



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

February 16, 2024

Via Electronic and Regular Mail

Reed Moulds, Managing Director
Vallco Property Owner LLC
965 Page Mill Road
Palo Alto, CA 94304

SUBJECT: APPROVAL LETTER – THE RISE SB 35 DEVELOPMENT (FORMERLY VALLCO TOWN CENTER) – SECOND MODIFICATION APPLICATION

This letter serves as ministerial approval (“Approval”) of the “The Rise SB 35 Application” (“Application”), requesting modification of the Vallco Town Center project approved pursuant to Government Code Section 65913.4 under Senate Bill 35 (“SB 35”). The Application, which included four requested project entitlements, was submitted to the City by Vallco Property Owner, LLC (“Applicant”) on December 5, 2023 for the 50.82-acre Vallco Mall property located between Interstate 280 and Steven’s Creek Boulevard and on both sides of North Wolfe Road.

This Approval is based on the Application and the additional updated plans and responses, in response to comments from the City, submitted by the Applicant on February 6 and February 14, together which is referred to as the “Project Application.”

I. Project Approval

The following entitlements are approved:

- a. Modification to Development Permit
- b. Architectural and Site Approval - Major
- c. Tentative Subdivision Map for Condominium Purposes
- d. Tree Removal Permit

Under the State’s and City’s Density Bonus Laws, the Applicant requests a 50% density bonus in compliance with State Law provisions in place on the date of Application. This allows an increase in the unit count in the project from 2,402 units to 2,669 units.

The Applicant continues to request three concessions under the Density Bonus Laws, due to the amount of affordable housing proposed in the Project Application. These concessions have been modified and are as follows:

1. A concession to allow the Below Market Rate (BMR) units to deviate from the requirement that unit types be comparable to the market rate units within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (A);
2. A concession to allow the studio and one-bedroom BMR affordable units to be smaller in size than the studio and one bedroom market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (B); and
3. A concession to allow 200,000 square feet of retail, a reduction of 400,000 square feet, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.

In 2018 and 2022, the City determined that these three concessions: a) will result in identifiable and actual costs to provide for affordable housing costs; b) will not result in specific, adverse impacts upon public health or safety or the physical environment or any property that is listed in the California Register of Historical Resources; and c) will not be contrary to state or federal law. (Gov. Code, § 65915(d)(1)(A)-(C). The award of the density bonus and concessions are not affected by the request for modification of the approved project.

In addition to the density bonus, density bonus concessions, with this Application, the applicant is additionally requesting a density bonus waiver. A density bonus waiver is to a development standard that the project cannot meet due to the proposed design, and if the project were required to meet the standard, it would cause the project to lose units in the housing development. State law disallows the City to reject the request for a waiver under the presumption that a differently designed project could meet the existing standard.

The applicant is proposing to not meet the 1:1 setback to height (slope line) standard established in the General Plan in Figure LU-2 (Community Form Diagram). This would allow structures as proposed in Blocks 2, 5, 8, 10, 11, 13, 14 and 15 to encroach into this setback. The encroachment is identified in the plan set in Sheet P-508 and P-508.1. These diagrams indicate that imposition of the slope line standard would cause the project as designed to lose residential units. As a result, the City must grant the proposed density bonus waiver.

These Approvals, including the density bonus, the three concessions and the waiver identified above, are collectively referred to as the "Project," and are reflected in the plan set included in Attachment "A."

This Approval does not cover encroachments or other improvements within the public right-of-way, including but not limited to, the proposed intersection located between Vallco Parkway and Highway 280 (right of way encroachments are subject to the City's permitting review process) or proposed tree removals within the public right of way. In addition, this Approval does not cover any signage, sign programs, construction permits, or final map(s). Subsequent applications for these permits will be reviewed prior to approval, consistent with the City's permit approval processes and the requirements of Government Code section 65913.4.

II. Basis for Approval

Government Code Section 65913.4 (SB 35, as amended) sets forth a streamlined, ministerial approval process for certain housing developments in jurisdictions that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower income levels as mandated by the State. The California Department of Housing and Community Development ("HCD") determined that the City made sufficient progress toward its above moderate income housing goals but made insufficient progress toward its lower (very low and low) income housing goals. Therefore, HCD determined that the City is subject to the streamlined, ministerial review and approval provisions in Government Code Section 65913.4 for very low and low income housing projects.

On September 21, 2018, the Vallco Town Center project was approved pursuant to SB 35, which was subsequently modified in 2022. The Applicant submitted a second request for modification of the approved project on December 5, 2023. In addition to the Project Plans, the Project Application supporting information provided by the Applicant that the City reviewed in making this determination is available on the City's website.

The Applicant's modification request is subject to a limited scope of review under Government Code section 65913.4(h) unless the modification changes the total number of residential units or total square footage of construction by 15 percent or more, not including underground space. (Gov. Code, § 65913.4(h)(3).) The scope of review of a qualified modification request under section 65913.4(h) is limited to determining whether the modified project meets the statutory criteria for SB 35 eligibility and whether the project complies with objective planning standards in effect at the time the original project application was submitted. (Gov. Code, § 65913.4(h)(1)(B).) Staff generally may not apply objective planning standards adopted after the March 2018 submittal date of the original Vallco SB 35 application if these requirements are met. In addition, the City may not reconsider "prior determinations that are not affected by the modification" (Gov. Code, § 65913.4(h)(4)) and must use "the same assumptions and

analytical methodology” that it used in approving the original application. (Gov. Code, § 65913.4(h)(1)(C).)

The modification request also includes a request for modification of the approved tentative subdivision map for the project. The streamlined approval provisions of SB 35 apply to approval of the tentative subdivision map. (Gov. Code, §65913.4(d)(2)). Under Government Code section 65913.4(h), review must be limited to objective subdivision standards that were in place at the time of the original application.

Under Government Code section 65913.4(h)(2), the City must complete ministerial review of the proposed modification request within 60 days. The deadline for completing review of the Vallco/Rise modification request was February 5, 2024. However, the Applicant agreed to an extension of time, until February 16, 2024, in review of the proposed modification to allow additional time for coordination between the Applicant, the City and other local agencies. This letter, which serves as notice of the Approval of the modification request pursuant to Government Code section 65913.4(h), is being issued within that time period.

The City has identified its basis for approval of the project in Attachment B.

III. Standard Project Requirements and Project Implementation Requirements

The Project Application is approved subject to the Standard Project Requirements and Project Implementation Requirements (collectively “Requirements”) set forth in Attachment B. These Requirements identify objective General Plan, zoning, and/or objective design review standards that were applied to the project at the time the original Application was submitted to the City on March 27, 2018. These Requirements are uniformly applied to similar entitlement applications and are within the City’s rules and regulations, including its General Plan, General Plan Environmental Impact Report, Municipal Code (including the zoning, subdivision and density bonus provisions), BMR Housing Mitigation Procedural Manual, and other applicable permit application forms and approvals, or reflect legal requirements imposed by other agencies and/or state law.

Further, Government Code Section 65913.4 contains specific requirements and criteria for a project to be subject to the streamlined, ministerial review and approval process. In order to assure the Approval is implemented as required by Government Code Section 65913.4, the City has included those in the Requirements in Attachment C.

IV. California Environmental Quality Act

This Approval is exempt from the California Environmental Quality Act ("CEQA") due to its ministerial nature. (Gov. Code, § 65913.4 (a); Pub. Resources Code, § 21080(b)(1).)

V. Term of Approval

The term of this modified project approval shall be determined in accordance with the requirements of Government Code section 65913.4(g).

Sincerely,



Benjamin Fu
Director of Community Development

- cc: Pamela Wu, City Manager (email)
Christopher Jensen, City Attorney (email)
Chad Mosley, Director of Public Works (email)
Piu Ghosh, Planning Manager (email)

Enclosures:

- Attachment A – Approved Plans dated February 16, 2024 (due to size, copies are available at the Community Development Department Planning Division)
Attachment B – Basis for Approval
Attachment C – Standard Project Requirements and Project Implementation Requirements

ATTACHMENT B
BASIS FOR APPROVAL

Eligibility for Modification Request Under Government Code Section 65913.4(h)

Under Government Code section 65913.4(h)(3), a proposed project modification qualifies for limited-scope review under 65913.4h) unless (A) “[t]he development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more, or (B) “[t]he development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, . . . and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.” The number of residential units is increased in the modified project by 11.12%, and the proposed modifications decrease the total square footage of construction by approximately 11.66%. Thus, the modified project qualifies for review as a modification request under Government Code section 65914.4(h).

