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August 15, 2022

**SENT VIA EMAIL** (pkelly@cityofmillvalley.org)

Patrick Kelly, Director of Building and Planning  
City of Mill Valley  
26 Corte Madera Avenue  
Mill Valley, CA 94941

**RE: Public Comments to the City of Mill Valley’s Notice of Preparation of the 2023-2031 General Plan Housing and Land Use Element Update and Zoning Amendments**

Dear Mr. Kelly:

On behalf of Friends of Hauke Park (“FOHP”), this letter provides comments regarding the City of Mill Valley’s Notice of Preparation (“NOP”) for the General Plan Housing and Land Use Element Update and Zoning Amendments (“Project”). As explained more fully below, the NOP includes substantive inconsistencies and even factual misrepresentations regarding existing conditions as well as the scope of the Project and its relationship to the proposed residential development at 1 Hamilton (“Hamilton Project”). Action is required by the City, including possibly a revised NOP, to correct these deficiencies.

**1. False Information Regarding Existing Conditions**

CEQA requires that an EIR evaluate, and that public agencies mitigate or avoid, significant effects of projects in the “area which will be affected by a proposed project.” (Cal. Code Regs., tit. 14, § 15000 et seq. (“CEQA Guidelines”), § 15360.) The project description is the activity the EIR must evaluate for environmental impact (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271-272; Pub. Resources Code, § 21065), while the environmental setting (i.e., baseline) is the condition of the environment against which the EIR will evaluate project changes for environmental harm (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 315). Therefore, CEQA requires that an EIR adequately describe the environmental setting. (*Ibid*; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874; CEQA Guidelines, § 15125.)

Here, the City is off to a bad start as the NOP sets forth demonstrably false information regarding existing conditions. Specifically, the NOP asserts that 40 residential units are allowed at 1 Hamilton under existing conditions:

**Table 3 Sites Inventory Summary**

Type of Site	Number of Sites	Number of Units (Anticipated Based on Existing Use without Rezoning)	Number of Units (Maximum Based on Allowable Density After Rezoning)
Vacant Single-Family Zoned Sites	88	88	88
Projected SB 9 Lot Splits	10	40	40
City-Owned Site (1 Hamilton)	1	40	50
Underutilized Sites: Commercial and Multi-Family Zoned Sites under ½ acre with Housing Overlay <sup>1</sup>	35	149	328
Opportunity Sites: Commercial Zoned Sites over ½ acre with Housing Overlay <sup>1</sup>	27	258	492
Office Conversions with Housing Overlay	13	65	173
<b>Totals</b>	<b>174</b>	<b>640</b>	<b>1,171</b>

SOURCE: City of Mill Valley 2022

NOTE: 1. The City anticipates no change in the existing commercial square footage on each of the opportunity sites with existing commercial uses.

This information is demonstrably false. 1 Hamilton’s General Plan land use designation is Community Facilities (Land Use Element, p. 25), and its zoning designation is Open Area (“O-A”) (see existing Housing Element, p. C-19). Both designations prohibit residential development. The Land Use Element’s Community Facilities description includes, “All City facilities including City golf course, parks, City Hall, Community Center, Public Safety Building, etc.; public schools and private schools.” (Land Use Element, p. 24.) It further states that a residential density range is “not applicable.” (*Ibid.*) Eliminating any confusion on this point, the draft Housing Element states, “The OA and CF Zoning Districts do not permit residential use on the property.” (Draft Housing Element, p. C-2.)

As we explained to the City by letter dated July 29, 2022, there is no question that residential uses are prohibited at 1 Hamilton based on its General Plan land use designation and its zoning designation. Six days later, the City’s PowerPoint presentation

for the Project’s scoping meeting included a revised table that implicitly acknowledges the NOP’s error:

**PROJECT DESCRIPTION SUMMARY**

Type of Site	Number of Sites	Number of Units (Anticipated Based on Existing Use without Rezoning)	Number of Units (Maximum Based on Allowable Density After Rezoning) <sup>2</sup>
Vacant Single-Family Zoned Sites	88	88	88
Projected SB 9 Lot Splits	10	40	40
City-Owned Site (1 Hamilton)	1	0	50
Underutilized Sites: Commercial and Multi-Family Zoned Sites under ½ acre with Housing Overlay <sup>1</sup>	35	149	328
Opportunity Sites: Commercial Zoned Sites over ½ acre with Housing Overlay <sup>1</sup>	27	258	492
Office Conversions with Housing Overlay	13	65	173
<b>Totals<sup>2</sup></b>	<b>174</b>	<b>600</b>	<b>1,171</b>

NOTE: 1. The City anticipates no change in the existing commercial square footage on each of the sites with existing commercial uses.  
 NOTE 2. The “number of units” identified in this table is a conservative estimate of the number of units that will be built on these sites. In most instances the number indicated in this table will be larger than the number of units estimated for the purpose of meeting the City’s Regional Housing Needs Assessment (RHNA) allocation. The number of units estimated for RHNA purposes takes into account site constraints, environmental constraints, and market trends to devise an estimate of the realistic number of units that will be built on-site. The number of units used for CEQA purposes takes into account maximum build-out to ensure that the City has analyzed potential environmental impacts adequately.

