



# CITY OF CUPERTINO

## AGENDA

### PLANNING COMMISSION

This will be a teleconference meeting with no physical location  
Tuesday, September 28, 2021  
6:45 PM

Teleconference Meeting

#### TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION TO HELP STOP THE SPREAD OF COVID-19

In accordance with Governor Newsom's Executive Order No-29-20, this will be a teleconference meeting without a physical location to help stop the spread of COVID-19.

Members of the public wishing comment on an item on the agenda may do so in the following ways:

1) E-mail comments by 5:00 p.m. on Tuesday, September 28 to the Commission at [planningcommission@cupertino.org](mailto:planningcommission@cupertino.org). These e-mail comments will be received by the Commission members before the meeting and posted to the City's website after the meeting.

2) E-mail comments during the times for public comment during the meeting to the Commission at [planningcommission@cupertino.org](mailto:planningcommission@cupertino.org). The staff liaison will read the emails into the record, and display any attachments on the screen, for up to 3 minutes (subject to the Chair's discretion to shorten time for public comments). Members of the public that wish to share a document must email [planningcommission@cupertino.org](mailto:planningcommission@cupertino.org) prior to speaking.

#### 3) Teleconferencing Instructions

Members of the public may observe the teleconference meeting or provide oral public comments as follows:

Oral public comments will be accepted during the teleconference meeting. Comments may be made during "oral communications" for matters not on the agenda, and during the public comment period for each agenda item.

To address the Commission, click on the link below to register in advance and access the

meeting:

#### Online

Please click the link below to join the webinar:

[https://cityofcupertino.zoom.us/webinar/register/WN\\_\\_I7Eeh53RtKW4dSX4mL6Uw](https://cityofcupertino.zoom.us/webinar/register/WN__I7Eeh53RtKW4dSX4mL6Uw)

#### Phone

Dial: (669) 900 6833 and enter Webinar ID: 957 8467 0141 (Type \*9 to raise hand to speak)

Unregistered participants will be called on by the last four digits of their phone number.

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 957 8467 0141

SIP: 95784670141@zoomcrc.com

After registering, you will receive a confirmation email containing information about joining the webinar.

Please read the following instructions carefully:

1. You can directly download the teleconference software or connect to the meeting in your internet browser. If you are using your browser, make sure you are using a current and up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers, including Internet Explorer.
2. You will be asked to enter an email address and a name, followed by an email with instructions on how to connect to the meeting. Your email address will not be disclosed to the public. If you wish to make an oral public comment but do not wish to provide your name, you may enter "Cupertino Resident" or similar designation.
3. When the Chair calls for the item on which you wish to speak, click on "raise hand." Speakers will be notified shortly before they are called to speak.
4. When called, please limit your remarks to the time allotted and the specific agenda topic.

#### ROLL CALL

#### APPROVAL OF MINUTES

1. Subject: Approve the September 14 Planning Commission minutes  
Recommended Action: Approve the September 14 Planning Commission minutes

[1 - Draft Minutes](#)

## POSTPONEMENTS

## ORAL COMMUNICATIONS

*This portion of the meeting is reserved for persons wishing to address the Commission on any matter within the jurisdiction of the Commission and not on the agenda. Speakers are limited to three (3) minutes. In most cases, State law will prohibit the Commission from making any decisions with respect to a matter not on the agenda.*

## WRITTEN COMMUNICATIONS

## CONSENT CALENDAR

*Unless there are separate discussions and/or actions requested by council, staff or a member of the public, it is requested that items under the Consent Calendar be acted on simultaneously.*

## PUBLIC HEARINGS

2. Subject: Consider adopting amendments to the Cupertino General Plan to add clarity to existing language in Chapter 3 (Land Use) in Figure LU-2, Policy LU-1.1 and Goal LU-13, and to add emphasis to existing language in Chapter 6 (Environmental Resources and Sustainability) (Strategy ES-6.1.1), and Cupertino Municipal Code Title 17, Environmental Regulations, to add a new Chapter, Chapter 17.04, to adopt standard environmental protection requirements for construction, development and other similar or related activities. (Application No(s): GPA-2021-001, MCA-2021-004; Applicant(s): City of Cupertino; Location: citywide)

Recommended Action: That the Planning Commission recommend that the City Council adopt the draft resolutions (Attachments 1 and 2) to adopt the:

1. Addendum (Addendum No. 5 to the 2014 General Plan EIR) addressing the environmental effects of the proposed changes and the proposed amendments to the Cupertino General Plan (Attachment 2); and
2. Proposed amendment to the Cupertino Municipal Code adding Chapter 17.04.

Staff Report

[1. Draft Resolution Adopting Addendum to EIR and GP Amendments](#)

[2. Draft Resolution - MCA-2021-004](#)

[3. Objective standards disposition](#)

[4. Addendum No. 5 to 2014 General Plan Final EIR](#)

## OLD BUSINESS

## NEW BUSINESS

## STAFF AND COMMISSION REPORTS

## ADJOURNMENT

*If you challenge the action of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this agenda, or in written correspondence delivered to the City of Cupertino at, or prior to, the public hearing. In the event an action taken by the Planning Commission is deemed objectionable, the matter may be officially appealed to the City Council in writing within fourteen (14) days of the date of the Commission's decision. Said appeal is filed with the City Clerk (Ordinance 632).*

*In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference meeting who is visually or hearing impaired or has any disability that needs special assistance should call the City Clerk's Office at 408-777-3223, at least 48 hours in advance of the meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.*

*Any writings or documents provided to a majority of the Planning Commission after publication of the packet will be made available for public inspection in the Community Development Department located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Planning packet archives linked from the agenda/minutes page on the Cupertino web site.*

*IMPORTANT NOTICE: Please be advised that pursuant to Cupertino Municipal Code section 2.08.100 written communications sent to the Cupertino City Council, Commissioners or City staff concerning a matter on the agenda are included as supplemental material to the agenda item. These written communications are accessible to the public through the City's website and kept in packet archives. Do not include any personal or private information in written communications to the City that you do not wish to make public, as written communications are considered public records and will be made publicly available on the City website.*

*Members of the public are entitled to address the Planning Commission concerning any item that is described in the notice or agenda for this meeting, before or during consideration of that item. If you wish to address the Planning Commission on any issue that is on this agenda, please complete a speaker request card located in front of the Commission, and deliver it to the City Staff prior to discussion of the item. When you are called, proceed to the podium and the Chair will recognize you. If you wish to address the Planning Commission on any other item not on the agenda, you may do so by during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.*

*For questions on any items in the agenda, or for documents related to any of the items on the agenda, contact the Planning Department at (408) 777 3308 or [planning@cupertino.org](mailto:planning@cupertino.org).*





# CITY OF CUPERTINO

## Agenda Item

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**21-9897**

**Agenda Date: 9/28/2021**  
**Agenda #: 1.**

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Subject: Approve the September 14 Planning Commission minutes

Approve the September 14 Planning Commission minutes



**CITY OF CUPERTINO  
PLANNING COMMISSION MEETING  
DRAFT MINUTES, SEPTEMBER 14, 2021**

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**PLEDGE OF ALLEGIANCE**

At 6:45 p.m. Chairperson Wang called to order the regular Planning Commission meeting. This was a teleconference meeting with no physical location.

**ROLL CALL**

Present: Chairperson Wang, Vice Chairperson Scharf, Commissioner Saxena, Commissioner Kapil, and Commissioner Madhhipatla

**APPROVAL OF MINUTES:**

1. Subject: Draft Minutes of June 22, 2021

Recommended Action: Approve or modify the Draft Minutes of June 22, 2021

Moved by Scharf and seconded by Wang to “Approve the minutes”. The motion carried 3-0-2. (Madhhipatla, Saxena abstain)

2. Subject: Draft Minutes of August 10, 2021

Recommended Action: Approve or modify the Draft Minutes of August 10, 2021

Moved by Scharf and seconded by Wang to “Approve the minutes”. The motion carried 4-0-1. (Kapil abstain)

3. Subject: Draft Minutes of August 24, 2021

Recommended Action: Approve or modify the Draft Minutes of August 24, 2021

Moved by Scharf and seconded by Madhhipatla to “Approve the minutes”. The motion carried 4-0-1. (Wang abstain)

**POSTPONEMENTS/REMOVAL FROM CALENDAR:** Planning Manager Piu Ghosh notified the Commission that application no.s GPA 2021-001 and MCA-2021-004 have been postponed to the next Planning Commission meeting.

**ORAL COMMUNICATIONS:**

Paul Soto spoke about housing issues.

**WRITTEN COMMUNICATIONS:** None

**CONSENT CALENDAR:** None

**PUBLIC HEARING:**

4. Subject: Consider amendments to Cupertino Municipal Code Sections 19.56.030 (Table 19.56.030), 19.56.030F, 19.56.040, and Table 19.56.040A and the addition of Section 19.56.080 (Density Bonus Ordinance) to allow density bonuses and other incentives as provided by state law and also to add a subsection in Section 19.56.040 providing additional incentives for affordable housing and a new Section 19.56.080 providing that the Density Bonus Ordinance will be interpreted consistent with state density bonus law. (Application No: MCA-2021-003; Applicant: City of Cupertino; Location: Citywide.)

Recommended Action: That the Planning Commission adopt the draft resolution (Attachment 1) recommending that the City Council:

1. Find the actions exempt from CEQA; and
2. Adopt amendments to Cupertino Municipal Code Sections 19.56.030 (Table 19.56.030) 19.56.030F, and Table 19.56.040A to allow for density bonuses and other incentives as provided by state law; and to add a new Section 19.56.080 providing that the Density Bonus Ordinance will be interpreted consistent with state density bonus law.

Note that the language providing additional incentives is not being proposed at this time.

Planning Manager Piu Ghosh gave a presentation and answered questions from the Commissioners

City Attorney Christopher Jensen answered questions the Commissioners regarding AB 2345, incentives, and concessions.

Chair Wang opened the public comment period and the following individual(s) spoke:

- Administrative Assistant Cyrah Caburian read a letter from Jennifer Griffin.
- Jean Bedord

Chair Wang closed the public comment period.

Commissioners asked questions and made comments.

Scharf moved and Saxena seconded to adopt the draft resolution. The motion carried 3-2-0. (Madhdipatla, Wang voted no)

**OLD BUSINESS:** None

**NEW BUSINESS:**

Planning Manager Piu Ghosh introduced Cyrah Caburian.

**REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:** None

**REPORT OF THE PLANNING COMMISSION:**

Vice Chairman Scharf attended the California Alliance of Local Electives. The following items were discussed:

- Affordable housing, SB9 and SB10
- Statewide initiative on local land use control scheduled in 2022.

Commissioner Madhdhipatla had comments about AB1174.

**FUTURE AGENDA SETTING:**

Vice Chairperson Scharf would like to create an ordinance on contaminated sites.

Chairperson Wang would like to get quarterly updates on the Vallco project, review Vallco's project timeline and would like to get ahead of Housing Element and review land use designation.

**ADJOURNMENT:**

The meeting was adjourned at 8:13 pm to the next Planning Commission meeting on September 28, 2021, at 6:45 p.m.

Respectfully Submitted:

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/s/Abby Ayende  
Abby Ayende, Management Analyst



# CITY OF CUPERTINO

## Agenda Item

**21-9904**

**Agenda Date: 9/28/2021**

**Agenda #: 2.**

Subject: Consider adopting amendments to the Cupertino General Plan to add clarity to existing language in Chapter 3 (Land Use) in Figure LU-2, Policy LU-1.1 and Goal LU-13, and to add emphasis to existing language in Chapter 6 (Environmental Resources and Sustainability) (Strategy ES-6.1.1), and Cupertino Municipal Code Title 17, Environmental Regulations, to add a new Chapter, Chapter 17.04, to adopt standard environmental protection requirements for construction, development and other similar or related activities. (Application No(s): GPA-2021-001, MCA-2021-004; Applicant(s): City of Cupertino; Location: citywide)

That the Planning Commission recommend that the City Council adopt the draft resolutions (Attachments 1 and 2) to adopt the:

1. Addendum (Addendum No. 5 to the 2014 General Plan EIR) addressing the environmental effects of the proposed changes and the proposed amendments to the Cupertino General Plan (Attachment 2); and
2. Proposed amendment to the Cupertino Municipal Code adding Chapter 17.04.



**COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

CITY HALL  
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**PLANNING COMMISSION STAFF REPORT**

Meeting: September 28, 2021

**Subject**

Consider adopting amendments to the Cupertino General Plan to add clarity to existing language in Chapter 3 (Land Use) in Figure LU-2, Policy LU-1.1 and Goal LU-13, and to add emphasis to existing language in Chapter 6 (Environmental Resources and Sustainability) (Strategy ES-6.1.1), and Cupertino Municipal Code Title 17, Environmental Regulations, to add a new Chapter, Chapter 17.04, to adopt standard environmental protection requirements for construction, development and other similar or related activities. (Application No(s): GPA-2021-001, MCA-2021-004; Applicant(s): City of Cupertino; Location: citywide)

**Recommended Action**

That the Planning Commission recommend that the City Council adopt the draft resolutions (Attachments 1 and 2) to adopt the:

1. Addendum (Addendum No. 5 to the 2014 General Plan EIR) addressing the environmental effects of the proposed changes and the proposed amendments to the Cupertino General Plan (Attachment 2); and
2. Proposed amendment to the Cupertino Municipal Code adding Chapter 17.04.

**Discussion**

*Background:*

Changes to State law since 2017 provide that housing development projects may in some circumstances only be required to comply with objective standards in a city's general plan and zoning, as opposed to standards that are subjective and whose application involves the use of discretion. Since FY19/20, the City's Work Program includes an item to update the General Plan and Zoning Ordinance to ensure that those documents include objective standards that can be readily understood and applied to all projects. Staff and the City Attorney's Office identified certain items that could benefit from clarification. Some of these, such as clarifications in Chapter 13.04, Park Land Dedication, and Chapter 19.80, Planned Development Zones, of the Municipal Code, were completed in late 2019.

The Planning Commission and City Council also invited members of the public to suggest areas in the General Plan and the Zoning Ordinances that could be clarified with objective standards. A large number of comments were collected from members of the public, and individual Planning Commissioners and City Council members, between June 2019 and October 2019, including at two Planning Commission meetings on June 25 and July 9, 2019 and two City Council meetings on September 18 and October 1, 2019. Additional comments were compiled during the General Plan Annual Review conducted by Planning Commission during five meetings between September 2019 and February 2020.

At its September 18, 2019 meeting, the City Council authorized staff to commence preparing amendments for the items identified by staff and the City Attorney's Office and continued the discussion on the remaining items to its October 1, 2019 meeting. However, following discussion at that meeting, the Council delegated the task of prioritizing and reviewing the remaining items to the City Manager.

It is important to note that while this evaluation process was occurring, SB 330 was enacted. SB 330 made changes to State law providing that until January 1, 2025, amendments to existing standards that will reduce the intensity of housing development may not be made on some properties, without corresponding amendments to increase the intensity of housing development elsewhere.

Staff, with direction from the City Manager and input from the City Attorney, prepared Attachment 4. Attachment 4 indicates the timing of the various topics that have been identified as needing clarification as follows:

- Immediate Completion – Items for which staff had started to prepare updates. These are presented here.
- Current Work Program Items – Items that are part of the current Work Program and are expected to be completed or have significant progress in Fiscal Year 2020/2021.
- Completed – Items that have been completed as part of prior projects/actions.
- Housing Element Update – Items that may not be completed by themselves due to limitations of state law but may be considered as part of upzoning that may be necessary to accommodate the City's RHNA.
- Future Work Program Items – Items that the City may consider incorporating into future Work Programs based on staffing and budgetary considerations.
- On Hold – Items not recommended to be considered by the Planning Commission at this time or those that may be considered with a future comprehensive General Plan update.

The amendments proposed at this time are on the "Immediate Completion" list. In addition, Municipal Code amendments are proposed to adopt objective standards for environmental protection.

*Analysis:*

General Plan Amendments (Attachment 1)

There are two chapters in which amendments are proposed in the General Plan – Chapter 3 (Land Use) and Chapter 6 (Environmental Resources and Sustainability). In Chapter 3, the changes are limited to Figure LU-2, Policy LU-1.1 and in the introductory language in Goal 13.

1. Figure LU-2: Edits in Figure LU-2 have been made in the footnotes to the figure and in the height and density boxes on the figure. These are described further below:
  - a. Footnotes: Edits have been made to the footnotes to address concerns related to the objectivity of the existing language. Clarifications include clarifications to Building Planes footnotes to clarify the building slope line must be retained at a 1:1 slope for the building and not just the “primary building bulk.” In addition, language has been added to clarify the intent of those words, to allow “architectural feature that do not include useable area” into the slope line.

Another area of clarification is to address the language related to heights and setbacks adjacent to residential areas. Language has been amended to reference specific plans, conceptual zoning plans or land use plans and any adopted design guidelines for established height and setbacks adjacent to residential areas.
  - b. Height and Density Boxes: No changes have been made which allow an increased density or any increase in heights in any of the Special Areas or neighborhoods.

Language in the Homestead, Heart of the City, South De Anza, Monta Vista Village Special Area and Neighborhoods density and height boxes have been updated to clarify the existing density in the Heart of the Special Area. Additionally, edits are proposed in the City Center Node text box to clarify the intent of the existing language – that existing, taller buildings (such as the Montebello condominiums, former Kimpton Hotel, and the tower office buildings) may retain their existing height.
2. Policy LU-1.1: A reference has been added to Figure LU-2 in Policy LU-1.1 to clarify that the figure identifies maximum residential densities allowed.
3. Goal LU-13: The policies in Goals LU-14 through LU-18 are nested policies for the Heart of the City Special Area. However, this was not clear in the General Plan. This has been clarified with amended language.
4. Strategy ES-6.1.1: Emphasis has been added to this strategy to “strongly” encourage Santa Clara County to engage with affected neighborhoods when considering changes to the mineral extraction activity and changes to restoration plans, as advised by one of the members of the City Council.

Note that the above-described amendments are intended to clarify the adopted General Plan and do not change the permitted intensity of housing development for any parcel in the City.

Municipal Code Amendment (Attachment 3)

As previously described, staff is recommending the adoption of standards for environmental protection for all kinds of construction, site improvements and other related or similar projects by adding Chapter 17.04 (Standard Environmental Protection Requirements) to the Municipal Code. The proposed language was developed with input from PlaceWorks, an environmental consulting firm, their on-staff biologists, geotechnical experts and other staff with subject area expertise. The draft language was further reviewed and edited for clarity and objectivity by staff and City Attorney’s Office.

The proposed new Chapter is organized similarly to other Chapters in the Municipal Code. A purpose section (Section 17.04.010) is followed by a Definitions section (Section 17.04.020). The definitions section defines terms used in the new Chapter to ensure that the terms are not misinterpreted or interpreted differently by different persons.

Following the Definitions section is an Applicability and Demonstration of Compliance Section (Section 17.04.030). This section identifies which projects the standards would apply to. As proposed, all projects related to construction, ground-disturbing activities (grading, excavation, etc.) and tree removal would be subject to these standards. In addition, the proposed language identifies how an applicant must demonstrate compliance. The following table summarizes these requirements:

<b>Type of Project</b>	<b>Compliance Mechanism</b>
Non-residential project	Submittal and implementation of a Construction Management Plan and/or inclusion on permit plans
Residential development of four or more units	
Residential development with three or fewer units	On building permit plans, as required
Residential additions/remodels and Tenant Improvements	
Projects with no requirement for building and ground disturbing permits (includes tree removal permits with no other associated improvements or ground disturbing activity)	Implement all applicable requirements during permitted work

Requirements prior to project approval: Section 17.04.040 of the proposed chapter identifies the technical reports required prior to project approval. These include reports related to Air Quality, Hazardous Materials, Traffic and Vibration to address environmental protection.

1. **Air Quality:** Certain projects that operationally generate large amounts of diesel truck or Transport Refrigeration Units (TRUs) per day or are located within 1,000 feet of sensitive land uses (e.g. residential, schools, hospitals or nursing homes) are required to prepare an operational Health Risk Assessment (HRA). The report is required to ensure that indoor air quality for projects that are identified by the Bay Area Air Quality Management District (BAAQMD) as requiring further analysis, is managed by preparing an operational HRA. The operational HRA would be prepared in accordance with the policies and procedures of the State office of Environmental Health Hazard Assessment (OEHHA) and BAAQMD to ensure standard requirements in the preparation of the assessment. The project applicant is also required to indicate the location of the project site on the BAAQMD's Planning Healthy Places map. If the site is located in an area identified as "Implement Best Practices," the project is required to implement best practices. These include installation of higher rated air filters, ensuring that openings into the building are located as far away from emission sources as feasible and planting trees as required.
2. **Soil Remediation:** All projects except tree removal projects must complete and submit the applicable form of environmental assessment report, and additional testing, if required, prior to construction. Applicants are required to provide, at a minimum a Phase 1 Environmental Site Assessment (ESA) report. If the Phase I ESA report indicates the potential for contaminants, the project applicant must prepare a Phase II ESA report to identify the type and extent of the contamination. This includes steps to take if additional testing is required, and how testing must be conducted. The details of the process are described.
3. **Traffic:** A Vehicle Miles Traveled (VMT) analysis is required to indicate compliance with the City's previously adopted VMT standards.
4. **Vibration:** If it is anticipated that equipment that causes vibrations will be used during construction, the project applicant must submit a vibration study. There are certain standards prescribed to ensure that vibration effects are reduced.

Requirements prior to permit issuance: Section 17.04.050 includes the requirements related to the different environmental factors that must be met prior to permit issuance if there has not been a prior project approval. The areas where refinements are being made to previous conditions of approval or new standards have been proposed are as follows:

1. **Air Quality:** The City already has standard requirements related to Air Quality impacts as identified in the General Plan Environmental Impact Report (EIR) certified by the City Council in 2014. These have been further refined because BAAQMD has issued or adopted new guidance since that time. In addition, requirements have been imposed to ensure that larger projects (those that disturb more than one acre and are

more than two months in duration) are required to use higher quality equipment as mitigation.

Prior to any construction permits being issued, BAAQMD's requirements must be indicated on the plans

2. Greenhouse Gas Emissions and Energy: In order to ensure that greenhouse gas emission impacts are minimized, applicants must complete the Climate Action Plan – Development Project Consistency Checklist for approval by the City.
3. Biological Resources: The requirements related to biological resources pertain to the taking, removing or destroying of eggs from active nests or the destruction/disturbance of bat roosts in abandoned buildings. There are laws and requirements that prevent the disturbance or taking of eggs from active nests per the Migratory Bird Treaty Act and the State Department of Fish and Game Code. These requirements are currently applied to all applications that have the possibility of affecting birds. The proposed requirements are to implement the requirements and spirit of that law in keeping with the size of the project. The requirements differ slightly by the size of project. For smaller projects (such as one single family home, ground disturbing activity of up to 500 square feet or the removal of up to three trees), the property owner or the tree removal contractor is authorized to conduct preconstruction surveys to identify active nests. If active nests are found, smaller projects must then retain an ornithologist or a biologist to identify a buffer at which work may proceed. However, for all other projects, a qualified ornithologist or biologist must be retained at the outset to conduct the preconstruction surveys. Repeat surveys may be necessary on a weekly basis to identify when work may proceed in the buffer area. A final report must be presented to ensure work was completed to the satisfaction of the City.

Special Status Roosting Bats are also required to be protected during any construction, or re-tenanting of abandoned or vacant structures. This is done by showing evidence that abandoned buildings were properly sealed when vacated/abandoned and conducting pre-construction surveys by a qualified biologist prior to proceeding with any work. The requirement also prescribes objective ways to address the issue in the event that there are any roosting bats in a building. A final report is required to ensure the work was completed to the satisfaction of the City.

