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JAMES M. FINE, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

7 Attorneys for Petitioner
8 Friends of Hauke Park

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN

12 FRIENDS OF HAUKE PARK,

13 Petitioner,

14 v.

16 CITY OF MILL VALLEY, and
17 DOES 1 through 10,

18 Respondents.

CASE NO. ✓✓ 0000005

**VERIFIED PETITION FOR WRIT OF
MANDATE; ELECTION TO PREPARE
RECORD OF PROCEEDINGS**

**(Code Civ. Proc., § 1085;
Gov. Code, §§ 65587, 65751;
Pub. Resources Code, §§ 21168, 21168.5,
21167.6, subd. (b)(2))**

INTRODUCTION

1
2 1. FRIENDS OF HAUKE PARK (“Petitioner” or “FOHP”) petitions this Court for a
3 Writ of Mandate (“Petition”), directed to Respondent CITY OF MILL VALLEY (“City” or
4 “Respondent”). Petitioner challenges the City’s May 15, 2023 action to adopt the 2023-2031
5 Housing Element Update and amendments to the City’s General Plan Land Use Element and
6 Land Use Map (collectively, “HEU”), and to certify an Environmental Impact Report (“EIR”)
7 for the HEU.

8 2. This case arises from arbitrary and capricious housing policy by the City that is
9 significantly bifurcated according to the affluence and political influence of residents.
10 Specifically, the HEU perpetuates and exacerbates the City’s existing practice of steering all of
11 its public affordable housing to the least affluent and most diverse area of the City in order to
12 appease the City’s most wealthy and politically-influential NIMBYs.

13 3. The roadway Camino Alto divides “old” Mill Valley to the west, and “new” Mill
14 Valley to the east. Based on historical inequalities, the residents living to the west of Camino
15 Alto are significantly wealthier and whiter than those living to the east of Camino Alto. Census
16 tracts 1261 and 1270, both located west of Camino Alto (collectively, “West Mill Valley”), have
17 median household incomes of \$212,685 and \$189,746, respectively, and are 91 percent and 85
18 percent white. Census tract 1262 (“East Mill Valley”), by contrast, is 70 percent white with a
19 median family income of \$124,083 — less than the Marin County median of \$131,008. All Mill
20 Valley City councilmembers reside in West Mill Valley.

21 4. The City has historically steered public housing away from West Mill Valley to
22 the more diverse and less affluent Census tract 1262. Indeed, 100 percent of the City’s public
23 affordable housing projects are located in Census tract 1262 despite the HEU’s concession that it
24 is “the smallest in size (1.49 square miles) and current population (4,224 residents).” Census
25 tracts 1261 and 1270, by contrast, contain no public affordable housing projects.

26 5. The HEU does not overcome the City’s practices that restrict public affordable
27 housing in the affluent areas located west of Camino Alto. It does the opposite. The HEU
28 perpetuates the City’s discriminatory pattern by focusing on just one single site, the “1

1 Hamilton” site located in Census tract 1262 east of Camino Alto, as the location for the City’s
2 seventh public housing project (“1 Hamilton Project”). Thus, the HEU adds a seventh public
3 housing project in Census tract 1262 — at a site that prohibits all residential uses based on its
4 community facility (“C-F”) land use designation — while steadfastly excluding dozens of
5 potential sites located in West Mill Valley. The HEU would therefore ensure that the City’s
6 most powerful and wealthy neighborhoods remain free from any public housing.

7 6. The City’s primary housing policy is not to add more affordable housing to Mill
8 Valley, but rather to keep affordable housing out of the wealthier West Mill Valley. This does
9 not affirmatively further affordable housing throughout the community as required by state law.

10 7. The City exacerbates the prejudice resulting from its arbitrary and capricious
11 violations of the Housing Element Law through its violations of the California Environmental
12 Quality Act (“CEQA”). The City abuses CEQA’s “tiering” provisions by taking action to
13 implement a public affordable housing project located at 1 Hamilton while simultaneously
14 refusing to analyze reasonably foreseeable impacts associated with that action. The City’s claim
15 to prepare “project-level” CEQA review at a future date rings hollow since the City has already
16 committed to the affordable housing project at 1 Hamilton as a practical matter through its
17 modification to 1 Hamilton’s land use designation as part of the HEU. “Tiering” should not be
18 used as a shell game to insulate officials from accountability for arbitrary and capricious
19 political favors.

20 **PARTIES**

21 8. Petitioner FRIENDS OF HAUKE PARK is an unincorporated association whose
22 members include residents of Mill Valley.

23 9. Respondent CITY OF MILL VALLEY is a municipal corporation, organized
24 under the laws of the state of California, and exercising local government power.

25 10. Petitioner is unaware of the true names and capacities of Respondents DOES 1
26 through 10 and sue such respondents by fictitious names. Petitioner is informed and believes,
27 and on the basis of such information and belief alleges, that the fictitiously named respondents
28 are also responsible for the actions described in this Petition. When the true identities and

1 capacities of these respondents have been determined, Petitioner will amend this Petition, with
2 leave of Court if necessary, to insert such identities and capacities.

3 **BACKGROUND FACTS**

4 11. In 2015, the City adopted a Housing Element Update for the 8-year period from
5 2015 through 2023 (“2015 HEU”).

