





San Mateo, CA 94403-3404

December 6, 2022

VIA ELECTRONIC MAIL

Mayor Betsy Nash And Members of the City Council City of Menlo Park 701 Laurel Street Menlo Park, CA 94025

> City of Menlo Park's Sixth Housing Element Site Inventory RE:

Dear Mayor Nash and Members of the City Council:

In advance of the City Council's upcoming hearing to consider the Sixth Housing Element ("Housing Element"), we are writing on behalf of the David D. Bohannon Organization ("DDBO") to follow up on our letter of November 11, 2022 (attached) that requested the City of Menlo Park ("City") include our property located at 3750 Haven Avenue (APN 055-231-060) ("Property") in the Housing Element's inventory of housing opportunity sites (the "Site Inventory").

As we have explained, there are important reasons to include the Property in the Site Inventory: 1) serious interest to develop the Property into much-needed, high-density housing; 2) suitability as a nonvacant site for redevelopment; 3) realistic capacity to yield approximately 442 residential units; and 4) ability to help the City achieve substantial compliance with State Housing Element Law. Moreover, we also request that the City include the contiguous parcels located in Bohannon Park (as shown on the attached map) that DDBO controls and which could be assembled and developed into a viable, multifamily village if the City creates the necessary densities, such as those established for the ConnectMenlo General Plan ("ConnectMenlo"). The inclusion of these sites will serve to materially help the City make the case that its Site Inventory contains actual land suitable and available for residential development, which will bolster the legitimacy of the City's Site Inventory and facilitate compliance with State Housing Element Law. We understand that staff is not adding to the Site Inventory without direction from the City Council. We ask for this direction tonight.

Housing Element Deficiencies

We are writing to amplify the point made in our November 11th letter as to the deficiencies in the Housing Element identified by the Department of Housing and Community Development ("HCD"). The City is facing unprecedented consequences for potential Housing Element noncompliance. HCD has raised serious realistic capacity concerns that require a major overhaul of the document to achieve compliance with State Housing Element Law. Specifically, the City must revisit its housing inventory to ensure that, not only can the City achieve its baseline RHNA obligation (i.e. 2,946 units), but its 30% percent buffer expectation (i.e. 884 units), as well.

As you know, HCD's October 21, 2022 letter ("HCD Letter") identifies the need for further analysis regarding suitability of nonvacant sites. Specifically, the HCD Letter states, "[t]he element must include an analysis demonstrating **the potential for redevelopment** of nonvacant sites." (HCD Letter, page 4.) (emphasis added.) HCD goes on to say that:

While the element includes a detailed description of existing uses, it must also demonstrate the potential for additional development in the planning period... the element must analyze the extent that existing uses may impede additional residential development. For example, the element includes sites identified as religious institutions, a post office, parking lots, a supermarket and office buildings...the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period...[a]bsent findings (e.g. adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the regional housing need allocation.

(HCD Letter, page 4.)

Simply put, we believe the City has a serious problem making such findings based on the necessary substantial evidence. This Summer, DDBO wrote two letters to the City stating our willingness to consider converting certain properties near Marsh Rd/HWY 101 to residential uses if the City increased the 30 du/acre base to a higher, more viable density, such as that in the ConnectMenlo area, where, not coincidentally, actual multifamily projects of higher density currently are being developed. In the June 6, 2022 Staff Report, staff recommended to the City Council that, not only should you keep these sites on the Site Inventory, but you also should increase the densities. However, the City Council ignored this recommendation and **removed the sites** in the face of clear demonstration of our willingness to redevelop the sites at more viable densities. Now, the Site Inventory is shortchanged 102 potential units at minimum or hundreds of units at a maximum.

