 linear feet) of other waters will require mitigation.

### **E3.1.3 Mt. Diablo Creek**

To mitigate for the loss of other waters, the City proposes enhancing Mt. Diablo Creek’s ecological values by removing culverts, stabilizing the creek channel, and restoring and maintaining native vegetation. In addition to providing mitigation, this work will improve stormwater attenuation and achieve other CRP Area Plan creek restoration goals. Mt. Diablo Creek enhancement includes the removal of 14 concrete box culverts under existing road crossings, and the restoration of a natural channel with earth/rock substrate where each culvert has been removed. Additional enhancements, including creation of secondary channels, riparian habitat restoration, and reconnecting the creek to its floodplain, are proposed to compensate for the loss of other waters. The City is preparing a mitigation plan describing the proposed mitigation along Mt. Diablo Creek in more detail. Note that, while not part of the mitigation, the City has identified a need for flood detention resulting from project-related changes on Mt. Diablo Creek. The most likely locations for the flood detention would be either in the East Bay Regional Park District (EBRPD) property or in the vicinity of the Tournament Sports Complex. This will require additional study. This flood detention is separate from on-site stormwater detention associated with development, which will be the responsibility of the Master Developer.

### **E3.1.4 Willow Pass Creek**

To minimize and mitigate the fill of Willow Pass Creek, the City has proposed realigning (as opposed to piping) portions of Willow Pass Creek to retain and restore surface flows. The regulatory agencies (ACOE, RWQCB, CDFW) have expressed a strong desire to retain and enhance the functions and values of Willow Pass Creek. In response, the City has proposed realignment, re-construction, and restoration (revegetation) of Willow Pass Creek. The City has developed options for realigning the creek, including moving the majority of the channel alignment south of the proposed Delta Road, and utilizing existing culverts to cross under the Contra Costa Canal. As this realignment is expected to occur adjacent to proposed infrastructure, the City will closely coordinate this effort with the Master Developer to reduce and avoid conflicts (i.e., to incorporate the realigned creek into development plans).

This approach to other waters mitigation is included in the City's ACOE Section 404 Individual Permit application and will be included in the City's request to the RWQCB for water quality certification. In addition, the fill, realigning, and creek restoration work will be included in the City's application for a Lake or Streambed Alteration Agreement. The City has discussed its approaches to other waters with the ACOE, RWQCB, and CDFW and those discussions are ongoing.

## **E3.2 City and Master Developer Roles and Responsibilities**

Consistent with the City's sitewide permitting approach, the City will continue to pursue an Individual Permit from ACOE, water quality certification from the RWQCB, and a 1600 Agreement with CDFW. The City will continue to lead the wetlands and "other waters" permitting. However, the City may request technical information from the Master Developer's engineers or other members of its development team to ensure the proposed development does not adversely affect the existing wetlands and creeks (beyond the impacts described in the permit applications), or the City's proposed wetland mitigation at the former airfield, and to address other issues raised by the regulatory agencies. This coordination with the Master Developer is expected to include infrastructure aspects such as roadway and bridge alignment and design, as well as design and location of stormwater infrastructure (outfalls, water quality control features, and storage).

The City will continue to take the lead on the "other waters" aspect of the permitting, including restoration of Mt. Diablo Creek, and the realignment and restoration of Willow Pass Creek. Due to the relationship between development and creek restoration, the City will coordinate the creek restoration projects with the Master Developer, and the City will coordinate closely with the Master Developer on technical aspects that intersect with specific plan infrastructure plans and design.

To ensure the sitewide permitting continues to move forward, the City expects to collaborate closely with the Master Developer as a key partner and stakeholder in successful sitewide permitting. Collaboration will include the following specific responsibilities and include regular meetings, communication, and sharing of work-in-progress and final documents and designs:

- The City and its consultants will continue to process a sitewide Section 404 Individual Permit and water quality certification/waste discharge requirements.
- The City and Master Developer will coordinate their hydrological, stormwater, and grading analyses associated with Mt. Diablo Creek.
- The Master Developer team will take the lead on infrastructure planning to support development of the Specific Plan, including site grading, stormwater planning, and utilities.

- The City will seek input from the Master Developer's engineers and planning staff to prepare regulatory documents and address regulatory questions.
- The City may invite members of the Master Developer team to attend regulatory meetings, as needed to provide technical support, but the City will continue to take the lead and be the point of contact with all regulatory agencies.

### **E3.3 Cost Estimates for Aquatic Mitigation**

The total cost associated with providing the necessary wetland mitigation, creek mitigation, and stormwater attenuation/restoration is still uncertain. For planning purposes, the City estimates the total aquatic resource costs will be approximately \$51-\$60M, plus the permit processing costs the City has incurred and will continue to incur. See the RFQ for further discussion of previous expenditures in support of the Project and expectations for reimbursement of the City by the Master Developer. The City will establish aquatic mitigation permitting fees to fairly allocate costs among all developers for the permit processing, implementation/oversight, and mitigation costs.

The City will evaluate potential mechanisms for funding the aquatic resource mitigation and restoration activities and will work with the Master Developer to identify and select appropriate funding mechanisms.

## **E4 Endangered Species Act (California tiger salamander, California red-legged frog, and Alameda whipsnake)**

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### **E4.1 Framework/Permitting Status**

The USFWS issued a biological opinion (BO) to the Navy and ACOE for disposal and reuse of the former Naval Weapons Station in accordance with Section 7 of the federal Endangered Species Act (ESA) (Biological Opinion). The City will be responsible for implementing the BO conditions and mitigation in the same manner as the Section 404 Individual Permit and will pass through all applicable BO conditions to the Master Developer as part of the entitlements. In particular, through the entitlements, the Master Developer will be responsible for implementing the “Construction-related Avoidance and Minimization Measures for all City, EBRPD, and First Responder Training Activities” contained in the BO (as part of the BO’s Proposed Conservation Measures).

The City applied to CDFW for a sitewide California Endangered Species Act (CESA) incidental take permit. The City and CDFW are currently negotiating the terms of a sitewide CESA permit, and CDFW has informally agreed to several key terms consistent with the terms of the BO. Based on discussions to date, the

City does not anticipate the CESA permit will require significantly different avoidance and minimization measures for construction activities or that additional compensatory mitigation will be needed beyond the measures and mitigation included in the BO.