6 12. The 2015 HEU observed, “As a predominately built-out city, Mill Valley has few
7 remaining vacant properties suitable for residential development. . . . This shortage of vacant
8 developable land has resulted in the exploration of alternative mechanisms to provide sites for
9 housing. . . . To facilitate affordable housing development, the City would lease appropriate
10 City-owned properties on a long-term basis to housing developers in exchange for a long-term
11 commitment to maintain all or a portion of units as affordable housing. . . . To increase the
12 supply of potential sites, the City would allow residential uses in the Community Facilities (C-
13 F) zone subject to the approval of a conditional use permit.” (2015 HEU, p. II-12.)

14 13. Based on this, the 2015 HEU included a “program objective,” which provides:
15 By 2018, prepare an *inventory of publicly-owned land that is not already zoned for open*
16 *space*, including parking lots, and examine the feasibility of their use for housing. Consider
17 modifying the City’s zoning regulations to allow residential uses in the C-F zone subject to the
18 approval of a conditional use permit.” (2015 HEU, p. II-12, emphasis added.)

19 14. The City did not prepare this inventory of City-owned properties by 2018.
20 Instead, City staff worked with members of the City’s Housing Advisory Committee (“HAC”)
21 on or about 2020. On September 30, 2020, the HAC reviewed a preliminary analysis of City-
22 owned sites. The staff report for that HAC meeting noted that two sites on either side of Linda
23 Vista Drive in West Mill Valley (“Linda Vista Sites”) were the best opportunity to support
24 affordable housing, explaining, “Upon further review and discussion, the subcommittee
25 determined that the parcels off Vista Linda Drive near the 7th tee of the golf course provided
26 the best opportunity to subdivide and rezone the land (currently zoned as Open Area) to Single-
27 Family Residential.” A true and correct copy of a City-prepared figure showing the Linda
28 Vista Sites is attached as Exhibit A.

1 15. The Linda Vista Sites include two parcels located across the street from each
2 other. Lot 1, located north of Linda Vista Drive, is a vacant parcel adjacent to Scott Highland
3 Park. Lot 2, located south of Linda Vista Drive, is also vacant but if developed would perhaps
4 require some reconfiguration of the Mill Valley Municipal Golf Course, a dilapidated 9-hole
5 golf course that had had been losing money for several years.

6 16. The staff report’s recommendation regarding use of the Linda Vista Sites, located
7 in Census tract 1261, prompted a flood of opposition from residents of West Mill Valley,
8 including the Scott Highlands area in West Mill Valley in close proximity to the Linda Vista
9 Sites. A staff memo dated October 5, 2020 summarizing the September 30, 2020 HAC meeting
10 explains:

11 The discussion item related to identifying City-Owned land to leverage an
12 affordable housing project has generated significant interest in the community,
13 particularly for those in the Scott Highlands area. There were over 135 members
14 of the public in attendance (via zoom/telephone) with 43 public comments heard
15 by the Committee. . . Of the 43 speakers, 33 expressed concern about the sale of
16 open space, particularly the Scott Highland’s open space identified in the staff
17 report.

18 17. Mark Polite, a real estate developer and Mill Valley resident in Census tract 1261,
19 provided direction to the City from himself and his business partner, former Mill Valley Mayor
20 Dennis Fisco (another Census tract 1261 resident), to abandon the Linda Vista Sites in West
21 Mill Valley in favor of the 1 Hamilton site in East Mill Valley, suggesting the 1 Hamilton site
22 would engender “minimal neighborhood opposition” from the residents of Census tract 1262.

23 18. The City Council held a hearing on October 5, 2020 to receive a recommendation
24 from the HAC and staff, which included hiring a consultant “to confirm the staff analysis of
25 City-owned sites” and “provide further investigation into possible redevelopment scenarios.”

26 19. As with the earlier HAC meeting, residents of Census tract 1261 in West Mill
27 Valley inundated the Council with comments opposing any use of the Linda Vista Sites in
28 support of affordable housing. This pressure campaign was successful. The Council avoided
taking any action in response to staff’s position that the Linda Vista Sites were the “best
opportunity,” and instead directed staff to hire a consultant to prepare an updated and revised
inventory of City-owned properties.

1 20. The City thereafter contracted with The Housing Workshop, which prepared a
2 memorandum setting forth its analysis on or about February 10, 2021 (“Housing Workshop
3 Inventory”). The Housing Workshop Inventory identified four potentially feasible sites for an
4 affordable housing development. Three of the four sites are located in West Mill Valley, and
5 the fourth, 1 Hamilton, is located in East Mill Valley. The three West Mill Valley Sites include
6 Lot 2 of the Linda Vista Sites, a portion of Boyle Park, and a four-acre site identified as
7 Edgewood. Of the four potentially feasible sites, the Housing Workshop Inventory stated that
8 the Boyle Park site was “the best of the 4 identified sites,” explaining, “From an objective
9 affordable housing development point of view, this is the best of the 4 identified sites.”

10 21. Lot 1 of the Linda Vista Sites was inexplicably excluded from any analysis in the
11 Housing Workshop Inventory. On information and belief, Lot 1’s omission was based on the
12 public opposition generated from West Mill Valley residents.