Ref.	Site Name or General Ref.	Acreage ¹	Potential Density ²	Potential Units	Considerations for the Site Inventory	Potential Options (Bold Text = Staff Recommendation)
A	Marsh Rd. and Bohannon Dr. Sites Site #65 (1000 Marsh Rd.) Site #66 (3885 Bohannon Dr.) Site #73 (4065 Campbell Ave.)	Site #65 2.5 acres (1-acre carve out) Site #66 5 acres (1-acre carve out) Site #73 1.4 acres	Site #65 30 du/ac Base 100 du/ac AHO Bonus Site #66 30 du/ac Base 100 du/ac AHO Bonus Site #73 30 du/ac Base 100 du/ac AHO Bonus	Site #65 30 units Base 100 units AHO Bonus Site #66 30 units Base 100 units AHO Bonus Site #73 42 units Base 140 units AHO Bonus	Why Remove Property owner stated disinterest in housing development unless higher densities considered Why Keep Limited sites in District 2 and desire to spread housing opportunity throughout the city	Keep on opportunity sites list and increase densities on sites Keep on opportunities sites list with AHO Bonus Remove from opportunity site list

Conversely, at the same June 6, 2022 Special Meeting, the City Council was informed that the property owners of the Sharon Heights Office Parks had expressed disinterest in housing development on their Sand Hill Road sites. Staff recommended that the City Council remove these sites from the Site Inventory in light of this disinterest. Nevertheless, despite clear evidence of a property owner's complete lack of intent to develop its sites, the City Council directed staff to **keep these sites** on the Site Inventory.

Ref.	Site Name or General Ref.	Acreage ³	Potential Density ⁴	Potential Units	Considerations for the Site Inventory	Potential Options (Bold Text = Staff Recommendation)
В	Sharon Heights Office Parks Site #4 (2480 Sand Hill Rd.) Site #49 (2700 Sand Hill Rd.)	Site #4 6.8 acres (2-acre carve out) Site #49 10.9 acres (2-acre carve out)	Site #4 30 du/ac Base 100 du/ac AHO Bonus Site #49 30 du/ac Base 100 du/ac AHO Bonus	Site #4 60 units Base 200 units AHO Bonus Site #49 60 units Base 200 units AHO Bonus	Why Remove Property owner stated disinterest in housing development during the planning period and current investment/improvemen ts at the larger site. Why Keep Plans to use site for housing can change and this would allow more options/potential Limited sites in District 5 and desire to spread housing opportunity throughout the city	Remove from opportunity sites list Keep on opportunities sites list with AHO Bonus

These are just two examples of the City's problematic choices with respect to the Site Inventory analysis. Moreover, a review of public comments submitted on the Housing Element identified numerous other instances where commenters have called into question the viability of opportunity sites. Staff recommended removing these sites from the Site Inventory, as well, yet nearly all of them have remained, despite their questionable suitability. Now, it would appear that, if these sites are rejected by HCD as being infeasible for the reasons the commenters raise, then the buffer being relied upon in the Housing Element would be eliminated. This background information **highlights the City's serious problems** associated with meeting HCD's mandate and complying with

State Housing Element Law. Consequently, it necessitates the City's need to include additional, more realistic sites, as discussed below.

Inclusion of 3750 Haven and Bohannon Park Properties

In light of the foregoing, DDBO again stresses the importance of the City adding the Property to the Site Inventory so that it can point to its high likelihood of redevelopment to housing during the 6th RHNA cycle. Frankly, the City does not have many of these obvious, suitable redevelopment opportunities on which to rely. Instead, it is asking HCD and the public to believe that property owners will develop "carve outs" of their sites and build housing in parking lots at remarkably low density. These tenuous assumptions accompanied by the lack of real evidence put the City's Housing Element at extreme risk. Therefore, we request that the City Council give serious consideration to the Property, **even if it is located in District 1**, for the reasons enumerated in our prior letter and to avoid the consequences of Housing Element non-compliance.

Similarly, we are making a new request that the City include certain properties in Bohannon Park that DDBO controls and could consolidate for redevelopment to multifamily housing. These sites are highlighted on the attached map and include:

- 120, 140, 160 Scott Place (APN 055-253-220)
- 4065 Campbell Avenue (APN 055-251-270)
- 4045-4055 Campbell Avenue (APN 055-251-260)
- 3885 Bohannon Drive (APN 055-251-220)
- 990 Marsh Road (APN 055-251-070)
- 1000 Marsh Road (APN 055-251-340)
- 1100 Marsh Road (APN 055-251-320)
- 1110 Marsh Road (APN 055-251-250)
- 1020, 1040, 1060, 1080 Marsh Road (APN 055-251-350)