While we speculate that this PowerPoint slide represents some effort by the City to correct the NOP, more is required to acknowledge this error and eliminate any confusion resulting from the NOP’s fundamentally misleading information. The environmental impacts of ten additional residential units (as suggested by the NOP) to an existing residential area are dramatically different from the environmental impacts of 50 new residential units in an area where all residential development was previously prohibited. Setting that aside, the NOP’s suggestion that “existing” conditions allow residential uses raises serious questions regarding whether the City intends to rely on a shifting and inconsistent project description in order to thwart adequate CEQA review of the Hamilton Project, which is addressed below.

**2. Shifting and Inconsistent Project Description**

The courts have consistently held that an “accurate and stable project description” is a bedrock requirement of CEQA—the sine qua non (that without which there is nothing) of an adequate CEQA document:

Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other

alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.

(*Inyo v. Los Angeles* (1977) 71 Cal.App.3d 185, 192-93 (*Inyo*.) The ability of informed citizens to participate in environmental review is a key component of CEQA. (*Washoe Meadows v. Dept. of Parks and Recreation* (2017) 17 Cal.App.5th 277, 285 (*Washoe*) [“Informed public participation is essential to environmental review under CEQA.”]; *Inyo, supra*, 71 Cal.App.3d at 192 [“The EIR process facilitates CEQA’s policy of supplying citizen input.”].) Through the EIR process, CEQA “provide[s] public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.” (*Washoe, supra*, 17 Cal.App.5th at 286 [quoting Pub. Resources Code, § 21061].)

An interrelated bedrock CEQA principle of informed public participation is that all aspects of a proposed project, i.e., the “whole of the action,” must be analyzed in an EIR. (See CEQA Guidelines, § 15378, subd. (a) [a project is the “whole of an action” which may result in direct or indirect physical changes to the environment].) This means that an EIR must include analysis of “all phases of a project” and all “reasonably foreseeable consequences” of a project. (CEQA Guidelines, § 15126 [EIR’s impact analysis must consider all phases of a project]; *Laurel Height Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376 [EIR must analyze “reasonably foreseeable consequence” of a project].)

Concerns about both of these interrelated CEQA requirements are raised because the NOP is internally inconsistent about whether the Project includes changing the General Plan land use designation and zoning designation for 1 Hamilton. On one hand, NOP page 6 states, “The proposed project includes amending the general plan land use designations and redesignating the zoning district for . . . the following locations as reflected in Figure 2,” which includes 1 Hamilton. (See NOP, Figure 2.) Further, Table 3 to the NOP 3 identifies 1 Hamilton as allowing up to 50 residential units “after rezoning.” This information strongly suggests the Project includes General Plan amendment and rezoning action in order to accommodate the Hamilton Project. On the other hand, Table 6, “Summary of Zoning Map and Land Use Amendments,” appears to omit any reference to 1 Hamilton. (NOP, p. 9.)

This inconsistency leaves the public to speculate about the scope of the CEQA “project” to be analyzed in the EIR. To the extent the NOP’s mischaracterization of 1 Hamilton’s “current” zoning is premised on the City’s intention to revise 1 Hamilton’s General Plan land use designation and zoning designation as part of the Project, the EIR

will need to include adequate analysis of the Hamilton Project. We ask the City to directly address two simple questions:

- (1) Does the CEQA project include changing 1 Hamilton's General Plan land use designation to allow residential uses?
- (2) If the answer to the first question is "yes," why is the City suggesting that it will prepare a subsequent EIR for the Hamilton Project since a subsequent approval would ostensibly be exempt from CEQA review pursuant to Public Resource Code section 21083.3?

A member of FOHP attended the City's public scoping meeting on August 4, 2022, in an attempt to obtain answers to these questions. Incredibly, City officials refused to answer and, in order to avoid any follow-up questions, ended the scheduled three-hour meeting after only thirty minutes. The City's obfuscation thwarts the public's efforts to understand the City's environmental review strategy for both the Project and the Hamilton Project.

To eliminate any confusion, if the Project includes revisions to the General Plan Land Use Element and/or Zoning Ordinance that would authorize residential use of 1 Hamilton, the City must use its best efforts to find out and disclose all that it reasonably can about the Hamilton Project. (*Laurel Heights, supra*, 47 Cal.3d at 395-396; *Environmental Protection & Information Center v. Cal. Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 503.) As will be demonstrated by other comment letters submitted in response to the NOP, detailed project-level information is presently available regarding the proposed affordable housing project and will continue to be refined over the next several months. The City will not be allowed to shirk its duty to prepare adequate CEQA analysis of the Hamilton Project by claiming either that it has not yet been approved, or by promising (well-intentioned or not) to perform such review in the future.<sup>1</sup>

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<sup>1</sup> Even if the City were to commit in good faith to prepare an EIR for the Hamilton Project and actually followed through with that promise, the City could later argue that any deficiencies in that EIR are not prejudicial and therefore require no corrective action. (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 179 [rejecting argument that by "preparing and certifying the EIR as if CEQA applied, the City waived any right to later invoke a potential CEQA exemption"].)

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The City must take unmistakable, legally-cognizable action to correct the NOP's deficiencies identified above. A failure to do so will likely be construed by a reviewing court as evidence that the City is misleading the public regarding the Hamilton Project and the City's intended process for future review and approval. Thank you for the opportunity to comment.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:



Patrick M. Soluri

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