13 22. The Housing Workshop Inventory identified seven sites as infeasible for
14 affordable housing development based on various cursory and unsupported notes. The Housing
15 Workshop Inventory also purported to analyze 37 other City-owned parcels “for potential sale”
16 without any explanation as to why they were analyzed solely for sale and not development.

17 23. On or about March 12, 2021, The Housing Workshop prepared a separate
18 memorandum entitled *Financial Analysis of Example Affordable Housing Projects* (“Housing
19 Workshop Financial Analysis”), which purported to determine whether an affordable housing
20 project would be developed at 1 Hamilton without an ongoing public subsidy based on specific
21 assumptions about existing development restrictions provided by the City.

22 24. Thus, in October 2020, City staff characterized the Linda Vista Sites “provided
23 the best opportunity,” and the 2021 Housing Workshop Inventory found the Boyle Park site to
24 be “the best of the 4 identified sites.” Nevertheless, by May 25, 2021, the monthslong pressure
25 campaign from West Mill Valley residents had achieved its goal. Ignoring its own earlier
26 findings from October 2020 or those from its own consultant, The Housing Workshop, the May
27 25, 2021 staff report abruptly changed course, stating, “[T]he parcel connected with the Public
28 Safety Building [at 1 Hamilton] is the most viable.”

1 25. Staff’s characterization of the Housing Workshop Inventory was false. The
2 Housing Workshop Inventory identified Boyle Park, not 1 Hamilton, as most viable.

3 26. The staff report’s characterization is also false as to the viability of developing
4 the Linda Vista Sites. The Housing Workshop Inventory noted only that development on the
5 Linda Vista Sites “may impact the adjacent golf hole,” but also that “research indicated that 9-
6 hole courses typically require 20 to 48 acres of land, so at 45 acres, the Mill Valley course may
7 well reconfigurable [*sic*] in this section to accommodate the housing site.” The only other
8 identified challenge associated with development of the Linda Vista Sites would be “substantial
9 community resistance,” with the Housing Workshop Inventory explaining:

10 It should be noted that the potential housing development site shown above, is
11 across the street along Linda Vista Drive from a recently-proposed public parcel
12 currently uses [*sic*] as a playing field, which engendered substantial community
resistance to any development. (Housing Workshop Inventory, p. 11.)

13 27. Thus, the Housing Workshop Inventory does not support City staff
14 characterization of 1 Hamilton as “the most viable.” To the contrary, the Housing Workshop
15 Inventory indicates that the Boyle Park and Linda Vista Sites, both located in West Mill Valley,
16 are at least as viable as 1 Hamilton. And even if the Housing Workshop Inventory can be
17 construed as concluding 1 Hamilton is “most viable,” it does not support a conclusion that
18 either the Boyle Park or the Linda Vista Sites are not viable.

19 28. The City misconstrued the Housing Workshop Inventory to advance its
20 politically-motivated goal. That said, the Housing Workshop Inventory itself also suffered
21 from numerous fatal defects including but not limited to:

22 a. The Housing Workshop Inventory claims to have evaluated
23 “approximately 75 City-owned parcels,” yet it only identifies four parcels that it
24 considered potentially feasible for development and seven additional parcels that were
25 identified as infeasible for development. Thus, only 11 of the claimed 75 parcels were
26 analyzed for development.

27 b. The Housing Workshop Inventory analyzed approximately 37 sites “for
28 potential sale” and not development, but without any explanation as to why these parcels

1 were not analyzed for potential development. This disparate treatment is significant
2 because many parcels were dismissed for “sale” due to their open area (“O-A”) zoning
3 designation, while other parcels with the same O-A zoning designation were deemed
4 feasible for development.

5 c. Adding the 11 parcels analyzed for potential development to the 37 parcels
6 analyzed for potential sale results in a total of 48 parcels, not the 75 parcels that the
7 Housing Workshop Inventory claims to have analyzed. Approximately 27 parcels were
8 not even identified, much less analyzed for their suitability for development.

9 d. The Housing Workshop Inventory relied on arbitrary site criteria such as
10 minimum parcel size of 0.75 acres, maximum of ten percent average slope, and other
11 criteria based on “Council direction” that is non-specific, subjective and unsupported by
12 City planning policies and guidelines such as “vital downtown space” or “alley-style
13 parking abutting other building” in order to create a pre-text for excluding sites in West
14 Mill Valley.

15 e. Although the 2015 HEU program objective was to create an “inventory of
16 publicly-owned land that is not already zoned for open space” and so should have
17 excluded properties such as 1 Hamilton having the O-A zoning designation, the Housing
18 Workshop Inventory failed to comply with this direction and instead included sites such
19 as 1 Hamilton that were zoned O-A. Further, the Housing Workshop Inventory failed to
20 account for the fact that the General Plan prohibited any residential uses at 1 Hamilton
21 based on its C-F General Plan land use designation.

22 As a result of the above deficiencies, many more potentially suitable City-owned
23 properties remain unanalyzed for affordable housing, and even unidentified, in the Housing
24 Workshop Inventory.

