

MEMO TO BOB SILVESTRI, COMMUNITY VENTURES PARTNERS

**ADDENDMUM TO MY LETTER/EMAIL OF JANUARY 5, 2016 REGARDING ADEQUACY OF MILL VALLEY
GENERAL PLAN AND ZONING ORDINANCE CEQA DOCUMENTS**

February 8, 2016

Introduction

This letter supplements my comments of my letter/email to Vin Smith of January 26, 2016.

There are three Initial Studies (IS) currently under consideration by the City of Mill Valley for the following three proposed actions:

- 1) General Plan Land Use Element Amendment (Land Use Amendment);
- 2) General Plan Mobility Element Amendment; and
- 3) Zoning Ordinance and Development Standards Amendments.

In all the City's numerous staff reports, the three proposed CEQA projects and ISs are not clearly identified and listed in the same sentence or document as they are here. Therefore, decision makers and the community have no way to understand the breadth and complexity of the actions the City is taking or the actions' environmental impacts. Due to this confusing piecemealing of these related projects, not only is the public confused but the City is improperly segmenting the analysis into separate CEQA documents, which understates the related and cumulative impacts.

The two general plan amendment ISs' and especially the Zoning Ordinance and Development Standards Amendments (ZO IS) project descriptions are woefully inadequate. The ZO IS does not describe the actual voluminous project proposals being considered by the City but only includes a few general references to changes to development standards.

The three ISs do not include the required presentation or analysis of data or provide any evidence for their conclusions that there will be no significant impacts. As stated in my letter of January 5, 2016 and further detailed below, the ZO IS does not assess the possibility of increases in development, due to the proposed changes which would provide incentives to build new and expand existing multifamily residences under proposed mixed use regulations. These impacts could include increases in actual housing density and population, traffic congestion and parking demand (irrespective of statistical density upper limits found in the code), increases in permeable surfaces and subsequent polluted runoff, floodplain and aquatic resources impacts.

The three ISs should be retracted and the City should prepare an Environmental Impact Report that covers all three actions.

Segmentation

CEQA prohibits the segmentation of related projects into smaller pieces. A public agency may not divide a single project into smaller individual projects in order to avoid its responsibility to consider the environmental impacts of the project as a whole. *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171.

Here, even though the City is currently preparing two general plan amendment changes, which are related to development and density in the downtown and other areas throughout the City, ZO IS does not address these related projects, thus inappropriately segmenting or piecemealing consideration of all three related projects. All three projects should have been considered together in one CEQA document in order to provide decision makers and the public with a comprehensive view of the three projects' timing, relationship and total and cumulative impacts. This is not just a CEQA requirement; separating the three actions is confusing and makes no sense.

Cumulative Impacts

There are three ISs being considered right now by the City of Mill Valley. Two relate to General Plan amendments and one to zoning ordinance amendments. CEQA requires that agencies address the cumulative impacts of each project. But none of the three IS's includes a cumulative impacts analysis regarding the other projects considered by the City right now.

For example, the ZO IS should include an analysis of the incremental impacts of the zoning ordinance changes, combined with the impacts potentially caused by approving the Land Use Element Amendments and the Mobility Amendment changes.

For instance, the land use element designation amendments and the rezoning will both potentially increase development and population, thus leading to potential cumulative impacts on: public services, such as police and fire, and public infrastructure, such as floodplain management and sewage treatment. For instance, the mobility amendment changes will potentially conflict with the proposed mitigation measures identified in the ZO IS.

None of these potential cumulative impacts have been addressed.

