Community Venture Partners, Inc.
A Catalyst for Sustainable Solutions

March 18, 2015

Mill Valley City Council
City of Mill Valley
26 Corte Madera Avenue
Mill Valley, California 94941

Re: Draft Housing Element Update 2015-2023

Dear City Council Members:

I'm submitting this commentary on the Draft Housing Element (the "HE") for 2015 - 2023 in the hope that the City Council will make advisable revisions, prior to its adoption. As written, the Draft HE contains significant flaws that should be addressed in order to better serve the public's interests, and to better conform to the intentions of our new General Plan.

This letter is not intended as criticism of the Planning Commission or City Planning staff. However, certain statements and recommendations were made during the recent Planning Commission hearings that I believe were based on incorrect interpretations of the Housing Law, and so provide an opportunity to correct those. In addition we're now operating under a new General Plan that was the result of an exhaustive public process and because of this the last cycle HE is no longer relevant and the new HE must be revised in order to be consistent with the General Plan.

Executive Summary

We, CVP's land use law specialist, Edward Yates (former Deputy Counsel to Santa Barbara County), and I, recently met with Jim McCann and Vin Smith and discussed the issues noted in this letter. We share some common ground. However, differences of opinion remain in two areas in particular.

We are of the opinion that in matters of conflicting regulations or inconsistencies State Law overrides local law in matters relating to housing and development, zoning and the HE. This analysis cites those applicable laws, specifically. Jim and Vin are of the opinion that this is not always true and that the City can insert language in its HE or other sections of the General Plan to essentially protect their local rights to approve or disapprove a project, even if this language (e.g., either disclaimers or designated site capacities) creates inconsistencies in the General Plan or conflicts with State Law.

In addition, Jim and Vin contend that in an instance where the HE is not clear about what may or may not be approvable on a particular parcel that is on the HE Site Designation List (total

density, for example), that the City or its agencies (the PC) can look to other parts of the General Plan (the Land Use Element, for example) to argue against a proposal's appropriateness. We disagree and believe State Law is clear in this regard that the HE essentially "trumps" the other parts of the General Plan in part because it is more site specific and is the only GP Element that is certified by the State.

We've asked Staff to provide legal citations to support their positions, as we have, but to date have not seen any, thus this analysis and commentary. That said, it is also our opinion that approval and recommendation of the HE by the Planning Commission appears to have been influenced by these arguable issues and incorrect or incomplete guidance by Planning Staff and misinterpretations of State Law.

The changes to the HE requested herein are all reasonable and consistent with what other municipalities in Marin have done in light of our greatly reduced RHNA quotas in this housing cycle. Please note that the City has until May 31, 2015 to adopt its Housing Element so there is ample time to correct errors and hold public hearings as required to resolve any outstanding issues. Most other municipalities have used the final adoption hearings as the best time to make the changes required (typically to the HE Site Lists) and consider all public input before the HE is finalized.

In this HE cycle the Department of Housing and Community Development ("HCD") and ABAG have reduced Mill Valley's Regional Housing Needs Assessment ("RHNA") allocation from 292 units to 129. The community has a reasonable right to expect to benefit from these changes. This new allocation may be considered within a de novo City Council hearing process that allows us to revise our HE Site List. This also affords the opportunity to be more selective in our approach to designating potential development sites so that such designations do not conflict with fundamental principles and goals and values of our General Plan (see General Plan references attached, APPENDIX I).

This analysis consists of five main sections.

"A - THE HOUSING ELEMENT: TRUE OR FALSE" deals with common misunderstandings that potentially affected the Planning Commission's review and GPAC's work in arriving at their conclusions.

"B - REMOVE CERTAIN PARCELS FROM THE HOUSING ELEMENT SITE LIST THAT ARE IN CONFLICT WITH OUR GENERAL PLAN" reviews a list of designated housing sites on the HE Site List that we believe should be disqualified and removed. Among these is a number of major local serving business sites located in existing core commercial zones. This section also includes citations from our General Plan to substantiate these requests.

"C - ADJUST THE HE LANGUAGE TO DESIGNATE CERTAIN PARCELS ON MILLER AVENUE AS "MIXED USE." This section focuses on the need to update our Housing Element language and possibly the Land Use Element's language to more accurately reflect the planning intentions that have emerged over the past 15 years that support "mixed use" development in the Gateway and Main Street rooms along Miller Avenue.

"D - REMOVE THE MVAHC SUPPLEMENTAL SITE LIST" discusses the reasons why the Mill Valley Affordable Housing Committee's Supplemental Site List should be removed from the Housing Element in order to preserve the integrity of the new General Plan and the public process that led to the General Plan's creation.

"E - OTHER CONSIDERATIONS" deals with how the State Density Bonus Law impacts the Housing Element RHNA and Site List, and offers comments on why we believe the proposal to create a Housing Advisory Committee is ill advised.

ATTACHMENT: APPENDIX I – GENERAL PLAN CITATIONS

Most of the information contained in this analysis has never been presented before to the City, so I ask that you please take the time to read it thoroughly. I apologize in advance for its length, but this is an important piece of legislation that requires more than sound bite comments.

A - THE HOUSING ELEMENT: TRUE OR FALSE

A-1 The law "requires" that HCD certify our Housing Element

FALSE:

State Law only requires that a Housing Element be "certifiable," meaning that it be in full compliance with State Law (Government Code Section 65585.1(c)). In fact, cities in California may "self-certify" their Housing Elements in the event that HCD does not agree that their HE is certifiable. In other words certification is proof of compliance with the laws created by our legislature not proof of compliance with HCD's wishes.

This is obviously true because to require a part of a General Plan to be controlled by an unelected State Agency would violate the State's Constitution, which holds that a city's General Plan is a city's constitution and is solely the province of locally elected decision makers (California Constitution, Art. 11, Section 5.).

> That is why laws like SB375 contain broad disclaimers such as *"Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region; and nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy."*

However, for practical purposes "certification" by HCD is seen as the gold standard because it is the best way to avoid protracted arguments with HCD or lawsuits by housing advocates (one can invoke HCD as a defense). So the preference has been to get an HCD certification. But lately, it's common knowledge that HCD has been increasingly aggressive in its use of its "power" to demand more and more changes that are nowhere to be found in the law. So unless we understand that this is a negotiation and that we have the right and moreover the *responsibility* to push back on behalf of our community, the results put too much control in HCD's hands.

Expedited review by HCD

In this 2015-2023 housing cycle, HCD has offered "expedited review" of the HE. Expedited review means that even though our RHNA obligation has changed, if a city agrees to submit essentially the same HE that they submitted the last round with only minor modifications, they are essentially assured certification.

This "offer" by HCD is meaningless because it is legally axiomatic (how could they deny certifying the same HE they already certified?). But aside from reducing the amount of work Planning Staff has to do, how does this benefit our residents? I don't feel that this choice has been adequately explained to the public or our delegated commissioners (GPAC and the Planning Commission).