25 29. The City’s May 25, 2021 staff report further misconstrued the Housing Workshop
26 Inventory and Housing Workshop Financial Analysis as part of the City’s politically-motivated
27 effort to focus solely on 1 Hamilton as the only feasible City-owned site for affordable housing.
28 The staff report cites to the Housing Workshop Inventory for its assertion that an affordable

1 housing development parcel “must be at least $\frac{3}{4}$ of an acre” and “[t]he project would require at
2 least 40 units.” These claims are false because the Housing Workshop Inventory derived this
3 minimum size criterion based on the City's existing zoning density restrictions, and not on
4 increased density that would be allowed by Government Code section 65583.2, subdivision
5 (a)(4).) In fact, the Housing Workshop Inventory concedes that its site-selection criteria are
6 inconsistent with criteria that should have been used for a Housing Element update by noting,
7 “This current analysis does not seek to alter these land use designations; the work conducted
8 every 8 years to prepare the City’s Housing Element Update is meant to address those larger
9 policy questions.”

10 30. Further, The Housing Workshop Financial Analysis was never intended to, and
11 did not, set a minimum parcel size at all, but rather to determine whether development of 1
12 Hamilton, “assum[ing] a 0.75 acre (gross) development site,” would require a public subsidy.
13 This distinction is critical because while estimating that the 1 Hamilton Project as proposed
14 would require a \$100,000 subsidy, the Housing Workshop Financial Analysis made it clear that
15 greater subsidies does not make a project infeasible, explaining, “One key to understanding
16 these findings is that seeking subsidy from available state and regional sources is common to
17 affordable housing projects, and lack of available local subsidy dollars does not constrain
18 project implementation.” In other words, the availability of state and federal subsidies means
19 that alternative affordable housing projects are feasible including, without limitation, a smaller-
20 sized project at the 1 Hamilton site or a completely different site with increased construction
21 costs.

22 31. Based in part on the City’s arbitrary and capricious misuse of the Housing
23 Workshop Financial Analysis and flawed Housing Workshop Inventory, the City achieved its
24 politically-motivated goal of switching to 1 Hamilton in East Mill Valley as the only City-
25 owned site for a public affordable housing project in the City.

26 32. Based on its newly-formulated direction to focus exclusively on 1 Hamilton, the
27 City Council on June 21, 2021 voted to proceed with issuing a request for qualifications to
28 solicit interest from developers to construct affordable housing at 1 Hamilton, and also to use

1 the City’s Housing Trust Funds to “conduct further site investigations, including survey work
2 and other technical studies, as needed” to develop 1 Hamilton. The Council rejected one
3 councilmember’s request that this action also include the Boyle Park site in West Mill Valley,
4 asserting that including Boyle Park in such outreach would be “premature.”

5 33. On September 20, 2021, the City Council adopted a resolution designating 1
6 Hamilton as “surplus land” and a separate resolution authorizing the City Manager to negotiate
7 and draft an exclusive operating negotiating agreement (“ENA”) with developer EAH Housing
8 (“EAH”) to develop and operate 1 Hamilton as an affordable housing development. FOHP
9 raised various objections to these actions, including one comment that was particularly
10 prescient:

11 We note that only one site – 1 Hamilton Drive – is being proposed for this
12 “exempt surplus” designation despite the existence of other possible sites. FOHP
13 is reasonably concerned that the City is excluding from consideration other
14 feasible sites based on political and other concerns that are unrelated to site
15 suitability as articulated in the City’s staff report dated October 5, 2020. Limiting
16 the City’s “exempt surplus” designation to only 1 Hamilton Drive reinforces this
17 concern, *as the City could attempt to rely on that designation as substantial
18 evidence supporting the decision to exclude consideration of off-site project
19 alternatives.* (CEQA Guidelines, § 15126.6.) This is untenable.

20 (FOHP letter dated September 17, 2021, emphasis added.)

21 34. In response to public concern that these actions would commit the City to such
22 contemplated development, the City stated, “[T]he authorization to negotiate an ENA is
23 discretionary but does not commit the City to disposing of the land or approving a project that
24 would have a direct or reasonably foreseeable indirect impact on the environment.”

25 35. On February 7, 2022, the City Council approved an ENA with EAH Housing for
26 the 1 Hamilton site, which included significant financial contributions by the City toward
27 EAH’s pre-development costs. As a separate agenda item at that same meeting, the City
28 Council received a progress report regarding the HEU. This prompted the public to question
why the City was using a process for identifying City-owned sites (i.e., The Housing
Workshop) that was separate from the consultant and process employed by the City to identify
suitable residential sites to satisfy its Regional Housing Need Allocation (“RHNA”) obligations.

1 36. Purporting to respond directly to public concerns about the City’s separate
2 process to identify City-owned parcels, Mayor McCauley asserted during that meeting that the
3 RHNA process was completely separate from The Housing Workshop’s activities, stating:

4 Another thing, there is a confusion here about the idea of doing an analysis of
5 regional housing needs authority or RHNA sites and the city site analysis that was
6 done so as a part of the Housing Advisory Committee we went down two paths.
7 One path was can we find surplus land we can sell to raise money to provide the
8 ability to develop land with another party maybe a church or whatever. The
9 second process we had was can the city on its own find a site that we can offer to a
10 developer, a low-income mission driven developer to create a site. ***That is
11 completely different than the analysis which is going on to find out where we are
12 going to come up with these 865 units for RHNA which is all generally private
13 property.*** They are completely different things, so I just want to make sure that
14 people understand that difference.