Zoning Ordinance IS ("ZO IS") Procedural and General Inadequacies

Project Description

The Staff Reports for January 26 and February 9 state that the Zoning Ordinance changes include (but are not limited to) the following:

Re-zone the following parcels current zoned "Professional Administrative Office P-A" and 52 with the Land Use Designation of "Multi-family Residential2 MFR-2" to be zoned "Multi- 53 Family Residential -Parkway RM-P": 54 APN Address 55 028-213-03 288 Miller Avenue 56 028-213-04 292 Miller Avenue 57 028-213-05 298 Miller Avenue 58 028-213-25 310-314 Miller Avenue 59 028-213-31 320 Miller Avenue 60 028-213-41 306 Miller Avenue 61 028-213-42 300 Miller Avenue 62 028-213-43 316 Miller Avenue 63 028-222-30 295 Miller Avenue 64 028-222-61 305 Miller Avenue 65 028-222-70 15 Willow A venue 66 028-222-71 317-319 Miller Avenue 67 028-222-83 -- Miller A venue 68 4. Re-zone the following parcels current zoned "Professional-Administrative Office P-A" and 69 with the Land Use Designation of "Multi-Family Residential-2" to be zoned "Multi-Family 70 Residential- Downtown (RM-D)" to be consistent with their

General Plan Land Use 71 Designation: 72 73 74 75 APN 028-014-07 028-014-08 Address 34-36 Corte Madera Avenue 38 Corte Madera Avenue"

But the ZO IS Project Description does not mention, reference, or even contemplate these or the other numerous actions being proposed. These proposed project measures include but are not limited to: a) new FAR and setback bonuses for “design excellence”; b) new 250 sf. FAR bonuses for garage parking for multifamily development; c) potential reductions in outdoor space by allowable accessory buildings; d) reducing parking requirements for efficiency units and smaller multifamily units; e) encouraging lot assemblages; and f) new prohibitions on converting multifamily development to single family residences. Instead of describing the actual project, the ZO IS Project Description makes general claims that the project is for “adopting an ordinance revising Title 20 “Zoning” of the Municipal Code reflecting proposed changes to Development Standards....” Such a vague and incomplete project description violates CEQA’s requirements to provide a stable and specific project description.

This forces the reader to attempt to sift through the voluminous and numerous staff reports to gain this above project information. Thus, the ZO IS violates CEQA’s requirements by not referring to the location of the information and the reader is left with no way to discern what is being analyzed in the IS. This violation of this project description requirement is further demonstrated throughout the ZO IS; the ZO IS impacts discussion never actually discusses the project’s actual proposed changes to the Zoning Ordinance and Development Standards, rendering a reasonable environmental analysis impossible.

The City Cannot Skip Impact Analysis

In order to justify the sparse and inadequate project description and impact analyses, the ZO IS Project Description makes two claims that are neither supported by facts nor allowed for under CEQA.

First, the ZO IS claims the project “is carried over from the 2009-2014 Housing Element.” (ZO IS, Page 2.) But as stated in my previous letter, the 2013 Housing Element and EIR only provide general policy proposals, not the specific amendments to the zoning ordinance contemplated here. These are new amendments to the General Plan and the Zoning Ordinance and these amendments and their impacts must be described in the ZO IS.

Second, the 2013 EIR did not assess the impacts of these proposed changes despite CEQA requirements that second tier CEQA documents describe any environmental impacts that were not described in a first tier CEQA document. The IS must include reference the first tier EIR and evidence and analysis that the later project does not causes significant effects that were not examined in the EIR. (Pub. Res. Code § 21094(c); CEQA Guidelines §§15063(b), 15152(f). As shown below, the ZO IS does not do so.

Instead, the ZO IS simply makes unsupported conclusions that impacts are not significant, without citing any actual project, data, modeling, or even qualitative analysis regarding impacts. The ZO IS makes four claims why the City of Mill Valley can supposedly get away with no impact analysis.

Claim 1: The Zoning Ordinance amendments will have no significant impacts because the City has said so. In a January 26 memo, the City Attorney concludes that the General Plan Amendments will have no significant environmental impacts because “at this time there does not appear to be any substantial evidence that there will be significant impacts.”

The City Attorney's memo, however, does not cite any data or analysis or modeling to make this conclusion but simply says it appears there are no impacts. This is the type of baseless, arbitrary conclusion by local government officials that CEQA was enacted to counter.