The current Site Inventory includes sites #67, #68, #69, #70, #71, and #72 (also noted on the attached map) in Bohannon Park, across the street from our sites, as Non-Residential Parcels with Complete Redevelopment. The Housing Element assumes that redevelopment on these sites could be 100 percent residential or mixed use, much like several projects in the Bayfront area. (Housing Element, page 7-33.) Specifically, the Housing Element calls out the office sites on Bohannon Drive and Campbell Avenue because new residential allowances would be similar to ConnectMenlo's R-MU zoning designation, which allows up to 100 du/ac at the bonus level, which the City sees as a "good indicator that higher-density housing could be developed in this area and that there is a market for such use." (Housing Element, page 7-34.) On this we can agree; however, our omitted Bohannon Park sites enjoy even more likelihood of redevelopment because of our common ownership and ability to consolidate parcels into a viable, roughly 25+-acre redevelopment opportunity that could produce hundreds of (or possibly over a thousand) residential units. By including our Bohannon Park properties in the Site

Inventory, the City can make the "Potential Findings for Non-Residential Parcels with Complete Redevelopment," especially the prong that says "[s]ome controlling landowners are considering a sale, change of use, or change of locations"—especially if the City intends to self-certify. (Id.) Therefore, we respectfully request that the City include the aforementioned sites in the Site Inventory for the next draft of the Housing Element.

Conclusion

We are requesting that the City Council direct staff to include these properties in the Site Inventory because of our genuine interest in redeveloping the sites and helping the City achieve its RHNA obligations. As we have stated before, we would like to be part of the solution and are offering suitable and realistic opportunities for the City to get credit for real—not illusory—housing units. We hope that the City appreciates the seriousness of this moment. As you know, there are many State Housing Law "tools in the toolbox" that developers could invoke to override local control if the City Council misses the mark with HCD. We hope that the City Council recognizes our request as an opportunity to help avoid this outcome.

Thank you for your consideration. If you need any additional information or have any questions related to this request, please do not hesitate to contact me at david.bohannon@ddbo.com or (650) 345-8222.

Sincerely,

David D. Bohannon II

President & CEO

Enclosures

cc: Justin Murphy, City Manager

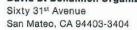
Mary Wagner, Office of the City Attorney

Deanna Chow, Assistant Community Development Director

Tom Smith, Acting Principal Planner

Calvin Chan, Senior Planner







November 11, 2022

BOHANNON...

Via E-mail dmchow@menlopark.org, jicmurphy@menlopark.org, ndoherty@bwslaw.com

Deanna Chow, Assistant Director of Community Development Justin Murphy, City Manger Nira Doherty, City Attorney City of Menlo Park 701 Laurel Street Menlo Park, CA 94025

> Re: Request to Include 3750 Haven in the City of Menlo Park's Sixth Housing **Element Site Inventory**

Dear Ms. Chow, Mr. Murphy, and Ms. Doherty,

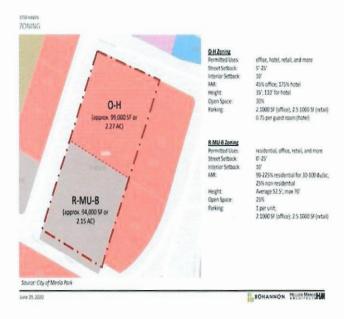
We thank you for your efforts on the City of Menlo Park's Sixth Housing Element ("Housing Element"). The purpose of this letter is to respectfully request that 3750 Haven Avenue (APN: 055-231-060) ("Property") be included in the Housing Element inventory of housing opportunity sites (the "Site Inventory"). As explained below, there are compelling reasons to include the Property in the Site Inventory, including but not limited to, feasibility, market demand and owner and developer interest in developing the Property into a high-density residential property.

As you may know, David D. Bohannon Organization ("DDBO") has engaged Greystar as a consultant for the purposes of redeveloping this property. Greystar has successfully entitled four projects in the City, most notably, the Menlo Portal and Menlo Uptown mixed use projects in the Bayfront Area of the City. DDBO and Greystar consider the City and its staff valued partners in the pursuit of well-designed residential projects and in the City's commitment to multifamily projects with affordable components.

We understand that the City is in the process of revising its Draft Housing Element in response to comments from the Department of Housing and Community Development ("HCD") issued on October 21, 2022 and will be promulgating a Final EIR for the Draft Housing Element prior to the City Council's consideration of the revised Housing Element. Given this timing and opportunity for further revision, DDBO respectfully requests that the Property be included as an opportunity site in the next Draft Housing Element and Final EIR in order to assist the City in making the revisions requested by HCD.