15 (Mill Valley City Council Meeting, February 7, 2022, emphasis added.)

16 37. Thus, City responded to public criticism about the inadequate and incomplete
17 Housing Workshop Inventory by asserting that it was “completely different” from the site
18 inventory that the City was preparing as part of the HEU.

19 38. On June 30, 2022, the City released a public review draft HEU with comments
20 due on June 30, 2022 (“June draft HEU”). FOHP submitted comments documenting various
21 deficiencies in the June draft HEU. In particular, FOHP noted that the June draft HEU belied
22 the Mayor’s earlier statement because it expressly relied upon the Housing Workshop Inventory
23 to identify suitable City-owned sites to satisfy the City’s RHNA obligations. (Draft Housing
24 Element, pp. III-11, C-2.)

25 39. The June draft HEU thereby revealed that public commenters were not
26 “confus[ed],” but rather that the City misrepresented the relationship between the Housing
27 Workshop Inventory and the HEU. Although the City had previously dismissed public
28 criticism about the incomplete and inadequate Housing Workshop Inventory by claiming that it
was “completely different” from the HEU, the City’s representations were false. The HEU
relied upon the Housing Workshop Inventory’s analysis of City-owned properties for the
HEU’s analysis of suitable City-owned properties to satisfy the City’s RHNA obligations. The
various omissions and defects in the Housing Workshop’s Inventory were incorporated into,
and thereby tainted, the HEU’s site inventory.

1 40. On July 20, 2022, the City released a Notice of Preparation (“NOP”) of an EIR
2 for the HEU. FOHP submitted public comments explaining that the NOP’s description of the
3 project failed to adequately disclose to the public whether the scope of the project subject to the
4 EIR included changing the General Plan land use designation for 1 Hamilton in order to allow
5 residential uses. These comments forced the City to publicly disclose that the City intended to
6 take action on 1 Hamilton’s land use designation notwithstanding the City’s earlier promise to
7 prepare a later EIR for that action. The City clarified this issue in a later “errata” issued on
8 September 15, 2022.

9 41. On or about August 2022, the City revised the July draft HEU (“August draft
10 HEU”) for purposes of submission to the California Department of Housing and Community
11 Development (“HCD”) for review. HCD issued extensive comments on November 21, 2022.
12 In particular, HCD acknowledged the issue of disparate treatment of East Mill Valley relative
13 to West Mill Valley, stating:

14 HCD received a number of comments related to zoning and AFFH, particularly in
15 relation to the City’s apparent lack of units affordable to lower income West of
16 Camino Alto. Many commentors also voiced concerns that, of the over seventy
17 City-Owned sites in the City, only one was chosen to accommodate housing
18 lower-income. HCD encourages the City to consider these comments.

19 (HCD letter, p. 13.)

20 42. On December 21, 2022, the City released a NOP for the 1 Hamilton Project,
21 demonstrating that it formulated a project description supporting project-level review prior to
22 that date. FOHP submitted comments on January 27, 2023.

23 43. Although the City had not yet revised the August draft HEU in response to HCD
24 and public comments, the City released its Draft EIR for the HEU (“DEIR HEU”) on January
25 17, 2023. The Council authorized staff to seek a shortened, 30-day public review period for the
26 DEIR HEU, which was unsuccessful.

27 44. The Final HEU was released to the public on February 16, 2023, which was one
28 month after its DEIR was released for public comment. The Final HEU suffers from several
fatal defects including but not limited to the following:

1 a. The Final HEU continues to rely on the Housing Workshop Inventory’s
2 defective analysis of suitable City-owned properties, which was in turn based on
3 manipulated and otherwise unsupported suitability criteria, including criteria that is
4 inconsistent with HCD guidance, and also dismisses without analysis dozens of City-
5 owned sites.

6 b. The Final HEU violates the City’s duty to affirmatively further fair
7 housing throughout the community by clinging to the City’s arbitrary and capricious
8 position that 1 Hamilton is the only suitable City-owned site of the 70+ sites purportedly
9 analyzed.

10 c. The Final HEU falsely asserts that the City must rely on a rezoning
11 program to identify sites necessary to satisfy its RHNA requirements. In fact, the Final
12 HEU acknowledges that the City owns 17 residentially-zoned properties that are not
13 included in the HEU’s site inventory “due to the parcels being in the right of way, in the
14 floodway, or on a highly sloped and forested piece of property in the high fire severity
15 zones.” (Final HEU, p. C-2.) Substantial evidence does not support the City’s exclusion
16 of these properties from the Sites Inventory and the resulting claim that the City must
17 rezone properties in order to satisfy the City’s RHNA requirements.

18 d. The Final HEU unlawfully identifies 1 Hamilton as a “suitable site”
19 despite its General Plan land use designation of C-F that prohibits all residential uses
20 regardless of zoning designation.

21 e. The Final HEU asserts that it is unlawful to include other sites such as
22 Boyle Park and the Linda Vista Site in the HEU’s site inventory based on the vague,
23 self-serving and circular logic that these sites have not been “identified as active housing
24 projects” such as 1 Hamilton.

