



COMMUNITY DEVELOPMENT DEPARTMENT

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

CITY COUNCIL STAFF REPORT

August 20, 2019

Subject

Vallco Shopping District Special Area General Plan Amendments and Associated Zoning Amendments; and Second Addendum to the Environmental Impact Report for the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project

Recommended Action

That the City Council:

1. Receive a staff presentation;
2. Conduct the public hearing;
3. Adopt:
 - a. Resolution No. _____, a resolution adopting a Second Addendum to the Environmental Impact Report for the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project (Attachment 1);
 - b. Resolution No. _____ (GPA-2019-01), a resolution amending the General Plan to remove Office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations (Attachment 2);
 - c. Resolution No. _____ (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 3);
4. Introduce and conduct the first reading of:
 - a. Ordinance No. _____ (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 4); and
 - b. Ordinance No. _____ (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 5).

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 identifies approximately 58 acres within the Vallco Shopping District Special Area as available for development and assigns 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 identifies the Vallco Shopping District Special Area as a "Priority Housing Site," which means that the City plans 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 specific plan would allow 389 units "by right" at a minimum density of 20 units per acre and a maximum of 35 units per acre.

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 includes two scenarios to satisfy its RHNA: "Scenario A" and "Scenario B". Scenario A is consistent with the existing land use regulations described above. The General Plan Land Use Element provides that the City will 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 May 31, 2018. Under Scenario B, if the Residential development allocations are removed from the Vallco Shopping District Special Area, the remaining RHNA would be accommodated on other sites by approving 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 certified petition calling for 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 and adopting 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 mixed-use 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 right to proceed regardless of subsequent changes in the local planning and zoning requirements. 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.

On August 2, 2019, the Department of Housing and Community Development (HCD) sent the City a letter regarding a potential violation of State housing element law if the Vallco SB 35 project is overturned and the City does not take action to complete the rezoning called for in its adopted Housing Element to implement either Scenario A or Scenario B (see Attachment 6, and see Attachment 7 for the City's response letter to HCD). As discussed in HCD's letter, because the Vallco SB 35 project is approved, the City has satisfied its Housing Element obligation to make land available to accommodate at least 389 residential units within the Vallco Shopping District Special Area. If the approval is overturned, however, the City will be required to identify a location (or locations) in the City to accommodate the City's remaining RHNA. The proposed General Plan and zoning code amendments would make at least 389 residential units available to develop by-right within the Vallco Shopping District Special Area.

The remainder of this analysis describes the General Plan and zoning code amendments that are proposed to implement City Council's direction.

Analysis:

To implement the City Council's direction, City staff have prepared draft General Plan and zoning amendments. The draft amendments were considered by the Planning

Commission following a public hearing on July 30, 2019. Each of these amendments, and the Planning Commission's recommendations, are described in detail below.

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. The General Plan provides that this designation is intended for mixed-use development that would feature predominantly commercial and office uses, with residential uses allowed to offset job growth, better balance the Citywide jobs to housing ratio, and where compatible with the primarily non-residential character of the area.

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 2) and replace it with two new land use designations: "Regional Shopping" and "Regional Shopping/Residential" (see Attachment 3) 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 "by right" at a maximum density of 35 dwelling units per acre and a minimum density of 29.7 dwelling units per acre. 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 for the Vallco Shopping District Special Area. Prior to that, the "Vallco Park Area" covered the current special area and the former Rose Bowl site (now the Nineteen800 development). The 2005 General Plan designated the area "Commercial/Residential," although the land use designation description contemplated some office uses within the Vallco Park Area that were included in a development agreement that expired in 2009. In the 1993 General Plan, Vallco Park Area permitted Commercial/Residential uses in the Special Area, which is similar to the new designations

now proposed, with office and industrial uses permitted on what is now the Nineteen800 development.

Development Standards

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 one-foot setback for every one-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, as described below).
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 City's Housing Element 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 that 389 units are realistically achievable, enough land should be designated to allow 458 units at 35 dwelling units per acre (85% x 458 units = 389 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 one-foot setback for every one-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 8. The following amendments are proposed to the policies and strategies included as part of Goal LU-19.

1. Figures: A new Figure LU-4 reflecting the new Regional Shopping/Residential Use where residential uses would be permitted will be included based on the City Council's determination regarding the location of residential uses. An aerial view of the project site and an Assessor Parcel Map have been included as Attachment 9 to help the discussion. In addition, aerials with overlays covering approximately 13.1 acres of the Special Area illustrating potential alternative locations for the Regional Shopping/Residential Use designation have been provided as Attachment 10. Among several locations on the site, Attachment 10 identifies four potential locations for the City Council to consider:
 - a. West of Wolfe Road and north of Vallco Parkway;
 - b. West of Wolfe Road at the terminus of Vallco Parkway;
 - c. West of Wolfe Road between Vallco Parkway and Stevens Creek Boulevard; or
 - d. East of Wolfe Road and north of Vallco Parkway.