A-2 State Law "requires" us to have a buffer

FALSE:

A "buffer" is defined as the number of units that Mill Valley designates as potential housing sites on their HE Site List that are in excess of our RHNA requirement. **However, the term "buffer" is *not* found in State Housing Law.** HCD has argued that a certain number of additional sites are reasonable to require in order to show a city is doing all it can to "remove impediments to affordable housing." This is a reasonable request to a point since all sites listed may not end up being developable, and all Housing Elements now tend to have some buffer sites on their HE Site List. However, those are in the range of about 20 to 30 percent over the RHNA.

Mill Valley currently has a buffer of almost 200 percent of our RHNA requirement, the largest buffer of *any* municipality in Marin County.

A-3 The RHNA was reduced due to discussions between Mill Valley and HCD

YES and NO

HCD reduced the RHNA mostly because of ongoing public protests throughout the SF Bay Area by community groups and elected officials. A tipping point was when the Town Council of Corte Madera challenged HCD/ABAG to produce a methodology by which they calculated the RHNA (as required under State Housing Law). ABAG representatives were unable to produce such a methodology and in fact admitted that none was being used (I was in attendance at the public meeting where this occurred). In addition the population growth projections and employment growth projections that were supposedly the basis of the RHNA did not stand up to legal and statistical analysis presented by a number of SF Bay Area experts.

That notwithstanding, Mill Valley complied with their full RHNA quota in the last cycle and exceeded it by a generous margin. However, at this point even HCD has acknowledged that there are limits to population and jobs growth expectations. RHNA quotas have been dramatically reduced. Residents of Mill Valley have a reasonable right to expect to benefit from those reductions, particularly in cases where HE decisions are in conflict with our General Plan.

A-4 The Housing Element process and rules were "*different this time* (cycle)" and that effected our RHNA

FALSE:

In response to questioning by Commissioner Geiszler, Planner Danielle Staude stated that the HE process is *"different every time"* and how the last time it was based on *"PDAs"* but now *"the strategy has changed"* and *"we don't have any PDAs."*

This is simply incorrect. There is nothing that is in any way different for this Housing Element cycle from the past HE cycle except that the RHNA is reduced. Some new legislation has also gone into effect that should be considered: SB 743 (removes certain CEQA arguments against a project) and SB 628 (it adds "affordable housing development" as a new item that can be funded through traditional Infrastructure Financing District bonds) that might affect Mill Valley's planning process in the future. However, the strategy at the State and Regional levels has not changed. PDAs are still part of the regional planning strategy as codified by SB 375 in 2008.

A-5 We should not reduce the HE Site List because we could risk *"losing HCD's certification"*

FALSE:

Planning Staff made this statement at the Planning Commission hearing on January 27th. It's simply not correct. The fact is that *every* other municipality in Marin has down-sized their HE Site list this time around (most voluntarily, but some forcibly, as was the case with the public referendum petition in Fairfax). Even the County of Marin, the most intransigent of them all, cut almost 300 units and eliminated a half dozen major housing sites from their previous cycle Site List, at their final Board of Supervisor's HE adoption hearing. And they have had no problem getting certification from HCD.

Why this is important:

Creation of the Housing Element Site List remains one of the last locally controlled decisions under State Housing Law. But once that decision is made it cannot easily be reversed (our argument above about State Law taking precedence). HCD fully anticipates that HE Site Lists will be reduced in response to the reduction of RHNA.

A-6 Staff assured the Planning Commission that being on the Site List *"doesn't matter"* because *"we don't have to build anything"* and our local zoning and planning process remains unaffected.

FALSE:

At the Planning Commission hearing on January 27, Planning Staff assured the PC that the HE Site List *"didn't matter"* because *"we're not required to build anything."* Danielle Staude stated that this was assured because *"Our Housing Element includes a paragraph that says we have*

local control of our planning and approval," and that *"maintains the Mill Valley General Plan goals about small town character."* Vin Smith referred to the wording of Appendix C of our Housing Element and our Land Use Element to substantiate the claim that local rules and regulations take precedence over State requirements when a specific development proposal is submitted.

We respectfully disagree with all of this. As noted in the introduction, State Law does not provide for any such protections and inserting language in our HE does not override those Laws and their consequences.

With regard to HCD and HE certification it is true that the HE Site List is essentially an academic exercise that's sole purpose is to demonstrate that sufficient opportunities exist to develop housing, and particularly affordable housing, to fulfill our obligations under RHNA. However, that does not mean that there are no practical or legal ramifications or consequences from creating a Housing Element Site List or designating a particular site as a potential housing site. In fact, it is quite the opposite.

The "List" is not a list

Staff has made the argument that the "site list" isn't really a list at all, but only the result of a "capacity analysis" (this begs the question that if the list is meaningless then why are we doing a list at all?). However, this is not a matter of semantics. In fact, State Housing Law makes no distinctions about what a list is called (a "site list" or a "capacity analysis") and it is interpreted the same way by developers and the market that values its future development potential.

Staff has stated that the new analysis "method" Mill Valley has employed (including in our last HE) is superior to the way we have done the Housing Element analysis before and this method expands our approval (disapproval) powers for individual development proposals. However, in every HE cycle going back 20 years we have always done some kind of capacity analysis that has also resulted in a list of sites (505 Miller, 500 Miller, Richardson, etc.) that instantly attracted development proposals that otherwise would not have been submitted. Having a list of sites or a list of "capacity" for sites has the same consequences no matter what you call it and it has no effect on the rules and regulations governing the approval process.

Practical Consequences

Placing a site on the HE Site List has significant practical ramifications. In plain English, putting a site on the HE Site List is like hanging a sign on it that says, "Please bring us proposals for housing for this site." That is why we must be careful what we put on the HE List to ensure that the possible outcomes are really what we want. The consequences of not thinking that through is why parcels on our previous HE Site Lists (the "pipe line" projects) produced such intractable battles about development rights and entitlements. Among these are the high density housing proposals for the "Von der Werth" project at 500 Miller Avenue, the "Coopersmith" project on Miller Avenue, Mike House's 505 Miller Avenue, the La Goma housing proposal, and the infamous "Richardson" project at Camino Alto and Blithedale.

***None* of these proposals would have been made unless or until those sites were designated in an adopted Housing Element. *None* of them was zoned at the time for the housing proposals that came forth. And contrary to assurances we heard, similar to those we are hearing today, *none* of these proposals produced anything close to what was imagined or promised at the time they were included in the HE Site List.**

The burden of time and cost put upon our City and its residents to argue against these inappropriate proposals was *extraordinary*. Putting them on an HE Site List was the single most significant thing that happened to drive their development.

For example, the Von der Werth site was clearly intended to be a mixed use development as envisioned in the Miller Avenue Streetscape Plan and the original Miller Avenue Plan, with small rental housing units over retail and commercial spaces filled with local serving businesses. Yet at the end of the day (after more than five years), the Planning Commission was forced (by law) to approve the development of nine enormous, out of character, luxury, for sale condominiums fronting right on our major retail and community services street.