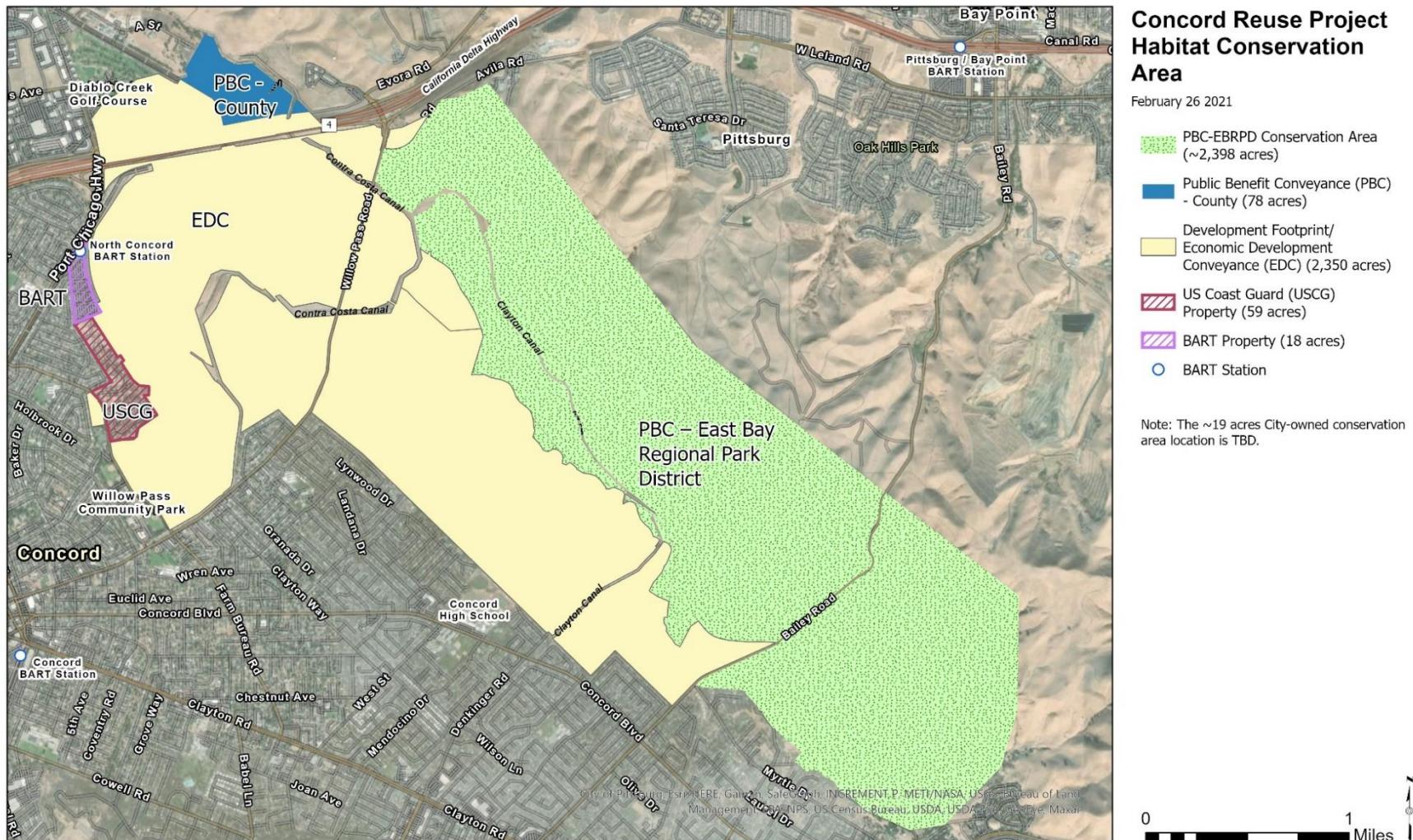
Under the BO, approximately 3,676 acres of habitat will be preserved and enhanced to provide 2:1 mitigation. Approximately 2,417 acres of habitat will be preserved “onsite” within the property east of Mt. Diablo Creek as shown on the attached Figure E-2. The EBRPD will own and manage most of the onsite mitigation (approximately 2,398 acres and the City will own the remaining 19 acres). The EBRPD transfer is via a separate Public Benefit Conveyance (PBC) (see RFQ). An additional 1,278 acres will be preserved at a to-be-determined “offsite” location to reach the required 2:1 mitigation ratio. The offsite mitigation property must be acquired no later than the start of the second phase of construction but is not required as part of the first phase of development.

In addition to preserving 3,676 acres of habitat, three new amphibian breeding ponds will be constructed within the onsite mitigation property and some of the existing ponds will be enhanced. Some enhancements to the offsite mitigation property may be necessary as well.

The 3,676 acres of habitat will require long-term management, and this management requires a secure, irrevocable, source of funding that the City will provide through a phased endowment held by the National Fish and Wildlife Foundation. In addition, the City will provide the EBRPD with “interim” management funding for the onsite mitigation, and if the offsite mitigation is acquired before the second phase of construction, the City likely will have to provide interim management funding for the offsite property.

Under the terms of the BO, the City will establish development fees to pay for the City’s implementation of the BO, which includes funding the habitat mitigation, oversight and enforcement of the BO, and ongoing coordination with the EBRPD and USFWS (similar commitments and coordination with CDFW likely will be required under the CESA permit as well). Under the BO, development fees will be paid by one or more developers when the City transfers property to the party developing it. All future developers will be required to pay a pro rata share of the costs, including fees, to reimburse the City.

Figure E-2 Habitat Conservation Area



## **E4.2 City and Master Developer Roles and Responsibilities**

Consistent with the City's sitewide permitting approach, the City will continue to pursue a CESA permit from CDFW, implement the BO (including the preparation and submission of additional habitat management plans), and evaluate the suitability of and acquire offsite mitigation. The City does not anticipate the Master Developer will participate in the CESA permitting or BO implementation, and the Master Developer's role will be limited to implementing the avoidance and minimization measures contained in the BO and CESA permit that are required for construction activities.

## **E4.3 Cost Estimates for Species Mitigation**

The City and EBRPD prepared a Property Analysis Record (PAR) to evaluate and reach agreement on the costs associated with the interim and long-term habitat management (which is subject to an approved Habitat Management and Monitoring Plan) associated with the onsite mitigation. The City has also evaluated the costs associated with enhancing the onsite mitigation. The necessary endowment to support long term management of the onsite mitigation (based on the 2018 PAR) is approximately \$1,340,000 and will be adjusted for inflation at the time the endowment is funded. The interim management costs are approximately \$30,000-\$35,000 per year, subject to an inflationary adjustment (and will be phased out as the endowment becomes available). The estimated costs for the onsite enhancements/one-time habitat costs are approximately \$2M. The primary uncertainty with regard to the species mitigation costs are the costs to acquire, and potentially enhance, the offsite mitigation, which will likely cost an estimated \$32-\$40M.

The mitigation costs are in addition to the permit processing costs the City has incurred and will continue to incur. The City will establish species mitigation permitting fees to fairly allocate costs among all developers for the permit processing, implementation/oversight, and mitigation costs.

## **E5 National Historic Preservation Act (Section 106 Consultation)**

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### **E5.1 Framework/Permitting Status**

The Navy consulted with the State Historic Preservation Officer (SHPO) and consulting parties regarding the disposal and reuse of the former NWS Concord (i.e. considering the effects of the CRP Area Plan development). The City, Navy, SHPO, and EBRPD entered into a confidential memorandum of agreement

(MOA) that resolves the adverse effects to historic properties, including to the one known historic property located within the development area. This buried historic property will be capped and preserved in place pursuant to the approved Historic Properties Treatment Plan, and the City anticipates this will be done either by the Navy in connection with its remediation work or when other natural resource mitigation work is done. The exact timing will depend on progress of the Navy remediation and transfer efforts, and timing of the Master Developer initiating development.

## **E5.2 City and Master Developer Roles and Responsibilities**

As a signatory to the MOA, the City will be responsible for the mitigation and will include the applicable mitigation measures (which are consistent with the existing EIR mitigation measures) in future entitlements. No further Section 106 consultation by the ACOE is anticipated. The City may seek the Master Developer's technical (construction) assistance with capping the site.

## **E5.3 Cost Estimates for Historic Property Mitigation**

The City has not evaluated the costs associated with capping the buried historic property but does not anticipate the costs will be significant. The work can likely be done in connection with other site preparation or mitigation work to minimize costs.

## **Appendix F**

### **Standard Conditions**

## **F1 Cost of Preparing and Submitting Statements**

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All costs incurred in preparing and submitting the Statement of Qualifications (SOQ) in response to the Request for Qualifications (RFQ) are to be borne by the Respondent and not the Local Reuse Authority (LRA) or the City of Concord (City). In no event shall the LRA or the City be liable for any costs whatsoever for the preparation and submittal of a response to this RFQ.

## **F2 Reservations and Options**

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The LRA and the City reserve the right, in its sole discretion, to award any combination of services, reject any or all proposals, and/or waive informalities, minor irregularities, inconsequential deviations, and minor variations from specifications in SOQs received. Without limiting the foregoing, the LRA reserves the right and options to: reject any or all of the submittals, including but not limited to, any submittal that is determined to contain false, misleading, or materially incomplete information; waive or modify any of the provisions of the RFQ; request modifications to the Master Developer Teams proposed by Respondents; issue addenda to this RFQ; issue subsequent RFQs; cancel or postpone the RFQ process; and/or waive any errors in SOQs it receives.