Note: The City Attorney's memo also misstates the description of CEQA's standard of judicial review for Initial Studies. The actual standard is whether the petitioner has a *fair argument* that there is substantial evidence of significant impacts. This standard is far less favorable to the City than the substantial evidence standard incorrectly identified in the City Attorney's memo.

Claim 2: No supposed changes in density and new standards mean there will be no impacts.

The ZO IS and later, the Planning Director and the City Attorney, have claimed that because mixed use was previously allowed in commercial zones, that no new impacts would occur. The two memos also contend that providing for a generous FAR, relaxing parking, height and setback standards will provide the City with more regulatory authority to protect the environment. In addition to this being implausible and without either memo citing any studies or data to support their contentions, the memos are not convincing for several other reasons.

1. These conclusions are apparently based on the unsupported belief that the density allowed by the current zoning ordinance is the effective density. This is false because other provisions of the Zoning Ordinance which govern height, parking, and setbacks are the actual effective constraints on development in Mill Valley. These actual effective constraints are being loosened (and highly discretionary under "design excellence" provisions), thus, logically and in practice, these new relaxed standards will increase actual development and effective density.
2. FAR is essentially being increased by allowing for bonus lot coverage for garages and accessory structures, provisions that did not exist before. For instance, the figures on page 3 of the Staff Report are misleading as they don't take garage and accessory buildings and FAR bonus incentives into account. Further, these figures are completely theoretical and faulty because don't take current parking standards into account.

Even if density is not increased, the relaxation of current parking, height, and setback standards and FAR **development incentives** for garages and the *absolutely arbitrary* "design excellence" will allow for "by right" development for developers who meet the standards. Thus, the relaxations and incentives provide for broad increase in development potential over the current, much more difficult conditional use permit system. The ZO IS and the memos impermissibly dismiss these potential impacts out of hand and thus, do not assess the potential direct and indirect impacts mentioned below.

3. Finally, the City of Mill Valley is not being upfront with the citizens of Mill Valley regarding the potential for development and density that would happen with the General Plan and ZO Amendments. The actual stated goal of the General Housing Element is to provide additional housing to meet the City's Regional Housing Needs Assessment numbers

negotiated with the State Department of Housing and Community Development. For instance, the Housing Element Constraints Appendix *proposes* (but does not approve) general methods to remove and lessen those constraints in order to increase residential housing development; e.g. potentially changing parking and setback requirements and allowing more by right development. (HE Constraints, B-8).

The Housing Capacity Analysis Appendix mentions the parcels that could be the subject of new policies that increase development. (Page C-8 to C-20). However, there is no analysis in the 2013 EIR but the intent to increase development is clear.

This goal to increase population and development is plainly stated in the proposed amended ordinance:

" 20.24.005 Purpose and Intent [from Ex. D, Ordinance, Page 6.]

The multi-family residential zones are intended to create and maintain medium and higher density residential neighborhoods that blend a range of housing types with a mix of unit sizes with a limited mix of neighborhood-scale commercial, office, and institutional uses. The City's goals include preservation of the existing stock of rental housing in these areas and provision of opportunities for develop"

Claim 3: No changes in existing conditions from 2013 General Plan EIR.

The ZO IS states that "the environmental conditions remain the same as considered under the MV2040 General Plan and FEIR, and are not altered by the Proposed Standards and Guidelines." (ZO IS, page 11).

1. The claim that environmental conditions have not changed in the 4 years since the EIR was actually drafted is not supported by any evidence. Various studies that have been prepared by the City after that EIR was drafted were not cited or considered.
2. The claim that the conditions were "not altered" is simply a baseless conclusion and defeats the entire purpose of CEQA. The CEQA process is, in fact, to determine if the proposed action will alter or cause environmental impacts to the existing conditions. A blanket statement that there are no impacts simply begs the questions and is a red flag for a dearth of evidence to support a conclusion of no impacts.
3. The claim that conditions were not altered is illogical because no actual setback, parking, height, FAR, garage, accessory standards were considered.