25 45. The City released a Final EIR for the HEU on May 5, 2023, which provided the
26 statutory minimum ten days for public review and comment on the Final EIR prior to project
27 approval. On May 15, 2023, the City certified the HEU EIR and approved the HEU, including
28

1 the change to 1 Hamilton’s land use designation that would allow residential uses for the first
2 time at that site.

3 46. The City filed a notice of determination (“NOD”) for the HEU on May 17, 2023,
4 thereby triggering a 30-day statute of limitations.

5 **JURISDICTION AND VENUE**

6 47. This Court has jurisdiction over the matters alleged in this Petition pursuant to
7 Code of Civil Procedure sections 1085, Government Code sections 65587 and 65751, and
8 Public Resources Code section 21168.5.

9 48. Venue for this action properly lies in the Superior Court for the County of Marin
10 pursuant to Code of Civil Procedure section 394.

11 49. This Petition is timely filed in accordance with Public Resources Code section
12 21167, subdivision (d).

13 **STANDING**

14 50. Section 65587 of the Government Code, subdivision (b), provides that “any
15 interested party” may bring an action “to review the [City’s] conformity with the [Housing
16 Element Law]” pursuant to Code of Civil Procedure section 1085. Petitioners are “interested
17 part[ies]” under the Housing Element Law. (*Ibid.*)

18 51. Petitioner has standing to assert the claims alleged in this Petition arising under
19 CEQA because Petitioner is beneficially interested in this matter, as required by Code of Civil
20 Procedure section 1086. Petitioner has standing to assert the CEQA claims raised in this
21 Petition because its members include residents and property owners within Marin County and
22 have personal and community interests that are directly and adversely affected by the
23 Respondent’s approval of the HEU. Petitioner is within the class of persons beneficially
24 interested in, and aggrieved by, the acts of Respondent as alleged below. Petitioner and its
25 members have a beneficial interest in challenging the Respondent’s unlawful approval of the
26 HEU that will negatively impact the environment and public health in the City of Mill Valley
27 and Marin County.

1 60. The housing element is a roadmap for housing development in a given
2 community. The housing element must identify and analyze existing and projected housing
3 needs, and must include “a statement of goals, policies, quantified objectives, financial
4 resources, and scheduled programs for the preservation, improvement, and development of
5 housing.” (Gov. Code, § 65583.) The housing element must also “identify adequate sites for
6 housing” and “make adequate provision for the existing and projected needs of all economic
7 segments of the community.” (*Ibid.*)

8 61. The process of updating a housing element begins with HCD’s determination of a
9 RHNA for the region for a given planning period. (Gov. Code, § 65584, subd. (a)(1).) The
10 RHNA sets goals for housing affordable to various income levels. Each local government must
11 then prepare a housing element that provides “[a]n inventory of land” with zoned capacity “to
12 meet the locality’s housing need for [each] designated income level” by the end of the cycle.
13 (Gov. Code, § 65583, subd. (a)(3).) Sites suitable for housing include both privately-owned
14 sites and sites owned by public agencies such as the City. (Gov. Code, § 65583.2, subd. (a).)

15 62. A housing element must, in its site inventory and otherwise, “affirmatively further
16 fair housing.” (Gov. Code, §§ 65583, subs. (a)(3), (b), (c)(1), (c)(5), (c)(10)(A); 65583.2, subd.
17 (c); see § 8899.50.) Further, a housing element must include “an analysis of the relationship of
18 the sites identified in the land inventory to the jurisdiction’s duty to affirmatively further fair
19 housing.” Finally, “A public agency shall administer its programs and activities relating to
20 housing and community development in a manner to affirmatively further fair housing, and take
21 no action that is materially inconsistent with its obligation to affirmatively further fair housing.”
22 (Gov. Code, § 8899.50, subd. (b)(1).)

23 63. The HEU fails to substantially comply with the Housing Element Law. Its
24 deficiencies include but are not limited to the following:

25 a. The HEU’s inventory of suitable land is arbitrary and capricious. It fails to
26 adequately explain why dozens of City-owned properties — including properties that are
27 zoned for residential use — were excluded from analysis in the Housing Workshop
28 Inventory and, by extension, the HEU. On information and belief, many City-owned

1 properties that are otherwise “suitable” pursuant to the Housing Element Law have not
2 been included in the HEU.

3 b. As a result of the HEU’s arbitrary and capricious exclusion of suitable City-
4 owned properties, the HEU’s inventory fails to identify suitable residential sites that do
5 not require any rezoning.

6 c. As a result of the HEU’s arbitrary and capricious exclusion of City-owned
7 properties from analysis, the HEU arbitrarily concludes that 1 Hamilton is the only
8 suitable City-owned site for affordable housing.

9 d. The HEU’s myopic focus on 1 Hamilton as the only suitable site for
10 affordable housing, located in the same census tract as all six of the City’s existing public
11 affordable housing projects and also in the City’s most diverse and least wealthy census
12 tract, is inconsistent with the City’s duty to affirmatively further fair housing.

13 e. The HEU fails to adequately analyze the relationship of sites identified in
14 its land inventory to the City’s duty to affirmatively further fair housing.

15 f. The HEU and its programs are materially inconsistent with the City’s
16 obligation to affirmatively further fair housing.