Eligibility for Streamlined Review Under SB 35

The following is an analysis to determine whether the project continues to meet the eligibility requirements of Government Code section 65913.4. The eligibility requirements are listed in the form of questions with responses based on whether this is applicable to the modification request.

1. *Has the Department of Housing and Community Development (“HCD”) determined that the local agency is subject to SB 35?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

In 2018, when the original application was submitted, HCD had determined that due to the type and amount of affordable housing generated in the City of Cupertino, the project was subject to SB 35 streamlining.

2. *Is the project a multifamily housing development (2 or more residential units)?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

The proposed project continues to be a mixed-use development with 2,669 residential units and therefore, qualifies as a multifamily housing development.

3. *Has the applicant dedicated the applicable minimum percentage of units in the project to households making below 80% of the area median income?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

In 2018, HCD had identified the City of Cupertino as a “50% Affordable Housing jurisdiction” for purposes of SB 35 streamlining and ministerial review. The modification request include 50% (890 units) of the base (1,779 units) as affordable to very low income or low income households earning annual incomes less than 80% of the area median income. The additional units proposed in the project is a result of additional market rate units the project is eligible under State Density Bonus law, which are exempt from SB35 affordability requirements.

4. *If the site is in a city, is a portion of the city designated by the United States Census Bureau as either an “urbanized area” or “urban cluster,” or, if the site is in an unincorporated area, is the parcel entirely within the boundaries of “urbanized area” or “urban cluster”?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

In 2018, the U.S. Census data identifies the City of Cupertino as being a part of the San Jose urbanized area.

5. *Does at least 75% of the perimeter of the site adjoin parcels currently or formerly developed with “urban uses”?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

California Government Code section 65913.4(h)(8) defines “urban uses” to mean any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

The City determined in 2018 that at least 75% of the perimeter of the project site adjoin parcels currently or formerly developed with urban uses.

6. *Does the site have either zoning or a general plan designation that allows for residential use or residential mixed-use development and does the development designate at least two-thirds of the square footage for residential use?*

Residential or Mixed-Use Designation

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

The 2018 Cupertino General Plan: Community Vision 2015 – 2040 identified the parcels at the project site as the Vallco Shopping District Special Area which had the following General Plan land use designation: Commercial/Office/Residential. This land use designation allows mixed-use developments with commercial, (including retail and hotel uses), office, and residential uses.

The 2018 zoning of the property was Planned Development with General Commercial uses (P(CG)) south of Vallco Parkway and Planned Development with Regional Shopping uses (P(Regional Shopping)) north of Vallco Parkway. While the zoning did not allow residential uses, the General Plan designation in effect in 2018 allowed for a mix of uses including residential.

Government Codes section 65913.4(a)(5)(B) provides that in the event an objective zoning standard (here, the 2018 zoning designation) is mutually inconsistent with an objective general plan standard (here, the 2018 General Plan land use designation), the general plan designation prevails. The proposed modified project continues to propose a mixed-use development with residential, commercial and office uses. Therefore, the proposed modification request is consistent with the 2018 General Plan land use designation allowing a mix of uses, including residential.

Residential Square Footage

Applicable to the modification request, since there are modifications proposed that change residential and nonresidential square footage.

Government Code section 65913.4(a)(2)(C) requires that projects qualifying for ministerial approval must show that “at least two-thirds of the square footage of the development is designated for residential use.” The residential and nonresidential square footage calculations must be performed using the “same assumptions and analytical methodology” that were used in the 2018 project approval.

In 2018, the definition of “floor area” in the 2018 Cupertino Municipal Code section 19.08.030(F) was used to determine what percentage of the proposed development is designated for residential use. The Municipal Code defines “floor area” to mean “the total area of all floors of a building measured to the outside surfaces of exterior walls, and including the following:

1. Halls;

2. Base of stairwells;
3. Base of elevator shafts;
4. Services and mechanical equipment rooms;
5. Interior building area above fifteen feet in height between any floor level and the ceiling above;
6. Basements with lightwells that do not conform to Section 19.28.070(I);
7. Residential garages;
8. Roofed arcades, plazas, walkways, porches, breezeways, porticos, courts, and similar features substantially enclosed by exterior walls;
9. Sheds and accessory structures.

"Floor area" shall not include the following:

1. Basements with lightwells that conform to Section 19.28.070(I);
2. Lightwells;
3. Attic areas;
4. Parking facilities, other than residential garages, accessory to a permitted conditional use and located on the same site;
5. Roofed arcades, plazas, walkways, porches, breezeways, porticos, courts and similar features not substantially enclosed by exterior walls."

Cupertino Municipal Code section 19.08.030(A) defines an "attic" to mean "an area between the ceiling and roof of a structure, which is unconditioned (not heated or cooled) and uninhabitable." Therefore, mechanical electrical and other areas between the ceiling and roof are not included in the calculation of floor area.

Cupertino Municipal Code section 19.08.030(F) defines "first floor" to mean "that portion of a structure less than or equal to twenty feet in height, through which a vertical line extending from the highest point of exterior construction to the appropriate adjoining grade, passes through one story."

Based on an independent review conducted by the City's contract plan check consultant, under the supervision of City Planning staff, the modification request complies with the minimum residential square footage requirement of SB 35. The proposed modification is a mixed-used residential development consistent with General Plan land use designation and Municipal Code definitions with at least two-thirds of the area designated for residential use.

The following table shows the square footage of various uses provided by the applicant and the square footage calculated by the City's consultant, based on plans submitted by the applicant. Any methodological differences between the applicant's

calculation and the City’s review do not impact the project’s compliance with SB 35 criteria or applicable objective standards.

	Residential	Retail	Office	Total
Approved SF (2018)	4,961,904	485,912	1,981,447	7,429,263
<i>% of Total</i>	66.8	6.5	26.7	100
Approved SF (2022 Mod.)	5,119,005	429,408	1,973,494	7,521,907
<i>% of Total</i>	68.1	5.7	26.2	100
2024 Modification Plans (SF)	4,381,608	226,386	1,954,613	6,562,607
<i>% of Total</i>	66.8	3.4	29.8	100
Consultant Calculations (SF)	4,429,637	229,469	1,971,167	6,630,273
<i>% of Total</i>	66.8	3.5	29.7	100

7. *Does the project involve a subdivision of land and is the development subject to a requirement that prevailing wages will be paid and a skilled and trained workforce will be used?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

The applicant has certified that the project will be subject to the applicable requirements of California Government Code section 65914.3(a)(8) related to the payment of the general prevailing rate of per diem wages for all construction workers and that a skilled and trained workforce will be used.

8. *Is the project outside of each of the following areas? (The full text of the criteria listed below can be found in section 65913.4(a)(6).)*

Not applicable to the modification request, since the proposed modifications do not impact this criterion and pursuant to Govt Code section 65913.5(g), the City is prohibited from revisiting these determinations from 2018.

- Coastal zone – The project site is outside a coastal zone. The City of Cupertino’s General Plan does not identify any portions of the City within a Coastal Zone.
- Prime farmland or farmland of statewide importance – The project site is outside prime farmland or farmland of statewide importance. The City of Cupertino’s General Plan does not identify any portions within the City to be prime farmland or farmland of statewide importance.
- Wetlands as defined under federal law – The project is outside any wetlands as defined under federal law. There are no wetlands as defined under federal law identified on the project site.

- High or very high fire hazard severity zones – The project site is outside the high or very high fire hazard severity zones. The high or very high fire hazard severity zones are identified in Chapter 16.74 of the Municipal Code.
- Hazardous waste site – The site is not listed as a hazardous waste site pursuant to Health and Safety Code section 65962.5 or 25356.
- Earthquake fault zones in an official map published by the State Geologist, unless the development complies with state seismic protection building code standards and by local building standards – The project site is outside earthquake fault zones and will comply with applicable state seismic protection building code standards and local building standards.
- FEMA designated flood plain or floodway – The project site is outside a FEMA designated flood plain or floodway.
- Lands designated for conservation in a habitat conservation plan – The project site is outside lands designated for conservation in a habitat conservation plan.
- Protected species habitat – The project site is outside any protected species habitat.
- Lands under a conservation easement – The project site does not include lands under a conservation easement.
- Require demolition of (a) housing subject to recorded rent restrictions, (b) housing subject to rent control, (c) housing occupied by tenants within past 10 years, or (d) an historic structure placed on a local, state, or federal register – The project site is outside an area that would involve the demolition of any housing subject to rent restriction, rent control or occupied by tenants in the past 10 years or an historic structure placed on a local, state, or federal register. The site has historically been used and operated as a regional mall. There has never been any housing located on the project site. While the site is identified as a “Community Landmark” in the City’s General Plan, the site does not contain an historic structure that was placed on a national, state, or local historic register as referenced in SB 35.
- Land governed by the Mobilehome Residency law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act – The project site is not located on land governed by the Mobilehome Residency law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

9. *Has the project proponent certified that either the entire development is a “public work” for purposes of the prevailing wage law or that the construction workers will be paid at least the prevailing wage?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

The applicant has affirmed in its project application that all construction workers will be paid at least the prevailing wage.