Coopersmith got approval for more than a dozen luxury townhomes with attached au pair quarters (affordable?). And in the case of the Richardson project the community has been fighting for years to stop an out of scale, overly impactful 20 unit townhouse development, on a commercially zoned site, where the developer contends that he only bought it because it was shown on the past HE list as a "housing" site. The fact that we seem to have won a reprieve on this project, for the time being, is small consolation.

None of this matters?

The argument has been made that none of this matters because anyone can bring a proposal at any time under our conditional use process to build any type of project on any site in the City. And we all know that is true. But this argument fails to understand of purposes and goals of State Housing Law, the requirements for certification of the HE, and the significance of putting a site on an HE Site List (as discussed below).

Bottom Line:

The HE Site List approach is not producing the kinds of development proposals we actually need to address our affordable housing needs. And as explained below, the current HE Site List will potentially have a decidedly negative impact on local serving, small businesses.

Legal Consequences

When Commissioner Bolen asked Planning Staff directly, *"Are there any legal ramifications"* (of putting sites on the HE Site List), she was told, unconditionally, *"No."* In the context of laws and regulations as complex and overlapping as our State's Housing Laws, this is an extraordinary statement.

Placing a site on our HE Site List has specific legal ramifications regarding the future uses and the value of that property (the market reacts to any potential zoning/planning change). It is the first step toward a legal entitlement (this speaks to our disagreements with Jim McCann and Vin Smith on interpretation of State Law). What ends up on the HE Site List is becoming increasingly important in light of the political leanings in Sacramento and recent State legislation that increasingly removed local planning control and places the onus on the City to make specific findings to deny housing development rather than on developers to demonstrate why proposals should be approved. A variety of laws now makes it easier to override CEQA and local zoning for low income, high density housing proposals (e.g., SB 743).

Once a municipality submits its site designations to HCD, the city loses aspects of its local control over its development approval process.

> *Government Code Section 65863(b) restricts municipalities' ability to downzone parcels that have been included in an HCD certified Housing Element Site List. Government Code Section 65583(g) - adopted in SB 375 - provides a "builder's remedy" whereby a city that does not comply with zoning needed for affordable housing development is subject to liability and attorney's fees. Further, a developer who meets the either law's requirements for affordable or senior units is arguably entitled to the density bonus and other assistance as of right, regardless of what the locality wants subject to limited health and safety exceptions. Government Code Section 65915(e).*

To be legally secure, the City therefore needs to obtain *recertification* by HCD for any future HE Site List changes after certification, <u>even if due to unforeseeable circumstances</u> such as earthquakes, sea level rise or findings of soil toxicity. Offering unneeded sites on the HE list (in excess of RHNA) therefore *increases* the City's legal liability and exposure to litigation (even where it makes the required findings accompanying any zoning change).

The "Local Control" Shell Game

Placing a site on an HE Site List is clearly a "local" decision, completely within the control of a locally elected body (this is ensured by the State Constitution). However, (and this is the crux of the misinformation about designated parcels) once we do that, the situation reverses itself.

Not only do a variety of other laws currently make it easier to override CEQA and local zoning for low income, high density housing proposals, but the City is providing developers with a several new legal arguments if the developer chooses to sue the City over a permit denial.

> *For instance, a developer could contend the City is estopped from denying a permit for a project on the Site List because the developer relied, to his detriment, on the City's Site List designation. Further, a developer could claim that the City's rejection of an application for a project on the Site List would be inconsistent with the General Plan (as amended by the new HE since it is part of that General Plan) and thus either request damages or an injunction against the City to amend its zoning ordinance or general plan. (Government Code Section 65587(d).) Keep in mind that developers can obtain costly attorney's fees against cities, for such lawsuits, including housing element law builder's remedies. (Government Code Section 65583(g).)*

Further, nothing is stopping the State Legislature from passing new regulations tomorrow that add new conditions, rights or restrictions to sites that are on certified Housing Element Site Lists (i.e., that any site on a certified HE Site List henceforth has an automatic default density of "X" low income units, or enjoys greater CEQA exemptions [as SB 743 did], or is exempt from local zoning regulations as the State Density Bonus Law does - See more information on the State Density Bonus laws below).

For example, the State Legislature could pass a law in the future that provides that any site on an HE Site List within a ½ mile of a freeway (Goodman's Lumber) now has a ten story height limit "by right" and CEQA and traffic impacts are waived, or that special State funds are available for development of those sites, or any other provisions the Legislature might want to pass.

Local control would be lost because the City volunteered the sites on the HE Site List for housing development and subsequent State Law trumps our local regulations. Since all the sites on the HE List are officially identified for development as soon as the HE is certified, they can do this legally because the decision to put the site on the list was a "local decision" so they have not technically usurped "local control." But for all practical purposes, the City has lost local a measure control of development on those parcels.

This brings in our other argument that regardless of how we word our HE, State Law will supersede it in a challenge. And the City cannot look to other elements of their General Plan to argue against a future development proposal, unless the State legislation specifically gives them that authority.

Again, the primary purpose of the State Housing Laws and the HE certification process is to *limit* local control as much as possible in order to ensure future "fair share" housing growth.

Why this is important

These facts directly contradict the assurances given to our Planning Commissioners, in response to direct questions from Steve Geiszler and Anne Bolen, at the hearing on January 27th. It's our opinion that the Planning Commission decision to recommend adoption of the MV HE was therefore based on incorrect guidance.

A-7 The Housing Element Site List can be easily changed at any time in the future.

FALSE:

In response to direct questioning by Steve Geiszler and Anne Bolen, at the hearing on January 27th, Planning Director Vin Smith stated that the Housing Element Site List was *"not set in stone"* and was a *"fluid document"* that could be changed at any time in the future. He also stated that *"after the HE is certified… it doesn't mean we can't go back and change it."* He called the decision about which sites to include on the HE Site List a *"theoretical question that can be answered at a later date."*

The truth is the exact opposite and this response, in this context, is quite misleading.

Again, the primary purpose of State Housing Law and in particular the Housing Element certification process is to *reduce* future obstacles by local government that might reduce the opportunities to develop housing. Once a city places a parcel on its HE Site List and that list is certified, it has ceded a degree of authority to the State (and to any other future State legislation regarding those sites).

Yes, certainly, a certified Housing Element Site List can be changed, but as noted above, any changes will force the need for a recertification by HCD (Government Code Sections 65589.5(d)). Failing to do so would leave the City wide open to legal challenges from developers and housing advocates, and might even force the City to be on a new four year HE review cycle.

> *A city's ability to escape these commitments is extremely difficult because in order to change their HE Site List cities must make specific findings that are limited to very narrow criteria. (Government Code Section 65589.5(d)(1-5)). The HE List cannot be changed for a casual reason. Further, if the City attempts to revise its housing element mid cycle, HCD's approval is not assured or automatic. They could require additional studies or analysis to obtain recertification. And it would require another General Plan amendment and a new public hearings process.*

To dismiss all this as inconsequential is unwise. The fallacy of Staff's comments are obvious in that when asked if we can change anything about the Site List now, we are told that we should not because it might cause HCD to withhold certification. Yet somehow after the HE is certified we are told we can change it at any time, apparently without any comments from HCD.