I. Introduction and Background

The Property is located in the Bayfront Area of the City. The Property has split zoning—in both the zoning code and the general plan, ConnectMenlo, the Property has two separate zoning designations even though it consists of only one parcel. The land use designation is R-MU-B on approximately 2.15 acres of the Site but is O-H on the other 2.27 acres of the Site.



The R-MU-B zoning provides for a maximum bonus density of 100 du/ac.¹ Although the R-MU-B portion of the Property is expressly zoned for residential development, the City did not include the Property's APN in the Site Inventory of the Draft Housing Element submitted to HCD on July 25, 2022.² The residential potential on just the R-MU-B portion of the Property is 227 units. However, we urge the City to include residential development across the entirety of the Property to allow a total of 442 units, as discussed further below.

II. Request for Inclusion in Housing Element Update

On October 21, 2022, HCD sent the City a letter confirming that the Draft Housing Element was not yet in substantial compliance with California housing element laws.³ The HCD letter stated that "revisions [to the Housing Element] will be necessary to comply with State Housing Element Law."⁴ Among other requested revisions, HCD identified the need for

¹ See Menlo Park Municipal Code § 16.45.050 ("Development regulations."); *id.* at § 16.45.060 ("Bonus level development.").

² Draft Housing Element, Figure 7-1 and Appendix 7-1.

³ Cal. Gov. Code §§ 65580 - 65589.11.

⁴ Letter from Senior Program Manager Paul McDougall to Deanna Chow re *City of Menlo Park's 6th Cycle* (2023-2031) Draft Housing Element, October 21, 2022 [hereinafter "HCD Letter"].

further analysis regarding suitability of nonvacant sites and local government constraints on housing development.⁵ Given that the City will be soon revising its Draft Housing Element according to HCD's comments, we respectfully request that the City add the Property to the Site Inventory for the reasons enumerated below.

a. Adding the Property to the Housing Element Site Inventory would demonstrate that the City has additional capacity to meet RHNA targets.

The Draft Housing Element identifies sufficient sites to develop units in surplus of the City's Sixth Cycle Regional Housing Needs Allocation ("RHNA"). The City's Housing Element demonstrates that it will exceed both its RHNA (2,946 units) and its RHNA with a 30 percent buffer (3,830 units) by accommodating for a total of 6,503 units.⁶

Although the Draft Housing Element did not identify a shortfall of available sites, including the Property can only bolster the City's findings that it has identified sufficient cites to meet its RHNA mandate. Adding the Property to the Site Inventory would demonstrate the City's ability to actually provide for 6,945 units. Also, since redevelopment at the Property will require compliance with the City's inclusionary housing requirements, the Property would also allow the City to show that it can provide more below market rate ("BMR") units. Thus, adding this Property to the Site Inventory would further support the City's efforts to provide additional opportunities for moderate and lower income housing even further beyond the 30 percent buffer.

b. Adding the Property to the Site Inventory would assist the City in addressing some of the comments identified in the HCD Letter.

The HCD Letter addresses several areas where the Draft Housing Element requires additional analysis. Including this Property in the Site Inventory would address some of HCD's comments, at least with respect to the Property.

<u>Suitability of Nonvacant Sites</u>: First, the HCD Letter notes that the Draft Housing Element requires more analysis regarding the "inventory of land suitable and available for residential development" and the "suitability of nonvacant sites":

While the element includes a detailed description of existing uses, it must also demonstrate the potential for additional development in the planning period... the element must analyze the extent that existing uses may impede

⁵ HCD Letter, at pp. 6, 8-9.

⁶ Draft Housing Element, at pp. 7-2, 7-22.

⁷ Although the "default density" assumed in the Draft Housing Element is 30 du/ac, the City can demonstrate that this Property is likely to accommodate 442 units as a result of DDBO and Greystar's intent to redevelop. See Draft Housing Element, at 7-6 (discussing the default density).

additional residential development... [t]he element should describe how residential development is likely to occur on sites including an office building built in 2013, as well as a supermarket, and an operating post office.⁸

Whereas some of the sites included in the Site Inventory have a low likelihood of redevelopment, such as those referenced in the text cited above, DDBO and Greystar's stated intent, combined with a strong record of past entitlements in this jurisdiction, demonstrate that the Property has a very high likelihood of redevelopment for housing during the 6th RHNA cycle. DDBO and Greystar's history of development in the area and this letter itself are reliable evidence of that potential for residential development at this Property during the planning period.