10. *Has the project proponent certified that “a skilled and trained workforce” will be used to complete the development, if the requirement is applicable?*

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

California Government Code section 65914.3(a)(8)(B)(ii) defines a skilled and trained workforce for purposes of this section to have “the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.” The applicant has affirmed in the project application that it will use skilled and trained workforce to complete the development.

Compliance with Objective Standards

Density

Not applicable to the modification request, since there are no modifications proposed which impact this criterion.

The project meets the maximum allowable General Plan density for the site. The project is located on 50.822 acres, prior to dedication of required right-of-way to accommodate frontage improvements. In 2018, the City determined that the base maximum residential yield would be 1,779 units. With a revised 50% density bonus (as the Density Bonus provisions stood at the time the modified application was made), the maximum residential yield is 2,669 units.

Office Allocation

Applicable to the modification request, since there are modifications proposed which impact this criterion.

The project meets the maximum General Plan office allocation for the site. The 2018 General Plan allowed a maximum of 2,000,000 sq. ft. of office development at the Vallco Shopping Center Special Area. Both the applicant provided calculations and the city’s

independent reviewer identified that the office development is less than this maximum. Please see the table on Page 5.

Objective Zoning Standards

Applicable to the modification request, since there are modifications proposed which may impact this criterion.

The General Plan related to the Vallco Shopping Center Special Area in effect in 2018 (see Attachment B) contemplated the preparation of a specific plan for the project site. The specific plan was expected to include zoning standards. The draft specific plan was being prepared and was not adopted as of the date the original project application was submitted to the City in March 2018.¹ Only objective planning standards in effect at the time that the original application was submitted to the City can be applied to the project or to the modification request. (Gov. Code, §§ 65913.4(a)(5), 65913.4(g)). As a result, there was no specific plan or associated zoning standards, applicable to the project application.

As determined in 2018, there are no height limits applicable to the original or modified project. However, the Community Form Diagram (Figure LU-2) in the Land Use Element of the 2018 General Plan identifies building planes the project must meet. Figure LU-2 states as a foot note: “Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area” and “For the North and South Vallco Park areas (except for the Vallco Shopping District Special Area): Maintain the primary building bulk below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.” In 2018, it was determined that the original project met this standard. The 2023 modified project has requested a Density Bonus waiver from this standard. Since the implementation of this standard would result in the loss of units in the development as designed, the City must approve this Density Bonus waiver. Slope line sections are indicated on Sheets P-0508 and P-0508.01.

Objective Design Review Standards

Applicable to the modification request, since there are modifications proposed which may impact this criterion.

As was determined in 2018, there are no specific “objective design review standards” for this site (e.g., architectural design standards). However, there are standard project

¹ The Vallco Town Center Specific Plan was adopted on September 18, 2018. However, upon a referendum by local residents, the City Council rescinded the adopted Plan in May 2019.

requirements that are broadly applicable to development within the City (for example, standards that relate to streets). There have been changes to the project which impact standard project requirements, which have been modified to apply to the proposed modifications, and therefore, the modification request complies with design review standards.

ATTACHMENT C

STANDARD PROJECT REQUIREMENTS AND PROJECT IMPLEMENTATION REQUIREMENTS

These Standard Project Requirements and Project Implementation Requirements are intended to be read in conjunction with the Ministerial Approval Letter – The Rise SB 35 Modification Project Application, issued February 16, 2024. Where appropriate, City staff may defer compliance with specific Standard Project Requirements until it is determined to be reasonably related to and necessary for a particular construction or project phase. If timing for compliance is not specified, it shall be determined by the City Manager or her/his designee.

1. ACCURACY OF THE PROJECT PLANS

The Applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any errors of any property data may invalidate this approval and may require additional review.

2. ANNOTATION OF THE STANDARD PROJECT REQUIREMENTS

These Standard Project Requirements and Project Implementation Requirements must be incorporated into and annotated on the building plans.

3. APPROVED PLANS

The Approval is based on the Approved Plans stamped February 5, 2024, and attached herewith for a mixed use project with:

- a. 2,669 residential units of which 890 units shall be affordable as outlined in condition #4 below. In addition, the residential uses shall be approximately 4,381,608 square feet but not less than 66.7% of the floor area of the project.
- b. Office uses shall be approximately 1,954,613 square feet.
- c. Retail uses shall be no less than and shall be approximately 226,386 square feet.
- d. Office and Retail uses combined shall not exceed 33.3% of the floor area of the project.
- e. A total of 15 developable blocks connected by surface streets.
- f. A total of no more than 2,700 condominium units.
- g. Associated improvements as proposed, except as stated herein.

Building permits, including grading and demolition permits, must be obtained prior to commencement of construction. Building permit plans must substantially match the dimensions, floor plans and floor areas indicated in the approved plan set, and must include stamped and certified calculations of each type of authorized use

(Residential, Office and Retail) by a Professional Architect or Engineer for verification by the City.

4. ADDITIONAL FLOOR PLAN DETAILS

The project shall be constructed in the manner that substantially conforms to the approved plans. Minor modifications to the approved plans, including but not limited to any modification necessary to comply with Conditions #80 (Loading & Waste Management Entrances) and #81 (Frontage Road Design), may be approved under Municipal Code Chapter 19.164, subject to the limitations on discretionary review set forth in Government Code section 65913.4. Within 90 days of issuance of this letter, the Applicant shall provide floor plans (P-800 series) for all floor levels (same/similar floor plans may be indicated as “typical”).

5. AFFORDABLE UNITS

- a. The Applicant shall provide 50% of the base yield for the project site (890 units) as affordable, of which 267 units shall be affordable to households making 50% below the area median income and 623 units shall be affordable to units making 80% below the area median income.
- b. Of the 890 affordable units, 160 Very Low Income units and 107 Low Income units, for a total of 267 units, are required by the City’s Below Market Rate (BMR) Housing Program (Municipal Code Chapter 19.172). These 267 units shall be subject to the affordable rent and eligibility restrictions in the City's Below Market Rate Housing Mitigation Program Procedural Manual ("Procedural Manual"). All City BMR units shall be affordable for a period of not less than 99 years. Rent shall be calculated as included in the Procedural Manual and shall include parking costs. The BMR units shall be administered under the City’s Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units (Administration Manual).
- c. State Density Bonus Law (Government Code Section 65915 et seq.) requires the project to contain 267 Very Low Income units. These units are inclusive of the 160 Very Low Income City BMR units from subsection (b) above. The remaining 107 Very Low Income units shall be affordable for a period of not less than 55 years and administered under the California Tax Credit Allocation Committee’s (TCAC’s) compliance manual, and rent shall be calculated as provided in State Density Bonus Law and implementing regulations.
- d. 623 affordable units shall be affordable to Low Income households earning 80 percent of median income or below. These units are inclusive of the 107 Low Income City BMR units from subsection (b) above. The remaining 516 Low Income units shall be affordable for a period of not less than 55 years and administered under the TCAC compliance manual, and rent shall be calculated

as provided in the TCAC compliance manual. The units shall be subject to the same preference program outlined in the City Procedural and Administration Manuals.

- e. The following table indicates affordable unit type, income levels, length of affordability, rents, and administration requirements. With respect administration of the affordable units, the City and Applicant may elect to establish project-specific administration programs and protocols, including the use of a single compliance manual and administering agency. Such project-specific administration may be further detailed through a master affordable housing agreement.