4. Cultural Resources: Project applicants must adhere to certain requirements in order to protect cultural and tribal resources, and human remains and Native American burials as required by state law. This includes training prior to beginning construction, identifying potential cultural resources, not disturbing soil within 25 feet of any finds, retaining a qualifying archaeologist for preparation of reports and documenting significant finds, contacting tribes if the resource is a tribal resource. In

areas where there are known cultural resources, the archaeologist is required to provide information to the City for it to determine whether the resources is considered historic or a unique archeological resources.

The requirements for protection of human resources and native American burials are the same as those required by state law and identified in the CA Health and Safety and CA Public Resources Codes. These include not disturbing remains, notifying the County Coroner's office and determining whether the remains are native American or not. If they are native American, a process prescribed by state law is identified.

5. Hazardous Materials (Soil and Groundwater Contamination): This section clarifies the responsibilities of the project applicant, including requiring the involvement of other regulatory agencies, depending on the contaminants identified in the Phase II ESA report, prior to issuance of a permit.
6. Hydrology and Water Quality: This requirement requires all applicants to demonstrate compliance with the City's Municipal Code requirements related to stormwater pollution prevention.
7. Noise and Vibration: To ensure that noise and vibration impacts are mitigated, all applicants must comply with the City's Community Noise Control Ordinance and also provide notice prior to commencing construction. The noticing radius is determined by the size of the project and ranges between 500 feet for projects on large sites and 100 feet for smaller sites and single family homes. The City would review and approve haul routes to ensure that the effects are minimized to the greatest extent possible by avoiding the greatest number of sensitive use areas.

Additionally, the applicant is required to prepare and implement a Construction Vibration Monitoring plan for the areas that are identified as being sensitive to the use of identified equipment and also provide a post-survey report on any structure where either monitoring has indicated high vibration levels or complaints have been received about damage having occurred. Noticing requirements are also specified for construction involving vibratory equipment.

8. Paleontological Resources: This requirement is to ensure that paleontological resources are protected during construction. These require the retention of a qualified paleontologist, at the applicant's cost, who would assess any finds for significance and mitigation.
9. Utilities and Service Systems: The 2014 General Plan EIR identified that there were some potential issues with peak wet weather flow capacity through the City of Santa Clara's sanitary sewer system related to contractual obligation of the Cupertino Sanitary District. To ensure that these effects are addressed, requirements have been

added to ensure that reports are prepared for the City's review to ensure that this cap is not triggered and there are some requirements specified to achieve this and ensure that the Cupertino Sanitary District has signed off on a letter of clearance prior to issuance of permits.

Additionally, applicants are required to ensure that they obtain written approval from the appropriate water service provided for water connections, service capability and location/layout of water lines and backflow preventers, prior to issuance of any permits.

### Tribal Consultation

The City received a request to conduct tribal consultation pursuant to SB18 (Tribal Consultation for General Plan Amendments). With this request in early July, the Native American Heritage Commission (NAHC) was contacted to obtain the names of tribes that should be contacted. Upon receipt of the list of tribes that should be contacted, letters were sent by certified mail on July 8, 2021. Tribes have 90 days (until October 6, 2021) to request consultation. On August 7, 2021, Ms. Geary, the Chairwoman of the Tamien Nation, requested consultation to which draft materials were sent. Following this, a specific request was made to consult with the City on Strategy ES-6.1.2: Recreation in Depleted Mining Areas. However, there are no changes being proposed this General Plan Strategy. This has been communicated to Chairwoman Geary on September 25, 2021. No other requests for consultation have been received so far.

### Environmental Impacts

Pursuant to the requirements of the California Environmental Quality Act (CEQA), Addendum No. 5 (Attachment 4) to the Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) has been prepared. No subsequent or supplemental environmental review is required because none of the conditions that would require preparation of a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

In addition, the adoption of the General Plan Amendments Municipal Code amendments is not a project under the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq., and the State CEQA Guidelines, California Code of Regulations Section 15000 et. seq., (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. Even if the project were found to be a project under CEQA, it would be subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) (General Rule) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no

possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action, the adoption of new Environmental Protection Standards, would have no or only a de minimis effect on the environment because it does not commit the City to any particular project. In addition, the new Standard Environmental Protection Requirements consist of previously adopted mitigation measures, City conditions of approval, existing regulatory requirements and other best practices, and are adopted for the purpose of reducing the effects of land use development and infrastructure projects on the environment.

#### Next Steps

The Planning Commission's recommendation will be presented to the City Council for its review and determination on whether to adopt the proposed General Plan Amendment and Municipal Code Amendment or not. The City Council hearing is tentatively scheduled for October 19, 2021.

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Prepared by:

Piu Ghosh, Principal Planner

Reviewed and Approved for Submission by:

Benjamin Fu, Director of Community  
Development

#### Attachments:

1. Draft Resolution adopting Addendum No. 5 to the 2014 General Plan EIR and General Plan Amendments GPA-2021-001
2. Draft Resolution adoption of Municipal Code Amendments MCA-2021-004
3. Document indicating timing of all items requested have objective standards adopted
4. Addendum No. 5 to the 2014 General Plan Final EIR

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF CUPERTINO RECOMMENDING THAT THE CITY COUNCIL  
ADOPT AN ADDENDUM (ADDENDUM NO. 5 TO THE 2014  
GENERAL PLAN EIR) ADDRESSING THE ENVIRONMENTAL  
EFFECTS OF THE PROPOSED CHANGES TO THE GENERAL PLAN  
AND THE MUNICIPAL CODE**

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The Planning Commission recommends that the City Council adopt the Draft Resolution attached hereto as Exhibit 1 to adopt Addendum No. 5 to the 2014 General Plan Final EIR and the General Plan amendments to clarify existing language in Chapter 3 and emphasize language in Chapter 6.

---

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this \_\_\_\_day of \_\_\_\_\_, \_\_\_\_, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Piu Ghosh  
Planning Manager

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R. Wang  
Chair, Planning Commission

RESOLUTION NO. [##-###]

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADOPTING AN ADDENDUM (ADDENDUM NO. 5) TO THE 2014 GENERAL  
PLAN FINAL EIR AND APPROVAL OF MINOR MODIFICATIONS TO THE  
GENERAL PLAN**

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 *et seq.*) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) (hereinafter, "CEQA Guidelines"), the City prepared a Final Environmental Impact Report for General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) ("Final EIR"); and

WHEREAS, the City Council certified the Final EIR and approved the Project on December 4, 2014; and

WHEREAS, the approved amendments to the General Plan and Municipal Code Amendments ("Project") consists of amendments to the existing language in the General Plan to reduce ambiguity and adoption of standard environmental protection requirements; and

WHEREAS, since certification of the Final EIR, the City has proposed certain refinements to the Project consisting of clarifications of the existing language in the General Plan without any changes to the intensity or density of development and adoption of certain standard environmental protection requirements; and

WHEREAS, these activities constitute minor modifications to the Project and none of the conditions requiring a subsequent or supplemental EIR as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 and Section 15163 have occurred; and

WHEREAS, the City has caused to be prepared an Addendum to the Final EIR pursuant to CEQA Guidelines Section 15164 ("Fifth Addendum"); and

WHEREAS, the Addendum provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because there are no substantial changes in the Project or the circumstances under which the Project is to be undertaken that would result in new or substantially more severe environmental impacts requiring major revisions to the Final EIR, and there is no new

information that involves new significant environmental effects or a substantial increase in the severity of previously identified environmental effects that would require preparation of a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163; and

WHEREAS, the Addendum concluded that the significant and unavoidable impacts to which the proposed Project will contribute were previously disclosed and analyzed in the Final EIR; and

WHEREAS, the City held a duly noticed public hearing on the Addendum to the EIR on October 19, 2021 to consider adoption of the Addendum to the Final EIR; and

WHEREAS, all individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the EIR and Addendum; and

WHEREAS, by Resolution No. \_\_\_ the Planning Commission recommended that the City Council adopt the Addendum to the Final EIR; and

WHEREAS, the changes made after publication of the Addendum, including any changes recommended by the Planning Commission, do not change the conclusion that none of the conditions requiring a subsequent or supplemental EIR as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 and Section 15163 have occurred; and

WHEREAS, the City Council has independently reviewed and considered the information in the Addendum, which concludes that no further environmental review is required for the refinements to the Project;

NOW, THEREFORE, BE IT RESOLVED that the City takes the following actions:

1. Determines that the Addendum reflects the independent judgment of the City.
2. Adopts the Addendum to the Final EIR for the General Plan Amendments and Municipal Code Amendments to clarify existing language in the General Plan in Chapters 3 and 6, and adoption of standard environmental protection requirements
3. Approves the project refinements as shown in Exhibit A attached hereto and incorporated herein by reference and authorizes the staff to make grammatical,

**Exhibit 1**

typographical, numbering, and formatting changes necessary to assist in production of the final published General Plan.

PASSED and ADOPTED at a regular meeting of the City Council of the City of Cupertino the \_\_\_\_day of \_\_\_\_\_, 2021 by the following vote:

AYES:

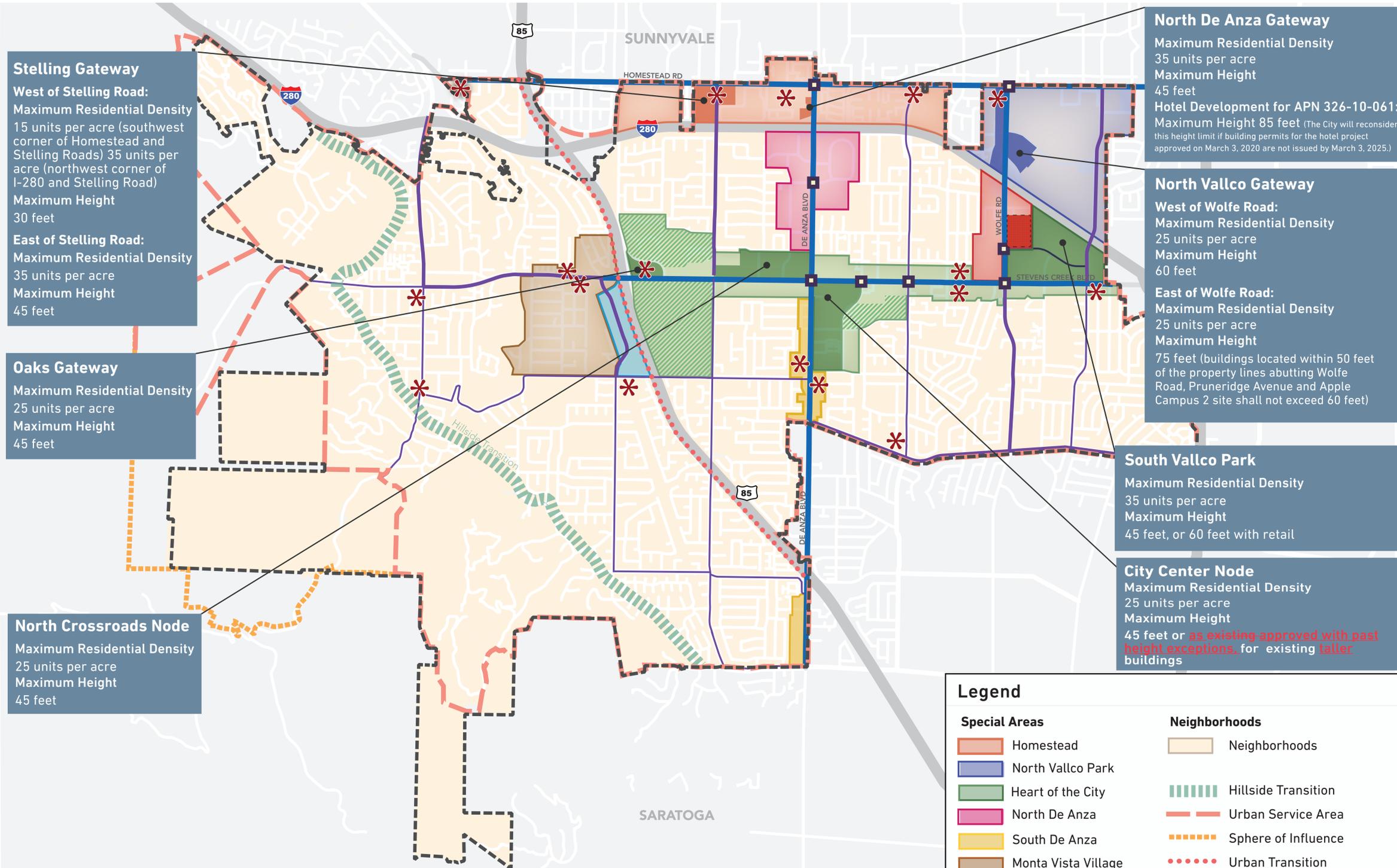
NOES:

ABSTAIN:

ABSENT:

SIGNED:  _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	_____ Date

# Figure LU-2 COMMUNITY FORM DIAGRAM



**Building Planes:**

- 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. **Architectural features that do not include usable area may encroach into the slope line.**
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For projects outside of the Vallco Shopping District Special Area that are adjacent to residential areas: **Heights and setbacks adjacent to residential areas will be determined during project review. Where slope lines or other applicable height and setback limits for projects adjacent to residential areas is not established in a specific plan, conceptual zoning plan or land use plan and in any adopted design guidelines, this will be established during project review.**
- For projects within the Vallco Shopping District Special Area that are adjacent to the North Blaney/Portal neighborhood: Maintain the building below a 2:1 slope line drawn from the adjacent residential property line.
- For the North and South Vallco Park areas: 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. **Architectural features that do not include usable area may encroach into the slope line.**

- Parcel APN 326-10-061 within the N. De Anza Gateway: For hotel development, maintain the building below the variable slope lines as shown in Figure LU-5. For all other developments, the 1:1 slope line shall be maintained.

**Rooftop Mechanical Equipment:** Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are enclosed, centrally located on the roof and not visible from adjacent streets.

**Priority Housing Sites:** Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element other than the Vallco Shopping District Special Area shall be as reflected in the Housing Element. The Vallco Shopping District Special Area shall be subject to the heights and densities shown above, with residential uses permitted in the Regional Shopping/Residential designation as shown in Figure LU-4.

### Legend

<b>Special Areas</b>	<b>Neighborhoods</b>
Homestead	Neighborhoods
North Vallco Park	Hillside Transition
Heart of the City	Urban Service Area
North De Anza	Sphere of Influence
South De Anza	Urban Transition
Monta Vista Village	City Boundary
Bubb Road	Boulevards (Arterials)
Vallco Shopping District	Avenues (Major Collectors)
	Avenues (Minor Collectors)
	Key Intersections
	Neighborhood Centers

<b>Homestead Special Area</b>	
<b>Maximum Residential Density</b> Up to 35 units per acre per General Plan Land Use Map 15 units per acre (two parcels at southeast corner of Homestead Rd and Blaney Ave). All other areas - Maximum density as indicated in the General Plan Land Use Map or 35 units per acre where none indicated.	
<b>Maximum Height</b> 30 feet, or 45 feet (south side between De Anza and Stelling)	
<b>North Vallco Park Special Area</b>	
<b>Maximum Residential Density</b> 25 units per acre	<b>Maximum Height</b> 60 feet
<b>Heart of the City Special Area</b>	
<b>Maximum Residential Density</b> Up to 25 units per acre per General Plan Land Use Map or - South Vallco -35 units per acre (South Valley)- All other areas - Maximum density as indicated in the Heart of the City Land Use Map and, if none indicated, 25 units per acre	<b>Maximum Height</b> 45 feet, or 30 feet where designated by hatched line
<b>North De Anza Special Area</b>	
<b>Maximum Residential Density</b> Maximum density is 25 units per acre	<b>Maximum Height</b> 45 feet
<b>South De Anza Special Area</b>	
<b>Maximum Residential Density</b> North of Bollinger Rd - maximum density is 25 units per acre (north of Bollinger) South of Hwy 85 - maximum residential is 5-15 units per acre (South of 95)	<b>Maximum Height</b> 30 feet
<b>Monta Vista Village Special Area</b>	
<b>Maximum Residential Density</b> Up to 15 units per acre, per General Plan Land Use Map Maximum density as indicated in the General Plan Land Use Map, and if none indicated, 15 units per acre	<b>Maximum Height</b> Up to 30 feet
<b>Bubb Road Special Area</b>	
<b>Maximum Residential Density</b> 20 units per acre	<b>Maximum Height</b> 45 feet
<b>Vallco Shopping District Special Area</b>	
<b>Regional Shopping/Residential</b> <b>Maximum Residential Density</b> 35 units per acre in areas identified in Figure LU-4 <b>Minimum Residential Density</b> 29.7 units per acre in areas identified in Figure LU-4 <b>Maximum Height</b> Up to 60 feet	<b>Regional Shopping</b> <b>Maximum Residential Density</b> N/A - residential is not a permitted use <b>Maximum Height</b> Up to 60 feet
<b>Neighborhoods</b>	
<b>Maximum Residential Density</b> Per Maximum density as indicated in the General Plan Land Use Map; 15 units per acre for Neighborhood Commercial Centers Sites	<b>Maximum Height</b> 30 feet



## GOAL LU-1

Create a balanced community with a mix of land uses that supports thriving businesses, all modes of transportation, complete neighborhoods and a healthy community

### BALANCED COMMUNITY

The City seeks to balance future growth and development in order create a more complete community. This includes ensuring a mix of land uses that support economic, social and cultural goals in order to preserve and enhance Cupertino's great quality of life.

#### POLICY LU-1.1: LAND USE AND TRANSPORTATION

Focus higher land use intensities and densities within a half-mile of public transit service, and along major corridors. [Figure LU-2 indicates the maximum residential densities for sites that allow residential land uses.](#)

#### POLICY LU-1.2: DEVELOPMENT ALLOCATION

Maintain and update the development allocation table (**Table LU-1**) to ensure that the allocations for various land uses adequately meet city goals.

#### STRATEGIES:

##### LU-1.2.1: Planning Area Allocations.

Development allocations are assigned for various Planning Areas. However, some flexibility may be allowed for transferring allocations among Planning Areas provided no significant environmental impacts are identified beyond those already studied in the Environmental Impact Report (EIR) for Community Vision 2040.



## GOAL LU-13

Ensure a cohesive, landscaped boulevard that supports all modes of transportation, links its distinct and active commercial and mixed-use sub-areas and nodes, and creates a high-quality, distinct community image and a vibrant heart for Cupertino

### HEART OF THE CITY SPECIAL AREA

The Heart of the City will remain the core commercial corridor in Cupertino, with a series of commercial and mixed-use centers and a focus on creating a walkable, bikeable boulevard that can support transit. General goals, policies and strategies [\(as identified in Goal LU-13\)](#) will apply throughout the entire area; while more specific goals, policies, and strategies for each subarea are designed to address their individual settings and characteristics [and are identified in Goals LU-14 through LU-18.](#)

#### POLICY LU-13.1: HEART OF THE CITY SPECIFIC PLAN

The Heart of the City Specific Plan provides design standards and guidelines for this area, which promote a cohesive, landscaped boulevard that links its distinct sub-areas and is accessible to all modes of transportation.

#### POLICY LU-13.2: REDEVELOPMENT

Encourage older properties along the boulevard to be redeveloped and enhanced. Allow more intense development only in nodes and gateways as indicated in the Community Form Diagram **(Figure LU-2)**.



## GOAL ES-6

### Minimize impacts of available mineral resources

#### MINERAL RESOURCES

The City seeks to minimize the impacts of mineral resource operations on the community.

##### **POLICY ES-6.1: MINERAL RESOURCE AREAS**

Cooperatively work with Santa Clara County to ensure that plans for restoration and mining operations at Lehigh Hanson and Stevens Creek quarries consider environmental impacts and mitigations.

##### **STRATEGIES:**

##### **ES-6.1.1: Public Participation.**

Strongly encourage Santa Clara County to engage with the affected neighborhoods when considering changes to restoration plans and mineral extraction activity.

##### **ES-6.1.2: Recreation in Depleted Mining Areas.**

Consider designating abandoned quarries for passive recreation to enhance plant and wildlife habitat and rehabilitate the land.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF CUPERTINO RECOMMENDING THAT THE CITY COUNCIL  
ADOPT AN ORDINANCE ADDING A NEW CHAPTER 17.04  
(STANDARD ENVIRONMENTAL PROTECTION REQUIREMENTS)  
TO THE CUPERTINO MUNICIPAL CODE**

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The Planning Commission recommends that the City Council:

1. Determine that Project is not a project under the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq., and the State CEQA Guidelines, California Code of Regulations Section 15000 et. seq., (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that it is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) (General Rule) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action, the adoption of new standard environmental protection requirements, would have no or only a de minimis effect on the environment because it does not commit the City to any particular project. In addition, the new standard environmental protection requirements consist of previously adopted mitigation measures, City conditions of approval, existing regulatory requirements, and other best practices and are adopted for the purpose of reducing the effects of land use development and infrastructure projects on the environment.
2. Adopt the proposed amendments to the Municipal Code as indicated in Exhibit A.

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PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by the following roll call vote:

AYES:

NOES:

Ordinance No. \_\_\_\_\_

Page 2

ABSENT:

ABSTAIN:

**ATTEST:**

**APPROVED:**

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Piu Ghosh  
Planning Manager

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R. Wang  
Chair, Planning Commission

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADDING CHAPTER 17.04 (STANDARD ENVIRONMENTAL PROTECTION  
REQUIREMENTS) TO THE CUPERTINO MUNICIPAL CODE**

The City Council of the City of Cupertino finds that:

1. WHEREAS, requiring all projects involving construction, grading, excavation, or tree removal activity that require a permit or approval by the City to comply with applicable standard environmental protection requirements, based on objective standards, will reduce the environmental consequences of projects that are not subject to review under the California Environmental Quality Act; and
2. WHEREAS, amending the Cupertino Municipal Code to specify the standard environmental protection requirements that apply to projects for which City permits for or approval of construction, grading, excavation, or tree removal activity is required will provide certainty to project applicants; and
3. WHEREAS, the City Council desires to have objective standards applicable to projects that are clear and understandable to ensure there are no unacceptable risks to human health or safety or the environment; and
4. WHEREAS, the Planning Commission held a duly noticed public hearing on September 28, 2021 regarding the proposed ordinance; and
3. WHEREAS, the City of Cupertino wishes to adopt the standard environmental protection requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES  
ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The City of Cupertino hereby adopts Standard Environmental Protection Requirements and amends the Cupertino Municipal Code as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this

Ordinance No. \_\_\_\_\_

Page 4

ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3: California Environmental Quality Act.**

This Ordinance is not a project under the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq., and, together with related State CEQA Guidelines, California Code of Regulations Section 15000 et. seq., (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) (General Rule) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

In this circumstance, the proposed action, adoption of new standard environmental protection requirements, would have no or only a de minimis effect on the environment because it does not commit the City to any particular project. In addition, the new standard environmental protection requirements consist of previously adopted mitigation measures, City conditions of approval, existing regulatory requirements, and other best practices and are adopted for the purpose of reducing the effects of land use development and infrastructure projects on the environment. The foregoing determination is made by the City Council in its independent judgment.

**SECTION 4: Effective Date.**

This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section 36937.