## **F3 Conflict of Interest Disclosure**

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By submission of a SOQ, the Respondent shall be deemed to represent and warrant the following to the LRA:

- No person or entity employed by the LRA or City or otherwise involved in preparing this RFQ on behalf of the LRA or City: (i) has provided any information to Respondent that was not also available to all other entities responding to the RFQ; (ii) is affiliated with or employed by Respondent or has any financial interest in Respondent; (iii) has provided any assistance to Respondent in responding to the RFQ; or (iv) will benefit financially if Respondent is selected in response to the RFQ; and
- Respondent has not offered or given to any LRA or City officer (elected or appointed) or employee any gratuity or anything of value intended to obtain favorable treatment under the RFQ or any other solicitation or other contract, and Respondent has not taken any action to induce any LRA or City officer (elected or appointed) or employee to violate the rules of ethics governing the LRA or City and its employees. Respondent has not and shall not offer, give, or agree to give anything of value either to the LRA or City, or any of its employees, agents, job shoppers, consultants, managers, or other person or

firm representing the LRA or City, or to a member of the immediate family (i.e., a spouse, child, parent, brother, or sister) of any of the foregoing. Any such conduct shall be deemed a violation of this RFQ. As used herein, “anything of value” shall include but not be limited to any (a) favors, such as meals, entertainment, and transportation (other than that contemplated by this RFQ, if any, or any other contract with the LRA or City) which might tend to obligate an LRA or City employee to Respondent, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment, or business opportunity. Such term shall not include work or services rendered pursuant to any other valid LRA or City contract.

## F4      Miscellaneous Provisions

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- **Notice of Modifications:** The LRA will post on the LRA’s website (<http://www.concordreuseproject.org/>) any notices or information regarding cancellations, withdrawals, modifications to deadlines, and other modifications to this RFQ. Respondents shall have an obligation to check the website for any such notices and information, and the LRA shall have no duty to provide direct notice to Respondents.
- **Change in Respondent Information:** If after Respondent has submitted an SOQ, substantive information provided in that SOQ changes, the Respondent must notify the LRA in writing and provide updated information. The LRA reserves the right to evaluate the modified response, eliminate Respondent from further consideration, or take other action as the LRA may deem appropriate. The LRA will require similar notification and approval rights of any change to Respondent’s proposal or Master Developer Team following selection, if any.
- **Restricted Communications:** Upon release of this RFQ and until final selection of a Master Developer, Respondents shall not communicate with the LRA or City staff about the RFQ or issues related to the RFQ except as permitted under the terms of this RFQ. Refer to Section 5.1 Master Developer RFQ Process for formal communication dates.
- **SOQs Become Property of the LRA:** Once submitted, all SOQs shall become the property of the LRA and City. The LRA and City may use any and all ideas and materials included in any SOQ, whether or not Respondent is selected as the Master Developer.
- **Selection Non-Binding:** The selection by the LRA of one or more Respondents indicates only the LRA’s intent to permit the Respondent(s) to continue with the process outlined herein, and the selection does not constitute a commitment by the LRA or City to execute a final agreement or contract with one or more Respondents. Respondent therefore agrees and

acknowledges that it is barred from claiming to have detrimentally relied on the LRA or City for any costs or liabilities incurred as a result of responding to this RFQ.

- **California Public Records Act Requests; Confidentiality:** All documents submitted in response to this RFQ will be subject to the California Public Records Act (CPRA – Government Code Section 6250 et seq.), which generally mandates the disclosure of documents in the possession of the LRA or City upon the request of any person, unless the content of the document falls within a specific exemption category. Any confidential or proprietary information which Respondent believes is exempt from disclosure under the CPRA (“Confidential Information”) must be enclosed in a separate folder or envelope clearly marked as “CONFIDENTIAL/PROPRIETARY INFORMATION” and submitted with the rest of the SOQ. Submittals where all information is so marked will be disregarded. Respondent (by virtue of submitting its SOQ) acknowledges that City has not made any representations or warranties that Respondent’s asserted Confidential Information will be exempt from disclosure under the CPRA or other applicable laws.

By submission of a SOQ, Respondent agrees that if City's City Attorney, in his or her discretion, determines that release of Respondent's Confidential Information is required by the CPRA or other applicable laws, including pursuant to order of a court of competent jurisdiction, City may notify Respondent of City's intent to release Confidential Information. In such event Respondent will have five (5) calendar days after the date of City's notice (“Objection Period”) to deliver to City a written objection notice which includes (1) justification for non-disclosure of all or any portion of the requested Confidential Information, and (2) legally binding confirmation of Respondent's indemnity and release obligations as set forth in these Standard Conditions (“Objection Notice”). City may release the Confidential Information if (i) City does not timely receive an Objection Notice, (ii) a final and non-appealable order by a court of competent jurisdiction requires City to release Confidential Information, or (iii) the City's City Attorney, in his or her discretion, upon review of the Objection Notice, determines that it does not satisfy the requirements set forth in these Standard Conditions or that the requested Confidential Information is not exempt from disclosure under the CPRA or other applicable laws. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the CPRA or other applicable laws, City may redact, delete, or otherwise segregate the Confidential Information that will not be released from the portion to be released, and may key by footnote or other reference to the appropriate justification for not disclosing the unreleased Confidential Information. By submission of a SOQ, Respondent agrees to defend, indemnify and hold harmless City and LRA and its and their officers, officials, employees, volunteers, agents, attorneys, and representatives from and against any and all liabilities, claims, demands, damages, fines, penalties, costs and expenses (including attorneys' fees and

costs) arising out of or in any way connected with disclosure or non-disclosure of any of Respondent's asserted Confidential Information.

By submission of a SOQ, Respondent waives, releases and discharges forever the City and LRA and its and their officers, officials, employees, volunteers, agents, attorneys, and representatives from any and all present and future liabilities, claims, demands, damages, fines, penalties, costs and expenses (including attorneys' fees and costs) arising out of or in any way connected with the disclosure or non-disclosure of any such Confidential Information. Respondent is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

As such relates to the RFQ process, Respondent hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

- **Hold Harmless:** By participating in the RFQ process, each Respondent agrees to hold the LRA and City and its and their officers, employees, agents, representatives, and consultants harmless from all claims, liabilities, and costs related to all aspects of this RFQ.
- **Restrictions:** By participating in the RFQ process, each Respondent acknowledges that the LRA and City are subject to various laws, rules, policies and agreements that impose legal and ethical constraints upon current and former LRA and City employees and consultants with regard to post-employment restrictions vis-a-vis such employee's or consultant's involvement in LRA- or City-led projects.
- **Accuracy of Background Information:** Information provided in this RFQ, as well as in related reports by LRA or City staff or its or their consultants is provided for the convenience of the Respondents only and is not intended to be exhaustive. The accuracy or completeness of this information is not warranted by LRA or City.
- **“As-Is” Property Condition:** As will be addressed in more detail in the to be negotiated Term Sheet and Disposition and Development Agreement, the CNWS property will be conveyed in phases to and shall be acquired and accepted by the selected Master Developer in an “as-is” condition, without representation or warranty by the LRA or City as to physical or environmental conditions of the land, ground water or any existing structures. The LRA and City make no representations regarding the character or extent of soil or subsurface conditions or the conditions and existence of utilities that may be encountered during the course of construction of any work, development, or occupancy of the CNWS property. As prospective Master Developers,

Respondents will be responsible for independently reviewing all available information that may be available from the Navy, environmental regulatory agencies, including the United States Environmental Protection Agency and the California Department of Toxic Substances Control, LRA, and City about existing conditions, and undertaking independent analysis of site conditions, including any environmental and health and safety issues, as applicable to that particular stage of the Master Developer selection process.