	City BMR		State Affordable	
<i>Income levels</i>	<i>Very Low</i> (≤ 50% AMI)	<i>Low</i> (≤ 80% AMI)	<i>Very Low</i> (≤ 50% AMI)	<i>Low</i> (≤ 80% AMI)
Number of affordable units (890 Total)	160	107	107	516
Term of Affordability (not less than)	99 years		55 years	
Rent calculation	City Procedural and Administration Manual		State Density Bonus Law	CA Tax Credit Allocation Committee (TCAC) Compliance Manual
Administration regulations	City Procedural and Administration Manual		TCAC Compliance Manual except units subject to same preference program as in City Procedural and Administration Manual	
Administering Agency	City – through third party vendor selected by the City and paid for by Applicant or successor		Applicant. Annual audit to be performed by third party auditor selected by the City and paid for by Applicant or successor.	

- f. The project is permitted the following total number of residential units in each block of the development:

	Affordable Units	Market Rate Units	Total
Block 1	-	204	204
Block 2	-	268	268
Block 3	-	73	73
Block 4	-	182	182
Block 5	297	-	297
Block 6	-	47	47
Block 7	-	89	89
Block 8	-	254	254
Block 9	-	204	204
Block 10	284	-	284
Block 11	309	-	309
Block 12	-	458	458
Block 13	-	-	-
Block 14	-	-	-
Block 15	-	-	-
Total	890	1,779	2,669

- g. Pursuant to Municipal Code Section 19.56.050(F), affordable units in the project, and for each phase of the project, shall be constructed concurrent with, or prior to, the construction of the market rate units.

The Director of Community Development may approve modifications to the phasing plan provided that no modification may reduce the total number of affordable units constructed below 25% of the total number of units constructed. The units constructed shall include a proportional number of City BMR units relative to the total number of BMR units. In the event the Director approves a modification pursuant to this paragraph, the City may issue a certificate of occupancy for a subsequent residential building only if it includes sufficient affordable units to satisfy the requirements of Government Code section 65913.4. In the event that the ministerial approval expires or is otherwise terminated pursuant to Government Code section 65913.4 prior to achieving such compliance, Applicant shall pay Below Market Rate Housing Mitigation In-Lieu Fees in an amount equivalent to the provision of the outstanding affordable units

to meet the requirements of Section 65913.4. as determined in the BMR Housing Mitigation Program Procedural Manual.

- h. Pursuant to Health and Safety Code Section 17929, to the extent that the affordable units are provided in the same buildings as market rate units, the occupants of the affordable units shall have the same access to the common entrances and to the common areas and amenities of the project as the occupants of the market-rate housing units, and the affordable units may not be isolated to a specific floor or an area on a specific floor.
- i. The Applicant shall identify the location of individual affordable units and prepare a master affordable housing agreement and declaration of restrictive covenants, which shall be subject to review and approval by the City Attorney and which shall be recorded prior to the issuance of the first building permit for vertical construction. The location of the individual affordable units is not required for ministerial approval but distribution of units per this subsection can be included as a condition of approval per Section 301(a)(5).

6. RESIDENTIAL KITCHENS

The kitchen area within each unit shall be one contiguous floor area without any separation, such as doors or barriers.

7. SAFE PEDESTRIAN PATHS

Building permit plans shall indicate clearly defined pedestrian paths in parking lots to provide a safe path to building entrances.

8. NON-RESIDENTIAL BELOW MARKET RATE HOUSING PROGRAM

The Applicant shall comply with the City's Non-residential BMR program by paying the required housing mitigation fees per the Housing Mitigation Manual for any office development, payable at the time of building permit issuance for vertical construction of any office use. The Applicant's request for a waiver of housing mitigation fees is pending and will be reviewed under the procedures set forth in the Housing Mitigation Manual.

9. FEES

The Applicant shall pay all applicable fees, taxes, and bonds per the City's adopted fee schedule and/or Municipal Code, at the time of building permit issuance. Applicable fees shall be only those associated with the development for which the building permit is issued, and fees not tied to the issuance of a building permit for a specific phase of construction shall be due upon the issuance of the building permit for vertical construction (e.g., core and shell permit). Fees, taxes and bonds, include, but not limited to:

- a. Building Permit Fees
- b. Third-party Consultant Costs plus any administration fees
- c. Below Market Rate Housing Mitigation Fees
- d. Transportation Impact Fees
- e. Parkland Dedication Fees. Parkland dedication fees for the affordable units included in the project are waived in compliance with the City's BMR Procedural Manual.
- f. Storm Drain Fees
- g. Public Works plan review, encroachment permit, and grading permit fees and bond. Additional reviews of three or more will be charged hourly. On-site Grading Bond shall be in the amount of 100% of site grading and drainage improvements, including retaining walls and shoring facilities.

10. FORMATION OF A PROPERTY OWNERS' ASSOCIATION

Prior to issuance of the first building permit for vertical construction, one or more Property Owner's Association shall be formed to maintain the common areas of the property, or a portion thereof consistent with the phasing of construction. The Conditions, Covenants and Restrictions (CC&Rs) shall be reviewed and approved by the City Attorney, the Director of Public Works and the Director of Community Development prior to recordation of the CC&Rs. The City's review and approval of the CC&Rs shall be limited to confirming that the following terms are incorporated into each Association's CC&Rs:

- a. That members/board meetings shall be held at a minimum of once/year.
- b. The Association assessments shall cover, among other costs and expenses, the following:
 - i. Maintenance of common area on the property including, but not limited to, private drives and roadways, hardscaping, parking, landscaping, stormwater treatment facilities, and accessory items, such as trash bins/areas, tree grates, outside trash bins, and fences.
 - ii. Building and site repair on a regular schedule, or as otherwise necessary, and building renovation and replacement, as necessary.
- c. Any amendment to the CC&Rs material to the condition or maintenance of the property or compliance with any Condition of Approval must be reviewed and approved by the City.
- d. Disbanding of the Association shall require City approval.

11. PRIVATE ROAD MAINTENANCE AGREEMENT

A reciprocal maintenance agreement shall be required for all parcels that share a common private drive or private roadway with one or more other parcels within the tract. The agreement shall be recorded prior to issuance of building permit for

vertical construction of the phase in which the private roadways are proposed and shall be subject to prior approval as to form and content by the City Attorney. Such maintenance obligations shall be included in the Conditions, Covenants and Restrictions for the Property Owners' Association.

12. STREET AND ROAD CLOSURES

During project operations, street and road closures for resident or tenant safety and security are not approved as part of this Application. Temporary street and road closures may be permitted pursuant to review and approval of a Special Events Permit. Any future fencing or road closures proposed to close streets is subject to staff review and approval.

13. BUSINESS HOURS OF OPERATION

Any office or commercial uses with hours of operation earlier than 7:00 a.m. or later than 11:00 p.m. must obtain Conditional Use Permits.

14. CONSTRUCTION MANAGEMENT PLAN

A construction management plan shall be prepared by the Applicant and approved by the City prior to issuance of building permits. Staging of construction equipment shall not occur within 100 feet of any residential property.

15. CONSTRUCTION AND DEMOLITION DEBRIS REQUIREMENTS

All waste material generated from the demolition, site preparation, and construction of the project shall be recycled or otherwise diverted from landfill in accordance with the California Green Building Standards Code (CalGreen) and the Municipal Code. The Applicant shall provide documentation that waste materials generated met the minimum diversion rate of 65% identified in the CalGreen and Municipal Codes prior to final permit inspections.

16. GRADING AND CONSTRUCTION HOURS AND NOISE LIMITS

- a. All grading activities shall be limited to the dry season (April 15 to October 1), unless permitted otherwise by the Director of Public Works.
- b. Construction hours, street construction, grading, underground utility, and demolition work, and noise limits shall be compliant with all requirements of Chapter 10.48 of the Cupertino Municipal Code.
- c. Grading, street construction, underground utility and demolition hours for work done more than 750 feet away from residential areas shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Grading, street construction, demolition or underground utility work within 750 feet of residential areas shall not occur on Saturdays, Sundays, holidays, and

during the nighttime period as defined in Section 10.48.053(b) of the Municipal Code.

- d. Construction activities shall be limited to Monday through Friday, 7 a.m. to 8 p.m. and Saturday and Sunday, 9 a.m. to 6 p.m. Construction activities are not allowed on holidays as defined in Chapter 10.48 of the Municipal Code. Nighttime construction is allowed if compliant with nighttime standards of Section 10.48 of the Cupertino Municipal Code.
- e. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an applicant appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
- f. The Applicant shall be responsible for educating all contractors and subcontractors of restrictions on construction, street construction, grading, underground utility, and demolition work.