Ordinance No. \_\_\_\_\_

Page 5

**SECTION 5: Publication.**

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a regular meeting of the Cupertino City Council on October 19, 2021, and **ENACTED** at a regular meeting of the Cupertino City Council on November 2, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Darcy Paul, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	  _____ Date
APPROVED AS TO FORM:  _____ Chris Jensen, City Attorney	  _____ Date

## **Attachment A – Adding Chapter 17.04 (Standard Environmental Protection Requirements)**

*The sections of the Cupertino Municipal Code set forth below are adopted as follows:*

Add new Chapter 17.04 (Standard Environmental Protection Requirements) to Title 17

### **CHAPTER 17.04 Standard Environmental Protection Requirements**

#### **Section**

17.04.010 Purpose

17.04.020 Definitions

17.04.030 Applicability

17.04.040 Standard Environmental Protection Technical Report Submittal Requirements

17.04.050 Standard Environmental Protection Permit Submittal Requirements

17.04.060 Violations

#### **17.04.010 Purpose.**

The purpose of this chapter is to identify standard environmental protection requirements that all construction projects must meet, including but not limited to environmental mitigation measures identified in any environmental documents required as part of a General Plan update.

#### **17.04.020 Definitions.**

The following words and phrases when used in this chapter shall have the following meanings set forth in this section:

- A. “Applicable Construction Document” means a construction management plan or a permit plan, which are the project plans associated with permit applications.
- B. “Approval” means issuance of permits under Title 18 or Title 19, and when permits pursuant to Title 18 or Title 19 are not required issuance of other required City permits by the City of Cupertino.
- C. “Construction Management Plan” means a document that includes the details the construction manager is required to enforce to minimize potential construction impacts related to construction crew parking, equipment staging, off-site circulation, noise, and air quality on residents and commercial operations during the construction phase.

Ordinance No. \_\_\_\_\_

Page 2

- D. "Construction" or "Ground-disturbing activities" include any paving, excavation, soil removal, grading, utility trenching, removal of foundations and structures, regardless of whether the soils have been previously disturbed or not.
- E. "Permit" means any discretionary or ministerial permit or approval that is required pursuant to Title 14, Title 16, Title 18, or Title 19 of the Cupertino Municipal Code to allow a project.
- F. "Permit Plan" means any project plan(s) that are required for permit approval pursuant to Title 14, Title 16, Title 18, or Title 19 of the Cupertino Municipal Code to allow a project.
- G. "Project" means any construction, ground-disturbing activity, or tree removal activity.
- H. "Project Applicant" means the project proponent or property owner.
- I. "Regulated Projects" means any development that is subject to oversight by an environmental regulatory agency, including but not limited to oversight by the State Water Resources Control Board and other similar agencies.
- J. "Sensitive Receptor" means the types of land uses, populations, and buildings or structures that are considered sensitive to air pollution, noise, and vibration.
  - 1. Air quality-sensitive population groups include children, the elderly, the acutely ill, and the chronically ill, especially those with cardiorespiratory diseases. Disadvantaged communities identified in CalEnviroScreen 3.0 (i.e., environmental justice communities), as subsequently revised, supplemented, or replaced, may be disproportionately affected by and vulnerable to poor air quality.
  - 2. Noise-sensitive receptors include land uses where quiet environments are necessary for enjoyment and public health and safety. Residences, schools, hotels, libraries, religious institutions, hospitals, and nursing homes are examples.
  - 3. Vibration-sensitive receptors include land uses residences and buildings where people normally sleep (e.g., residences and hotels, and buildings or structures that are susceptible to architectural damage (e.g., non-engineered timber and masonry buildings and historic buildings).
- K. "Tenant Improvement" means any construction activity that modifies interior space in non-residential space.
- L. "Tree" means Protected Trees and Public Trees under the Cupertino Municipal Code, unprotected trees, or any other vegetation suitable for nesting birds.

### **17.04.030 Applicability and Demonstration of Compliance.**

- A. Every project within the City of Cupertino shall comply with all applicable standard environmental protection requirements identified in Section 17.04.040 and Section 17.04.050.
- B. Compliance with the requirements shall be demonstrated as follows:
1. For all non-residential projects, residential projects involving the development of four or more residential units, and mixed-use projects, compliance shall be demonstrated through submittal and implementation of a construction management plan and/or permit plans, as applicable, prior to issuance of an approval to the satisfaction of the City.
  2. For residential projects with three or fewer units, for residential additions/remodels and Tenant Improvements, compliance shall be demonstrated on permit plans to the satisfaction of the City.
  3. For projects that do not require the issuance of a permit and for tree removal projects, the property owner must demonstrate compliance by ensuring that all applicable standard environmental protection requirements are implemented.

### **17.04.040 Standard Environmental Protection Technical Report Submittal Requirements.**

Every project shall implement the following standard environmental protection technical report submittal requirements, which reports are subject to third-party peer review under the direction of the City at the applicant's cost, prior to the approval of the project unless they are not applicable to the project as demonstrated by a written explanation of why any standard environmental protection technical report submittal requirement is not applicable to the project, subject to the review and approval of the Director of Community Development and/or the City Engineer, or his or her designee, as appropriate:

#### **A. Air Quality**

1. **Control Diesel Particulate Matter from Non-Residential Projects During Operation.** Applicants for new non-residential land uses within the city that either have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered Transport Refrigeration Units (TRUs), or are within 1,000 feet of a sensitive land use (e.g., residential, schools, hospitals, nursing homes), as measured from the property line of the project to the property line of the nearest sensitive use, shall:
  - a. Prepare and submit an operational Health Risk Assessment (HRA) for approval by the City prior to approval of the project.

- b. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment (OEHHA) and the Bay Area Air Quality Management District (BAAQMD).
- c. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM<sub>2.5</sub> concentrations exceed 0.3 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), or the appropriate noncancer hazard index exceeds 1.0, the project applicant shall be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms.
- d. T-BACTs identified in the HRA shall be indicated in the appropriate applicable construction document prior to approval of the project. T-BACTs may include the following measures from BAAQMD's *Planning Healthy Places Guidebook* but are not limited to:
  - i. Restricting nonessential idling on-site to no more than two minutes.
  - ii. Providing electric charging capable truck trailer spaces to accommodate Zero Emissions (ZE) Trucks.
  - iii. Providing electric charging capable warehousing docks to accommodate ZE Transport Refrigeration Units (TRUs).
  - iv. Requiring use of Near Zero Emissions (NZE) or ZE equipment (e.g., yard trucks and forklifts) and/or vehicles.
  - v. Restricting offsite truck travel through the creation of truck routes.

## **2. Manage Indoor Air Pollution.**

- a. Applicants for residential and other sensitive land use projects (e.g., hospitals, nursing homes, day care centers) in areas identified on the Bay Area Air Quality Management District's (BAAQMD) "Conduct Further Study" on the Planning Healthy Places Map shall:
  - i. Prepare and submit an operational Health Risk Assessment (HRA) to the City prior to approval of the project.
  - ii. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment (OEHHA) and BAAQMD. The latest OEHHA guidelines shall be used for the analysis, including age sensitivity factors, breathing rates, and body weights appropriate for children ages 0 to 16 years.

- iii. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM<sub>2.5</sub> concentrations exceed 0.3 micrograms per cubic meter (µg/m<sup>3</sup>), or the appropriate noncancer hazard index exceeds 1.0, the project applicant shall identify and demonstrate measures that are capable of reducing potential cancer and non-cancer risks to an acceptable level (i.e., below ten in one million or a hazard index of 1.0), including appropriate enforcement mechanisms.
- iv. Measures to reduce risk may include, but are not limited to:
  1. Air intakes located away from high volume roadways and/or truck loading zones.
  2. Heating, ventilation, and air conditioning systems of the buildings provided with appropriately sized Minimum Efficiency Reporting Value (MERV) filters.
- b. Applicants for residential and/or other sensitive land use projects (e.g., hospitals, nursing homes, day care centers) must state in the applicable construction document where the site is located on the Bay Area Air Quality Management District (BAAQMD) Planning Healthy Places Map, as subsequently revised, supplemented, or replaced. If the site is located in an area identified as "Implement Best Practices," the project applicant shall implement, and include in applicable construction documents, the following best practices identified in the BAAQMD *Planning Healthy Places Guidebook*:
  - i. Install air filters rated at a MERV 13 or higher.
  - ii. Locate operable windows, balconies, and building air intakes as far away from any emission source as is feasible.
  - iii. Incorporate solid barriers or dense rows of trees in a minimum planter width of 5 feet per row of trees between the residential and/or sensitive land use, and the emissions source into site design.
  - iv. Do not locate residential and/or sensitive land use on the ground floor units of buildings near non-elevated sources (e.g., ground level heavily traveled roadways and freeways).
- c. The project applicant shall include the applicable measures identified in subsections (a) and (b) above in the applicable construction documents prior to approval of the project. Specifically, the air intake design and MERV filter requirements shall be included on all applicable construction documents submitted to the City and verified by the City's Planning Division.

## **B. Hazardous Materials**

**Manage Soil and/or Groundwater Contamination.** Projects that involve tree removal only are not subject to this Section B. For all other projects, except as provided for in Section B.3, the project applicant shall complete Section B.1 and B.2, as required, prior to approval of the project.

- 1. Phase I ESA.** Retain the services of a qualified environmental consultant with experience preparing Phase I Environmental Site Assessments (ESAs) to prepare a Phase I ESA in accordance with the American Society for Testing and Materials (ASTM) Standards on Environmental Site Assessments, ASTM E 1527-13 (ASTM 1527-13) and in accordance with the U.S. Environmental Protection Agency's (EPA's) Standards and Practices for All Appropriate Inquiries (40 Code of Federal Regulations 312), published November 2005, as subsequently revised, supplemented, or replaced. The goal of an ASTM Phase I ESA is to evaluate site history, existing observable conditions, current site use, and current and former uses of surrounding properties to identify the potential presence of Recognized Environmental Conditions (RECs) as defined in ASTM E 1527-13, associated with the site. If the Phase I ESA does not identify any RECs, then no further action is needed. If the Phase I ESA identifies RECs, then a Phase II ESA shall be prepared as described in Section B.2.
- 2. Phase II ESA.** A Phase II ESA shall be prepared by a qualified environmental consultant and signed and stamped by a Professional Geologist or Professional Engineer hired by the project applicant. The Phase II ESA shall include the collection and analysis of samples designed to evaluate RECs identified in the Phase I ESA, in compliance with ASTM standards, and a health risk assessment to evaluate whether the RECs pose an unacceptable or potentially unacceptable health risk to future users of the site. Depending on the health risks identified in the Phase II ESA, the project applicant shall proceed as follows:
  - a. If the Phase II ESA identifies no unacceptable or potentially unacceptable health risk associated with the RECs, then no further action is needed.
  - b. If the Phase II ESA identifies an unacceptable or a potentially unacceptable health risk, the requirements related to soil remediation in Section 17.04.050B shall apply.
- 3. Focused Phase I and II ESAs.** Projects that are on sites which are known to have current or former orchards or other irrigated agricultural activities that were active in 1950 or later are assumed to contain RECs associated with organic pesticides and are required to prepare a Focused Phase I ESA that addresses only RECs other than those associated with organic pesticides. Depending on the

contaminants found in the Focused Phase I ESA, the project applicant shall proceed as follows:

- a. If the Focused Phase I ESA identifies no other unacceptable or potentially unacceptable health risks, then the project applicant shall prepare a Focused Phase II ESA that addresses only the potential hazards associated with organic pesticides.
- b. If the Focused Phase I ESA identifies RECs other than organic pesticides, then the project applicant shall prepare the Phase II ESA as described in Section B.2 to address both the organic pesticides RECs and all other RECs.

### **C. Vehicle Miles Traveled**

**Evaluate Vehicle Miles Traveled or VMT.** Project applicants shall prepare a vehicle miles traveled (VMT) analysis, which shall include a comparison of existing VMT and project-generated VMT, for review and approval prior to project approval, indicating that the project meets the standards in Section 17.08.040 (Vehicle Miles Traveled (VMT) Standards).