Potential locations (a) and (b) are unlikely to support any commercial development, because they lack visibility from major streets and have fewer opportunities for pedestrian connections to other large developments. However, these potential locations could likely support residential uses without a commercial component.

Potential location (c) would have frontage along Stevens Creek Boulevard and be located directly across Wolfe Road from existing higher density residential mixed-use developments, i.e., the Nineteen800 and Main Street developments. This may make the location better-suited for a mixed-use development, rather than solely for residential uses. Potential location (d) is located directly across Vallco Parkway from the Nineteen800 development, which may create a similar relationship and potential for mixed-use.

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 3. 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 special needs, including developmental disabilities.
 - c. Provide for appropriate cultural sensitivity training concerning Native American tribal resources prior to ground-disturbing activities.

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 zoning amendments are also required.

1. 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 4).
2. Zoning Map Amendment: The Vallco Shopping District Special Area would be rezoned to designate 13.1 acres within the Special Area 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 5).

Planning Commission Recommendations

On July 30, 2019, the Planning Commission held a public hearing regarding the proposed General Plan and zoning amendments. Following the public hearing, the Planning Commissioners deliberated regarding the amendments. The Planning Commission discussed the importance of providing options for additional residential development within the Vallco Shopping District Special Area, but the Commissioners did not reach agreement that the proposed amendments were necessary at this time. The Planning Commission did not want to identify a precise location for residential uses within the Vallco Shopping District Special Area before conducting a more comprehensive planning process. Commissioners also expressed concern regarding the economic feasibility of redeveloping the Special Area if residential uses were limited to 13.1 acres, and there was discussion of conducting a more robust community engagement process regarding future development.

Two motions were introduced to approve resolutions recommending adoption of the General Plan amendments, but neither motion passed. Because the Planning Commission did not recommend adoption of the General Plan amendments, they also did not recommend adoption of the zoning amendments that would have implemented the proposed General Plan amendments.

The Planning Commission approved Resolution 6884 by a vote of 4-0 (Commissioner Moore recused), which recommends that the City Council adopt a General Plan Amendment solely to establish a height limit of 60 feet for residential uses and 75 feet for residential uses above ground-level commercial within the Vallco Shopping District

Special Area; subject to economic analysis of the feasibility of development consistent with those General Plan amendments and subject to additional public engagement. Planning Commission Resolution 6884 is included as Attachment 11.

Financial Feasibility Assessment

To assess the viability of developing 13.1 acres of the Vallco Shopping District Special Area as residential or residential over ground floor commercial uses, but without office development, the City commissioned a preliminary financial feasibility assessment of the proposed General Plan and zoning amendments, which is included as Attachment 12. The analysis studied the feasibility of residential or mixed use development that would be allowed under the proposed Regional Shopping/Residential land use designation and associated zoning, independent from development on the remainder of the site.

The analysis identifies high-density ownership product as the most economically beneficial use under the proposed Regional Shopping / Residential land use designation. Assuming 459 units develop (at the maximum 35 dwelling units an acre on all 13.1 acres without a density bonus), 69 units would be dedicated at affordable sales prices to moderate and median income households and the remaining 390 units could be sold at market rates. Based on the analysis's estimates of an adjusted land basis, lease rates, sale values, development costs (including an assumed developer return on investment), operating costs, and permits and fees, this program results in a positive residual land value, i.e., the development program would be financially feasible based on the preliminary analysis results.

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 as defined in the statute, 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 both consistent with the requirements of Government Code Section 65863 and serve to implement the rezoning called for in the Housing Element.

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 were 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 is included as Attachment 13, and responses to comments received on the Second Addendum are provided in Attachment 14. As demonstrated in the Second Addendum and the responses to comments, the record includes 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 City Council adopt 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:

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

Prepared by: Benjamin Fu, Director, Community Development Department

Approved for Submission by: Deb Feng, City Manager

Attachments:

1. Draft Resolution No. _____, adopting a Second Addendum to the Environmental Impact Report for the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project
2. Draft Resolution No. _____, adopting GPA-2019-01, a resolution amending the General Plan to remove office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations
3. Draft Resolution No. _____, adopting 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
4. Draft Ordinance No. _____, adopting 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))
 5. Draft Ordinance No. _____, adopting 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)
 6. August 2, 2019 letter from the Department of Housing and Community Development to the City
 7. August 12, 2019 response letter from the City to the Department of Housing and Community Development
 8. Existing General Plan Vallco Shopping District Special Area policies
 9. Aerial of Vallco Shopping District Special Area and Assessor Parcel Map
 10. Alternative Site Locations for Residential Uses within Vallco Shopping District Special Area
 11. Planning Commission Resolution 6884
 12. August 14, 2019 Hausrath Economics Group Memorandum re: Preliminary financial feasibility assessment of the proposed General Plan Amendment for the Vallco Shopping District
 13. Second Addendum to the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project Environmental Impact Report (State Clearinghouse No. 2014032007)
 14. Response to Comments on the Second Addendum to the 2014 Certified General Plan Amendment, Housing Element Update, and Associated Rezoning Draft EIR (SCH# 2014032007)