



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

Meeting Date: July 30, 2019

#### Subject

Vallco Shopping District Special Area General Plan, Zoning Amendments, and Second Addendum to the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project Environmental Impact Report. (Application No(s): GPA-2019-01, GPA-2019-02, MCA-2019-02, Z-2019-01 (EA-2013-03); Applicant(s): City of Cupertino; Location: 10101 to 101333 North Wolfe Road APN#:316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095)

#### Recommended Action

That the Planning Commission

1. Receive a staff presentation;
2. Conduct the public hearing;
3. Adopt:
  - a. Resolution No. \_\_\_\_\_, recommending that the City Council adopt GPA-2019-01, a resolution adopting a Second Addendum to the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project Environmental Impact Report and amending the General Plan to remove office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations (Attachment 1);
  - b. Resolution No. \_\_\_\_\_, recommending that the City Council adopt GPA-2019-02, a resolution amending the General Plan and General Plan Land Use Map to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area and identifying a recommended location for future residential development on 13.1 acres of the Special Area (Attachment 2);
  - c. Resolution No. \_\_\_\_\_, recommending that the City Council adopt MCA-2019-01, an ordinance eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for

- a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)) (Attachment 3); and
- d. Resolution No. \_\_\_\_\_, recommending that the City Council adopt Z-2019-01, an ordinance amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG) (Attachment 4).

### Discussion

#### ***Background:***

The City's General Plan designates the "Vallco Shopping District Special Area" for office, commercial, and residential uses at a density of 35 dwelling units per acre on site to be developed pursuant to a specific plan, which generally covers the properties on which the Vallco Mall is developed. The General Plan identified approximately 58 acres within the Vallco Shopping District Special Area as available for development and assigned development allocations for the permitted office, commercial, and residential uses. Because the General Plan contemplated that redevelopment of the Vallco Shopping District Special Area would occur pursuant to a specific plan developed for the area, development standards apart from the residential density limitation (such as height and setbacks) were to be imposed through the specific plan.

The Housing Element of the General Plan further identified the Vallco Shopping District Special Area as a "Priority Housing Site," which means that the City planned to accommodate a portion of its Regional Housing Need Allocation (RHNA) by permitting residential development within the Vallco Shopping District Special Area. The Housing Element identifies 389 residential units to be a realistic development yield for the site, and it provides that the housing would be developed under the regulatory framework created by the specific plan.

To ensure that the Priority Housing Sites identified in the Housing Element are available for residential development as required by State law, the Housing Element included two scenarios to satisfy its RHNA: "Scenario A" and "Scenario B". Scenario A is consistent with the adopted land use regulations described above. The General Plan provides that the City would consider removing the Office and Residential development allocations in the Vallco Shopping District Special Area if a Specific Plan for the area is not adopted by March 31, 2018, and under Scenario B the remaining RHNA need removed from the Vallco Shopping District Special Area would be accommodated on other sites if the City Council approved General Plan and zoning amendments to increase their residential capacity.

The Specific Plan that had been prepared for the Vallco area was the subject of a referendum and the City Council rescinded that Specific Plan at its May 7, 2019 meeting.

Subsequently, at its June 18, 2019 meeting, the City Council considered removing the Office and Residential development allocations in the Vallco Shopping District Special Area in favor of Scenario B as described in the Housing Element. After considering its options, the City Council directed staff to prepare a General Plan Amendment to permit 389 residential units by right within the Vallco Shopping District Special Area, which would provide a mechanism to accommodate the RHNA in a manner consistent with Scenario A in advance of completing a specific plan for the area rather than adopting Scenario B to accommodate the City's RHNA. In addition, the City Council directed that staff bring forward a General Plan Amendment to remove office as a permitted use within the Vallco Shopping District Special Area and remove the associated office development allocation. The City Council also provided direction to continue the planning effort to create a specific plan, which could create the potential for additional residential development within the Vallco Shopping District Special Area.

Note that parcels comprising 50.82 acres of the Vallco Shopping District received a ministerial approval of a project pursuant to Senate Bill 35 (Government Code Section 65913.4, or SB 35). That approval would not be affected by the proposed General Plan and zoning amendments. SB 35 grants approved projects a vested right to proceed regardless of subsequent changes in the law. The amendments would apply to future project applications if the Vallco SB 35 project is not developed. There are two parcels in the Vallco Shopping District that are not a part of the SB 35 project. One parcel is the site of the soon-to-open Hyatt Hotel which would remain a permitted use under all the options above. The other parcel is the 5.16 acre Simeon parcel which is currently a parking lot associated with the mall. Future use of that site would be subject to any General Plan amendments adopted.