To this point, it is telling that in the past ten years there has never been an instance of a Marin municipality changing its HE Site List during an HE cycle.

Why this is important:

The HE Site List is an essential part of the HE that is being certified. It cannot be changed in the future without specific findings and a new public process.

A-8 Planning Staff assured the Planning Commission that a large buffer provides Mill Valley *"flexibility"* in planning where to put affordable housing in the future and that our approach was a more *"preferred"* and *"holistic"* way to address the HE

FALSE:

In response to questions from the PC Commissioners, Planning Director Vin Smith stated that having a very large buffer was a good thing because "*it gives the city more flexibility in its development approval process*." He called our approach a *"more holistic* way" of planning for RHNA, which he referred to as being *"preferred"* by HCD.

Notwithstanding that we have no way to quantify what the term *"more holistic way"* means, this is categorically wrong.

Upon being questioned by Commissioner Geiszler, who asked directly, *"if a developer wants housing* (on a site), *do we have… is it in our control to say that's not an appropriate site (for that)?"* Vin Smith's response to this was emphatically and unequivocally *"Yes, yes it is."*

This is incorrect and again misleading.

Commissioner Geiszler continued by asking about the approval process when an actual project is submitted to the City. He asked, *"So sites* (proposals) *have to be consistent with the General Plan, correct?"* To which Staff responded affirmatively, to assure him that the General Plan would give the city the absolute right to disapprove any project. However, what Staff has left out is that the HE Site List is itself a General Plan Amendment, so by approving this HE the sites are *already* consistent with the General Plan (and in the case of other inconsistencies will trump other parts of the General Plan). So the City will not have any argument to bring. And in fact, as we argued above, the HE takes precedence over the other parts of the General Plan should any inconsistency exist.

Legally, this is very important and it is why the HE Site List can come back to haunt us if not done correctly.

To stop a specific project the City would have to amend its General Plan and Housing Element again just for that one site – which cannot be done, practically, without HCD recertification, and which might open the door for a lawsuit by that property owner who is "damaged" by that spot down zoning. But what is more troubling is that in the context the questions that were asked at a Planning Commission hearing it appeared that the commissioners had the false impression that the "we" (who could change the site list for a particular project proposal), was the Planning Commission and Staff, which is just not the case.

Again, only a legislative body, the City Council, can change the HE or its Site List by doing another General Plan amendment. You are the only "we" that has that power and the public process to make a change is neither simple nor at the sole discretion of the City.

Apples and Oranges

In our opinion Staff's contentions confuse the difference between how the Housing Element certification process works and why it is required, with how the actual planning approval process works on a project by project basis after the HE Site List has been certified. As noted above, in the sections on "Practical Consequences" and "Legal Consequences," the realities and outcomes of our local planning process are in no way actually connected, at a later date, to the Housing Element exercise today.

Creating a certifiable Housing Element and HE Site List is a once in eight year academic exercise. After that happens its results are not examined until the next housing cycle in eight years. On the other hand, project approvals are a real time and ongoing occurrence that often are a consequence of a particular site being on the HE Site List. **But that is the only connection except for the practical and legal consequences noted above.**

Please note:

- **Having a larger buffer may give us the "flexibility" to argue for certification with HCD but it has no value after that.** The real impacts of an HE Site List with a large buffer are the exact opposite and could seriously *reduce* our flexibility to limit development. Having a long list of designated sites has opened the door to all of that potential development.

- **Having a buffer has no relationship whatsoever with the "flexibility" we might or might not have or need to approve or disapprove a particular development proposal**. Fulfillment of our RHNA quota is not monitored in real time by HCD: it is irrelevant to specific project approval.

- **That we have a large buffer cannot be used as an argument, by the City, to deny or reduce the density of a particular development proposal for a particular site, whether that site is on the HE Site List or not.**

- **The number of units shown on an HE Site List sets a minimum number of units not a maximum** (see sections on Planned Development process and the State Density Law).

If a site is listed on a certified HE Site List, neither the City Council nor the Planning Commission may argue at a future date that a developer's proposal should not be approved simply because the City prefers housing or more density to be developed on a different site in a different location, or that they have the authority to do that because they have so many other "buffer" sites on the list and that it gives them "flexibility." That is simply incorrect. The density that may be approved for a particular site is minimally what the HE Site List shows, but that is not the maximum. There is no relationship between what is approved on one site and what is then approved or not approved on another site.

Having a "buffer" is not related to third party law suits or building large building high density projects

A former member of GPAC noted that he was told by Planning Staff that the reason we needed the large buffer was that the reduction of the number of buffer sites might not produce enough development and lead to third party lawsuits.

This is simply not true and there has never been nor could there ever be a lawsuit brought on that basis.

A buffer provides theoretical flexibility in order to argue for HCD certification. Once a City has a certified HE, they cannot be sued for noncompliance even if nothing is ever built. And RHNA numbers for the next cycle have nothing to do with how many units were built (with some minor exceptions for "carry over"). They are based on the next round of growth projections.
Likewise, Staff has advised that a large buffer is preferable because then the city doesn't have to plan for large, high density projects on a few sites. But that is also incorrect. There is no relationship between the size of a buffer and how the City addresses its RHNA obligations (e.g.,

Belvedere's HE Site List is almost all second units). A city can get its HE certified even if it has no buffer and no large projects, so long as they show that their plan is a reasonable way to address their RHNA quota and State Law. Addressing the low income portion of our RHNA is not related to how dense the units are. It is related to the income levels of the prospective residents who live in those units.

Why this is important

Once the City cedes authority to the State and locks itself into its HE Site List (and creates more *inflexibility* by increasing the number of ministerial permits), the legal liability potential for the City rises accordingly. Thus, a larger buffer provides more opportunities (locations) for a developer or housing advocate group to sue the City to build greater density than the community or the General Plan support.

Commissioner Geiszler actually asked this question directly, regarding the Goodman's Lumber and the Sloats Nursery sites (see comments noted below), and was given incorrect answers by Staff. We believe these incorrect responses served as a primary reason why the PC voted to recommend the HE for adoption.

B - REMOVE CERTAIN PARCELS FROM THE HOUSING ELEMENT SITE LIST THAT ARE IN CONFLICT WITH OUR GENERAL PLAN

Please keep in mind that the discussion presented here and the revisions requested in this section are what are supposed to happen at the time when a city updates its General Plan. That's the whole purpose of updating the General Plan.

Purposes of Periodic General Plan Updates and the Housing Element

The State requires municipalities to update their General Plans on a regular basis, which is typically every ten to twenty years. Housing Elements, which are one of the many "elements" that make up the General Plan are updated more frequently (until recently, every five years). And our local municipal code, zoning laws and design guidelines are also changed on an as-needed basis over time.

