

## Gautho, Julia

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**From:** Barbara Davies <bdavies@merlonegeier.com>  
**Sent:** Thursday, August 28, 2025 2:11 PM  
**To:** Herlihy, Katie (kherlihy@ci.capitola.ca.us)  
**Cc:** Gautho, Julia; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us); ephillips@bwsllaw.com; gcolli@perkinscoie.com; Jamas Gwilliam; Scott McPherson; Scott Belz  
**Subject:** [PDF] Capitola Mall, 828 City Council Item No. 9.c  
**Attachments:** City of Capitola 08-28-25.pdf

Katie,

Please see attached letter send on behalf of Scott McPherson regarding **City Council Item No. 9.c.**

Thank you,

Barbara

Barbara A. Davies  
Executive Assistant  
Office Manager

**MerloneGeier**  
**Partners**

4365 Executive Drive  
Suite 1400  
San Diego, CA 92121

**Tel:** 858 / 259 / 9909  
**Dir:** 858 / 259 / 8126

August 27, 2025

BY ELECTRONIC MAIL

Katie Herlihy, Community and Economic Development Director  
City of Capitola  
420 Capitola Ave,  
Capitola, CA 95010

kherlihy@ci.capitola.ca.us

**Re: August 28, 2025, City Council Item No. 9.c; Capitola Mall Update and Amendment to Agreement with Ben Noble Planning – Merlone Geier Partners' Comments**

Dear Ms. Herlihy:

As you know, Merlone Geier Partners ("MGP") is the owner of the majority of the Capitola Mall site including specifically Assessor's Parcel Numbers 034-261-15; -37; -38; -39; and -40 (the "Mall"). Accordingly, the above-referenced agenda item bears directly on MGP's property and our ability to redevelop the site in accordance with the City's Housing Element. The purpose of this letter is to express our support for what staff refers to as "Option 2 – Expedited Objective Standards." Under this option, and as explained below, the Council would adopt zoning amendments by the end of the year. This timing is not *expedited* by any means; rather, under State law, conforming zoning amendments should have been adopted nearly one year ago, and the Housing Element states that the amendments will be adopted by the end of 2025. Continued delay in adopting zoning amendments required by State law, mandated in the Housing Element, and now exempt from review under the California Environmental Quality Act ("CEQA"), is neither permissible nor warranted.

***Conforming Zoning Amendments are Mandatory***

State law mandates that the City adopt zoning amendments described in the Housing Element relating to the Mall. Specifically, where a housing element requires zoning amendments to facilitate the projected housing production on a site within the city or county's housing sites inventory, those amendments "shall be completed." Further, the amendments must be adopted by outside dates established based on when the city or county adopts a certified housing element. Refer to our letter of September 5, 2024, included here as Attachment 1. The reason for these rules is obvious; failure to require timely adoption of zoning amendments would undermine the purpose of the State's Regional Housing Needs Allocation process and the related laws designed to ensure local agencies permit their fair share of housing. Here, little over five years remain in the current housing cycle, and the City has yet to adopt the required zoning.

The Housing Element includes mandatory zoning amendments that are no longer subject to debate or reconsideration. Specifically, the Housing Element commits the City to adopting the following Zoning Code amendments "by the end of 2025":

- (i) Establish the Capitola Mall as the area between Clares Street, 41<sup>st</sup> Avenue and Capitola Road.
- (ii) Allow for building height up to 75 feet for Mall Redevelopment.
- (iii) Define “Mall Redevelopment” to mean a mix of uses that includes residential and retail/commercial components.
- (iv) Exclude parking garages from the project FAR calculations.
- (v) Adopt objective development standards to facilitate mall redevelopment.

(See Housing Element, CH.5: Housing Plan P. 5-11.) These amendments are mandatory because they underpin the City’s assumptions it used to justify realistic development potential for housing units on the Mall property during the 2023-2031 housing cycle.

***There is no Basis for Creating Extraneous Bureaucratic Processes Around Mandatory Zoning Amendments***

The State’s housing laws are designed to thwart the types of unnecessary time and delay that are reflected in the descriptions of Options 1 and 3. As noted above and in our prior correspondence, the City is subject to a one-year deadline for adopting zoning amendments to implement the Housing Element. Options 1 and 3 unambiguously ignore that deadline and the 2025 date the City self-imposed in the Housing Element.

The mandatory zoning amendments are straightforward and have already undergone extensive review by the public, the City Council, and the California Department of Housing and Community Development. Options 1 and 2 are the same, except for the fact that Option 1 includes “three stakeholder meetings, one community workshop, and interim presentations to the Planning Commission and City Council” all before a public review draft is published. All this review would cover zoning amendments that were evaluated in the Housing Element, including, but not limited to, the increase in building heights, allowances for horizontal mixed-use projects, and changes to the FAR calculation. The Housing Element and its various drafts were presented at community workshops, joint study sessions, and Planning Commission and City Council hearings. Public feedback is already reflected in the adopted Housing Element.