The Applicant shall comply with the above grading and construction hours and noise limit requirements unless otherwise indicated.

17. DUST CONTROL

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site:

- a. Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- c. Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- e. The Applicant shall incorporate the City's construction best management practices into the building permit plan set.

18. AIR QUALITY

In compliance with the General Plan Environmental Impact Report Mitigation Measures related to Air Quality, the Applicant shall, prior to issuance of grading, demolition and/or building permits demonstrate compliance with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM10.

19. FIRE DEPARTMENT AND EMERGENCY FIRE RESPONSE

Within 365 days of project approval, the Applicant shall prepare an emergency response time study consistent with the requirements of Santa Clara County Central Fire Protection District (“District”) Development Review Comments, Comment 1, dated February 15, 2024. The Response Time Study shall evaluate the project’s additional demand on District resources and the resulting impact on the District’s ability to meet the Critical Response Time Standard using its existing resources. If the Response Time Study shows that the District will not be able to meet its Critical Response Time Standard after the project is fully occupied, the Applicant shall prepare an emergency services support plan for review and approval by the District and City within 180 days of submission of the Response Time Study (“Emergency Services Support Plan”). The Applicant shall comply with the requirements in District Development Review Comments, Comment 1, which are incorporated by reference herein. Prior to preparation of the Response Time Study, the Applicant, District and City may mutually agree to an alternative agreement that resolves potential Project impacts, if any, on the District’s Critical Response Time Standard.

20. COMPLIANCE WITH CODE REQUIREMENTS

- a. The project is subject to the governing provisions of Title 24 of the California Code of Regulations in effect at the time of building permit application including but not limited to the California Building Code, the California Plumbing Code, and California Fire Code, and shall be constructed in accordance with all such applicable state and locally adopted building standards. The Applicant shall obtain LEED Silver certification or an alternative reference standard in accordance with the Green Building Ordinance since the building size is over 50,000 square feet.
- b. The Applicant shall ensure that the project addresses comments and corrections set forth in the following:
 - i. The Fire Department of Santa Clara County comment letter dated February 15, 2024,
 - ii. The Public Works Department’s Environmental Services Division comments dated January 12, 2024,
 - iii. The Cupertino Sanitary District dated January 17, 2024, and
 - iv. The Public Works Department Development Services Division two comment letters dated January 19, 2024, including comments from City Surveyor, Giuliani & Kull, Inc.
- c. The Applicant should consider comments from the Valley Transportation Authority in their letter dated January 19, 2024.

21. ENVIRONMENTAL HEALTH

The Applicant shall obtain all necessary clearances from the Santa Clara County Department of Environmental Health (DEH) and/or other applicable environmental regulatory agencies. Soil-disturbing activity on any parcel subject to DEH oversight may commence only upon DEH clearance for such activity.

Pursuant to review of the DEH, limited approval has been issued for make ready utility work in the western portion of the project site, subject to the requirements articulated in DEH's letter dated January 11, 2024. Additionally, as noted in the letter, due to the changes in the project, a revised SMP must be submitted to DEH for review and approval.

22. BIOLOGICAL RESOURCES

The Applicant shall adhere to Mitigation Measure BIO-1 regarding nesting raptors and other birds set forth in the Mitigation Monitoring and Reporting Program for the City's General Plan Amendment, Housing Element Update and Associated Rezoning Project dated December 4, 2014

23. PUBLIC ART

Public art shall be provided for the project in accordance with General Plan Policy 2-66 and the City's Public Art Ordinance (Chapter 19.148 of the Cupertino Municipal Code). The minimum expenditure for the artwork, including, but not limited to design, fabrication, and installation is 0.25 percent of the total project budget, with an expenditure cap of \$100,000. The project pro forma shall be provided to the City to confirm the project budget, unless Applicant otherwise demonstrates that expenditure cap of \$100,000 has been reached.

The final public art plans (including design) shall be reviewed by the Fine Arts Commission/Arts and Culture Commission during the building permit stage, in advance of final occupancy for the last structure/improvements that causes the cumulative valuation of the constructed portions of the project to reach \$40,000,000, unless as otherwise approved by the City. Once approved by the Fine Arts Commission/Arts and Culture Commission, the public artwork shall be installed to the satisfaction of the City prior to final occupancy.

24. LANDSCAPE PROJECT SUBMITTAL(S)

Prior to issuance of building permits for vertical construction of each building/phase with associated landscape improvements on the Block, the Applicant shall submit a full Landscape Documentation Package, per sections 14.15.050 A, B, C, and D of the Landscape Ordinance, for projects with landscape area 500 square feet or more or elect to submit a Prescriptive Compliance Application per sections 14.15.040 A, B, and C for projects with landscape area between 500 square feet and 2,500 square feet.

The Landscape Documentation Package(s) or Prescriptive Compliance Application(s) shall be reviewed and approved to the satisfaction of the Director of Community Development prior to issuance of building permits, and additional requirements per sections 14.15.040 D, E, F, and G or 14.15.050 E, F, G, H, and I will be required to be reviewed and approved prior to final inspections.

25. SOIL ANALYSIS REPORT

A soils analysis report shall document the various characteristics of the soil (e.g., texture, infiltration rate, pH, soluble salt content, percent organic matter) and provide recommendations for amendments as appropriate to optimize the productivity and water efficiency of the soil.

The soil analysis report shall be made available to the professionals preparing the landscape and irrigation design plans in a timely manner either before or during the design process. A copy of the soils analysis report shall be submitted to the Director of Community Development as part of the landscape documentation package.

26. LANDSCAPE AND IRRIGATION PLANS

The Applicant shall submit detailed landscape and irrigation plans to be reviewed and approved by the Director of Community Development prior to issuance of building permits for each phase where associated landscape improvements are required. The landscape plan shall include water conservation and pesticide reduction measures in conformance with Chapter 14.15, Landscape Ordinance, and the pesticide control measures referenced in Chapter 9.18, Stormwater Pollution Prevention and Watershed Protection, of the Cupertino Municipal Code.

27. LANDSCAPE INSTALLATION REPORT(S)

The project is subject to all provisions delineated in the Landscape Ordinance (CMC, Chapter 14.15). A landscape installation audit(s) shall be conducted by a certified landscape professional after the landscaping and irrigation system(s) have been installed. The findings of the assessment(s) shall be consolidated into a landscape installation report(s). The landscape installation report(s) shall include, but not be limited to inspection to confirm that the landscaping and irrigation system(s) are installed as specified in the landscape and irrigation design plan(s), system tune-up, system test with distribution uniformity, reporting overspray or run-off that causes overland flow, and preparation of an irrigation schedule.

The landscape installation report(s) shall include the following statement: "The landscape and irrigation system have been installed as specified in the landscape and irrigation design plan and complies with the criteria of the ordinance and the permit."

28. LANDSCAPE AND IRRIGATION MAINTENANCE

Per the Landscape Ordinance (Cupertino Municipal Code, Chapter 14.15), a maintenance schedule(s) shall be established and submitted to the Director of Community Development or his/her designee, either with the landscape application package(s), with the landscape installation report(s), or any time before the landscape installation report(s) is/are submitted.

- a. Schedules should take into account water requirements for the plant establishment period and water requirements for established landscapes.
- b. Maintenance shall include, but not be limited to the following: routine inspection; pressure testing, adjustment and repair of the irrigation system; aerating and de-thatching turf areas; replenishing mulch; fertilizing; pruning; replanting of failed plants; weeding; pest control; and removing obstructions to emission devices.
- c. Failed plants shall be replaced with the same or functionally equivalent plants that may be size-adjusted as appropriate for the stage of growth of the overall installation. Failing plants shall either be replaced or be revived through appropriate adjustments in water, nutrients, pest control or other factors as recommended by a landscaping professional.

29. RESTAURANT ODOR ABATEMENT

All new restaurants shall install odor abatement systems to reduce odor impacts from the restaurants to the adjacent community. The odor abatement systems shall be installed prior to final occupancy of the associated restaurant(s). Detailed plans shall be reviewed and approved by the Director of Community Development prior to issuance of building permits for the relevant tenant improvements for restaurant(s).

30. NOISE ANALYSIS

The Applicant shall prepare an acoustical report to demonstrate compliance with the Cupertino General Plan. All residential units shall be subject to good quality construction practices and installation of equipment, including sealing of doors, windows, frames, and casings to ensure that the interior average day/night noise level does not exceed 45 dBA Ldn. Such reports shall be provided prior to the issuance of core and shell building permits for each residential structure.