### **D. Vibration**

1. **Manage Vibration During Construction.** The project applicant shall provide a vibration study to determine vibration levels due to construction to the City, prior to approval of the project, when the following activities would occur within the screening distance to buildings or structures: pile driving within 100 feet, vibratory roller within 25 feet, or other heavy equipment (e.g., bulldozer) within 15 feet; and for historical structures: pile driving within 135 feet, vibratory roller within 40 feet, or other heavy equipment within 20 feet. If vibration levels due to construction activities exceeds 0.2 inches per second peak particle velocity (in/sec PPV) at nearby buildings or structures, or 0.12 in/sec PPV at historical structures, the project shall implement the following alternative methods/equipment:
  - a. For pile driving, one of the following options shall be used: caisson drilling (drilled piles), vibratory pile drivers, oscillating or rotating pile installation methods, or jetting or partial jetting of piles into place using a water injection at the tip of the pile.
  - b. For paving, use a static roller in lieu of a vibratory roller.
  - c. For grading and earthwork activities, off-road equipment that shall be limited to 100 horsepower or less.

## **Section 17.04.050 Standard Environmental Protection Permit Submittal Requirements**

Every project shall implement the following standard environmental protection permit submittal requirements prior to the issuance of permits by the City unless they are not applicable to the project as demonstrated by a written explanation of why any standard environmental protection permit submittal requirement is not applicable to the project, subject to the review and approval of the Director of Community Development and/or the City Engineer, or his or her designee, as appropriate:

### **A. Air Quality**

- 1. Control Fugitive Dust During Construction.** Projects shall implement the Bay Area Air Quality Management District Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM<sub>2.5</sub> and PM<sub>10</sub>) during demolition, ground disturbing activities and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit.
- 2. Control Construction Exhaust.** Projects that disturb more than one-acre and are more than two months in duration, shall implement the following measures and the project applicant shall include them in the applicable construction document, prior to issuance of the first permit:
  - a. Utilize off-road diesel-powered construction equipment that is rated by the U.S. Environmental Protection Agency (EPA) as Tier 4 or higher for equipment more than 25 horsepower. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Tier 4 interim emissions standard for a similarly sized engine, as defined by the California Air Resources Board's (CARB) regulations. Applicable construction documents shall clearly show the selected emission reduction strategy for construction equipment over 25 horsepower.
  - b. Ensure that the construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City. The construction equipment list shall state the makes, models, and number of construction equipment on-site.
  - c. Ensure that all equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations.

3. **Control Volatile Organic Compound Emissions from Paint.** Projects shall use low-VOC paint (i.e., 50 grams per liter [g/L] or less) for interior and exterior wall architectural coatings. The project applicant shall include the use of low-VOC paint in the applicable construction documents prior to issuance of the first permit.

## **B. Hazardous Materials**

**Soil Remediation Required.** If a Focused or other Phase II ESA, as required pursuant to Section 17.04.040(B)(1), identifies an unacceptable or a potentially unacceptable health risk, the project applicant shall, depending on the contaminant, contact either the Environmental Protection Agency (EPA), Department of Toxic Substances Control (DTSC), Regional Water Quality Control Board (RWQCB) or local Certified Unified Program Agency (CUPA). The project applicant shall enter into a regulatory agency oversight program with an appropriate regulatory agency, or an established voluntary oversight program alternative with an appropriate regulatory agency, as determined by the City, and follow the regulatory agency's recommended response actions until the agency reaches a no further action determination, prior to issuance of any permit for a project that allows ground disturbing activity.

## **C. Greenhouse Gas Emissions and Energy**

**Reduce Greenhouse Gas Emissions (GHG) and Energy Use.** The project applicant shall complete the City of Cupertino Climate Action Plan – Development Project Consistency Checklist, for review and approval by the City Environment and Sustainability Department prior to issuance of the first permit, to demonstrate how the project is consistent with the Cupertino Climate Action Plan, as subsequently revised, supplemented, or replaced, in order to reduce greenhouse gas emissions and conserve energy.

## **D. Biological Resources**

1. **Avoid Nesting Birds During Construction.** For all projects that involve removal of a tree (either protected or unprotected) or other vegetation suitable for nesting birds, or construction or ground-disturbing activities defined in Section 17.04.020, the project applicant shall comply with, and the construction contractor shall indicate the following on all construction plans, when required to ensure the following measures are performed to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and California Department of Fish and Game Code when in active use:
  - a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible.

If feasible, construction, ground-disturbing, or tree removal/pruning activities shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for construction, ground-disturbing, or tree removal/pruning activities outside the nesting period.

- b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 and August 31), preconstruction surveys shall be conducted as follows:
  - i. No more than 7 days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities, in order to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.
  - ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in, and immediately adjacent to, the construction areas for active nests, while ensuring that they do not disturb the nests as follows:
    1. For projects that require the demolition or construction one single-family residence, ground disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct the preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.
    2. For any other demolition, construction and ground disturbing activity or the removal of four or more trees, a qualified ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.
- c. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be

- documented, and the qualified ornithologist or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.
- d. Protective measures may include, but are not limited to, establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist or biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.
  - e. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist and submitted to the Director of Community Development or his or her designee, through the appropriate permit review process (e.g., demolition, construction, tree removal, etc.), and be completed to the satisfaction of the Community Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

## **2. Avoid Special-Status Roosting Bats During Construction.**

- a. For all projects that involve demolition, renovation, or re-tenanting of an abandoned or vacant building or structure, where the property owner cannot show evidence to the satisfaction of the City of Cupertino Building Inspector that the building or structure was appropriately sealed at the time the building or structure was vacated to prevent bats from roosting, the project applicant shall retain a qualified biologist to conduct preconstruction surveys of the on-site buildings or structures prior to commencing any demolition, renovation, or re-tenanting activities. A building or structure is not appropriately sealed unless seal holes that are more than 0.5 inches in diameter or cracks that are 0.25 by 1.5 inches or larger are filled or closed with suitable material such as

- caulking, putty, duct tape, self-expanding polyurethane foam, 0.25-inch mesh hardware cloth, 0.5-inch or smaller welded wire mesh, installing tighter-fitting screen doors, or steel wool.
- b. The project applicant shall comply with, and the construction contractor shall include in the applicable construction documents, the following to ensure appropriate preconstruction surveys are performed and adequate avoidance provided for any special-status roosting bats, if encountered on the site. Preconstruction surveys shall:
- i. Be conducted by a qualified biologist prior to tree removal or building demolition, renovation, or re-tenanting. Note that the preconstruction survey for roosting bats is required at any time of year since there is no defined bat roosting season as there is with nesting birds.
  - ii. Be conducted no more than 14 days prior to start of tree removal or demolition, renovation, or re-tenanting.
  - iii. Be repeated at 14-day intervals until construction has been initiated after which surveys can be stopped, unless construction activities are suspended for more than 7 consecutive days at which point the surveys shall be reinitiated.
  - iv. If no special-status bats are found during the survey(s), then no additional measures are warranted.
- c. Protective measures shall be included in the applicable construction documents and implemented prior to issuance of permits, if any special-status bat species are encountered or for any roosts detected within the existing structures, where individual bats could be inadvertently trapped and injured or killed during demolition unless passively evicted in advance of construction activities. Protective measures shall include:
- i. If no maternity roosts are detected, adult bats can be flushed out of the structure or tree cavity using a one-way eviction door placed over the exit location for a minimum 48-hour period prior to the time tree removal or building demolition is to commence.
  - ii. Confirmation by the qualified biologist that the one-way eviction door was effective, and that all bats have dispersed from the roost location, modifying any exclusion efforts to ensure individual bats have been successfully evicted in advance of initiating tree removal or building demolition.
  - iii. If a maternity roost is detected, and young are found roosting in a building identified for demolition, renovation, or re-tenanting, work shall be

postponed until the young are flying free and are feeding on their own, as determined by the qualified biologist.

- iv. Once the qualified biologist has determined that any young bats can successfully function without the maternity roost, then the adults and young bats can be excluded from the structure to be demolished using the one-way eviction methods described above.
- v. Monitoring shall be provided by the qualified biologist as necessary to determine status of any roosting activity, success of any required bat exclusion, and status of any maternity roosting activity by bats, in the remote instance a maternity roost is encountered on the site.

## E. Cultural Resources

**1. Protect Archaeological Resources and Tribal Cultural Resources:** For all projects requiring ground-disturbing activities on land with no known archaeological or tribal cultural resources that has not been previously disturbed and/or where ground-disturbing activities would occur at a greater depth or affect a greater area than previously disturbed, the following shall be required:

**a. Areas with No Known Cultural Resources.** For all projects within areas where there are no known cultural resources, prior to soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

- i. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.
- ii. The potential for undiscovered archaeological resources or tribal cultural resources on site.
- iii. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.

iv. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:

1. All soil disturbing work within 25 feet of the find shall cease.
2. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.
3. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

**b. Areas with Known Cultural Resources.** For all projects within areas of known cultural resources as documented in the 2015 General Plan EIR Table 4.4-2, Cultural Resources in the Project Study Area and Vicinity, as subsequently revised, supplemented, or replaced by the City, and the archaeological or tribal cultural resources cannot be avoided, in addition to the requirements in Section E.1.a for all construction projects with ground-disturbing activities, the following additional actions shall be implemented prior to ground disturbance:

- i. The project applicant shall retain a qualified archaeologist to conduct a subsurface investigation of the project site, and to ascertain the extent of the deposit of any buried archaeological materials relative to the project's area of potential effects, in consultation with a tribal representative as applicable. The archaeologist shall prepare a site record and file it with the California Historical Resource Information System and the City of Cupertino.

- ii. If the resource extends into the project's area of potential effects as determined by the archaeologist, the resource shall be evaluated by a qualified archaeologist to determine if the resource is eligible for listing on the California Register of Historical Resources. If the qualified archaeologist determines that the resource is not eligible, no further action is required unless there is a discovery of additional resources during construction (as required above for all construction projects with ground-disturbing activities). If the qualified archaeologist determines that the resource is eligible, the qualified archaeologist shall identify ways to minimize the effect which the project applicant shall implement. A written report of the results of investigations and mitigations shall be prepared by the qualified archaeologist and filed with the California Historic Resources Information System Northwest Information Center and the City of Cupertino.
2. **Protect Human Remains and Native American Burials.** The project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.
  - a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.
  - b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.
  - c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.
  - d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.
  - e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains. If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's

recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded.

## F. Hydrology and Water Quality

**Control Stormwater Runoff Contamination.** The project applicant shall demonstrate compliance with Chapter 9.18 (Stormwater Pollution Prevention and Watershed Protection) of the Cupertino Municipal Code, to the satisfaction of the City of Cupertino. All identified stormwater runoff control measures shall be included in the applicable construction documents.

## G. Noise and Vibration

### 1. Notice and Signage:

- a. At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant shall send notices of the planned activity by first class mail as follows:
  - i. For projects on sites that are more than 0.5 acres or four or more residential units the notices shall be sent to off-site businesses and residents within 500 feet of the project site;
  - ii. For projects on sites between 0.25 to 0.5 acres, or two or three residential units (not including Accessory Dwelling Units) notices shall be sent to off-site businesses and residents within 250 feet of the project site; or
  - iii. For projects on sites less than 0.25 acres or one residential unit, the notices shall be sent to off-site businesses and residents within 100 feet of the project site.

The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The project applicant shall provide the City with evidence of mailing of the notice, upon request. If pile driving, see additional noticing requirements in subsection 3(b) below.

- b. At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the

authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the action to the City within three business days of receiving the complaint.