### ***Analysis:***

To implement the City Council's direction, City staff have prepared General Plan and zoning amendments for the Planning Commission's consideration. The following analysis describes the amendments proposed.

### ***General Plan Amendments***

#### ***Land Use Designations***

The current General Plan Land Use map identifies the Vallco Shopping District as allowing the following land use: Commercial/Residential/Office. This designation is intended for mixed-use development that would feature predominantly commercial and office uses, with residential uses permitted as needed to better balance the citywide jobs to housing ratio.

The City Council has expressed concern that by allowing office development within the Vallco Shopping District Special Area, the City would be further contributing to the

imbalance between high-paying jobs and available housing in the City. Accordingly, the proposed General Plan amendment would remove the “Commercial/Residential/Office” land use designation from the Vallco Shopping District Special Area (see Attachment 1) and replace it with two new land use designations: “Regional Shopping” and “Regional Shopping/Residential” (see Attachment 2) to remove office as a permitted use while retaining the commercial and housing uses contemplated for the site in the existing General Plan.

The Regional Shopping Designation would permit retail sales, businesses, service establishments with direct contact with customers, and hotel uses, along with restaurant and entertainment uses, in the Vallco Shopping District Special Area. The Regional Shopping/Residential designation would permit residential development at a maximum density of 35 dwelling units per acre and a minimum density of 29.7 dwelling units per acre by right. It would also permit all of the uses allowed under the Regional Shopping Designation as ground floor uses beneath residential uses, however the commercial uses would not be required in the areas designated “Regional Shopping/Residential”.

For historic reference, in amending the General Plan land use designation at this site in 2014 the General Plan amendments added the “Office” land use to the existing land use designation. Prior to that, the 1993 General Plan the site had a land use designation of Commercial/Residential, which is similar to the new designations now proposed.

References to office use are also recommended for removal from the Planning Area description for the Vallco Shopping District. (refer to Attachment 5 for existing Planning Area description and Attachment 1 for proposed edits)

#### *Development Standards*

The General Plan contains standards for development in the City by Special Area/Neighborhood in the form of development allocations, residential densities, heights and overall setbacks in the form of a slope line from major thoroughfares. These are incorporated in Table LU-1 and Figure LU-2 of the General Plan. These are included as Attachment 6 for reference.

Non-Residential Development: The development standards for non-residential development in the Vallco Shopping District Special Area would be as follows:

1. Development Allocations: The General Plan Amendment would delete the Office development allocation within the Vallco Shopping District Special Area. The following mix of non-residential uses would continue to be allowed in the Special Area, consistent with the current General Plan:
  - a. Commercial – 1,207,704 square feet
  - b. Hotel – 339 rooms

2. Building Heights: Up to 60 feet.
3. Setbacks: Establish a minimum 1 foot setback for every 1 foot increase in height from the existing North Blaney neighborhood. Setbacks remain the same from the curb line of Wolfe Road and Stevens Creek Boulevard.

Residential Development: The development standards for residential development would be amended as follows:

1. Development Allocations: The General Plan Amendments would not change the Residential allocation. 389 units would continue to be allocated within the Vallco Shopping District Special Area (note, however, that some State laws such as density bonus and SB 35 may require the City to approve additional development when certain conditions are satisfied).
2. Residential Density: 35 units per acre on 13.1 acres.

To maintain consistency with the Housing Element, the Vallco Shopping District Special Area must permit at least 389 residential units by right at a density of 35 dwelling units per acre. This would require a minimum of 11.1 acres for residential use; however, the State Department of Housing and Community Development (HCD) typically assumes that a project site will not develop with 100% efficiency (to account for required setbacks, driveways, open space etc.). The Housing Element (which HCD determined complied with the requirements of State housing element law) assumed that Priority Housing Sites would yield 85% of the maximum unit count. Therefore, to be consistent with the Housing Element's methodology and demonstrate to HCD that 389 units are realistically achievable, enough land must be designated to allow 458 units at 35 dwelling units per acre ( $85\% \times 458 \text{ units} = 389 \text{ units}$ ).

To accommodate 458 units at 35 dwelling units per acre, a minimum of 13.08 acres of land must be designated for Regional Shopping/Residential Use. For purposes of the General Plan amendment, this has been rounded to 13.1 acres, which could allow for 459 units. Note that if future development is proposed at the maximum allowed density and provides sufficient affordable housing to qualify for a 35% density bonus (allowed under state law), as many as 620 residential units may be developed in this area.