- **Campaign Contribution Restrictions:** By participating in the RFQ process, Respondent agrees that beginning on the date of issuance of this RFQ and continuing until such time as City has selected and entered into an Exclusive Negotiating Agreement with the preferred Master Developer: (1) Respondent shall not make and agrees to ensure that its affiliates do not make, any political contribution(s) to the campaign, or any political action committee supporting election or re-election, of any appointed or elected sitting City of Concord official running for any elected office or any candidate running for elected City office; and (2) Respondent shall not solicit its employees, contractors or subcontractors to make any political contribution(s) to the campaign, or any political action committee supporting election or re-election, of any appointed or elected sitting City of Concord official running for any elected office or any candidate running for elected City office. Respondents are also encouraged to read and understand the new campaign donation law AB 1439 ([https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB1439](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1439)) and associated FPPC and other legal decisions.

## Appendix G

### Template Exclusive Agreement to Negotiate

## **EXCLUSIVE AGREEMENT TO NEGOTIATE**

**by and between**

**CITY OF CONCORD**  
(“City”)

**and**

**[COMPANY NAME]**  
(“Developer”)

**Dated \_\_\_\_\_, 2023**

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## EXCLUSIVE AGREEMENT TO NEGOTIATE

THIS EXCLUSIVE AGREEMENT TO NEGOTIATE (“**Agreement**”), dated for reference purposes as of \_\_\_\_\_, 2023 (the “**Effective Date**”), is entered into by and between the CITY OF CONCORD, a California municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”), and *[Company Name]*, a *[State]* *[company type]* (“**Developer**”). City and Developer are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. The Concord Naval Weapons Station was once the United States Navy’s primary ammunition depot on the Pacific Coast. The United States Navy (“**Navy**”) vacated the approximately 5,000-acre property known as the Inland Area of the Concord Naval Weapons Station (“**CRP Area**”) in 1997, and in 2005 officially placed it on the base closure list. At that point, the City, acting through its City Council, was designated as the Local Reuse Authority (“**LRA**”) by the Department of Defense pursuant to the provisions of the federal Base Realignment and Closure Act (P.L. 101-510), as amended (“**BRAC**”). The City engaged in a seven-year planning process, which, among other things, culminated in the adoption of the Concord Reuse Project Area Plan (“**CRP Area Plan**”).

B. The CRP Area Plan provides that approximately 2,600 acres of the CRP Area will be set aside as a regional park for habitat conservation/restoration, open space, and passive recreation (“**Regional Park**”) pursuant to a public benefit conveyance from the United States government to a regional parks agency. An additional approximately 78 acres may be set aside in accordance with the CRP Area Plan for various public benefit uses, including, potentially, a first responder training facility (“**First Responder Site**”). The balance of the CRP Area comprising approximately 2,350 acres (“**Development Footprint**”) will be transferred by Navy to City under the economic development conveyance provisions of BRAC. The Navy will transfer the Development Footprint to City in phases, following concurrence by state and federal regulatory agencies on a Finding of Suitability for Transfer (“**FOST**”) with respect to the Development Footprint or portion thereof to be transferred. The Navy has completed a FOST for an initial transfer of 1,304 acres of the Development Footprint. The CRP Area, the Regional Park, and the Development Footprint are each depicted on the Site Map attached hereto as Exhibit A.

C. City issued a Request for Qualifications (“**RFQ**”) for development of the Development Footprint on \_\_\_\_\_, 2023. On \_\_\_\_\_, 2023 (“**Selection Date**”), the City Council, based on the statements of qualifications submitted in response to the RFQ, selected Developer to negotiate with City and to potentially become the master developer of a potential development project to include a mix of residential, commercial and public uses substantially consistent with the approved CRP Area Plan (“**Project**”) on all of the Development Footprint.

D. City and Developer desire to enter into this Agreement in order to set forth the terms under which the Parties will negotiate a detailed term sheet with respect to the Project (“**Term Sheet**”) which, if negotiations are successful, will be presented to the City Council for approval. If the City Council approves the Term Sheet, this Agreement also establishes procedures and standards for the negotiation and drafting of a comprehensive proposed

Disposition and Development Agreement (“**DDA**”) consistent with the Term Sheet providing, among other things, for City’s conveyance to Developer, subject to Developer meeting performance milestones to be set forth in the DDA, of all of the Development Footprint via multiple phased closings, and Developer’s implementation, either itself or in cooperation with one or more vertical developers, of the Project.

E. Concurrently herewith, City and Developer are entering into a reimbursement agreement (“**Reimbursement Agreement**”) providing for Developer’s reimbursement of certain costs to be incurred by City in connection with the planning, administration, and implementation of the proposed Project, including the negotiation and drafting of the Term Sheet and proposed DDA.

NOW, THEREFORE, City and Developer hereby mutually agree as follows:

#### *AGREEMENTS*

1. Incorporation of Recitals.

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as though set forth in full.

2. Exclusive Negotiations.

City and Developer agree for the Negotiating Period described in Section 3 below, to work together cooperatively to diligently negotiate and present for City Council consideration a Term Sheet, and, if the City Council approves the Term Sheet, to diligently negotiate the terms of a mutually satisfactory DDA, including a form of statutory Development Agreement as an exhibit thereto, for the conveyance to Developer, subject to Developer meeting performance milestones to be set forth in the DDA, of the Development Footprint via multiple phased closings and implementation of the Project thereon, all on terms consistent with the approved Term Sheet.

3. Negotiating Period.

The Negotiating Period will be conducted in two stages as follows:

3.1 Preliminary Stage. The first stage of the Negotiating Period (“**Preliminary Stage**”) shall commence on the Effective Date and expire, unless extended as provided in Section 3.3 below, one hundred twenty (120) calendar days thereafter. During the Preliminary Stage, the Parties shall diligently work together to negotiate and present to the City Council, prior to expiration of the Preliminary Stage, for Council’s consideration and potential approval a Term Sheet addressing the matters described in Exhibit B, attached hereto and such other matters agreed upon by the Parties. If the Parties fail to reach agreement on a mutually acceptable Term Sheet prior to expiration of the Preliminary Stage, either Party may terminate this Agreement by written notice to the other Party. Upon such termination, neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

### 3.2 DDA Stage.

(a) If, and only if, the Parties reach agreement on a mutually acceptable Term Sheet and the City Council approves the Term Sheet prior to expiration of the Preliminary Stage, as may be extended pursuant to Section 3.3 below, the Parties shall proceed to the second stage of the Negotiating Period (“**DDA Stage**”), which shall commence on the date the City Council approves the Term Sheet, and unless extended as provided in Section 3.3 below, shall expire on the date which is twenty-four (24) months thereafter, or such later date as may be mutually determined through the Term Sheet negotiations. The City Manager or designee is authorized to approve amendments to this Agreement to the extent consistent with the approved Term Sheet. The Parties anticipate that City will continue to negotiate with the Navy during the DDA Stage regarding the transfer of the Development Footprint to the City and that Developer may be asked to participate in such negotiations as requested by City. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except as set forth herein.

(b) If the Parties reach agreement on a mutually acceptable Term Sheet and such Term Sheet is approved by the City Council, Developer, at its option, may nevertheless terminate this Agreement by written notice to City delivered prior to delivery of the “Second Deposit”, as defined in the Reimbursement Agreement, in which case neither Party shall have any further rights or obligations under this Agreement, except as expressly set forth herein.

3.3 Extensions. The Preliminary Stage may be extended one or more times for a period not to exceed one hundred twenty (120) calendar days in total on City’s behalf by the City Manager or designee if such official determines in their sole discretion that the Parties have made substantial progress in their negotiations to merit such extension. Possible administrative extensions of the DDA Stage may be set forth in the Term Sheet and, if the Term Sheet is approved by the City Council, the Parties shall execute an amendment to this Agreement providing for such mutually agreed upon administrative extensions, which amendment the City Manager shall have authority to execute. Subject to approval by the City Council, either stage of the Negotiating Period may also be extended by mutual written agreement of the Parties.