31. SIGNAGE

Signage and location for signage is not approved with this Application. Signage shall conform to the City's Municipal Code Chapter 19.104, as in effect at the time of the original project application, unless otherwise agreed to by the Applicant.

32. SIGN PROGRAM

A sign program is not approved with this Application and is required for this project. The sign program shall be prepared by the Applicant for review and approval by the Director of Community Development, prior to issuance of sign permits.

33. SCREENING

All mechanical and other equipment on the building or on the site shall be screened so it is not visible from public street areas or adjoining developments. Screening materials/colors shall match building features and materials. The height of the screening shall be taller than the height of the mechanical equipment that it is designed to screen. The location of equipment and necessary screening shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

34. TRASH MANAGEMENT PLAN

A master Trash Management Plan shall be prepared by the Applicant. The plan shall demonstrate the project will meet all State and Municipal Code requirements for solid waste recycling and diversion. Plan will specify locations of trash enclosures/rooms, waste hauler circulation within the project, and methods of waste transportation within the project by the property owner, management, and residential and commercial occupants. A detailed plan shall be submitted to the City for review and approval prior to issuance of building permits for each phase/building.

35. TREE REMOVALS

The removal of up to 550 Protected trees on site, as indicated on the plans, is approved. A tree removal permit must be obtained in the event additional on-site protected trees are proposed for removal.

No street trees or trees within the existing right-of-way are approved for removal. Any such trees shall be reviewed and approved for removal by the Department of Public Works.

36. TREE TRANSPLANTATION

The Applicant shall transplant Trees # 97, 98, 99, 69, and 70 (Holly Oaks.) The Applicant is authorized to transplant Trees # 414, 415, 416, 260, 261 or 262 at its discretion but is not required to do so.

37. TREE PROTECTION

As part of the demolition or building permit drawings, a tree protection plan shall be prepared by a certified arborist for the trees to be retained. This tree protection

plan shall adhere to the recommendations of the City's consulting arborist. In addition, the following measures shall be added to the protection plan:

- a. For trees on private property to be retained, chain link fencing and other root protection shall be installed around the dripline of the tree prior to any project site work.
- b. No parking or vehicle traffic shall be allowed under root zones, unless using buffers approved by the Project Arborist.
- c. No trenching within the critical root zone area is allowed. If trenching is needed in the vicinity of trees to be retained, the City's consulting arborist shall be consulted before any trenching or root cutting beneath the dripline of the tree.
- d. Wood chip mulch shall be evenly spread inside the tree protection fence to a four-inch depth.
- e. Tree protection conditions shall be posted on the tree protection barriers.
- f. Retained trees shall be watered to maintain them in good health.
- g. A covenant on the property shall be recorded that identifies all the protected trees, prior to final occupancy.

The tree protection measures shall be inspected and approved by the certified arborist prior to issuance of building permits. The City's consulting arborist shall inspect the trees to be retained and/or transplanted and shall provide reviews prior to issuance of demolition, grading or building permits. Ongoing inspections by the City's Consulting Arborist may be requested by the City, at the Applicant's expense, to peer review Arborist reports provided on a regular basis by the Applicant. A report ascertaining the good health of the trees mentioned above shall be provided prior to issuance of final occupancy.

For trees within the public right-of-way which are subject to removal or new trees proposed for planting, the Applicant shall secure an encroachment permit from the City.

38. TREE PROTECTION BOND

The Applicant shall provide a tree protection bond in the amount of \$250,000 to ensure protection of trees recommended for retention, transplantation, or replacement by the City's consulting arborist prior to issuance of grading, demolition or building permits. The bond, or portion thereof, shall be returned after completion of construction of each building/phase, subject to a letter from the City's Consulting Arborist indicating that the trees are in good condition.

39. TREE REPLACEMENT

In accordance with Cupertino Municipal Code Chapter 14.18, the Applicant shall provide tree replacements for trees proposed to be removed in conjunction with the

proposed project. The number, location and type of trees shall be incorporated into the detailed landscape plan to be reviewed and approved by the Director of Community Development in consultation with the City's Consulting Arborist.

40. TRANSFORMERS

Electrical transformers, telephone cabinets and similar equipment shall be placed in underground vaults, inside buildings, or as required by PG&E. The developer must receive written approval from both the Public Works Department and the Community Development Department prior to installation of any above ground equipment. Should above ground equipment be permitted by the City, equipment and enclosures shall be screened with fencing and landscaping such that said equipment is not visible from public street areas, as determined by the Community Development Department. Transformers shall not be located in the front or side building setback area.

41. UTILITY STRUCTURE PLAN

Prior to issuance of building permits for vertical construction of each phase in which such improvements will be installed, the Applicant shall work with staff to provide a detailed utility plan to demonstrate screening or undergrounding of all new utility structures [including, but not limited to backflow preventers (BFP), fire department connections (FDC), post-indicator valves (PIV), and gas meters] to the satisfaction of the Director of Community Development, Public Works, Fire Department, and applicable utility agencies.

42. INDEMNIFICATION

Except as otherwise prohibited by law, the Applicant shall indemnify, defend with legal counsel approved by the City, and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or against the Applicant, to attack, set aside, or void the City's approval of this project or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in the defense of any claim or litigation. The Applicant agrees to accept the City's tender of defense of any claim or lawsuit related to this project or City's approval of said project. Furthermore, Applicant shall pay City's attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

43. STREET IMPROVEMENT AGREEMENT

The Applicant shall enter into a Street Improvement Agreement with the City of Cupertino providing for payment of fees, including but not limited to plan checking and inspection fees, storm drain fees, and fees for permits. Said agreement shall be executed prior to recordation of a Final Map. The fees imposed herein may be modified at the time of recordation of a Final Map or issuance of a building permit; in the event of said change or changes, the fees changed at that time will reflect the then current fee schedule. The Street Improvement Agreement will require the following bonds:

- a. Faithful Performance Bond: 100% of Off-site Improvements
- b. Labor & Material Bond: 100% of Off-site Improvement

44. COMPLETION OF PUBLIC WORKS IMPROVEMENTS

Public improvements necessary to implement the project shall be reviewed pursuant to Government Code section 65913.4(i)(3). Prior to entering into a street improvement agreement with the City of Cupertino, the Applicant shall have detailed plans of the improvements approved by the Director of Public Works and shall provide a surety or guarantee covering the cost of all improvements to be completed within the City of Cupertino's jurisdiction. The street improvement agreement will specify the timeline for completion of the improvements.

For improvements to be completed on facilities which are not under the jurisdiction of the City of Cupertino, the Applicant shall, prior to entering into a street improvement agreement with the City of Cupertino, either (1) have detailed plans of the improvements approved by the agency under whose jurisdiction the facility resides, and provide a surety or guarantee to that agency to cover the cost of the improvements; or (2) provide funding to the agency under whose jurisdiction the facility resides, in an amount sufficient to fund the design and construction of the improvements. The decision to pursue option (1) or (2) above shall reside with the agency under whose jurisdiction the facility resides, in consultation with the City of Cupertino.

In the event that Applicant can demonstrate to the satisfaction of the Public Works Department that, despite their best efforts, sufficient progress has not been made with the responsible agency, the funding shall be held in a segregated account by the City or in escrow in lieu of the design and construction of the mitigation measure. The funds will be released to the responsible agency once the project is programmed and approved.

45. ENCROACHMENT PERMIT REQUIRED

The Applicant must obtain an encroachment permit from City prior to commencing any work within the right-of-way.

46. STREET WIDENING AND PUBLIC RIGHT-OF-WAY DEDICATIONS

Public street widening, easements, and dedications shall be provided in accordance with City Standards, specifications and policies and as required by the Director of Public Works. Onsite private streets shall be provided with public access as shown on the approved plans. Any closure of private streets must be approved by the Fire Department and shall comply with requirements for fire and public safety access.

47. CALTRANS APPROVAL

The Applicant shall coordinate with Caltrans for any work or improvements proposed within Caltrans right-of-way. The Applicant shall provide to the City a letter of approval for the work and applicable encroachment permits issued from Caltrans to perform said work, prior to City approval and issuance of permits for any work within or affecting Caltrans right-of-way. The letter of approval from Caltrans shall explicitly state or depict the work being approved.