Because of this, over time, inconsistencies can arise between the General Plan and other laws and regulations, including the HE and its Site List. So updating the General Plan is the opportunity to review everything that has changed over time and make all aspects of the General Plan "consistent" with those other laws, or vice versa.

This "horizontal consistency" is required by State Law.

Planning Staff has argued that the "Site List" that resulted from the capacity analysis was the same list that was used in the previous HE, less than two years ago and therefore does not need to be changed. But as I just said, the whole purpose of updating the General Plan is to bring all parts into one consistent whole. So these comments are not a criticism of the past HE. They are a

necessary adjustment to correct errors and inconsistencies. Again, challenging the last HE and changing it is what is supposed to happen at this time.

> ***General Plan Requirements:*** *State Law (Government Code, § 65300.5) requires that all aspects / elements of the General Plan be "consistent" with each other. State Regulations (Government Code Section 65583(c)(7)) and the Municipal Code requires that the Housing Element must be the result of a properly noticed, public process.*

The Housing Element, as written, does not achieve these requirements and/or is in violation of one or more of these requirements. In fact, as written the HE creates more inconsistencies that previously and more legal ambiguity that is detrimental to the City's planning powers. The fact that something was approved in our last HE is not a reasonable argument to automatically include it again in the new HE. In light of now having a new General Plan, the crafting of the new HE is truly a de novo exercise.

GPAC Changes Everything

What is very different this time around in analyzing the HE, compared to the last time we did our HE, is that we now have the benefit of the two year GPAC process. This exhaustive public process clarified the fundamental goals and values of our City and pointed out the flaws that needed correction. It is incumbent upon us now to ensure that those goals and values are "consistently" codified in all our planning documents, zoning laws and other regulations, including the new Housing Element.

This is the reason for the comments below.

B-1 The following parcels should be removed entirely from the MV HE Site List because they violate the goals and values of the General Plan and create "horizontal inconsistencies":

a) The Goodman's Lumber and Hardware: all related parcels
b) The Sloat's Nursery / Urban Farmer property
c) The Mill Valley Car Wash property
d) Bank of America parcel at 715 East Blithedale Avenue

As noted in the General Plan (see "General Plan" references attached, APPENDIX I), the General Plan requires that the City "support" and "preserve" local serving businesses in clearly established commercial and retailing zones (cite: "*Community Values" - "Maintaining a strong, healthy economy that supports locally owned and local-serving businesses;*). Indicating that these sites are desirable as housing sites, potentially replacing the existing zoning and businesses violates those fundamental principles (cite: "*Community Vitality Goals, Policies & Programs - Maintain a strong, diverse, and vibrant local economy that welcomes those who want to make a positive economic impact, create sustainable commercial success,"*).

These sites are also all located in zones that are clearly designated in the Land Use Element of the General Plan as concentrated commercial zones where we want to encourage the majority of

our local serving businesses to locate (cite: *Mill Valley has four primary commercial areas: Downtown, Lower Miller Avenue, East Blithedale/Alto Center, and Redwood Highway Frontage Road.*).

Explanation of Sites

The East Blithedale / Alto Center area is one of the most vibrant local serving commercial and retail services zones in our City. Everything in our General Plan tells us that the City should work to "strengthen" this area and ensure its continued success. We should be increasing the number of community serving businesses in our commercial zones to create more local jobs for residents, but the HE Site List does the opposite by encouraging the replacement of these businesses with more and more housing.

653 Blithedale Avenue houses the Urban Farmer Store and Sloat's Nursery, and its plant yard and parking areas. Having these services, a plant nursery and garden store, in Mill Valley is a tremendous community asset.

Goodman's Lumber is another example of this. It would be a great loss to our community if Goodman's were to close and its land sold to the highest bidder to build more housing. We would be forced to drive to Home Depot in San Rafael for a couple of picture hooks and a rake. Additionally, the Goodman's site is not an appropriate housing site because a number of State and regional agencies (CA Air Resources, for one) do not recommend housing within 500 feet of a freeway due to the increasing evidence of negative health impacts on residents.

In the current political climate with its stress on maximizing the development of high density housing directly adjacent to quality transportation corridors (Highway 101) and recent legislation (SB 743) offering CEQA streamlining and exemptions for sites like this one (waiving traffic and parking and LOS impacts, etc.) we think the Goodman's site is particularly at risk by being designated in the HE Site List and see no reason to do anything that might encourage proposals for it as a housing site that might speed up the demise of that community serving business. It is precisely the kind of site that State Legislators are hoping to be able to fund so developers can build mid-rise projects similar to Win Cup in Corte Madera.

Finally, with regard to relatively new businesses like the Mill Valley Car Wash we should not forget that under our present drought conditions (which are predicted to continue for a decade), we may no longer wash our own cars in our driveways without risking a fine. A local carwash that recycles all its water is very much needed.

Please also keep in mind that most small businesses require easily accessible parking and a concentration of other stores to survive (i.e., if you're at the Whole Foods center you're more likely to go to that dry cleaners than drive to another). This commercial synergy needs to be preserved and supported not diluted with housing that could easily be built elsewhere.

Conclusion

The point we're making in mentioning these sites (and there may be others to exclude on the same basis of this additional "filter") is that we need to think about all the aspects of our community's needs and the goals and values of our General Plan in creating an appropriate HE Site List.

C – ADJUST THE HE LANGUAGE TO DESIGNATE CERTAIN PARCELS ON MILLER AVENUE AS "MIXED USE."

The clear intention of the Miller Avenue planning process, going back to the original Citizen's Advisory Committee (CAC) in 2001 was for development in the "Gateway" room and the "Main Street" room to be "mixed use" development that combines retail, commercial and residential. These ideas were also instrumental in shaping the Miller Avenue Streetscape Design. However, this "mixed use" planning vision has never been codified, consistently, in our regulation or our General Plan. This has caused problems in our project review process.

The Planning Commission has often been impotent when confronted with development proposals on Miller Avenue that are not consistent with the mixed use vision (Von der Werth). They have been unable to enforce the mixed use concept because there is nothing in our regulations they can look to for guidance.

This is the opportunity to correct that flaw in our planning documents, in the HE and the Land Use Element (to be consistent).

C-1 The following parcels should be clearly designated as "mixed use" (combinations of retail, commercial and housing) rather than as demolition and replacement housing sites, as required by the General Plan: (see General Plan references attached, APPENDIX I)

a) Mill Creek Plaza/Balboa Café/Tea Garden Springs
b) 2 AM Club/Joes Taco Lounge
c) Automotive Services at 16 La Goma Street
d) Most of the other parcels along Miller Avenue in the "Main Street" and "Gateway" rooms, including, but not limited to 382 Miller Ave., 444 Miller Ave., 493 Miller Ave., 363 Miller Ave., 433 Miller Ave., 546 Miller Ave., 550 Miller Ave., 600 Miller Ave., 401 Miller Ave., and others.