### 4. Exclusivity of Negotiations.

During the Negotiating Period, the City shall negotiate exclusively with Developer regarding implementation of the Project. Notwithstanding the above, during the entirety of the Negotiating Period, this Agreement does not prevent City from providing information regarding the Project or implementation thereof (other than Developer’s Confidential Information as defined in Section 16 below) to persons or entities other than Developer or engaging in negotiations with other public entities, including the Navy, San Francisco Bay Area Rapid Transit District (“**BART**”), and East Bay Regional Park District (“**EBRPD**”), with respect to development, transfer and use of relevant portions of the CRP Area.

## 5. Project Implementation.

Pursuant to the California Environmental Quality Act (“CEQA”), City certified a Final Programmatic Environmental Impact Report (“Program EIR”), adopted Overriding Findings of Significance, and adopted a Mitigation Monitoring and Reporting Program (“MMRP”) in conjunction with adoption of the Reuse Plan and adopted an Addendum to the Program EIR in connection with the CRP Area Plan. Developer acknowledges that, in conjunction with City consideration of a proposed DDA and any Specific Plan or other land use plans, entitlements, permits, or approvals for the Project (collectively the “Project Approvals”), it will be necessary to comply with CEQA at the Project level, although the Program EIR may be relied upon to the extent permitted under CEQA.

## 6. Developer’s Representations and Warranties.

Developer represents and warrants to City as follows:

6.1 Authority. Developer is a \_\_\_\_\_ company duly organized in the State of \_\_\_\_\_ and in good standing under the laws of the State of California. Developer has full right, power, and lawful authority to undertake all of its obligations under this Agreement, and Developer’s execution and delivery of this Agreement, and the performance of the obligations of Developer hereunder have been duly authorized by all requisite *company* actions on the part of Developer.

6.2 No Conflict. Developer’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer and/or Developer’s *manager or managing member*, as applicable, is a party or by which it is bound.

6.3 Litigation or Other Proceedings. The litigation disclosures previously provided by Developer to City in connection with Developer’s Statement of Qualifications (“SOQ”) response to the RFQ are true and complete in all material respects. Developer is not a party to, or subject of, any development project-related litigation other than as previously disclosed to City in connection with Developer’s SOQ submittal. Further, to Developer’s knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

6.4 Financial Statements; No Material Change in Financial Condition. The financial statements previously submitted by Developer to City in connection with Developer’s SOQ submittal are true and accurate in all material respects. There have been no material changes in Developer’s financial condition from the financial condition as reflected in the financial statements previously submitted by Developer.

6.5 No Developer Bankruptcy. As of the Effective Date, neither Developer nor Developer’s *manager or managing member*, as applicable, is the subject of any bankruptcy proceeding, nor has either (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its

respective creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

**6.6 Duty to Notify.** Developer shall notify City promptly, but in all events within 30 days from actual knowledge thereof, of any material change in any condition or of any event or circumstance which makes any representation or warranty of Developer under this Section 6 untrue or misleading.

**7. Progress Reports and Information.**

Within ten (10) calendar days following either Party's request, which may be made from time to time during the Negotiating Period, the other Party shall submit to the requesting Party a written progress report advising the requesting Party on the status of all work being undertaken by or on its behalf and, in the case of the City, the costs incurred in connection with such work. Further, City will provide, or make available to Developer for its review as reasonably requested by Developer, all information regarding the Development Footprint reasonably available to City, including all non-privileged information concerning the CRP Area, CRP Area Plan, and the physical condition and development of the Development Footprint obtained or developed by City Consultants or provided to the City by the Navy or any other third parties, including prior prospective developers. The City shall not, however, be obligated to produce any documents created for the specific purpose of assisting the City in its negotiations with Developer, or information produced by any prior prospective developer that City, in its reasonable discretion, determines to be confidential or proprietary developer information.

**8. Limitations on Effect of Agreement.**

This Agreement (and any extension of the Negotiating Period) does not obligate either Party to enter into a DDA on or containing any particular terms. By execution of this Agreement (and any extension of the Negotiating Period), City is not committing itself to, or agreeing to, undertake disposition of the Development Footprint or any portion thereof and Developer is not committing itself to acquire the Development Footprint or any portion thereof. Execution of this Agreement by City and Developer is merely an agreement to conduct a period of diligent, good faith negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith.

Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA is considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council, and executed by City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement.

This Agreement, which pertains only to negotiating procedures and standards between City and Developer, does not limit in any way the discretion of City in acting on any applications for any Project Approvals; provided, however, City agrees to coordinate with Developer the scheduling of meetings for Planning Commission and City Council consideration of such applications for approval. Consistent with Section 5 of this Agreement, the Parties acknowledge that CEQA compliance in connection with consideration of the Project is required, and that City retains the discretion in accordance with applicable law, before action on the Project by the City Council to: (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Project.

## 9. Defaults and Remedies.

9.1 Default. Failure by either Party to negotiate in good faith, and without unreasonable delay, as provided in this Agreement constitutes an event of default hereunder. Except as otherwise set forth herein with respect to City's immediate right to terminate the Agreement under Section 11 or Section 12, the non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If such default remains uncured ten (10) calendar days after receipt by the defaulting Party of such notice in the case of a default on an obligation to pay or reimburse money, or thirty (30) calendar days after receipt of such notice in the case of all other defaults, the non-defaulting Party may exercise the remedies set forth in Section 9.2 or Section 9.3 below.

9.2 Exclusive Remedies for City Default. In the event of an uncured default by City, Developer's sole and exclusive remedy is to terminate this Agreement. From and after such termination neither Party shall have any further right, remedy, or obligation under this Agreement, except for those surviving rights and obligations of the Parties as set forth in Sections 10, 11, 16 and 17 hereof.

9.3 Exclusive Remedies for Developer Default. Except as provided in Section 11 below, in the event of an uncured default by Developer, City's sole and exclusive remedy shall be to terminate this Agreement. Following such termination, neither Party will have any right, remedy, or obligation under this Agreement, except for those surviving rights and obligations of the Parties as set forth in Sections 10, 11, 16 and 17 hereof. Nothing herein shall be deemed to limit the City's rights and remedies under the Reimbursement Agreement.

9.4 No Damages. Except as provided in Section 11 below, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance or non-performance by the other Party under this Agreement. Subject to Section 11 below, each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity in the event of a default by the other Party, including the right to recover actual, consequential, special, or punitive damages from the defaulting Party. For avoidance of doubt, Developer acknowledges that City has the

right to recover actual damages under the Reimbursement Agreement, subject to the terms of that agreement.

**9.5 Default under the Reimbursement Agreement.** Developer's default under the Reimbursement Agreement following notice and expiration of applicable cure periods shall be deemed a default by Developer under this Agreement, and City shall have the right to immediately terminate this Agreement by written notice to Developer without having to provide any further opportunity to cure under Section 9.1 above.

#### **10. Rights to and Delivery of Third-Party Materials.**

Once submitted to the City, all documents, reports, and other work product generated by third parties for Developer with respect to the Project that Developer owns or has the right to transfer, including without limitation: (i) all environmental reports, geotechnical reports, surveys, marketing reports, lot studies and improvement plans; (ii) design concepts and draft land use and infrastructure plans, including any draft specific plan, and any other permits and approvals for any other land use entitlements; and (iii) any other relevant information or documentation relative to entitlement, approval or development of the Project (excluding only attorney client privileged communications) (collectively, "**Third-Party Materials**") shall become the property of the City. Developer shall include contractual language in all contracts with the engineers, designers, architects and other consultants producing such Third-Party Materials (the "**Third-Party Contracts**") by which those firms and consultants consent to future use of such Third-Party Materials by City and its designees without payment by City or its designees, provided such contractual language will not require those third-party consultants to continue working with the City. Such contractual language must be in a form reasonably acceptable to the City Attorney.