There will be ample opportunity for stakeholder participation around the City’s adoption of the mandatory zoning amendments. While the City is compelled under State law to adopt the zoning amendments, it must still do so in the form of an ordinance, which triggers standard notice and hearing procedures. The zoning amendments will be subject to public review and comment and must be approved only after the requisite City Council hearings, as would be the case with any other Municipal Code amendment. As such, Option 2 is not “expedited,” but it would instead be the least violative approach to compliance with State law and in a manner that follows typical code amendment processes.

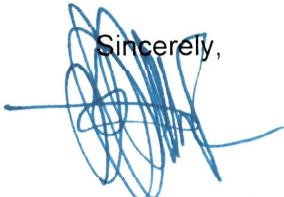
***There is Sufficient Time for the City to Adopt the Mandatory Zoning Amendments by the End of 2025***

It is the City's obligation to timely adopt the mandatory zoning amendments. These provisions do not require further study or debate given that they are prescribed by the Housing Element. Further, the City's adoption of the amendments is exempt from CEQA under SB 131, since the amendments are to implement zoning changes contemplated by the Housing Element. (Pub. Resources Code, § 21080.085(a) ("This division does not apply to a rezoning that implements the schedule of actions contained in an approved housing element pursuant to subdivision (c) of Section 65583 of the Government Code.") Given the finite nature of the amendments, the fact they are mandatory, and the CEQA exemption, we see no legitimate reason as to why the amendments should be delayed any longer.

***MGP Remains Willing to Work with the City***

Despite our concern with the delay in adoption of the zoning amendments, MGP remains committed to working with the City toward the redevelopment of the Mall. That said, State law imposes mandates around the adoption of zoning amendments that apply here. These rules and other mandates, including SB 330 and the Density Bonus Law, will inform any future applications as a matter of State law. We continue to invest time and resources into the feasibility and scale of potential project attributes such as a hotel and affordable housing; however, our willingness to consider these project components and the timing of any potential applications depends on the City's adoption of timely and compliant zoning amendments.

Sincerely,



Scott A. McPherson  
Managing Partner

cc: Jamie Goldstein, City Manager  
Eric Phillips, Burke, Williams & Sorensen LLP

**Exhibit A**

September 5, 2024, Letter

Perkins Coie LLP  
505 Howard Street  
Suite 1000  
San Francisco, CA 94105-3204  
T: +1.415.344.7000  
F: +1.415.344.7050  
PerkinsCoie.com

**MATTHEW S. GRAY**  
MGray@perkinscoie.com  
D: +1.415.344.7082

September 5, 2024

Sean Sesanto  
Associate Planner  
City of Capitola  
420 Capitola Avenue  
Capitola, California 95010  
ssesanto@ci.capitola.ca.us

**Re: Re: City of Capitola 2024-2031 Housing Element / Proposed Zoning Amendments**

Mr. Sesanto:

We write on behalf of Merlone Geier Partners (“MGP”), the owner of a portion of the Capitola Mall property (the “Property”) in the City of Capitola (“City”). MGP has closely monitored the 2024-2031 Housing Element (“Housing Element”) through its various drafts and related communications from the Department of Housing and Community Development (“HCD”). We noted in prior correspondence that redevelopment of the Property with a mix of commercial and residential uses as contemplated in the Housing Element will require amendments to site development controls that would otherwise render such development impracticable.<sup>1</sup> The purpose of this letter is to express our concern that the City is improperly delaying necessary zoning amendments.

***The Housing Element Requires Zoning Amendments to Achieve Assumed Housing Production During the Sixth Cycle***

The Property is the most important site in the City for achieving Regional Housing Needs Assessment (“RHNA”) requirements as part of the Sixth Cycle. The City’s overall RHNA allocation is 1,336 units. The Housing Element assumes a realistic development capacity for the Property of as many as 1,067 units, including 160 low-income units and 54 moderate-income units. (See Housing Element Table 4-8.) The Housing Element acknowledges that development capacity assumptions for the Property are predicated on development density assumptions of 48-units per acre, which will require modifications to zoning controls; namely an increase in building heights up to 75 feet and a maximum building floor area ratio (FAR) of 2.0. (See Housing

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<sup>1</sup> Refer to our letters of August 1, 2023, and November 8, 2023, and subsequent e-mail correspondence with Community Development staff.

Element, Program 1.7; see also p. 4-44 (“The proposed 48 dwelling units per acre can be achieved by permitting building heights up to 75 feet on the Capitola Mall Parcels.”).) The City proposes to address the height and FAR modifications through amendments to Section 17.88 of the City Municipal Code (“Code”). (*Ibid.*)

### ***The City Proposes to Delay Amendments to Section 17.88 Until 2025***

Even though amendments to Code Section 17.88 are critical to redevelopment of the Property at the densities assumed in the Housing Element, the City proposes to defer those amendments to a second tranche of zoning actions sometime in 2025. The Community Development Department’s website states:

On August 15, 2024, the Planning Commission directed staff not to include the zone changes and zoning code amendments of multifamily zones with the 2024 amendments. In 2025, the City will consider amendments to Residential Multifamily (RM) subzones (Capitola Municipal Code Section 17.16 Residential Zoning Districts) and the rezoning of the existing RM subzones. The City will also review amendments to Incentives for Community Benefits (Chapter 17.88).<sup>2</sup>

The Planning Commission is scheduled to consider amendments to the Code to address certain Housing Element requirements in a series of meetings scheduled for September 5th and October 10th, with City Council hearings then scheduled for October 10<sup>th</sup> and October 24<sup>th</sup>. As of this time, there are no draft amendments to Code Section 17.88 published online, and there is similarly no published schedule as to when such amendments will be made available for public review or subsequent action by the Planning Commission and City Council.

