

# PAUL HASTINGS

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March 25, 2016

Ms. Valerie Barone  
City Manager  
1950 Parkside Drive  
Concord, CA 94519

Re: Benefits of Selecting a Master Developer With Extensive Experience at Closed Military Bases

Dear Ms. Barone:

I am writing to explain the considerable benefits to the City of Concord of selecting a master developer with extensive experience at closed military bases of the size and complexity of the former Concord Naval Weapon Station (CNWS), and to emphasize that there is no developer in the country with more depth and breadth of experience at closed military bases than Lennar. Over the last 20 years, I have represented several different developers, including Lennar and its affiliates<sup>1</sup>, and also multiple Local Reuse Authorities (LRAs), with multi-year (and in many cases multi-decade) redevelopment projects at more than a dozen closed bases -- in California, as well as in the Midwest and on the East Coast.<sup>2</sup> I have spoken dozens of times at conferences throughout the nation regarding issues related to the Base Realignment and Closure (BRAC) process. I am also the author of *Brownfield Redevelopment at Closed Military Bases*, a chapter in the book *Environmental Issues in Real Estate & Business Transactions*, published by the American Bar Association in 2012.

Lennar has been deeply and continuously involved in military base redevelopment since 1997, when it was selected by the City of Vallejo as the master developer for the former Mare Island Naval Shipyard. Lennar now also serves as the master developer at the former Hunters Point Naval Shipyard and the former Treasure Island Naval Station in San Francisco, and the former Marine Corps Air Station El Toro in Irvine. In addition, Lennar has completed a residential development of 200 acres at Tustin Marine Corps Air Station in Tustin, on property it purchased directly from the Navy in a public sale. During the process of developing these bases, Lennar has become intimately familiar with the unique features and complexities of BRAC redevelopment.

## BRAC Redevelopment is Unique

Redeveloping a closed military base is unlike any other type of redevelopment. It involves literally a different language – the acronym-heavy, jargon intensive, “BRAC-speak.” Lennar speaks this foreign language more fluently than any other developer. Redeveloping a closed military base involves establishing trust and rapport with the civilian military personnel overseeing the transfer process – in the case of CNWS, that is the Navy BRAC Project Management Office (PMO) in San Diego. Because the Navy frequently rotates assignments among the different bases, Lennar has had the opportunity to work closely with almost the entire west coast BRAC PMO staff, as well as the national BRAC PMO leadership.

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<sup>1</sup> For convenience, in this letter I refer to any of the various Lennar-affiliated and managed entities, including joint ventures, I have represented as “Lennar.”

<sup>2</sup> I have also been a member of the team supporting Lennar Urban during the master developer selection process for CNWS.

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Likewise, the environmental regulatory agencies have special units dedicated to overseeing BRAC properties, and those project managers also rotate. Lennar has therefore had an opportunity to build trusting professional relationships with many project managers, attorneys, and mid-to-top level management at US EPA Region IX, DTSC and regional water boards. There is no other developer that has worked anywhere near as closely with the Navy, EPA, DTSC or water board staff responsible for overseeing California bases.

#### Early Transfers

Two of these bases (Mare Island and Tustin) have involved early transfers – transfer from the Navy to the LRA or developer before the completion of environmental remediation. Early transfers are very difficult to accomplish, as they require the personal approval of the governor (and EPA at a federal Superfund site like CNWS). Early transfers that are coupled with an environmental services cooperative agreement from the Navy to provide funds to the LRA or developer to complete the remediation involve complex negotiations of interlocking agreements among the Navy, EPA, DTSC, City, developer, insurer and remediation contractor. It is my understanding that the City of Concord has discussed the potential for seeking an early transfer with an environmental services cooperative agreement for CNWS. At Mare Island, Lennar negotiated the first-ever complete early transfer of both property and environmental responsibility from the military through the LRA and to a master developer under an environmental services cooperative agreement. For the last 15 years, Lennar has coordinated its development activities at Mare Island with ongoing remediation activities, and for the last 3 years it has directly overseen the final remediation activities under a complex and unique renegotiated environmental services cooperative agreement that provides for additional funding from the Navy. At Hunters Point, Lennar was also involved in complex, multi-year early transfer negotiations with the Navy, EPA, DTSC and the regional water board that were almost complete when circumstances arose that prevented consummation of the transaction; this experience provides Lennar with unique insight into what works, and what doesn't work, in these difficult negotiations. Again, no other developer has even close to this amount of experience in negotiating and implementing early transfer and privatized remediation at BRAC bases.

#### Superfund De-listing

Two of the bases Lennar has redeveloped (El Toro and Hunters Point) are on the federal Superfund list (formally known as the "National Priorities List"), which poses unique challenges for redevelopment. At El Toro, Lennar was able to work with US EPA to formally remove several thousand acres (almost all of the developable property at the base) from the federal Superfund list, which has helped facilitate multiple sales and financing transactions. Delisting would be of great benefit to the City of Concord's redevelopment efforts; I am unaware of any other developer in the country that has been able to secure a delisting of this magnitude at a closed military base.

#### Environmental Insurance

Lennar has procured environmental insurance at all the bases it has redeveloped. Negotiating environmental insurance for closed military bases is different than negotiating environmental insurance at other brownfield sites. The interrelationship between environmental insurance and the statutory indemnities and covenants provided by the federal government are unique BRAC issues, as is the potential presence of munitions and explosives. Also, the long duration of BRAC redevelopment projects and the amount of insurance limits sought by LRAs, developers and lenders often stretches the parameters of what insurers are comfortable offering. At El Toro, Lennar has negotiated several layers of

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custom environmental insurance coverage with limits several times higher than the maximum usually available in the marketplace.

Selecting a developer with this unprecedented depth and breadth of BRAC experience would benefit the City of Concord by making negotiations with the Navy and regulators faster, and increase the likelihood of the City obtaining favorable terms and accomplishing difficult but important objectives like securing an early transfer and a Superfund de-listing. Lennar's experience over the last two decades has allowed it to help LRAs creatively problem-solve when unforeseen problems arise, which is inevitable in a project of this size and complexity. I am confident that other BRAC experts throughout the country would agree with my assessment that Lennar is simply unmatched in the depth of its knowledge and experience on BRAC redevelopment.

I respectfully urge the City of Concord to consider these benefits in making its selection of a master developer for CNWS.

Sincerely,



Gordon E. Hart  
of PAUL HASTINGS LLP

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