Again, the General Plan requires that the City support and preserve local serving businesses, particularly in clearly established commercial and retailing zones. Indicating that these sites are desirable as housing sites, potentially replacing the existing zoning and businesses violates those fundamental principles. At a minimum, at these locations there should be an indication in the HE that any added housing only be a "mixed use" proposal that preserves the existing businesses. This is the only way to avoid future proposals similar to the Von der Werth and Richardson development proposals. It is also legally required to make the HE Site List consistent with the Miller Avenue Streetscape Plan, which is now specifically incorporated by reference in the HE.

A Fallacy about "Mixed-Use"

We live in a time of fast paced change and paradoxically a time of great yearning to recreate the past. Unfortunately, solutions to our challenges lay ahead not behind us. An example of this nostalgic thinking is the quaint images of "mixed-use" development that show small apartments above shopkeepers. Although this may be a desirable solution in our downtown area and in the Miller Avenue Main Street and Gateway rooms, it is not something that is very viable for developers in the 21st century on small infill lots (under one acre). Most of this kind of building stock was built more than fifty years ago.

The reasons for that are partially economic and partially due to how the development business and development financing have changed. Very few developers can actually build "mixed-use" at the scale the HE Site List is suggesting (six to twelve units). It's simply not economical. The only mixed-use we're seeing in the market now are major development projects (shopping malls combined with residential, hotel, etc., none of which will be proposed for small parcels in Mill Valley) or very small infill, owner developed projects that add two or three units.

Mill Valley has a special situation that needs specially crafted language if there's any hope of getting the results we desire and maintaining our small town character. Unless we clearly indicate that we require true mixed use solutions, most of the development proposals we're likely to see will be either all commercial or all housing. In most locations this would profoundly change the character and economic viability of those locations if they are now commercial zones. This type of change runs counter to all of the goals, values and principles of our General Plan (see General Plan references attached, APPENDIX I).

D – REMOVE THE MVAHC SUPPLEMENTAL SITE LIST

D-1 The "Mill Valley Affordable Housing Committee (MVAHC) Supplemental Parcel List" should be removed entirely from the MV Housing Element because it is the result of a process that violates the goals and values of the General Plan and the site list selection criteria established for the new Housing Element:

The MVAHC Supplemental List, as noted on pages C8 and C9, was developed and submitted by an unelected, un-appointed, unofficial group of individuals group called the "Mill Valley Affordable Housing Committee." The argument has been made that they were included because they were included in the past HE, last cycle. But as I've explained above, the new HE is driven and shaped by the GPAC process and needs to reflect that, legally and ethically. To deny that would be an affront to the great efforts made by all GPAC participants.

These MVAHC suggested sites are not included in the *Sites In The Capacity Analysis List* that is formally incorporated into the new HE and should be removed from the final HE for the following reasons:

a) The sites on the MVAHC List were not subjected to the officially sanctioned site evaluation criteria established for the *Sites In The Capacity Analysis List*."

It has been confirmed by Planning Staff that the MVAHC List was developed outside of the approved public process that created the official HE Site List. At the January 27th Planning Commission hearing, in response to a direct question, Danielle Staude stated, and Vin Smith confirmed, that the MVAHC sites *"**were not** subjected to the same criteria as the official HE Sites List,"* nor were they vetted by either Staff or the official HE Advisory Committee or the Planning Commission. This is significant.

One of the criteria for the HE Sites List was that any property built or substantially improved since the mid-1980s (1982 was cited by Danielle) was ineligible for inclusion. For example, Commissioner Larry Davis questioned the inclusion of 15 Willow Avenue on the MVAHC Supplemental list, because it was not only completely renovated and/or newly constructed since the year 2000 and was already subject to a reduced/shared parking requirement stipulation. This failure to follow this one prescribed site evaluation criterion applies to many of the MVAHC list sites.

On this basis alone they should be removed from the HE.

b) Since drafting the new HE is a de novo process, it appears that the sites on the MVAHC List were not subjected to a properly noticed and agendized public hearing process, a violation of the public open meetings laws.

The City of Mill Valley and the City Council established and approved a public process by which our General Plan and the Housing Element would be drafted, evaluated, reviewed, and approved. No member of the public or any member of City Staff has the right to alter that process. The public has a right to be able to rely on the City's fidelity to that process. Yet the record shows that the MVHAC Supplemental List was simply added based on the argument that it was there the last time. This is not a reasonable argument.

The inclusion of this Supplemental List should have been a separate, properly agendized discussion item.

Of greater concern, however, is that the dealings between Planning Staff and MVAHC have been privileged, held outside of the approved public process, and have the appearance of favoring one community group over others.

c) Planning Staff's defense of direct dealings with MVAHC suggests unequal government access that resulted in the inclusion of the MVAHC Supplemental List.

In response to a direct question by Commissioner Fred Eisenhart, at the Planning Commission hearing of January 27th, as to why the MVAHC list was included in the HE, Planning Staff defended that act by referring to MVAHC as a *"recognized organization."* Our question is recognized by whom and in what official manner and capacity that would grant them special consideration?

If the opinion of MVAHC is to be "officially" recognized, then the positions taken by much larger groups, such as Friends of Mill Valley or the nonprofit of which I am

president, Community Venture Partners (which is recognized by thousands of Marin residents), must also be included in the HE.

More troubling is that in response to challenges about the MVAHC list by Planning Commissioners, Staff offered to *"work with members of MVAHC"* (privately, outside of the public process) to *"review and revise their list if required."* On what authority do they believe they can do that? Doing so potentially invalidates the entire public process that created the Draft HE Site List, and circumvents requirements under the Brown Act to hold properly noticed public hearings on subjects of that magnitude.

Yes, the City Council can direct Staff to do this but neither the PC nor Staff have the autonomy to do this on their own.

d) The MVAHC may have taken liberties with their access to public officials and unfairly lobbied for the inclusion of their "list."

MVAHC is a small, self-appointed group of residents and non-residents (less than a dozen people) who have no particular professional expertise in planning or any legal standing in our City's HE process or our planning process, and certainly no more standing or authority than any other individual or other organization in our City. Their web site does not list any individual names of "members" and they do not appear to have any legal entity structure (i.e., corporation, nonprofit, etc.), though it is common knowledge that our Mayor, Ken Wachtel, has been a long time member.

However, I am also told that this group met directly with the Department of Housing and Community Development in Sacramento and that HCD was possibly confused and believed that, because of their name, they were there in an official capacity to speak for the City of Mill Valley. The City Council, as our elected representatives, must verify whether or not that is true. The public has a right to know.

e) Inclusion of the sites on the MVAHC List creates legal ambiguity in the HE and its certification by HCD.

I have never seen a HE Site List in any other municipality that includes two lists, one its official list and then a supplemental list created outside of the approved public process. The legal implications and potential ambiguities and interpretations, by HCD, the public, developers, and housing advocacy groups are numerous.

f) Blame it on ABAG

Staff justified the inclusion of the MVAHC List on the grounds that *"ABAG wants to hear from these organizations"* and it is *"very important to HCD"* to work with community groups such as this, saying, *"They like to see that."*

This misstates HCD's or ABAG's interests in community participation and input. Housing Element Law requires extensive public participation and outreach during the

General Plan and Housing Element update process, including public hearings, workshops, questionnaires, meetings, and so forth. However, this is required to be done *while* the Draft HE is being created, as part of that process. And this in no way justifies or endorses special interest groups from having special access to officials.

g) The sites on the MVHAC List have already been analyzed and rejected.