17 WHEREFORE, Petitioner prays for the relief requested below.

18 **SECOND CAUSE OF ACTION**

19 Violations of CEQA
(Pub. Resources Code, § 21000 et seq.)

20 64. Petitioner incorporates by reference each and every allegation contained in
21 Paragraphs 1 through 63 as though fully set forth herein.

22 65. The City prejudicially abused its discretion in certifying the EIR. The City did not
23 proceed in the manner required by law and its decisions in approving the HEU and certifying the
24 EIR are not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard*
25 *Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.)
26 These legal deficiencies include, without limitation, the following:
27
28

1 The City Has Piecemealed Its Review

2 66. CEQA’s conception of the term “project” is broad to maximize protection of the
3 environment. (*Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147
4 Cal.App.4th 643, 653.) “This big picture approach to the definition of a project (i.e., “the whole
5 of an action”) prevents a proponent or a public agency from avoiding CEQA requirements by
6 dividing a project into smaller components which, when considered separately, may not have a
7 significant environmental effect.” (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 270-
8 271; CEQA Guidelines, § 15378.) This means that an EIR must include analysis of “all phases
9 of a project” and all “reasonably foreseeable consequences” of a project. (CEQA Guidelines, §
10 15126 [EIR’s impact analysis must consider all phases of a project]; *Laurel Height Improvement*
11 *Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376 (“*Laurel Heights I*”) [EIR must
12 analyze “reasonably foreseeable consequence” of a project.]

13 67. The EIR engages in impermissible piecemealing of the 1 Hamilton Project.

14 68. One test for piecemealing is whether the anticipated future project is reasonably
15 foreseeable. This first test is met here since 1 Hamilton Project is both reasonably foreseeable
16 and even imminent, as in *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211
17 Cal.App.4th 1209, 1224 (*Banning Ranch*).

18 69. A second, independent test for piecemealing is “when the reviewed project legally
19 compels or practically presumes completion of another action.” (*Banning Ranch, supra*, 211
20 Cal.App.4th at p. 1223.) The EIR’s analysis confirms that this second test is met here. First, the
21 Draft EIR acknowledges that the proposed change to 1 Hamilton’s land use designation is solely
22 to facilitate the proposed affordable housing project at that site. Further the Final EIR asserts
23 that completing the 1 Hamilton project is necessary for the City’s HEU to comply with state
24 law. In fact, completing the 1 Hamilton project is so critical to the City’s HEU that any project
25 alternative that does not include the 1 Hamilton affordable housing project is infeasible. (Final
26 EIR, 2-993 [“Completely removing the 1 Hamilton Drive site would eliminate the City’s ability
27 to satisfy its lower income RHNA allocation and the recommended buffer of additional units for
28 low income; therefore, an alternative that removes 1 Hamilton Drive from the sites inventory is

1 legally infeasible”].) There is no question that the change in 1 Hamilton’s land use designation
2 and including 1 Hamilton in the RHNA site inventory are inextricably intertwined with the 1
3 Hamilton Project.

4 The EIR Fails to Adequately Analyze Significant Environmental Impacts

5 70. CEQA requires that an EIR describe the proposed project’s significant
6 environmental effects. Each must be revealed and fully analyzed in the EIR. (Pub. Resources
7 Code, § 21100, subd. (b); CEQA Guidelines, § 15126.2, subd. (a).) The EIR must “use its best
8 efforts to find out and disclose all that it reasonably can” about the 1 Hamilton Project, its
9 impacts and foreseeable future projects. (CEQA Guidelines, § 15144; *Environmental Protection*
10 *Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459,
11 503; *Laurel Heights I, supra*, 47 Cal.3d 376 [EIR must analyze “reasonably foreseeable
12 consequence” of a project].)

13 71. Here, the EIR failed to use its best efforts to find out and disclose all that it can
14 about the 1 Hamilton Project for numerous resource areas including, but not limited to, visual
15 and aesthetic resources, biological resources, recreation, transportation, land use inconsistency,
16 and hazardous materials.

17 Inadequate Alternatives Analysis

18 72. An EIR must provide “a range of reasonable alternatives to the project, or to the
19 location of the project, which would feasibly attain most of the basic objectives of the project
20 but would avoid or substantially lessen any of the significant effects of the project.” (CEQA
21 Guidelines, § 15126.6, subd. (a).) The EIR fails to meet this basic requirement.

22 73. The EIR fails to adequately set forth and analyze a reasonable range of
23 alternatives. The EIR unreasonably excluded without analysis any alternative that did not
24 involve development at 1 Hamilton.

25 74. The EIR’s analysis of alternatives is defective because the project objectives and
26 resulting analysis are not supported by substantial evidence and have been manipulated in order
27 to exclude otherwise feasible alternatives.

1 75. The Draft EIR eliminated without analysis a project alternative that it describes as
2 “removal or modification of site locations.” (Draft EIR, p. 17-2.) The EIR’s rejection of the
3 “removal or modification of site locations” is arbitrary and capricious and not supported by
4 substantial evidence.