Notwithstanding any other provision of this Agreement, if this Agreement is terminated by either Party prior to expiration of the Negotiating Period, or by City pursuant to Section 9.3, or if this Agreement expires without the Parties having entered into a DDA, then Developer shall promptly, at no cost and without warranty as to correctness, deliver to City copies of all Third-Party Materials in such formats as reasonably requested by City. Except for Third-Party Materials subject to Section 16 below, and subject to reasonable restrictions on the use of such Third-Party Materials in the Third-Party Contracts, the terms of which shall have been approved by the City Attorney, City, and its current and future consultants, contractors, and developers, may use all Third-Party Materials, at no cost and without warranty as to correctness, for any lawful purpose in connection with any future development or proposed development of the Development Footprint or other portion of the CRP Area. Developer's obligations under this Section 10 shall survive the expiration or earlier termination of this Agreement.

#### **11. Non-Disparagement.**

**11.1 Disparaging Statement.** Developer agrees that the Developer Restricted Individuals, as defined in Section 11.6, shall refrain from making, or soliciting another to make, any public statements (e.g., statements made in press releases, traditional and social media, public hearings, community meetings, or similar public forums), or authorizing any statements to be reported as being attributed to the Developer, that are disparaging or derogatory of any City

Council member or City staffer, and which are intended to and which would reasonably be expected to injure the reputation or business of such individual (hereafter a **“Disparaging Statement”**). By way of example only (and without limitation), a Disparaging Statement will not include statements by any Developer Restricted Individual that disagrees with, objects to or challenges statements made by a member of City Council or City staff about the Project.

**11.2 Notice and Demand to Meet and Confer.** In the event where City claims that Developer has made or authorized a Disparaging Statement in violation of this Section 11, City shall provide notice of such claimed violation in accordance with Section 15, along with a demand to Developer to meet and confer within five (5) business days of Developer’s receipt of said notice.

**11.3 Mediation.** If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree in its sole discretion), the Parties agree to try and settle the dispute by mediation. Mediation shall be conducted by JAMS, Inc. (“**JAMS**”), in accordance with JAMS mediation rules and procedures (including those relating to confidentiality), and shall occur at JAMS’ facility in Walnut Creek, California. Mediation shall not extend beyond one half-day absent mutual agreement of the Parties. Developer agrees to pay all costs charged by JAMS as a result of any mediation occurring pursuant to this Section 11.3.

**11.4 Liquidated Damages.** DEVELOPER ACKNOWLEDGES AND AGREES THAT COMMISSION OR AUTHORIZATION OF A DISPARAGING STATEMENT BY DEVELOPER MAY RESULT IN IRREPARABLE HARM TO THE CITY AND THAT THERE IS NO ADEQUATE REMEDY AT LAW FOR A VIOLATION OF THIS SECTION 11. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF SUCH VIOLATION, CITY WILL SUFFER DAMAGES, INCLUDING LOST OPPORTUNITIES TO PURSUE OTHER DEVELOPMENT AND DELAYED RECEIPT OF PROPERTY TAX REVENUES FROM THE PROJECT, AND THAT IT WOULD BE IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, IF DEVELOPER IS IN BREACH OF ITS OBLIGATIONS UNDER THIS SECTION 11, AND ASSUMING CITY HAS EXHAUSTED THE PROCEDURES DESCRIBED IN SECTION 11.2 AND SECTION 11.3, CITY MAY (I) IF THIS AGREEMENT HAS NOT ALREADY EXPIRED OR BEEN TERMINATED, IMMEDIATELY TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO DEVELOPER, AND (II) RETAIN THE UNEXPENDED PORTION OF ANY DEPOSIT DEVELOPER HAS MADE UNDER THE REIMBURSEMENT AGREEMENT, PLUS ANY INTEREST THEREON, BUT NOT TO EXCEED \$100,000, AS FIXED AND LIQUIDATED DAMAGES AND NOT AS A PENALTY. DEVELOPER’S OBLIGATIONS UNDER THIS SECTION 11 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. BY PLACING THE INITIALS OF THE AGENT EXECUTING THIS AGREEMENT ON ITS BEHALF BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: DEVELOPER \_\_\_\_\_ CITY \_\_\_\_\_

11.5 **Developer's Rights to Object.** Developer's objections to any development conditions made in a public hearing, its exercise of its administrative or judicial rights of appeal of any action by the City, or its response to a Disparaging Statement made about Developer, in connection with the proposed Project or Project Entitlements shall not, by themselves, be deemed a Disparaging Statement or a violation of this Section.

11.6 **Developer Restricted Individuals.** The following individuals (the "**Developer Restricted Individuals**") are subject to this Section 11 and Section 12 below:

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12. **Campaign Contributions.**

12.1 **Campaign Contribution Restrictions.** During the term of this Agreement, Developer shall ensure that the Developer Restricted Individuals do not make, or solicit another to make, any political contribution(s) to the campaign, or any political action committee supporting election or re-election, of (i) any appointed or elected sitting City of Concord official running for any elected office, or (ii) any candidate running for elected City office. Developer further agrees that the Developer Restricted Individuals shall not solicit its or their or Developer's employees, contractors, or subcontractors working on the Project to make any political contribution(s) to the campaign, or any political action committee supporting election or re-election, of (i) any appointed or elected sitting City of Concord official running for any elected office, or (ii) any candidate running for elected City office. Within ten (10) business days of the execution of this Agreement (or, in the case of newly appointed or newly elected officials, within ten (10) business days of such appointment or election), the City Manager shall advise all appointed or elected sitting City of Concord officials in writing of the restrictions on campaign contributions set forth in this Section 12.1.

12.2 **City Remedies.** In the event City has reason to believe Developer has violated its obligations under this Section 12, City may notify Developer in writing which notice shall include a brief recitation of the facts City believes constitute evidence of such violation. Developer shall have fifteen (15) days following receipt of such notice to provide any exculpatory evidence demonstrating that no such violation has occurred. Following expiration of such 15-day period City may immediately terminate this Agreement by written notice to Developer, and without affording Developer any opportunity to cure such violation, if City determines that Developer has violated its obligations under this Section 12.

13. **Rights Following Expiration or Termination.**

If a DDA is signed by Developer, approved by the City Council, and executed by City, the ongoing rights and obligations of the Parties shall be as specified in the DDA and any ancillary agreements. If, at the time this Agreement expires or is terminated in accordance with its terms, the Parties have not entered into a DDA, then City has the absolute right to pursue disposition and development of all or portion of the Development Footprint in any manner and with any party or parties it deems appropriate.

14. Right to Enter the Development Footprint/City Property Documents.

City shall work with the Navy to provide Developer, its employees, agents, and contractors with a right of entry or other similar access during the Negotiation Period to pertinent portions of the Development Footprint for the purpose of conducting inspections, tests, examinations, surveys, studies, appraisals, and marketing tours. Any right of entry shall be in a form acceptable to City, Navy, and Developer and consistent with any existing right of entry in favor of the City or any prior right of entry provided by the City to former prospective developers or purchasers of the Development Footprint.

15. Notices.

Any approval, disapproval, demand or other notice which any Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means that offers confirmation of receipt, including by certified or registered U.S. Mail, postage prepaid and return receipt requested, personal delivery, overnight courier, or email, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice:

To Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

To City: City of Concord  
Local Reuse Authority  
1950 Parkside Drive  
Concord, California  
Attention: LRA Executive Director  
Telephone: (925) 671-3001  
Email: guy.bjerke@cityofconcord.org  
and: reuse.project@cityofconcord.org

With copies to:

City of Concord  
1950 Parkside Drive  
Concord, California  
Attention: City Attorney  
Telephone: (925) 671-3160  
Email: susanne.brown@cityofconcord.org  
and: city.attorney@cityofconcord.org

And

Burke, Williams & Sorensen, LLP  
1999 Harrison Street, Suite 1650  
Oakland, CA 94612-3520  
Attention: Gerald J. Ramiza  
Telephone: (510) 273-8780  
Email: jramiza@bwslaw.com

Any notice shall be deemed given on the date of delivery if delivered by certified or registered mail, personal delivery to the recipient, or overnight courier if on a business day (and if not on a business day, then on the next business day) or when delivery is refused. Any notice shall be deemed given when received if sent by email if received before 5:00 PM local time (of the recipient) on a business day, and otherwise on the next business day.