The most glaring flaw in all this "logic" about the inclusion of the MVAHC Supplemental List is this: since we know that the officially approved site selection criteria, developed by the City's consultant and staff, has already evaluated *"every single site in the City of Mill Valley"* (attested to by Planning Staff at the January 27th Planning Commission hearing), **then we know with complete certainty that based on those criteria, all of the sites on the MVAHC List have already been studied and were eliminated for failing to meet those criteria**.

This fact is indisputable. If the City allows previously rejected sites to be included in the HE, then we believe other members of the community and/or other organizations, such as Community Venture Partners, have the right to challenge the exclusion of other sites in the City and force the City to reopen the Housing Element site selection process.

Finally, the inclusion of the MVAHC List is inequitable to the land owners of these sites and the public. Its inclusion would abandon fundamental principles of fairness and transparency in Mill Valley.

E – OTHER CONSIDERATIONS

E-1 The HE has not properly considered the impacts of the State Density Bonus Law in calculating the number of housing units developed.

The California State Density Bonus Law (California Government Code Sections 65915 – 65918) allows developers to obtain an increased unit density bonus in exchange for offering to build affordable or senior units. The Density Bonus Law provides a 35 percent increase in project densities ***(a minimum, not the maximum),*** depending on the amount of affordable housing provided. If all of the proposed units designated in the Housing Element (of two units or more per our proposed inclusionary zoning regulations) were to qualify for the State Density Bonus provisions, and many of them will because our inclusionary ordinance requirements will push the proposals over the legal requirements for qualifying, the total potential units proposed would increase by at least 35 percent.

Local governments have little authority under the law to deny a State Density Bonus requested, and must provide extensive variances to height, density and parking to accomplish those development requests, unless very specific and legally narrow findings are made with respect to the health, safety and welfare of residents.

For more information on the State Density Bonus Law please see the attached document:

http://www.kmtg.com/sites/default/files/publications/density_bonus_law_2012.pdf

Planning officials around Marin have repeatedly stated that they are not concerned with the State Density Bonus because there are exceptions to this law that provide municipalities with the ability to regulate such density bonus projects. We are told that proposals for development of any parcel included in the Housing Element are required to conform to local code, community plans, general plan policy, design guidelines, etc. and must go through the normal planning, design, environmental review, and permitting and public review processes required. Both statements are misleading. Reducing local control is a primary objective of Housing Element and Density Bonus law.

Density Bonus Law's requirements to waive local control are mandatory.

The operative word in density bonus law is the municipality *"shall"* provide the density bonus. The term "shall" is used sixty three times in the main Government Code section regarding density bonus. Government Code § 65915 (only a very few "shall"s relate to the developers responsibilities.). This ability to *force* the locality to modify or even *waive* its normal development standards is the very reason these laws were passed and are the most compelling reason for the developer to structure a project to qualify for the density bonus.

Indeed, developer's attorneys advertise that the density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items.

> Government Code Section 65915(e) states that *"[i]n **no case** may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section."*

Thus, a developer who meets either law's requirements for affordable or senior units is arguably entitled to the density bonus and other assistance as of right, regardless of what the locality wants, subject to limited health and safety exceptions. (Ibid.) What this means is that proposals are ***not*** required to conform to all local municipal codes or general plan guidelines.

Further, CEQA contains several infill exceptions and recently the State Legislature has streamlined CEQA requirements for traffic and parking impacts in certain areas (located in high quality transit corridors – i.e. within one half mile of Highway 101). Developers have successfully used these exemptions to provide for complete exemptions for large projects with density bonus. ***Wollmer v. City of Berkeley*** (2011) 193 Cal.App.4th 1329 held that modifications required by the density bonus law – which increased the project impacts - did not disqualify the project from claiming the exemption.

Finally, some planners have contended that the State Density Bonus is not a concern because, historically, it has rarely been implemented. However, in the past seven years we've seen the adoption of significant legislation to promote low income housing (SB 375, SB 743, Plan Bay Area, etc.), all of which will increase the likelihood that developers will need to implement the Density Bonus in order to make their projects economically viable.

In addition the State has approved the funneling of billions of dollars of "Cap and Trade" funds away from energy projects and toward "equity gap" funding for high density housing development. This would cure the biggest challenge facing developers, lack of profits.

Because of the potential impacts of the State Density Bonus law provisions and in light of the dramatic reduction in our RHNA requirements, I ask the City Council to review the site list and remove those sites that have the greatest potential of being overly impactful to the neighboring homes and businesses, and to the small town character of our City if the State Density Bonus were employed.

E-2 The Housing Advisory Committee should be removed from consideration

I believe the creation of a permanent Housing Advisory Committee is a bad idea. We do not need yet another unelected, quasi-governmental, politically motivated and politically appointed advocacy group inside our City government. In a City where we already have significant communications problems between our Planning Department and Planning Commission and City Council, the last thing we need is yet another committee, particularly one that will be off the radar and generally out of the public's watchful eye.

This idea may have sprung, in part, from discussions during the GPAC process in that it might be helpful to bring in expert advisors for "sidebars" to help the committees make decisions. However, that "advisory" role was only meant to be *during* the GPAC process ("on call" when needed), not on a permanent basis. This idea is fraught with problem.

- What will these people possibly do all year after year while on this committee? It is inconceivable that their advice, no matter how valuable, will be required on an ongoing basis. And that being the case and human nature being what it is, they will begin to "make work" for themselves and attempt to expand their influence.

- Who will be on this committee, who will appoint them, and based on what skills and to what end? It would be incredibly naïve to think that appointment to this group would not become instantly politicized and dominated by special interests.

- Members of politically favored advocacy groups already appear to have been identified even before the committee idea has been agreed upon. At the January 27th Planning Commission hearing on the HE, Elizabeth Moody, the founder of the MVAHC and a former board member of Ecumenical Association of Housing (a major nonprofit development company) stood up and said, *"I can't wait to get this Advisory Committee up and running so we can sit down with developers and build some housing!"*

  That doesn't sounds like someone who is anticipating being in an "advisory" role. That sounds like someone who believes that she will be at the helm of a full-fledged, government funded, housing development agency. The "committee" has not even been formed yet and already it is completely off course.

Summation

I hope that you will carefully consider my comments. Again, the changes requested are reasonable and consistent with what most municipalities in Marin have done in light of our greatly reduced RHNA quotas. The arguments I have presented are based on the law and grounded in planning best practices.

I want to add another more personal reason for changing the HE: many of us are not ashamed to say that love Mill Valley the way it is, and we want to ensure that what we love is preserved for future generations. I know you agree this may be the most important argument of all.