HCD states that, in order to demonstrate the appropriateness of the zoning to accommodate housing: "Information gathered from local developers on densities ideal for housing development in the community and examples of recent residential projects that provide housing for lower income households is helpful in establishing the appropriateness of the zone." Given Greystar's history of nearby projects, the City may conclude that the Property is appropriate for housing at the maximum density.

Affirmatively Furthering Fair Housing (AFFH) and Identified Sites: Second, the HCD Letter notes that the Draft Housing Element requires more analysis regarding "Affirmatively Furthering Fair Housing (AFFH) and Identified Sites": "While the element includes a general summary of fair housing related to the sites inventory, it must analyze how the identified sites contribute to or mitigate fair housing issues." There are two ways in which adding the Property to the Site Inventory would bolster City findings that its Housing Element adheres to AFFH obligations.

First, any redevelopment of the Property would provide at least 15 percent affordable housing units since it is subject to the City's Inclusionary Housing requirements, this Site would mitigate fair housing issues by providing the requisite number of BMR units. Through compliance with these requirements, redevelopment of the Site would provide place-based community revitalization to the benefit of future inhabitants and local residents in the vicinity of the Project.

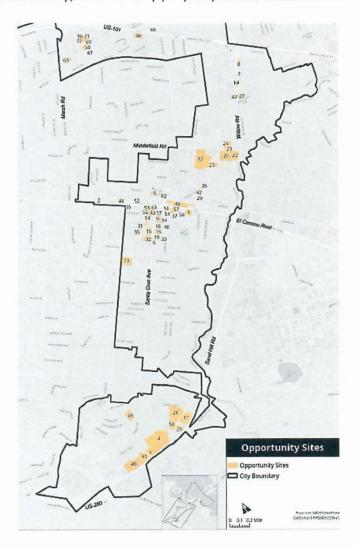
The Property would also greatly expand the geographical reach of the Site Inventory. AB 686 requires that, for housing elements due on or after January 1, 2021, sites must be identified

⁸ Id at 6

⁹ HCD Memorandum re *Housing Element Site Inventory Guidebook Government Code Section 65583.2*, June 10, 2020, at p. 14, https://www.hcd.ca.gov/community-development/housing-element/docs/sites inventory memo final06102020.pdf.

¹⁰ HCD Letter, at p. 4.

throughout the community in a manner that affirmatively furthers fair housing opportunities. ¹¹ HCD guidance confirms that sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing. ¹² Figure 7-1 of the Draft Housing Element indeed shows a group of sites listed in the North-Western portion of the City (i.e., sites 38, 63, 67-72), but the vast majority of sites are concentrated in the City's downtown corridor near El Camino Real and Santa Cruz avenues, or to the South near Sand Hill Road. The Property would be the most North-Western property on the Site Inventory, and the only property North-West of the U.S. 101.



¹¹ Cal. Gov. Code § 65583, subd. (c)(10).

¹² HCD Memorandum re *Housing Element Site Inventory Guidebook Government Code Section 65583.2*, June 10, 2020, at p. 9.

Therefore, adding this Property can assist with addressing at least two analytical gaps that the HCD Letter identified, thereby assisting the City in avoiding the consequences of Housing Element non-compliance.¹³

c. Adding the Property to the Site Inventory would streamline future residential development there, removing two of the constraints identified in the housing element.

Chapter 5 of the Draft Housing Element, "Actual and Potential Constraints to Housing," identifies both land use controls and development processing time as two constraints on housing development. Listing the Property would facilitate future processing, thereby removing constraints. Given that the R-MU-B zoning designation has clearly defined development standards, set forth in Menlo Park Municipal Code section 16.45.050, processing the entire parcel subject to those standards would assist with removing these constraints.

d. Residential use in this neighborhood would be compatible with the surrounding development and is supported by existing infrastructure.