#### 16. Confidentiality of Information.

Any information provided by Developer to City, including pro formas and other financial projections (whether in written, graphic, electronic or any other form) that is clearly marked as “CONFIDENTIAL/PROPRIETARY INFORMATION” (“**Confidential Information**”) is subject to the provisions of this Section 16. Subject to the terms of this Section, City shall endeavor to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253, *et seq.*) or other applicable local, state, or federal law (collectively, “**Public Disclosure Laws**”). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys, and advisors (“**City Representatives**”), but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Developer acknowledges that City has not made any representations or warranties that any Confidential Information City receives from Developer will be exempt from disclosure under any Public Disclosure Laws.

In the event the City’s legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer, prior to disclosure of such Confidential Information, of City’s intention to release the Confidential Information. Developer shall have five (5) calendar days after the date of City’s notice (“**Objection Period**”) to deliver to City a written objection notice, which includes (a) justification for non-disclosure of all or any portion of the requested Confidential Information, and (b) legally binding confirmation of Developer’s indemnity and release obligations as set forth in this section (“**Objection Notice**”). City may release the Confidential Information if (i) City does not timely receive an Objection Notice, (ii) a final and

non-appealable order by a court of competent jurisdiction requires City to release Confidential Information, or (iii) the City's City Attorney, in their reasonable discretion, upon review of the Objection Notice, notifies Developer in writing that they have determined that it does not satisfy the requirements set forth in this Section or that the requested Confidential Information is not exempt from disclosure under the Public Disclosure Laws and Developer then fails to file and obtain a temporary restraining order or other similar injunctive relief preventing such disclosure within ten (10) days after receipt of the City Attorney's determination. If the City Attorney, in their reasonable discretion determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released, and may key by footnote or other reference to the appropriate justification for not disclosing the unreleased Confidential Information.

Developer acknowledges that in connection with City Council's consideration of any DDA as contemplated by this Agreement, City will need to present a summary of Developer's financial projections, including anticipated costs of development, anticipated project revenues, and returns on equity, cost and/or investment. If this Agreement is terminated without the execution of a DDA, City shall return to Developer any Confidential Information within thirty (30) days.

To the extent Developer believes the Confidential Information is not subject to Public Disclosure Laws, Developer may, at no cost to the City, file any necessary legal actions to enjoin or prevent the disclosure of the Confidential Information.

Developer shall defend, indemnify, and hold harmless City and its officers, officials, employees, volunteers, agents, attorneys, and representatives (collectively, "**Indemnitees**") from and against any and all Claims arising out of or in any way connected with disclosure or non-disclosure of any Confidential Information. "**Claim**" or "**Claims**" means any and all present and future liabilities, claims, demands, obligations, grievances, judgments, orders, injunctions, causes of action, assessments, losses, costs, damages, fines, penalties, expenses, suits or actions of every name, kind, description and nature (including attorneys' fees and costs), known or unknown, and whether now existing or hereafter arising, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any legal challenge brought by a third-party seeking or objecting to the disclosure of that Confidential Information. Developer's obligations under this Section 16 shall survive the expiration or termination of this Agreement.

Developer hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with any Confidential Information. Developer aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.**

As such relates to this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

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**Developer Initials**

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (i) is now, or hereafter becomes, through no act or failure to act on the part of City, generally known or available; (ii) is known by the City at the time of receiving such information as evidenced by City's public records; (iii) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by City without any breach of this Agreement and without any use of or access to Developer's Confidential Information as evidenced by City's records; (v) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent), or (vi) is the subject of a written permission to disclose provided by Developer to City.

Nothing herein shall prohibit Developer from seeking injunctive relief to prevent disclosure of information which Developer believes qualifies as Confidential Information.

**17. No Commissions.**

Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the potential transaction contemplated by this Agreement or any resulting DDA, then the Party through whom the commission is claimed shall indemnify, defend, and hold the other Party harmless from any liability related to such commission. The provisions of this Section 17 shall survive termination of this Agreement.

**18. Assignment.**

The qualifications and identity of Developer and its parent company, \_\_\_\_\_, *[identify parent company]*, were material considerations by City in selecting Developer. Accordingly, except as provided below, Developer may not assign all or any portion of this Agreement to any other person or entity, without the prior written approval of the City Council. Any purported voluntary or involuntary assignment by Developer of this Agreement without such City written approval shall be null and void, except as provided below. Notwithstanding the foregoing, Developer may assign this Agreement in its entirety without approval by the City to an Affiliate (defined below) of Developer, provided that \_\_\_\_\_ *[identify parent*

*company]* (a) has responsibility for the day-to-day entitlement and development activities of such entity; and (b) has majority voting and profits interests in such entity. Developer shall provide not less than ten (10) business days' prior written notice to City of any such permitted assignment. As used herein, the term "**Affiliate**" means an entity which controls, in controlled by or under common control with Developer.

19. Applicable Law; Venue.

This Agreement shall be construed in accordance with the law of the State of California, including its statutes of limitation, but without reference to choice of laws principles, and venue for any action under this Agreement shall be in Contra Costa County, California.

20. Severability.

If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.

21. Integration.

This Agreement, together with the Reimbursement Agreement, contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged in this Agreement and shall be of no further force or effect.

22. Modifications.

Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

23. Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Development Footprint or any other portion of the CRP Area with respect to this Agreement or any dispute or act arising from this Agreement.

24. Interpretation.

As used in this Agreement, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." Unless otherwise expressly stated, "days" means calendar days. This Agreement shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or any of its terms.

25. Authority.

Each person executing this Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of \_\_\_\_\_/[State]\_\_\_\_\_, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate power and authority to enter into this Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Developer is duly and validly authorized to do so.

26. Next Business Day.

In the event the date on which City or Developer is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

27. Joint and Several.

If Developer consists of more than one entity or person, the obligations of Developer hereunder shall be joint and several.

28. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

29. List of Exhibits.

The following Exhibit are attached hereto and incorporated herein by reference:

- (a) Exhibit A -- Site Map
- (b) Exhibit B -- Preliminary Stage Negotiation Matters

*[Remainder of page intentionally left blank]  
[Signatures on next page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**CITY:**

CITY OF CONCORD, a California  
municipal corporation

**DEVELOPER:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_

Name: Valerie Barone  
Title: City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