Many of us love that Mill Valley is small scaled and not over crowded. We like that every plot of dirt is not spoken for. We do not care if Mill Valley has "inefficient land use," as Regional Planning Agencies refer to our suburban environment. And we do not want to risk seeing its ruin just to satisfy some emotionally dead planning doctrines handed to us by Sacramento planners.

Some things are worth fighting to save.

Thank you for your time and consideration.

Best regards,

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Community Venture Partners, Inc.
A Catalyst for Sustainable Solutions

Comments on Draft Housing Element Update 2015-2023

APPENDIX I

Mill Valley General Plan Citations Supporting Suggested HE Changes

The "General Plan Goals" state:

> *The two primary goals of the General Plan remain the same as established in the 1989 General Plan, and are (1) To protect and enhance the natural beauty and small-town character of Mill Valley; and (2) To encourage continued diversity of housing, income levels, and lifestyles in the community.*
>
> The "Community Values" of the General Plan include *"Maintaining a strong, healthy economy that* ***supports locally owned and local-serving businesses;***

Sections titled "Community Vitality Goals, Policies & Programs - VITALITY-1 | Economic Vitality" establish that the intention of the General Plan is to:

> ***Maintain a strong, diverse, and vibrant local economy*** *that welcomes those who want to make a positive economic impact,* ***create sustainable commercial success,*** *support Mill Valley's small-town character, and enhance the quality of life of the community.*

And it further states, under "CV.1 Business Attraction and Retention" that the goals are to:

> *Create a transparent operational, informational, and regulatory framework to* ***attract and retain businesses (including, but not limited to, local-serving businesses and entrepreneurs that provide goods, services, or medical, educational, cultural, artistic, entertainment, or recreational amenities for the community).***

The General Plan clearly designates certain areas of the City as key locations for commercial uses and that the actions of the City should *"strengthen those locations for locally serving businesses and entrepreneurs"* (versus weaken or displace them).

> ***Land Use Commercial Areas***
>
> ***Mill Valley has four primary commercial areas: Downtown, Lower Miller Avenue, East Blithedale/Alto Center,*** *and* ***Redwood Highway Frontage Road.*** *These commercial areas generally consist of small, local-serving businesses that provide goods and services oriented primarily to the daily shopping, service, and entertainment needs of the area's residents.* ***They are considered a valuable asset by the community and play a key role in shaping Mill Valley's small-town character and quality of life.*** *Nearby residents can*

conveniently walk to shopping opportunities because these areas are generally surrounded by residential neighborhoods.
Increasing competition from major shopping centers elsewhere in Marin County, a greatly expanded commercial base in southern Marin County, and the growing popularity of online shopping have significantly affected small, local-serving businesses in Mill Valley by increasing the supply of establishments providing similar goods and services and thus making it more difficult for local businesses to capture a sufficient portion of their respective markets. With rising rents, existing local-serving businesses have trouble maintaining or increasing profits. ***A majority of the local-serving businesses in the area are owned and operated by small, independent proprietors. Many are local residents who have a sincere interest in the future of the town and are therefore involved in local organizations and institutions, such as the Mill Valley Chamber of Commerce, the Mill Valley School District, and local service clubs. Their activities help to build a type of community feeling and strength that contributes to the small town character of Mill Valley.***

Pages 19 and 20 of *"Land Use"* identify Downtown Mill Valley, Lower Miller Avenue, East Blithedale / Alto Center and the Redwood Highway Frontage Road areas as our City's most important commercial centers:

Mill Valley's downtown *is characterized by a tight configuration of one- and two-story buildings clustered around Lytton Square and the Depot Plaza. The variety of small businesses, the compatible architectural style of the buildings, and the unique natural setting give downtown the quality of a small village.* ***Downtown Mill Valley is the community's primary shopping, civic, and cultural center. Most downtown businesses are small-scale and oriented to provide a unique shopping and gathering place for local residents and regional visitors.***

Lower Miller Avenue, from Locust Street to Camino Alto, functions as the full-service commercial area for the community. In addition to retail and restaurants, it also provides a range of professional and business office space and service and repair businesses that serve the entire community.

East Blithedale/Alto Center, since its development, has served as both a neighborhood shopping center and a location for larger-scale retail businesses that serve a more regional market. *Currently, the East Blithedale/Alto Center area includes 204,000 square feet of leasable space. Its location near the East Blithedale/Highway 101 interchange makes it attractive for regional-serving businesses.*

The Redwood Highway Frontage Road area has historically served as a regional-serving office and commercial area. *The uses tend to be oriented to the Highway 101 frontage road and include a large amount of professional office space and some regional freeway-oriented commercial uses, such as hotels and car dealerships. This area constitutes most of Mill Valley's frontage on Highway 101.*

On page 30 of *"Land Use"* for *"Downtown"* it states that we need to:

> *LU.3-2* ***Encourage a complete and well-integrated mix of uses (including retail, food and drink establishments, services, arts and cultural venues, and residential uses)*** *that will create an attractive, vibrant, and walkable downtown experience that does not detract from the essential character and charm of downtown.*

On page 33 of *"Land Use"* it goes into further detail to emphasize that:

> *LU.5-3* ***Encourage a complete and well-integrated mix of uses along Miller Avenue that will create an attractive, vibrant, and walkable experience and gathering spaces consistent with the adopted Miller Avenue Streetscape Plan, and that continues to provide a range of goods and services that meet "everyday" local needs (e.g., auto repair, medical services, recreation and fitness, etc.).***
>
> *LU.5-4* ***Encourage property owners in the East Blithedale/Alto Center commercial area to improve and modernize existing facilities so as to provide safe and efficient multi-modal access and circulation and attract major community-serving tenants.***
>
> *LU.5-5* ***Work with the property owners along the highly visible Highway 101 commercial area to enhance its appearance and connection to Mill Valley and to continue to attract local and regional office and business uses.***

The long held principles of our city planning are sound and clearly reflected in our *"Land Use Map & Designations."*

Our General Plan Land Use Maps show a logical sequence of transition from high traffic commercial and industrial near highways, to smaller types of commercial and offices uses, to various types of mixed use and multifamily housing sites, and finally, to single family homes. This logical progression is encoded in many aspects of our General Plan and has been for decades.

Many of the proposed HE Site List parcel designations, noted herein, completely ignore critical aspects of these long held principles and undermine and threaten the viability of significant locally owned and local serving businesses.

> **The General Plan on *"Land Use Map & Designations:"***
>
> *The purpose of the General Plan Land Use Map (Figure 2.4) is to clearly illustrate the relationship between the basic land use policies and programs of a community and a given parcel of land within that community. In other words, the Land Use Map tells at a glance how a piece of property may be used and how intensively it might be developed. The Land Use Map is not the sole basis for that determination; other General Plan policies, zoning regulations, design guidelines, and other standards may also apply and influence the final size, scope, and appearance of a development project.*

However, the Land Use Map is the starting point for understanding not only how much development a parcel might accommodate, but also how that parcel fits into an overall community-wide view of future growth and development opportunities. (Emphasis added.)