- 2. Manage Noise During Construction.** Projects shall implement the following measures to reduce noise during construction and demolition activity:
  - a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.
  - b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
  - c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
  - d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

- 3. Manage Vibrations During Construction:** In the event pile driving is required, the project applicant shall:
- a. Notify all vibration-sensitive receptors within 300 feet of the project site of the schedule 10 days prior to its commencement and include the contact information for the person responsible for responding to complaints on site.
  - b. The project applicant shall retain a qualified acoustical consultant or structural engineer, to prepare and implement a Construction Vibration Monitoring Plan, which is subject to third-party peer review under the direction of the City at the applicant's cost, for areas within 100 feet for pile driving, 25 feet for vibratory roller, or 15 feet for other heavy equipment (e.g., bulldozer); and for historical structures: within 135 feet for pile driving, 40 feet for vibratory roller, or 20 feet for other heavy equipment. The plan shall include surveying the condition of existing structures; and determining the number, type, and location of vibration sensors and establish a vibration velocity limit (as determined based on a detailed review of the proposed building), method (including locations and instrumentation) for monitoring vibrations during construction, location of notices displaying the contact information for on-site coordination and complaints on site, and method for alerting responsible persons who have the authority to halt construction should limits be exceeded or damaged observed.
  - c. Submit final monitoring reports to the City upon completion of vibration related construction activities.
  - d. Conduct a post-survey on any structure where either monitoring has indicated high vibration levels or complaints that damage has occurred are received.
  - e. The project applicant shall be responsible for appropriate repairs as determined by the qualified acoustical consultant or structural engineer where damage has occurred as a result of construction activities.

## **H. Paleontological Resources**

**Protect Paleontological Resources During Construction.** If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a qualified paleontologist, City staff, and property owner. Appropriate

actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may include, but are not limited to, salvage of unearthened fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

## **I. Utilities and Service Systems**

### **1. Manage Wastewater Inflow and Infiltration to Sewer System.** Project applicants shall implement the following measures to reduce wastewater flow:

a. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD) that the project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

- i. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows, or
- ii. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The project's estimated wastewater generation shall be calculated using the current generation rates used by the CSD unless alternative (i.e., lower) generation rates achieved by the project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

b. The project applicant shall obtain a letter of clearance from the Cupertino Sanitary District and provide a copy of the letter of clearance to the City prior to issuance of the first permit.

### **2. Ensure Adequate Water Supply and Infrastructure.** The project applicant shall obtain written approval from the appropriate water service provider for water connections, service capability, and location and layout of water lines and backflow preventers, prior to issuance of the first permit.

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### **17.04.050 Violations**

Violation of any of the standard environmental protection requirements, except for any such standard environmental protection requirements that the Director of Community Development and/or the City Engineer, or his or her designee, has deemed inapplicable pursuant to Section 17.04.040 and Section 17.04.050, constitutes a violation of this Code.

IMMEDIATE COMPLETION

No.	Commenter	Comment	Response
1	CAO/Staff	Figure LU-2: Footnote #1: "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." This standard applies to sites or portions of sites that adjoin arterials or boulevards (identified in the General Plan's Chapter 5: Mobility to include De Anza Blvd., Homestead Road, Stevens Creek Blvd. (up to Bubb Road), and North Wolfe Road.). Sites or portions of sites that do not adjoin arterial or boulevards are subject to the setbacks and height limits established in the Zoning Code.	Delete "primary" and "bulk" - Define architectural Features - space that does not include habitable space
2	CAO/Staff	Figure LU-2: Footnote #3: "For projects adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review." This sentence is ambiguous and someone could interpret this to mean that increased heights or reduced setbacks are permitted.  For the General Commercial, Administrative and Professional Office, and Light Industrial Park non-residential zones the Zoning Code establishes setbacks from adjoining residential uses and Figure LU-2 sets height limits. For areas of the City where a Specific Plan or an Area Plan has been adopted, there are established setbacks, including those from residential neighborhoods. For example, the Heart of the City Specific Plan and the Saratoga-Sunnyvale Zoning Plan establish setbacks from adjacent residential development, while the South De-Anza and North De-Anza Conceptual Zoning Plans include large landscape setback requirements from adjoining properties.  However, if a mixed use project is proposed in a Planned Development zoning district where a Specific Plan or an Area Plan has not been adopted (e.g., North De Anza), while there are minimum landscape setbacks for surface parking lots (Chapter 19.124) that may be applied, there are none for buildings. This could impact the western section of the North Blaney neighborhood (abutting Apple's Infinite Loop and Mariani Campus).	a. Amend to clarify where Specific plan or area plan adopted, there are established maximum heights and minimum setbacks from property lines - Proceed as proposed  b. See Housing Element updates/upzoning and associated zoning amendments re: N. De Anza Special Area (east side of N. De Anza Blvd.)
3	CAO/Staff	Figure LU-2 Footnote #4: "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." The Vallco Shopping District is not a part of the South Vallco park area. Therefore the default 1:1 slope line from footnote #1 applies.	Clarify definition of "architectural features" to ensure that these may not include habitable space and allow these encroach but delete "primary" and "bulk."
4	CAO/Staff	Heart of the City Special Area text box: "Maximum residential density is "25 or 35 (South Vallco) units per acre"" This sentence is ambiguous. The Heart of the City Land Use Map identifies several sites within the Heart of the City Special Area that have a density of 5-10 du/ac, 10-20 du/ac and 20-35 du/ac.	Add clarifying language to Figure LU-2 to state that the HOC land use map indicates the maximum density.
5	Liang Chao	consistent in LU map to note "up to" a certain number of units per acre rather than a specific number;	Same as #4 above.
6	Plng Comm.	Strategy ES-6.1.1 – Public Participation – Amend language to read "Strongly encourage ....."	Add the word "strongly" at the beginning of this strategy.

IMMEDIATE COMPLETION

No.	Commenter	Comment	Response
7	CAO/Staff	<p>Crossroads, East Stevens Creek, West Stevens Creek and Central Stevens Creek Subareas: General Plan Goals LU-14 through -18 state that permitted uses in these areas are described in Figure LU-2. There could be confusion in that these subareas do not appear on Figure LU-2. However, these subareas are described and established in Chapter 2 of the General Plan (Planning Areas) and are existing areas identified in the Heart of the City Specific Plan. Goals LU-14 through 18 are essentially “nested goals” that support Goal LU-13.</p>	<p>Clarify that Goals LU-14 through 18 are “nested goals” that support Goal LU-13.</p>

CURRENT WORK PROGRAM ITEMS

No.	Commenter	Comment	Response
1	Lisa Warren	Add language related to the importance of, and goal for, 'dark sky'.	FY 19/20 Work Program Item - Dark Sky
2	David Fung	Reconsider the design review process: The current process which involves a late stage architectural review is both highly subjective (applicant can't anticipate feedback) and limited in scope (too late in process to address placemaking concerns). A better set of front end guidelines (including Form Based Code) can make this a more effective process.	FY 20/21 Work Program Item to develop Design Guidelines.
3	Kitty Moore	Define "buffers" with dimensions and type: if a boundary wall defines minimum height, setbacks have actual distances, park areas be specifically defined.	FY 20/21 Work Program Item to develop Design Guidelines.  Ordinance re: Park Land Dedication updated in 2019
4	David Fung	Adopt Form Based Code standards for all Special Planning Areas: Traditional standards (height, FAR, or setback) insufficiently capture the elements that matter in a design proposal. Some standards like residential density undermine good design goals (density limits encourage larger units). FBC can objectively set standards for building mass and articulation and incorporate placemaking and human-scale elements at the start of the design process. FBC is the best way to express "neighborhood flavor" to preserve or enhance the existing character of an area.  FBC adoption is not equal to increased densification! We can impose objective restrictions via FBC - for instance, a Heart of the City FBC can maintain the tree corridor and setback standards today while making for better quality redevelopment in the years ahead	FY 20/21 Work Program Item to develop Design Guidelines
5	Kitty Moore	Introduction: Consider the Vision Statement: - "...vibrant, mixed-use 'Heart of the City'" - Correct inconsistencies in maps of "heart of the City" - Create objective standards to maintain the vision	FY 20/21 Work Program Item to develop Design Guidelines
6	Plng. Comm.	Strategy LU 3.3.2 – “ensure the interrelationships of new and old developments complement each other” - add objective standards to implement this.	FY 20/21 Work Program Item to develop Design Guidelines
7	Plng. Comm.	Strategy LU 3.3.3 – “building should be designed to avoid abrupt transitions with existing development” – add further standards	FY 20/21 Work Program Item to develop Design Guidelines
8	Plng. Comm.	Strategy LU 3.3.6 – promote high quality architecture, visual interest – define this by adding setbacks and specifying changes in materials.	FY 20/21 Work Program Item to develop Design Guidelines
9	Plng. Comm.	Strategy LU 3.3.11 – allow construction of multi-story buildings provided that the surrounding buildings will not suffer from privacy intrusion – specify and add further standards for mitigation of privacy intrusion	FY 20/21 Work Program Item to develop Design Guidelines
10	Kitty Moore	Policy for shelters -	FY20/21 Work Program Item related to Homelessness ongoing
11	Kitty Moore	Policy for ELI -	FY20/21 Work Program Item related to construction of ELI housing
12	Liang Chao	Consider requiring projects using density bonus to maintain the average unit size before and after applying density bonus.	FY 20/21 Work Program Item re: Density Bonus

CURRENT WORK PROGRAM ITEMS

No.	Commenter	Comment	Response
13	Liang Chao	Consider limiting the amount of "amenity space" any use can claim. For instance, limiting the amount of amenity space for office or residential use to 20% of total space. Retail use might allow larger amenity space if the amenity space is open to the public.	Possibly consider with FY 20/21 Work Program Item re: Density Bonus
14	Liang Chao	For projects applying density bonus, consider prohibiting exceptions from regulations in the BMR manual, such as percentage of BMR housing units, quality or size of BMR units, or inclusionary requirement.	Consider with FY 20/21 Work Program Item re: Density Bonus
15	Steven Scharf	Look at what other cities have done regarding density of units per acre and square footage	FY 20/21 Work Program Item Density Bonus ordinance update
16	Liang Chao	include Floor Area Ratio (FAR) when consider design guidelines;	Consider with FY 20/21 Work Program Item re: Density Bonus
17	John Willey	What do residents want as far as how much housing in a particular area; want inclusive community and more housing that allows people to own a home and call Cupertino home; facilitate as much housing as can for traffic, community, schools, etc.	FY 20/21 Work Program Item re: Housing Survey
18	David Fung	Adopt sequestration policy: Objective updated standards for city and private plantings and landscaping should be established that encourage plant species that remove carbon dioxide and particulates from the air.	FY 20/21 Work Program Item - CAP update
19	David Fung	Adopt VMT standards: VMT and LOS traffic analysis are often in opposition. With VMT established by the state as the standard for review, the GP and codes should reflect that unambiguously, even while we continue to perform LOS studies.	FY 19/20 Work Program Item re: LOS-to-VMT transition ongoing. Delayed due to COVID-19.
20	Kitty Moore	Level of Service as threshold of significance in CEQA (EIR) process	FY 19/20 Work Program Item re: LOS-to-VMT transition ongoing
21	Kitty Moore	<p>Correct map on PA-7, boundaries of Heart of the City</p> <ul style="list-style-type: none"> <li>- Define boundaries of the "tree-lined boulevard"</li> <li>- Define how commerce centers will be configured</li> <li>- Define frontages, breaks in architectural features, distance between park areas, shade canopy, pollinator pathways, dark skies, roof policy, sustainability (green building), fire safety in surface materials</li> <li>- Define roof setback requirements precisely and show precisely the requirements for maintaining the building mass below the setback line.</li> </ul> <p>Remove the word "bulk" as in the bulk of the building will be below the 1:1 setback for example.</p> <p>Provide dimensions for how long a building can be without a change in the face plane. Such as, for every 100 feet of building length there shall be a plane-break along the facade comprised of an offset of at least seven feet in depth by 30 feet in length. The offset shall extend from the grade to the highest story.</p> <ul style="list-style-type: none"> <li>- Provide minimum street width to building height requirements to avoid caverns</li> </ul> <p>(PC RECOMMENDS CREATING A SEPARATE ITEM FOR THE FOLLOWING)</p> <ul style="list-style-type: none"> <li>- Address the move to electric heating and cooling</li> <li>- Roof policy defining requirements for white, green, and solar</li> <li>- Solar retrofitting city property policy</li> <li>- Sidewalk shading policy. Distances between unshaded areas at noon, for example</li> </ul>	<p>FY 20/21 Work Program Item re: Heart of the City.</p> <p>Bulk - Define architectural features - allow these to encroach in 1:1 slope line but not any areas with habitable spaces.</p>