48. CURB AND GUTTER IMPROVEMENTS

New curbs and gutters, sidewalks and related structures shall be installed in accordance with grades and standards as specified by the Director of Public Works. The Applicant shall close all unused driveway cuts and remove and replace broken or uplifted curb, gutter, or sidewalk as determined by the Director of Public Works.

49. PAVEMENT

The Applicant, prior to project completion, shall overlay all streets along the project perimeter, up to half street or more if improvements extend beyond the half street, with 2.5" of rubberized asphalt pavement per Caltrans Standards, and subject to approval by the City Engineer.

50. DETACHED SIDEWALK

The Applicant shall provide a minimum five-foot wide detached sidewalk along all street frontages where construction shall occur, to the satisfaction of the City Engineer.

51. PEDESTRIAN CROSSWALKS

The Applicant shall provide pedestrian crosswalk improvements around the project site. Final crosswalk improvement plans shall be reviewed and approved by the Director of Public Works.

52. COLORIZED BICYCLE LANES

The Applicant shall provide colorized bicycle lane pavement along project frontages and at areas of potential vehicular conflict as determined by the Director of Public Works.

53. PEDESTRIAN AND BICYCLE IMPROVEMENTS

The Applicant shall provide pedestrian and bicycle related improvements in connection with the issuance of any building permits that would require such improvements be installed (e.g., walkway and bicycle racks) consistent with the Cupertino Bicycle Transportation Plan and the Pedestrian Transportation Plan, and as approved by the Director of Public Works.

54. GRADING

Grading shall be as approved and required by the Director of Public Works in accordance with Chapter 16.08 of the Cupertino Municipal Code. 401 Certifications and 404 permits may be required. Contact Army Corp of Engineers and/or Regional Water Quality Control Board as appropriate.

55. STORM WATER BEST MANAGEMENT PRACTICES

Utilize Best Management Practices (BMPs), as required by the State Water Resources Control Board, for construction activity which disturbs soil. BMP plans shall be included in grading and street improvement plans.

56. NPDES CONSTRUCTION GENERAL PERMIT

When and where it is required by the State Water Resources Control Board (SWRCB), the Applicant must obtain a Notice of Intent (NOI) from the SWRCB, which encompasses preparation of a Storm Water Pollution Prevention Plan (SWPPP), use of construction Best Management Practices (BMPs) to control storm water runoff quality, and BMP inspection and maintenance.

57. C.3 REQUIREMENTS

The project shall comply with the Municipal Regional Stormwater NPDES Permit. C.3 regulated improvements are required for all projects creating and/or replacing impervious surface that is subject to requirements set forth in section C.3 of the Municipal Regional Stormwater NPDES permit. The Applicant shall reserve a minimum of 4% of developable surface area for the placement of low impact development measures to address storm water quality, on the tentative map, unless an alternative storm water treatment plan that satisfies C.3 requirements, is approved by the Director of Public Works.

The Applicant shall include the use and maintenance of site design, source control and storm water treatment Best Management Practices (BMPs), which must be designed per approved numeric sizing criteria. A Storm Water Management Plan, Storm Water Management Facilities Operation, Maintenance and Easement Agreement, and certification of ongoing operation and maintenance of treatment BMPs are each required.

All storm water management plans are required to obtain certification from a City approved third party reviewer.

58. EROSION CONTROL PLAN

The Applicant shall provide an approved erosion control plan prepared by a Registered Civil Engineer. This plan should include all erosion control measures used to retain materials on site. Erosion control notes shall be stated on the plans. The plan shall also be incorporated as an attachment to the SWPPP and shall be updated and amended as construction phases or site conditions change.

59. WORK SCHEDULE

Within 60 days of project approval, and every 6 months thereafter or as requested by the City, the Applicant shall submit a work schedule to the City to show the timetable for all grading/erosion control work, as well as work within the right of way, in conjunction with this project.

60. OPERATIONS & MAINTENANCE AGREEMENT

The Applicant shall enter into an Operations & Maintenance Agreement with the City, which shall be reviewed and approved by the Director of Public Works, prior to final occupancy. The Agreement shall include the operation and maintenance for any non-standard appurtenances in the public right-of-way that may include, but is not limited to, stormwater treatment facilities, sidewalk, pavers, enhanced landscaping, any landscaping necessary to screen utility cabinets, street trees and streetlights.

61. DRAINAGE

Drainage shall be provided to the satisfaction of the Director of Public Works. All connections from the development to the City storm drain system shall occur at maintenance holes, unless approved otherwise by the Director of Public Works. Hydrology and pre-and post-development hydraulic calculations must be provided to indicate whether additional storm water control measures are to be constructed or renovated. The storm drain system may include, but is not limited to, subsurface storage of peak stormwater flows (as needed), infiltration, evaporation or storm water harvesting facilities, bioretention basins, and hydrodynamic separators to

reduce the amount of runoff from the site and improve water quality. The storm drain system shall be designed to detain water on-site (e.g., via buried pipes, retention systems or other approved systems and improvements) as necessary to avoid an increase of the ten-year peak runoff, to the satisfaction of the Director of Public Works. Any storm water overflows or surface sheeting should be directed away from neighboring private properties and to the public right of way as much as reasonably possible.

62. FULL TRASH CAPTURE SYSTEM

The Applicant will be responsible for installing a full trash capture system/device to capture trash from the onsite storm drain system before the storm water reaches the City owned storm drain system and/or any adjacent creeks or diversion channels. A full capture system or device is a single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour storm in the sub-drainage area (see the Municipal Regional Permit section C.10 for further information/requirements). Systems and devices must be approved by the California State Regional Water Quality Control Board (RWQCB) and selected from the San Francisco Bay RWQCB Certified Full Capture System List of Trash Treatment Control Devices which may be viewed at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html. The Applicant shall install trash capture devices and automatic retractable curb inlet screens in all storm drain inlets in the public right of way that are located adjacent to the project.

63. GEOTECHNICAL REPORT

Prior to issuance of grading or building permits, the project design-level geotechnical report shall be approved by the City's Geotechnical Consultant. All design criteria and specifications set forth in the design-level geotechnical report shall be implemented as a part of the project. The Applicant will be responsible for providing a geotechnical engineering review letter stating that the final approved set of plans have been reviewed and meet the intent and recommendations of the geotechnical report. Such geotechnical engineering review letter shall be peer-reviewed by the City's Geotechnical Consultant, the costs which shall be borne by the Applicant.

64. UNDERGROUND UTILITIES

The Applicant shall comply with the requirements of the Underground Utilities Ordinance No. 331 and other related Ordinances and regulations of the City of Cupertino, and shall coordinate with affected utility providers for installation of underground utility devices. The Applicant shall submit detailed plans showing

utility underground provisions. Said plans shall be subject to prior approval of the affected Utility provider and the Director of Public Works.

65. BUS STOP LOCATIONS

The Applicant shall install and/or improve bus shelters/trash receptacles along the Wolfe Road, Vallco Parkway and Stevens Creek Boulevard project frontages, at bus stop locations as approved by VTA. The placement and design of the bus shelters/trash receptacles at each bus stop location shall be approved by the Director of Public Works and the VTA. If the Applicant proposes enhanced shelters of a design approved by the City, said shelters shall be maintained and funded by the Applicant. In the event that bus shelters are replaced with VTA standard revenue-generating bus shelters, the Applicant may not be required to maintain and service these bus shelters.

Shelters shall, at a minimum, include the following features:

- ADA accessible dimensions
- Concrete pad per VTA criteria
- Illuminated line number sign
- Passenger shelters
- Benches
- Trash receptacles
- Real-time information panels
- Schedule, fare, and service span information
- Lighting

66. TRAFFIC CONTROL PLAN

The Applicant shall submit traffic control plans prepared by a Registered Traffic Engineer or Civil Engineer to be approved by the Director of Public Works, for any work in the right of way as well as a routing plan for all vehicles used during construction. All traffic control signs shall be reviewed and approved by the Director of Public Works prior to commencement of work. The City has adopted the Manual on Uniform Traffic Control Devices (MUTCD) standards for all signage and striping work throughout the City. All permanent striping shall be made of thermoplastic.

67. TRAFFIC SIGNS

Traffic control signs shall be placed at locations specified by the City.

68. STREET TREES

Street trees shall be planted within the Public Right of Way to the satisfaction of the Director of Public Works and shall be of a species and size approved by the City in accordance with Ordinance No. 125.