Although one portion of the site is designated O-H, rather than R-MU-B, residential use of the entire Property is feasible and is compatible with surrounding development, as shown by the recent entitlement of three similar projects in the surrounding area: Menlo Uptown, Menlo Portal and Menlo Flats. The environmental review for these projects (discussed further below) demonstrated that they are supported by or could provide adequate infrastructure and are compatible with the surroundings.

e. Continued office/hotel development in this area would be duplicative, given the numerous offices and hotels already built or in the development pipeline.

The City's map of current and pending development shows that District 1 is home to many new hotel and office building projects, such that more office or hotel development could be duplicative, especially when viewed in context of the housing shortage. ¹⁴ Just in District 1, office and hotel projects under review include Hotel Moxy, Commonwealth Building 3, 1005 O'Brien Drive and 1320 Willow Road, 980-1030 O'Brien Dr., hotel and office uses at Willow Village, Tarlton Research and Development, Tarlton Life Sciences, and CS Bio. Given the surplus of office and hotel development, which demonstrates that the original intent of the O-H zoning has been achieved, residential development here would better achieve the City's housing goals.

¹³ Id. at 1.

¹⁴ City of Menlo Park, *Current and Pending Development*, https://menlopark.maps.arcgis.com/apps/Shortlist/index.html?appid=da1aa9a523ce4836988c2339a9364a84.

III. Request for inclusion of the Property in the Final EIR.

We also respectfully request that the City include the Property as part of an updated project description or potentially as an alternative in the Final EIR for the Draft Housing Element in order to demonstrate to the public that there will be no significant environmental impacts associated with residential redevelopment at the Site. For example, the Property could be added to Figure 2-2 and Table 2-4, which map and chart the housing opportunity sites. The Property could be added without changing any of the conclusions in the Draft EIR regarding significant environmental impacts.

Final EIRs for similar projects have demonstrated no environmental impacts:

Menlo Portal Project: First, the EIR for the Menlo Portal Project did "not identify any significant and unavoidable environmental impacts from the proposed project." The Menlo Portal Project proposed 335 dwelling units and an approximately 34,868-gross-square-foot commercial office building.

Menlo Uptown Project: The Final EIR for the Menlo Uptown Project also "does not identify any significant and unavoidable environmental impacts that would result from the implementation of the proposed project." The Menlo Uptown Project proposed 483 dwelling units and approximately 2,940 square feet of office uses—41 more units than the proposed redevelopment. The Menlo Uptown Project proposed 17

Menlo Flats Project: The Final EIR for the Menlo Flats Project also "does not identify any significant and unavoidable environmental impacts from the proposed project." The Menlo Flats Project proposed "158 dwelling units and approximately 15,000 square feet of nonresidential space consisting of 13,400 square feet of commercial office space and a 1,600-square-foot commercial space." 19

Given that the Final EIRs for these nearby projects found no significant unavoidable impacts, adding the Project to the Housing Element will not change or question the findings of the

17 Id.

¹⁵ City of Menlo Park, *Menlo Portal Project Environmental Impact Report, State Clearinghouse No.* 2020010055, February 2021, at p. 6, https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/approved/menlo-portal/menlo-portal-project-deir.pdf.

¹⁶ City of Menlo Park, *Menlo Uptown Project Landing Page*, https://menlopark.gov/Government/Departments/Community-Development/Projects/Approved-projects/Menlo-Uptown.

¹⁸ City of Menlo Park, Menlo Flats Project Environmental Impact Report, State Clearinghouse No. 2020110243, October 2021, at p. 6, https://beta.menlopark.org/files/sharedassets/public/community-development/documents/projects/under-review/menlo-flats/menlo-flats-draft-eir.pdf.
¹⁹ Id.

Draft EIR. Therefore, the City can include 3750 Haven Avenue in the Site Inventory and in the Final EIR.

We are grateful for your consideration of our request and look forward to working with the City on this exciting project. If you need any additional information or have any questions related to this request, please do not hesitate to contact me at scott.bohannon@ddbo.com, or (650) 345-8222.

Sincerely,

Scott Bohannon Senior Vice President

David D. Bohannon Organization

CC:

Betsy Nash, Mayor
Jen Wolosin, Vice Mayor
Ray Mueller, Councilmember
Cecilia Taylor, Councilmember
Drew Combs, Councilmember
Tom Smith, Acting Principal Planner
Calvin Chan, Senior Planner

