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February 23, 2022

SENT VIA EMAIL (cityclerk@cityofmillvalley.org)

Kelsey Rogers, City Clerk
Mill Valley City Hall
26 Corte Madera Avenue
Mill Valley, CA 94941

RE: Public Records Act Request

Dear Ms. Rogers:

This firm represents Friends of Hauke Park (“FOHP”) concerning the proposed “1 Hamilton Drive” housing project (“Project”). On September 15, 2021, we sent a letter to the City expressing concern “about the process and criteria utilized by the City of Mill Valley (‘City’) to seemingly decide upon the 1 Hamilton Drive site, adjacent to Hauke Park, as the City’s preferred location for the Project.” Based on this concern, we submitted a Public Records Act (“PRA”) request seeking documents relevant to the City’s consideration of the 1 Hamilton site along with the other 74 other sites.

The City has now provided nine rolling productions in response to that PRA request. On February 4, 2022, we explained:

We have now reviewed 2,068 pages produced by the City in response to our PRA request. Far from dispelling our concerns about an improper analysis for selecting viable sites, the documents produced to date support our concerns. While the City claims that it analyzed in detail 71 different City-owned sites, the City’s records only identify 11 such sites. (See Exhibit 1, memo from Danielle Straude from Janet “Re: Analysis of Tax-Exempt Sites for Affordable Housing Development” dated February 10, 2021 (“Site Analysis Memo”), pp. 7, 18.) ***The City’s document production does not even identify the remaining 64 sites***, much provide detailed analysis of their suitability.

We note the Site Analysis Memo identifies an additional 37 sites “for potential sale.” (Exhibit 1, Site Analysis Memo, p. 19.) The City has never clarified, however, whether these additional 37 sites “for sale” are included

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in the 75 sites purported analyzed for development. Even if they are included, the total of 48 sites (11 sites for development and 37 sites for sale) falls well short of the claimed 75 sites that were analyzed. In this scenario, 27 sites remain completely undisclosed.

(Soluri Meserve Letter to City dated February 4, 2022.)

In light of the City's inability to produce documents identifying the 64 other sites that were purported analyzed for the Project, we are now forced to file this second PRA request seeking all documents maintained by the City's consultant, The Housing Workshop. The PRA requires the City to produce documents maintained by its consultants such as The Housing Workshop. (*Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710 fn. 7.)

At this point, we are doubtful that The Housing Workshop's files will support the City's claim that it analyzed 75 different City-owned properties for suitability prior to selecting 1 Hamilton. We are concerned the documents will instead confirm our informed suspicion that The Housing Workshop was not hired to perform a legitimate analysis of the suitability of 75 City-owned sites, but rather to provide a *post hoc* rationalization for an earlier backroom selection of 1 Hamilton at the direction of Mill Valley's most powerful and politically-connected interests.

We understand that the City has hired Veronica Tam & Associates ("VTA") to perform a sites analysis associated with the City's General Plan Update. We are also requesting a copy of the consulting agreement between the City and VTA and any documents reflecting the total contract amount for VTA's site analysis service.

The City must provide access to its records unless the records fall within one of the specific exemptions enumerated in the California Public Records Act ("CPRA"). (*State of California Ex. Rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783.) The overarching policy of the CPRA favors disclosure, and a refusal to disclose information can only be based on specific exceptions enumerated in the CPRA. (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467.) If the City believes any of the records are exempt from disclosure by the CPRA and withholds any documents, then the agency must notify the requestor that some documents were withheld and provide the exemption(s) that justified withholding the documents. (See Gov. Code, § 6255; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, pp. 1072-74.) Recent case law clarifies that any such documents withheld from production under the CPRA may nevertheless be required for an administrative record pursuant to Public Resources Code section 21167.6, subdivision (e). (*Golden Door Properties, LLC v.*

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Superior Court of San Diego County (2020) 52 Cal.App.5th 746, 762.) Further, any City policy purporting to authorize the deletion of such communications would violate Public Resources Code section 21167.6. (*Ibid.*)

I prefer to receive the documents in electronic format as soon as possible, and we do not object to a rolling production of documents. If responsive materials must be copied, please contact me with an estimate of duplication costs. You may contact me at patrick@semlawyers.com. Thank you very much for your assistance.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By:


Patrick M. Soluri

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