Claim 4: Site Specific CEQA analysis will be done later. This contention was addressed in my earlier letter. There is no support in CEQA for this contention that CEQA analysis for foreseeable impacts can be deferred; appellate court cases specifically prohibit such an approach.

Further, the 2013 General Plan and EIR specifically contradict the claim that further CEQA analysis will even be done. Page B-3 of the 2013 General Plan EIR states that there will be no future CEQA analysis because many of these projects will be exempt as infill.

The City's approach is a transparent attempt at playing a shell game. The EIR contains no actual development standard proposals and no impact assessment and defers site specific CEQA review. The ZO IS (and Land Use Amendment IS) claims that the 2013 EIR covers the project and/or that CEQA analysis will be done later. Then the City – as it promises to do - will exempt the projects from CEQA review.

Impact Specific Inadequacies in the ZO IS Analysis

Air Quality

The ZO IS mentions criteria pollutants' impacts to the Bay Area air shed (Page 5) but does not adequately discuss the potential for an increase in local pollutants and their local impacts, such as an increase in toxic air pollutants caused by an increase in traffic and congestion due to an increase in population and development.

Biological Resources

The ZO IS, while acknowledging the existence of protected species, does not assess the possible impacts from erosion, siltation and sedimentation on these species. (Page 6.) Specifically, the IS does not discuss the potential impacts to aquatic resources due to potential development in the watershed of Mill Valley's creeks. The IS does not discuss the potential for these Amendments to modify habitat and potentially affect listed species in Mill Valley's creeks, including Coho Salmon and Steelhead.

Hydrology and Water Quality

Potential project impacts that could increase polluted runoff and exacerbate flooding are dismissed with the meaningless assurance that there will be no impacts due to City policies to promote impervious surfaces and improve water quality. (Page 10.) There is, however, no identification of the potential project impacts or the policies themselves. How can the reader determine if the policies will be sufficient if the impacts are not identified? For instance, there is no data or modeling regarding any potential increased runoff or flows (including flood studies done by the City, e.g. City of Mill Valley, 2013 *Riverine Flood Study*) and no analysis as to the current effectiveness of the supposed mitigating policies.

Land Use

The ZO IS does include any discussion or even significance criteria for the basic land use impact of changes to a City's General Plan and zoning ordinance; whether the changes will, in fact affect or conflict with existing land use and whether they will change the character of neighborhoods and communities.

Public Services

This section completely ignores the secondary impacts to public services from potential population growth and development. The ZO IS claims that because no new facilities are being built there will be

no impacts. The potential indirect impacts of new and/or relaxed development standards, however is more residents and increased need for new public services, such as police, fire and schools.

Public Infrastructure

This section completely ignores the secondary impacts to public infrastructure from potential population growth and development. The ZO IS claims that because no new facilities are being built there will be no impacts. (Page 15.) The potential impacts of new and/or relaxed development standards, however are the need for new public infrastructure, including flood protection structures, water storage, and sewage treatment facilities.

Recreation

This section completely ignores the secondary impacts to recreation from potential population growth. The ZO IS claims that because no new recreational facilities are being built there will be no impacts. (Page 16.) The potential impacts of new and/or relaxed development standards however are population growth and the need for new recreational facilities.

Transportation

This section while admitting that the Development Standards parking requirements will be relaxed provides no support for its conclusions that these new standards will not increase congestion and cause impacts to circulation. (Page 16, 17.) The ZO IS relies on pie-in-the-sky wishes that Marin County residents will, if faced with less parking and traffic congestion will simply take mass transit, which is, at present and for the foreseeable future, extremely limited (Page 12, 17; City of Mill Valley, 2007 *Downtown Parking Study*.) No data, study, modeling or even qualitative support is provided for this contention.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Yates", with a horizontal line extending to the right.

Edward Yates