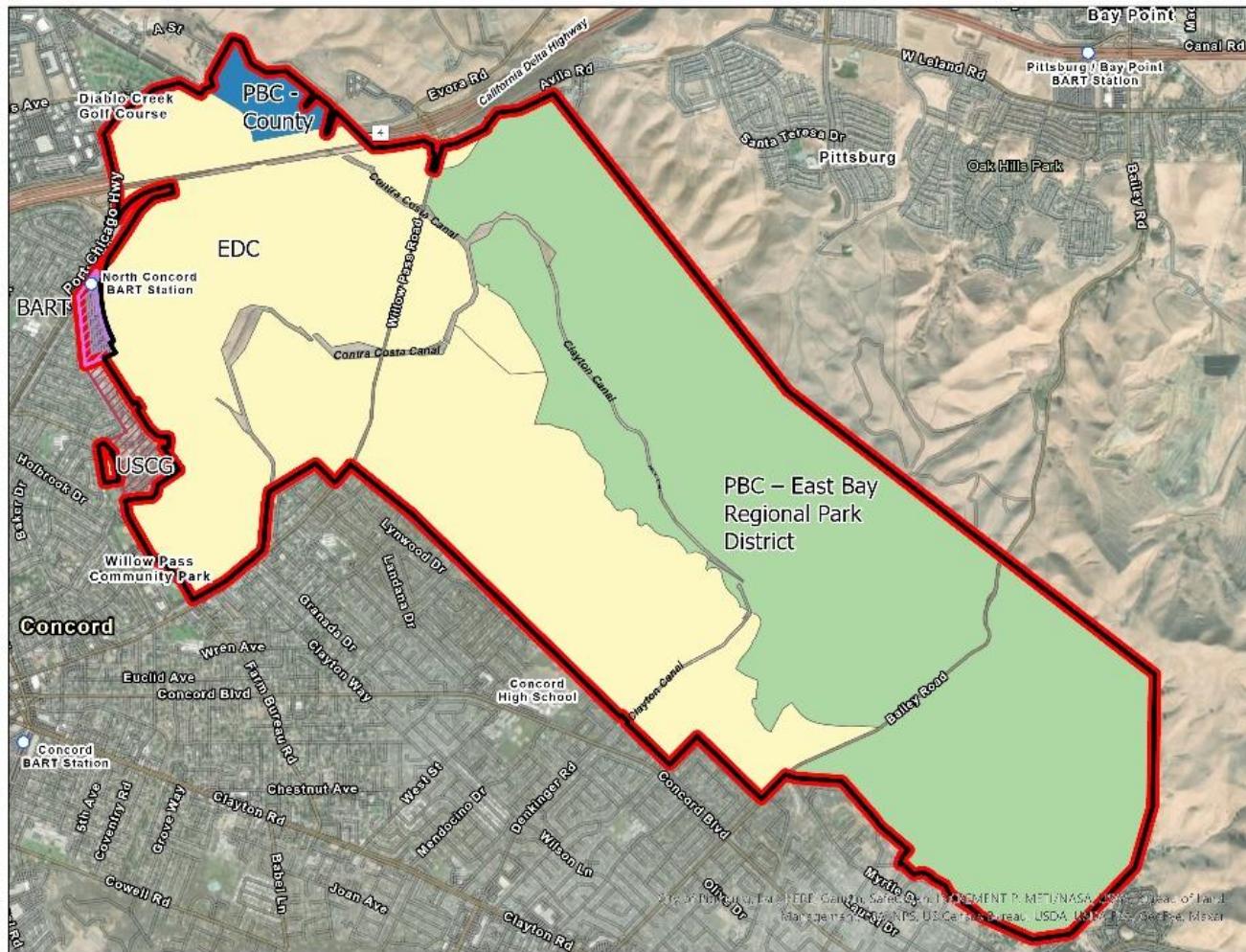
APPROVED AS TO FORM:

By: \_\_\_\_\_

Susanne Brown, City Attorney

## EXHIBIT A

### SITE MAP



### Concord Reuse Project Property Terminology

February 22 2021

- Concord Reuse Project (CRP)
  - Area Plan Boundary (~5,018 acres)
- Concord Naval Weapons Station (CNWS) / "Base" (~5,000 acres)
- Public Benefit Conveyance (PBC) - East Bay Regional Park District (2,600 acres)
- Development Footprint/ Economic Development Conveyance (EDC) (2,350 acres)
- Public Benefit Conveyance (PBC) - County (78 acres)
- US Coast Guard (USCG) Property (59 acres)
- BART Property (18 acres)
- BART Station

0 1 Miles

**EXHIBIT B****PRELIMINARY STAGE NEGOTIATIONS MATTERS**

- Determination of the Project.
- The terms under which Developer, following Navy's conveyance of each portion of the Development Footprint to the City, would operate, manage, and maintain it on an interim basis until such time as the Development Footprint, or applicable portion thereof, is ready to be conveyed to Developer pursuant to the DDA, or the DDA has been terminated.
- The terms, including conditions precedent to closing, under which City would convey the Development Footprint, or applicable portion thereof, to Developer by deed (or lease with respect to the Commercial Flex portions) in multiple phases corresponding with Developer's phased build out of the Project, including backbone infrastructure.
- The terms under which Developer would be permitted to assign or transfer its interests in the DDA to affiliates.
- The terms, including conditions precedent to closing, under which Developer would be permitted to convey subdivided, developable portions of the Development Footprint, or applicable portion thereof, to one or more vertical developers, which may or may not be affiliates of Developer, following Developer's completion of applicable portions of the backbone infrastructure.
- The terms under which City and/or Navy may potentially receive a portion of the proceeds generated from Developer's conveyance of subdivided, developable portions of the Development Footprint, or applicable portion thereof, to the vertical developer(s).
- The terms under which Developer will interface with Navy to address the Navy's remediation of additional hazardous materials that may be discovered on the Development Footprint, or applicable portion thereof, during development and following completion of Navy's initial remediation program.
- Requirements regarding compliance with the City's policies on prevailing wages, local hire and apprenticeship programs and potential Project Labor Agreements.
- Requirements for implementing site-wide mitigation and monitoring in accordance with the certified Final EIR for the Reuse Plan, Addendum for the CRP Area Plan, and other environmental documents.
- Requirements for funding the ongoing costs of implementing and complying with endangered species, habitat mitigation, archaeological and other mitigation obligations.
- Requirements related to compliance with affordable housing obligations and the phasing of affordable residential units.

- Requirements related to existing legally binding agreements regarding the provision of homeless housing and the transfer of property for a food bank.
- Requirements related to the phasing of development in the TOD core, as described in the CRP Area Plan, and neighborhood serving retail development.
- Requirements related to phasing of public improvements, including parks and other community facilities and amenities, and any necessary modifications to phasing over time.
- Requirements related to the transfer of a portion of the golf course and the provision of access through the golf course and corresponding improvements.
- Criteria and guidelines for implementation of the Project, including requirements related to design standards and City design review, to be set forth in a Specific Plan.
- Methods of financing the construction, installation and/or long-term maintenance of public improvements, including, potentially, via Mello-Roos Community Facilities District, Enhanced Infrastructure Finance District, Landscape and Lighting District or other tax-exempt financing vehicles.
- Provisions regarding the term of the DDA and outside dates for conveyance of land and construction of specified improvements in phases.
- The terms, including conditions precedent, under which Developer would be obligated to commence each backbone infrastructure phase.
- Terms regarding leasing of land and structures within the Development Footprint, or applicable portion thereof, including terms under which City would lease land and structures to Developer for Project related uses and terms for termination of existing leases and approval of new leases.
- The Project implementation milestones and other conditions precedent that the Developer would be required to satisfy before City would enter into subsequent exclusive negotiating agreements and/or Disposition and Development Agreements with Developer for those portions of the Development Footprint that are not addressed by the DDA.
- Terms regarding remedies in the event of failure of conditions precedent and/or default at various stages (prior to land conveyance, prior to development, after partial conveyance/development, etc.).
- The terms under which City would enter into a Development Agreement with Developer with regard to the Project, including such terms as the duration of the Development Agreement, the scope of vested rights conferred, and the applicability of new or increased impact fees.
- Any other issues that the Parties mutually agree to negotiate, including terms under which Developer would potentially be compensated for amounts expended on a specific plan and

EIR if the City Council were to approve the specific plan and EIR but then reject the proposed DDA as negotiated by City and Developer's negotiating teams.

## Appendix H

### CFP Term Sheet

CFP Term Sheet: The proposed Term Sheet for Disposition and Development Agreement and Statutory Development Agreement between the City of Concord, in its capacity as LRA and Concord First Partners, LLC dated November 15, 2022, which the City Council rejected on January 28, 2023.

The link to the Term Sheet can be found within the Term Sheet 2023 Folder in the Document Library at [concordreuseproject.org](http://concordreuseproject.org) website.

Direct link

[concordreuseproject.org/DocumentCenter/View/2273/Jan7StaffReportandTS](http://concordreuseproject.org/DocumentCenter/View/2273/Jan7StaffReportandTS)