69. STREAMSIDE PERMIT

Prior to issuance of a building permit, the Applicant shall provide plans and information that satisfies the requirements of the Stream Side Development Permit

as set forth by the Santa Clara Valley Water Resources Protection Collaborative. These items include, but are not limited to, topographic survey, specific measures to protect streams and/or water bodies from water quality impacts, and coordination with all interested jurisdictional agencies.

70. CALIFORNIA WATER SERVICE COMPANY CLEARANCE

Prior to issuance of any building permit that would require the construction of water facilities, provide a letter stating California Water Service Company approval for water connection, service capability and location and layout of water lines and backflow preventers.

71. DEDICATION OF UNDERGROUND WATER RIGHTS

The Applicant shall “quitclaim” all interests in, and grant to the City authorization to extract water from, the underground strata lying beneath and within the boundary limits of the project’s property.

72. ABANDONED WATER WELLS

The Applicant shall seal abandoned or unused water wells if the City, in consultation with the Santa Clara Valley Water District, determines that said abandoned or unused water wells have a potential to contaminate the water supply.

73. SANITARY DISTRICT

A letter of clearance for the project shall be obtained from the Cupertino Sanitary District prior to issuance of building permits.

No building permits will be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity through the Santa Clara sanitary sewer system being exceeded. The estimated sewage generation by the project shall be calculated using the sewer generation rates used by the San Jose - Santa Clara Water Pollution Control Plant Specific Use Code & Sewer Coefficient table, and from the City of Santa Clara Sanitary Sewer Capacity Assessment, May 2007, unless alternative (i.e., lower) sewer generation rates achieved by future development are substantiated by the developer based on evidence to the satisfaction of the Cupertino Sanitary District.

74. UTILITY EASEMENTS

Clearance approvals from agencies and property owners that have interest in utility easements on the development property (including PG&E, AT&T, and California Water Company, Cupertino Sanitary District and/or other entities) will be required prior to recordation of Final Map or issuance of building permits for vertical construction, whichever comes first. The Applicant shall provide approval letters

and recorded easement documents for any new or abandoned easements needed for occupancy of the project.

75. FIBER OPTIC CONDUIT INSTALLATION

A separate 3" fiber optic conduit shall be installed with all joint trench construction and shall be provided to the City for its usage. The fiber optic conduit shall be installed in accordance with plans and specifications approved by the Director of Public Works.

76. STREET LIGHTING INSTALLATION

Street lighting shall be installed and shall be as approved by the Director of Public Works. Lighting fixtures shall be positioned so as to preclude glare and other forms of visual interference to adjoining properties and shall be no higher than the maximum height permitted by the zone in which the site is located.

77. SUBDIVISION AGREEMENT

The Applicant shall enter into a Subdivision agreement with the City of Cupertino providing for payment of fees, including but not limited to checking and inspection fees, storm drain fees, park dedication fees and transportation impact fees. Said agreement shall be executed prior to recordation of Final Map.

78. FINAL SUBDIVISION MAP

A final subdivision map shall be recorded prior to issuance of building permits for vertical construction. Map shall include public roadway dedications in fee title, grant of public service easements, emergency access easements, and public access easements including access to parcels 316-20-092 and 316-20-088. The Final Map shall be substantially compliant with the approved Tentative Map as determined by the City Engineer. The Applicant shall designate no more than two entities¹ to own and maintain all roadway parcels and shall, prior to the issuance of any certificate of occupancy for a developable block, convey each roadway parcel associated with the developable block to the designated entity and cause to be recorded an instrument restricting the separate conveyance of each of said roadway parcels.

¹ The Applicant may elect to comply with this condition by creating (1) a single master association for the entire project; (2) separate master associations for the east and west sides of Wolfe Road; or (3) separate commercial and residential master associations for respectively covering commercial and residential properties. The Public Works Director may in their discretion approve a request for the designation of additional or alternative entities to own and maintain roadway parcels upon a showing that the requested designation does not interference with the operation or maintenance of public service easements, emergency access easements, and public access easements.

Prior to the issuance of a building permit for vertical construction of each building containing affordable residential units, the Applicant shall record declarations of restrictions sufficient to enforce occupancy and affordability restrictions on any parcel designated for the construction of affordable housing under the approved plans.

79. WASTE TRIOS

Permanently installed waste trios including cigarette butt urns which are designed for exterior use are required and must be included on the plans. Waste trios are outdoor receptacles positioned side-by-side which are clearly labeled recycling, compost, and landfill and include covers to prevent rainwater intrusion. An example of waste trios may be viewed online at: www.cupertino.org/greendev. The trios must be situated on private property adjacent to the sidewalk for patron and pedestrian use.

A manufacturer specification sheet including size, color, and style of the trios and cigarette butt urns shall be submitted with the resubmittal for review by Planning and Environmental Programs Division staff. Waste trios/urns should match outdoor furniture and furnishings.

80. LOADING & WASTE MANAGEMENT ENTRANCES

The proposed loading and waste management entrances along the frontage road shall be designed to provide adequate space for the designated trucks to park entirely within the private property. The frontage road shall not be used to accommodate idle or protruding trucks within the public right-of-way that would block bicycle, pedestrian and/or vehicular traffic.

81. FRONTAGE ROAD DESIGN

Prior to issuance of any building permit that would require the installation of the Wolfe Road frontage road, a frontage road design shall be approved by the City Engineer that addresses the comments raised in the letters from Public Works Department Development Services Division dated January 19, 2024, as referenced in Condition #20. The City's review and approval of the frontage road design shall be conducted in accordance with the requirements of Government Code section 65913.4(i).

82. TRAFFIC SIGNALIZATION

Signal phasing diagrams for intersections within the public right-of-way shall be provided to the Public Works Department for review and approval by the City Engineer consistent with the requirements of Government Code section 65913.4(i)(3) prior to issuance of any building permit that would require a new intersection in the

public right-of-way. The Applicant shall demonstrate to the satisfaction of the City Engineer that signal phasing and other aspects of the design will conform to adopted City, state and federal standards and will not adversely impact the efficient, safe and orderly movement of vehicles, pedestrians, bicycles and transit along the public roadway.

83. STORM DRAIN INLETS

All exterior storm drain inlets on the parcel must be clearly marked with, “No Dumping Flows to Creek” or “No Dumping Flows to Bay.”

84. USE OF COPPER

Copper metal roofing, copper granule containing asphalt shingles, copper gutters and downspouts, and/or other exterior ornamental copper are not permitted for use on any commercial or industrial building.

85. COMPLETION OF SITE IMPROVEMENTS

All site improvements shall be completed for each phase prior to issuance of final occupancy permits for structures constructed in conjunction with that phase, unless approved otherwise by the Building Official.

86. PROJECT IMPLEMENTATION REQUIREMENTS

Compliance with the following Project Implementation Requirements shall ensure that the Approved Plans, adhere to the requirements of Government Code Section 65913.4.

87. PREVAILING WAGE AND SKILLED AND TRAINED WORKFORCE CERTIFICATION

Pursuant to Government Code Section 65913.4(a)(8), the Applicant shall provide all required certifications to the City relative to the payment of prevailing wage, the use of a skilled and trained workforce as that term is defined by Public Contract Code Section 2600 *et seq.* and/or compliance with a project labor agreement pursuant to Public Contract Code Section 2500(b)(1).

88. RESIDENTIAL AMENITY SPACES

To ensure compliance with Government Code Section 65913.4(a)(2)(C), which requires two-thirds of the square footage of the development be designated for residential use, the use of and services offered within the residential amenity spaces is subject to review and approval by the Director of Community Development, prior to issuance of building permits.

89. CONSTRUCTION PHASING/ADHERENCE TO SB 35 TWO-THIRDS RESIDENTIAL REQUIREMENT

The last certificate of occupancy for non-residential construction shall not be issued until the Applicant demonstrates that two-thirds residential square footage is constructed to ensure consistency with Government Code Section 65913.4(a)(2)(C) and that at least 50 percent of residential units are affordable to low income households, as defined in Government Code section 65913.4(k).

90. PROJECT MODIFICATIONS

Any requested project modification shall be processed according to subdivisions (c), (d), and/or (h) of Government Code section 65913.4, as applicable. Any proposed modification shall be reviewed for compliance with the requirements of Government Code section 65913.4(a) and shall be denied if the proposed modification fails to meet those requirements. The foregoing does not limit the City's rights to take enforcement action, including permit revocation, if at any time it is determined that the project does not comply with these Conditions of Approval or the requirements of Government Code section 65913.4.