### ***The Housing Element Law Requires the City to Adopt Zoning Amendments to Implement the Housing Element in 2024***

The timing for adoption of zoning amendments to implement the Housing Element is established by Government Code Section 65583. Where a given jurisdiction timely adopts its housing element, the jurisdiction has up to three years to adopt required zoning amendments. (Govt. Code, § 65583(c).) However, when a jurisdiction fails to meet the deadline for adoption of a certified housing element, conforming zoning amendments must be adopted within one year of the statutory deadline for adoption of the housing element. (Govt. Code, § 65583(c)(1)(A).)

The City is subject to the one-year limit on Section 65583(c)(1)(A) because it failed to adopt a housing element that HCD deemed to be in substantial compliance with the Housing Element Law within 120 days of the December 15, 2023 statutory deadline. Thus, the City must adopt not just some, but all zoning updates necessary to effectuate the Housing Element as applied to parcels within the sites inventory by December 15, 2024. While the Property will not be rezoned per se, it is unambiguous from the Housing Element that amendments to Code Section 17.88—including amendments to site controls

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<sup>2</sup> See <https://www.cityofcapitola.org/communitydevelopment/page/public-review-drafts-zoning-code-updates#:~:text=The%20City%20is%20currently%20working,%2C%202024%2C%20at%206%20pm.>



(height and FAR) that Housing Element notes will apply only to the Property-- are essential to realizing projected densities.

***We Urge the City to Timely Adopt Amendments to Section 17.88***

MGP respectfully urges the City to adopt the amendments to Section 17.88 required in the Housing Element on or before the December 15, 2024 deadline. The necessary amendments to Section 17.88 are already described in detail in the Housing Element. There is no need for further study or analysis of the height or FAR increases, as these changes have already been studied and are mandated in the Housing Element.<sup>3</sup> Indeed, the Housing Element states that the City will adopt the following Code amendments “by the end of 2024”:

- (i) Establish the Capitola Mall as the area between Clares Street, 41st Avenue and Capitola Road.
- (ii) Allow for building height up to 75 feet for Mall Redevelopment.
- (iii) Define “Mall Redevelopment” to mean a mix of uses that includes residential and retail/commercial components.
- (iv) Exclude parking garages from the project FAR calculations.
- (v) Adopt objective development standards to facilitate mall redevelopment.

The City is nearly two years behind in adopting a substantially compliant Housing Element, and our concern is that delaying the Code amendments to enable the redevelopment of the Property will only further jeopardize the City’s ability to make meaningful progress towards its RHNA allocation during the Sixth Cycle. The Housing Element directions on amendments to Code Section 17.88 are sufficiently clear for staff to draft and then present those amendments for approval within the required timeframe under state law.

Further, we note that an extension of time to accomplish rezonings would be inconsistent with the Housing Element Law. While a jurisdiction may, under limited circumstances, delay required rezonings, such delays are permissible only if the jurisdiction completes rezonings sufficient to accommodate at least 75% of the units for low and very-low income households *and* the legislative body can justify, based on substantial evidence, that at least one of three scenarios exist that prevent the jurisdiction from timely completing the rezonings. (Cal. Govt. Code, § 65583(f).) Here, the City’s RHNA allocation is for 712 low and very-low income units. Per the Housing Element, the City will rely on properties in the RM zones to deliver 64 units, and properties on the Capitola Mall site to deliver 266 units, meaning nearly 47% of the total for lower income units. Yet, the City proposes to delay updates to Section 17.16 (pertaining to RM zones) and Section 17.88 affecting the Capitola Mall site. As noted above, the Housing Element assumes development capacities of 48 units per acre on the Capitola Mall site, and that assumption depends on the proposed increases to building height and FAR to be facilitated through amendments to Section 17.88. There is no evidentiary basis in the Housing Element or otherwise to conclude that the City can satisfy the 75% threshold in Government Code Section 65583(f)

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<sup>3</sup> Note page 3-13 of the Housing Element (“A recent feasibility analysis, including a pro forma, was conducted for the Capitola Mall. The study found that adding incentives (higher density, FAR and height) increased residual land value. The study also found that these changes would enhance project feasibility, particularly for multi-family development.”)



September 5, 2024

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without the necessary changes to the site controls for Capitola Mall that the City opted to address the “incentive” scheme in Section 17.88 rather than in the property’s underlying zoning, particularly when the City is also delaying the RM zoning amendments.

Sincerely,



Matthew S. Gray