5 76. The Final EIR asserts that any project alternative eliminating 1 Hamilton as a site
6 for affordable housing is legally infeasible. This assertion is not supported by substantial
7 evidence. It is instead based on false and misleading mischaracterizations of the Housing
8 Workshop Inventory, the Housing Workshop Financial Analysis, and the City’s earlier
9 declaration of 1 Hamilton as “exempt surplus land.” Further, the decision is based on the
10 Council’s preference, which is not a legitimate basis to avoid analyzing an alternative. (*Uphold*
11 *Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 602.)

12 Mitigation Measures are Improperly Deferred, Unenforceable, Vague, and Inadequate

13 77. An agency may not approve a project that will have significant environmental
14 impacts if there are feasible mitigation measures that would substantially lessen those effects.
15 (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).)

16 78. An agency must provide that mitigation measures are fully enforceable through
17 permit conditions, agreements, or other measures. (Pub. Resources Code, § 21081.6, subd. (b).)

18 79. An EIR must contain facts and analysis disclosing the analytical route the agency
19 traveled from evidence to action, and not just the agency’s bare conclusions and opinions. (*Save*
20 *Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99,
21 118.) An EIR must then describe mitigation measures and explain why they will work.
22 (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 203.)

23 80. Here, the EIR fails to include such facts and analysis for any mitigation measure
24 relied upon to limit the HEU’s significant impacts.

25 81. Mitigation measures in the EIR are impermissibly deferred, unenforceable,
26 impermissibly vague, and inadequate. This includes, but is not limited to visual and aesthetic
27 resources, biological resources, recreation, transportation, land use inconsistency, and hazardous
28 materials.

1 Inadequate Responses to Comments

2 82. The EIR failed to respond in good faith to public comments raising deficiencies
3 with the Draft EIR. CEQA requires that the Final EIR include a “detailed” written response to
4 all “significant environmental issues” raised by commenters. (*City of Long Beach v. LAUSD*
5 (2009) 176 Cal.App.4th 889, 904.) The Final EIR fails to include these critical disclosures.

6 83. Commenters submitted extensive comments on the Draft EIR. (CEQA
7 Guidelines, § 15088, subd. (c).) The Final EIR largely ignores these comments, or simply
8 provides inadequate, perfunctory, or false and inaccurate responses to these comments.
9 Examples of this deficiency include the Final EIR’s responses to comment letters 1, 5, 18, 21
10 and 34.

11 WHEREFORE, Petitioner prays for the relief requested below.


12 **PRAYER**

13 WHEREFORE, Petitioner respectfully requests the following relief and entry of
14 judgment as follows:

- 15 1. That the Court issue a peremptory writ of mandate directing the City to:
- 16 a. Vacate and set aside all HEU approvals, including the 1 Hamilton Project;
- 17 b. Comply with CEQA by preparing a legally adequate environmental
18 document under CEQA for the HEU, including the 1 Hamilton Project; and
- 19 2. For a temporary stay to prevent the City from taking further actions to implement
20 or proceed with the HEU, including the 1 Hamilton Project, during the pendency of this
21 litigation;
- 22 3. For temporary, preliminary, and permanent injunctive relief to prevent the City
23 from taking further actions to implement or proceed with the HEU, including the 1 Hamilton
24 Project;
- 25 4. An order awarding Petitioner attorneys’ fees under Code of Civil Procedure
26 section 1021.5, Government Code section 800, and other applicable authority;
- 27 5. Costs of suit; and
- 28 6. Such other and further relief as the Court deems just and proper.

1 Dated: June 14, 2023

SOLURI MESERVE,
A LAW CORPORATION

2
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4 By: 
5 Patrick M. Soluri
6 Attorney for Petitioner

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VERIFICATION

I, Gary Batroff, am a member of Petitioner Friends of Hauke Park. I have read the foregoing Petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of June 2023, in Marin County, California.



Gary Batroff

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EXHIBIT A

Golf Course

Near 7th Tee

Zoned: Open Area (OA)
Avg slope: 20%

Lot 1 Size: 1.05 Acres
Use: Vacant
(Scott Highlands Park removed from square footage total)

Lot 2 Size: 0.5 Acres
Use: Vacant



EXHIBIT B



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

June 14, 2023

SENT BY U.S. MAIL AND EMAIL

(hpolitzer@cityofmillvalley.org; cityclerk@cityofmillvalley.org)

Hannah Politzer, City Clerk
City of Mill Valley
26 Corte Madera Avenue
Mill Valley, California 94941

RE: Notice of Commencement of Action against the City of Mill Valley

Dear Ms. Politzer:

Please take notice, under Public Resources Code section 21167.5, that Friends of Hauke Park (“FOHP”) intends to file a petition for writ of mandate under the provisions of the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”), against the City of Mill Valley (“City”). The Petition challenges the City’s May 18, 2023 action to adopt the 2023-2031 Housing Element Update and amendments to the City’s General Plan Land Use Element and Land Use Map (“HEU” or “Project”), and to certify an Environmental Impact Report (“EIR”) for the Project. The lawsuit will be based on violations of the Housing Element Law and CEQA, as discussed more fully in the Project’s administrative and environmental review proceedings. The exact nature of the allegations and relief sought is described in the attached Petition for Writ of Mandate that FOHP plans to file on or before June 16, 2023.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Patrick M. Soluri

Attachments: Petition for Writ of Mandate and Proof of Service

cc: See attached Proof of Service