3. Building Heights:
  - a. For mixed use development: Up to 75 feet for residential over ground-floor commercial uses
  - b. For residential only development: Up to 60 feet
4. Setbacks: Would be the same as the setbacks discussed previously under Non-residential development. Minimum 1 foot setback for every 1 foot increase in

height from the existing North Blaney neighborhood. Setbacks remain the same from the curb line of Wolfe Road and Stevens Creek Boulevard.

*Amendments to Goal LU-19*

The General Plan contains provisions concerning future planning for the Vallco Shopping District within Goal LU-19. The existing General Plan policies regarding the Vallco Shopping District Special Area are attached to this Staff Report as Attachment 7. The following amendments are proposed to the policies and strategies included as part of Goal LU-19.

1. Figures: A new Figure LU-4, which specifically designates the location of the new Regional Shopping/Residential Use area where residential uses would be permitted, will be included to identify the location of this designation based on Planning Commission's input on the location of residential uses. An aerial of the project site and an Assessor Parcel Map have been included as Attachment 8 to help the discussion.

In order for successful residential development to occur within the Special Area, the Planning Commission may wish to consider the following factors as part recommending a location for the future residential development:

- a. For mixed use developments - Be located close to other higher density residential developments (e.g. near the Nineteen800 and Main Street developments); and
  - b. For a residential only development - Be in a location that would not support commercial development due to lack of visibility or other factors, such as lack of walkability/pedestrian friendliness (e.g. north of Vallco Parkway, west side of Wolfe Road).
2. Policies: To reflect the removal of office as a permitted use, to regulate housing development that may occur by-right prior to a specific plan, and to provide policy guidance for a future specific plan that may increase the residential capacity in the Vallco Shopping District Special Area (all as previously discussed), the General Plan amendments would revise the text related to these policies as shown in Attachment 2. The text amendments would:
    - a. Allow residential as a permitted use by-right on 13.1 acres, with the heights and densities discussed above;
    - b. Provide guidance for a future specific plan and related General Plan Amendment, which may allow additional housing within the Vallco Shopping District, especially affordable to low, very low, and extremely low-income households and housing for persons with disabilities, including developmental disabilities.

The General Plan would retain policies related to requiring a minimum of 600,000 square feet of retail use and no more than 30 percent of commercial space developed with entertainment uses, requiring development in a street grid with improved public street connections to encourage development in the form of a town center.

### ***Zoning Amendments***

To implement the General Plan amendments, the following two types of zoning amendments are also required.

#### ***Municipal Code Amendment***

A new zoning category, Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)), is proposed to be added to the text of the Municipal Code. This zoning designation would include development standards enabling the mixed use or residential-only development contemplated for the Vallco Shopping District Special Area as discussed above (see Attachment 3).

#### ***Zoning Map Amendment***

The Vallco Shopping District Special Area would be rezoned to designate 13.1 acres as Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning (P(R3,CG)) and the remainder of the Special Area to General Commercial (CG) (see Attachment 4). Upon a determination by the Planning Commission on the location of the residential designation, conforming exhibits will be prepared for the City Council's consideration at its hearing on this subject.

### ***Consistency with Government Code Section 65863***

State housing law requires that the City maintain sufficient sites to accommodate its RHNA at each income level throughout the eight-year "planning period" that its Housing Element is effective. Government Code Section 65863 prohibits the reduction of residential capacity on sites included in the Housing Element inventory unless: (1) the reduction is consistent with the adopted general plan, including the housing element; and (2) the remaining sites identified in the Housing Element are adequate to meet the remaining RHNA by income level.

As an initial matter, the Housing Element identified a realistic capacity of 389 units at a density suitable for housing affordable to lower income households in the Vallco Shopping District Special Area. The General Plan and zoning amendments do not reduce the capacity of the Special Area below 389 units, so the amendments do not result in a

“lower residential density” in the Special Area (as that term is used in Government Code Section 65863(g)(1)).

However, even if the amendments did result in a lower residential density, they would still be permitted under Government Code Section 65863. The Land Use and Housing Elements of the General Plan both contemplated that 389 units would be developed in the Special Area, and the amendments make the development of at least 389 units permitted by right. Therefore, the amendments are consistent with the adopted General Plan, including the Housing Element.

In addition, the amendments leave a surplus of sites available for development that is suitable for housing affordable to lower income households. For the current Housing Element, the City is required to plan for at least 563 lower income units. So far in the cycle, the City has issued building permits for 19 units and approved projects (the Hamptons and Marina) that would provide up to 57 more units. These units, plus the 389 units that would be permitted in the Vallco Shopping District Special Area, leave a balance of 98 units. The Housing Element identifies the Oaks in its inventory as being available for 200 units, more than enough to meet the remaining RHNA. Therefore, the amendments are consistent with the requirements of Government Code Section 65863.

### *Environmental Analysis*

In 2014, the City Council certified a Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), which was a program EIR prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The Final EIR analyzed land use alternatives that included citywide development allocations (as well as building heights and densities) for five Special Areas, seven Study Areas, and other Special Areas in connection with the adoption of the Cupertino Community Vision 2015-2040 (General Plan). The General Plan and Associated Rezoning were adopted in December 2014, the Housing Element Update was adopted in May 2015, and modifications to the text and figures of the General Plan adopted in October 2015 following adoption of an Addendum to the EIR.

When a lead agency has certified an EIR, Public Resources Code Section 21166 and CEQA Guidelines 15162 provide that no subsequent environmental review shall be required unless specified conditions have occurred (substantial changes in the project, substantial changes with respect to the circumstances under which the project is undertaken, or new information of substantial importance which was not known and could not have been known when the EIR was certified) and would result in new significant environmental effects or a substantial increase in the severity of significant environmental effects requiring major revisions to the EIR. CEQA Guidelines Section 15164 further states that



if some changes or additions to a previously certified EIR are needed, but subsequent review is not required under CEQA Guidelines 15162, an addendum shall be prepared.

The City has prepared a Second Addendum to the Final EIR to evaluate whether the proposed modifications to the Vallco Shopping District Special Area described in this Staff Report would require major revisions to the Final EIR due to new significant environmental effects or a substantial increase in the severity of significant environmental effects previously identified in the EIR. The Second Addendum, which is included as Attachment 9, provides analysis and cites substantial evidence in support of the conclusion that no subsequent environmental review is required because none of the conditions that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

Therefore, it is recommended that the Planning Commission recommend adoption of the Second Addendum, and no further environmental review is required for the modifications to the Vallco Shopping District Special Area described in this Staff Report.

Public Noticing and Outreach

The following noticing has been conducted for this project:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b> <i>(available at least 10 days prior to hearing, unless noted otherwise)</i>	<b>Agenda</b> <i>(posted five days prior to hearing, unless noted otherwise)</i>
<ul style="list-style-type: none"> <li>▪ Legal ad placed in newspaper</li> <li>▪ 96 Public Hearing notices mailed to property owners within 300 feet of the site</li> <li>▪ 36 notices mailed to agencies, service and utility providers</li> <li>▪ E-notification sent to 776 email addresses</li> <li>▪ Display <i>(courtesy)</i> ad placed in newspaper</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board</li> <li>▪ Posted on the City of Cupertino's Web site</li> </ul>

Next Steps

Staff will prepare conforming exhibits based on Planning Commission direction to include for the General Plan Amendment related to the Residential/Regional Shopping land use designation and the Zoning Amendment related to the P(R3,CG) zoning designation to be presented to the City Council.

The City Council will consider the Planning Commission's recommendations at an upcoming hearing and make final decisions regarding the proposed General Plan and Zoning amendments.

In addition, at its May 7, 2019 meeting, the City Council directed staff to place on a future agenda a community process for future development of the Vallco site, which could

result in more comprehensive development standards and additional housing throughout the Special Area. Staff is currently developing options and cost estimates to develop and implement a community engagement process to prepare a Specific Plan and will return for Council consideration at a future meeting.

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Prepared by: Joseph Petta, Assistant City Attorney

Reviewed by: Richard S. Taylor, Assistant City Attorney

Approved for Submission by: Benjamin Fu, Director of Community Development

Attachments:

1. Draft Resolution No. \_\_\_\_\_, recommending that the City Council adopt GPA-2019-01, a resolution adopting a Second Addendum to the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project Environmental Impact Report and amending the General Plan to remove office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations
2. Draft Resolution No. \_\_\_\_\_, recommending that the City Council adopt GPA-2019-02, a resolution amending the General Plan and General Plan Land Use Map to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area and identifying a recommended location for future residential development on 13.1 acres of the Special Area
3. Draft Resolution No. \_\_\_\_\_, recommending that the City Council adopt MCA-2019-01, an ordinance eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))
4. Draft Resolution No. \_\_\_\_\_, recommending that the City Council adopt Z-2019-01, an ordinance amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)
5. Planning Area description for Vallco Shopping District Special Area
6. Table LU-1 and Figure LU-2 of the General Plan
7. Existing General Plan Vallco Shopping District Special Area policies
8. Aerial of Vallco Shopping District Special Area and Assessor Parcel Map
9. Second Addendum to the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project Environmental Impact Report (State Clearinghouse No. 2014032007)