CURRENT WORK PROGRAM ITEMS

No.	Commenter	Comment	Response
22	David Fung	Revisit Heart of the City Specific Plan: - Update HoC Specific Plan to reflect its status as a primary transit route - Unify the existing 5 subareas into a single entity - Unify land-use designations across the area - Set appropriate development allocations for the entire area - Eliminate GP LU-1.3.1.3 and LU-1.3.1.4 (residential in mixed-use restrictions) - Change the "75% direct retail frontage" requirement in the HoC SP to reflect resident-facing commercial	FY 20/21 Work Program Item re: Heart of the City

COMPLETED

No.	Commenter	Comment	Response
1	David Fung	Adopt decarbonization policy: Objective standards for reduction of greenhouse gas through electrification in the building code should be established along with a time line to phase in these requirements on residential and commercial properties.	Completed with adoption of Reach Codes
2	John Willey	Be clear and specific at Vallco that housing is per acre; can't combine acreage and consolidating appropriate density; what do residents want as far as how much housing in a particular area	General Plan Amendments completed in 2019 related to Vallco to identify location of residential uses
3	John Willey	On Vallco Parkway reflect what residents would expect so not surprised	Addressed with 2019 General Plan amendments re: Vallco
4	Darcy Paul	If allocation in danger of turning into entitlement than better not have allocations;	Addressed with 2019 General Plan amendments re: Vallco
5	Liang Chao	Consider requiring applicants to include a document to indicate how the project complies with the strategies in the Bike and Pedestrian Plans and the General Plan.	Planning Application Form updated to require submission of documents to indicate compliance
6	Liang Chao	Consider requiring that the square footage and number of bedrooms of all units be listed in plan sets, in addition to average unit size. BMR units and their sizes should be identified. The average size for BMR units of different types (studio, one-bedroom etc.) should be listed.	Planning Application Form updated to require submission of documents to indicate compliance
7	Kitty Moore	Consider removing community benefits from project approvals or have some more direct connection between the project impact and the benefits provided.	Study Session held in July 2020. Direction provided.
8	CAO/Staff	<p>"Section 19.80.030</p> <p>B. All P districts shall be identified on the zoning map with the letter coding "P" followed by a specific reference to the general type of use allowed in the particular planning development zoning district. For example, a planned development zoning district in which the uses are to be general commercial in nature, would be designated "P(CG)." A planned development zoning district in which the uses are intended to be a mix of general commercial and residential would be designated "P(CG/Res)."</p> <p>C. Permitted uses in a P zoning district shall consist of all uses which are permitted in the zoning district which constitutes the designation following the letter coding "P." For example, the permitted uses in a P(CG) zoning district are the same uses which are permitted in a CG zoning district for sties with a mixed-use residential designation, Section 19.80.030F shall apply.</p> <p>D. Conditional uses in a P zoning district shall consist of all uses which require the issuance of a conditional use permit in the zoning district which constitutes the designation following the letter coding "P." For example, the conditional uses in a P(CG) zoning district are the same uses which require a conditional use permit in CG zoning district. Each conditional use in a P zoning district requires a separate conditional use permit for sites with a mixed-use residential designation, Section 19.80.030F shall apply."</p> <p>The Code does not establish development standards for P zoning districts. It contemplates that standards will be developed as part of the discretionary development permit for the site. The City's practice has been to apply the development standards from the R-3 zones for attached multifamily mixed-use applications, or the R-2 zone standards for small-lot single family/townhome applications, which are then modified during the design review process to develop the standards for each development. For projects subject to new state law that are subject to only objective zoning standards, there are no applicable adopted development standards. Therefore a change to the zoning code is proposed.</p>	Ordinance updated in 2019
9	Kitty Moore	Review in parallel with the coming Quimby Act requirements	Ordinance updated in 2019

**COMPLETED**

No.	Commenter	Comment	Response
10	Kitty Moore	Define park land -Size and shape requirements - Requirements to developers to dedicate park land acreage as a development	Ordinance updated in 2019
11	David Fung	Review of Park Land Dedication policy: Should include objective definition of "recreational facility" as well as grade-level land requirements and alternatives. The park land requirement should scale with the size of the proposed project	Ordinance updated in 2019
12	Lisa Warren	"Parks" defined in a useful way including the need to be on grade, not falsely elevated. Reinforce language that defines AND enforces requirements for 'real parks' to meet goals of acres per density of any given area of the city, and vicinity to parks.	Ordinance updated in 2019
13	Kitty Moore	Define requirements in park deficient areas - Define park deficient areas - Show on maps	Completed with adoption of Parks Master Plan
14	Liang Chao	Request to schedule a density bonus study session; make sure justification for concessions from applicant are justified and see how other cities are reviewing this.	Two Study Sessions on Density Bonus held in 2019 and 2020, respectively. Density Bonus Ordinance update part of FY 20/21 Work Program.
15	Liang Chao	Clarify what is parkland on phase 1 that it must be on the ground	Parkland Dedication Ordinance updated in 2019
16	Liang Chao	Include more details in P-Zoning so that a streamlined project has sufficient objective standards to follow. For example, set a minimum percentage for retail use and add specific slope line and setback limitations when development abuts single family neighborhoods.	Planned Development Ordinance updated in 2019
17	Liang Chao	Consider prohibiting more than one active development proposal application for any particular property at a time.	Completed as part of SB 35 procedures adopted in 2019.
18	Plng. Comm.	Policy LU 11.2 – "allow land uses not traditionally considered to be part of college to be built at De Anza" – Determine whether the City has land use authority over community colleges. How would the City's RHNA be impacted if De Anza College were to develop housing on the site?	City does not have land use authority over De Anza College. City's RHNA will not be impacted if housing is developed at De Anza College.
19	Darcy Paul	have one proposal for one development at a time and look into to see what other jurisdictions are doing.	Completed as part of SB 35 procedures adopted in 2019.

No.	Commenter	Comment	Response
1	CAO/Staff	Mitigation Measures: Review previously adopted mitigation measures to identify those generally applicable to new development, and develop an objective method for imposing them while avoiding burdening classes of projects to they would not apply, as a practical matter.	Consider with Housing Element update and Environmental Review
2	CAO/Staff	<p>Figure LU-2: Footnote #3: "For projects adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review." This sentence is ambiguous and someone could interpret this to mean that increased heights or reduced setbacks are permitted.</p> <p>For the General Commercial, Administrative and Professional Office, and Light Industrial Park non-residential zones the Zoning Code establishes setbacks from adjoining residential uses and Figure LU-2 sets height limits. For areas of the City where a Specific Plan or an Area Plan has been adopted, there are established setbacks, including those from residential neighborhoods. For example, the Heart of the City Specific Plan and the Saratoga-Sunnyvale Zoning Plan establish setbacks from adjacent residential development, while the South De-Anza and North De-Anza Conceptual Zoning Plans include large landscape setback requirements from adjoining properties.</p> <p>However, if a mixed use project is proposed in a Planned Development zoning district where a Specific Plan or an Area Plan has not been adopted (e.g., North De Anza), while there are minimum landscape setbacks for surface parking lots (Chapter 19.124) that may be applied, there are none for buildings. This could impact the western section of the North Blaney neighborhood (abutting Apple's Infinite Loop and Mariani Campus).</p>	<p>a. Amend to clarify where Specific plan or area plan adopted, there are established maximum heights and minimum setbacks from property lines - Proceed as proposed</p> <p>b. Develop height and setback standards for parcels in N. De Anza Special Area, east side of N. De Anza Blvd.</p>
3	David Fung	Clarify impact fee exemptions: Current regulations are ambiguous on whether a project owes parkland, BMR, and traffic impact fees. There should be an explicit default for each fee and each class of development that might be assessed, including regular construction, BMR homes, ADUs, and any other categories...	Consider updates to Municipal Code, administrative guidelines etc. with Housing Element update.
4	CAO/Staff	Figure LU-2: Footnote #2: "For the Crossroads area, see the Crossroads Streetscape Plan." No Crossroads Streetscape Plan has been adopted.	Consider with Housing Element upzoning
5	Darcy Paul	clarify density of units per acre;	Consider with Housing Element upzoning
6	David Fung	Consider Heart of the City updates to special areas served by transit (North and South DeAnza, etc.) but not covered by Specific Plan: Move to a unified land-use model/entitlement across the special area	On hold pending Housing Element update/analysis
7	Kitty Moore	<p>Have requirements for all Specific Plan Areas such as height, decrease density to match allocations in Table LU-1, removed expired allocations, create residential specifically zoned areas outside of mixed use clearly defined.</p> <p><b>PC Recommendation:</b> That clarification be sought for "create residential specifically zoned areas outside of mixed-use clearly defined"</p>	Consider identifying specifically residentially zoned sites in mixed use areas and changes to density as part of Housing Element update.
8	Kitty Moore	Separate non-residential land use designations to remove the commercial/office from mixed use except for specified clearly throughout mixed use areas.	Consider with Housing Element upzoning
9	Darcy Paul	Looking to get rid of neutral area classifications or have some maneuvering room;	Consider with Housing Element upzoning
10	Liang Chao	Clarify original intent of LU2 map when Council approved it that Bubb Rd. won't be 20 units per acre but only on footprint and not meant to apply everywhere regarding how many acres; also understand what is currently build-out on Bubb Rd	Consider with Housing Element upzoning
11	Kitty Moore	Consider a BMR citywide dispersal requirement. Define dispersal, both within a BMR project and citywide.	Consider with Housing Element update

HOUSING ELEMENT UPDATE/UPZONING AND CONCURRENT ZONING AMENDMENTS - FY 22/23

No.	Commenter	Comment	Response
12	Kitty Moore	Provide for senior retirement living for active seniors wanting proximity to shopping dining and entertainment areas.	Consider with Housing Element update
13	David Fung	Market rate ADUs should NOT count as Moderate BMR production: Today all ADUs would be counted toward the city's Moderate RHNA production, even though many have no BMR obligations or restrictions. This is an oversight that should be fixed.	Consider with Housing Element upzoning
14	Kitty Moore	Policy such as Housing Element sites with no housing after two years forfeit the designation to have it redistributed.	Consider with Housing Element update
15	David Fung	Standards that vary by project scale: Small and large projects have intrinsically different requirements which should be reflected in the GP and building code. For example, including residential parking in the FAR calculation effectively controls mass in a SFH area, but the same rule is not meaningful for a 200-unit multi-story apartment building. New objective standards should be appropriate for the scale of a project, which might require dividing R-3 regulations to reflect small, medium, and large projects. <u>This affects FAR calculation, setbacks, parking requirements, and more.</u>	Consider with Housing Element upzoning
16	Lisa Warren	Require that all housing units (not only single family homes) define 'size by square foot' not only 'number of units'.	Consider with Housing Element upzoning
17	Kitty Moore	Figure LU-2: Footnote #1: "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." This standard applies to sites or portions of sites that adjoin arterials or boulevards (identified in the General Plan's Chapter 5: Mobility to include De Anza Blvd., Homestead Road, Stevens Creek Blvd. (up to Bubb Road), and North Wolfe Road.). Sites or portions of sites that do not adjoin arterial or boulevards are subject to the setbacks and height limits established in the Zoning Code.	(1) Add "avenues" and "major connectors" after "arterial/boulevard" - Consider change with Housing Element upzoning  (2) Clarify slope line is drawn from curb line of any frontage road abutting property - Consider change with Housing Element upzoning  (4) Delete "except for the Crossroads Area."
18	Plng. Comm.	Policy LU 14.1 – West Stevens Creek Area – Reiterated addition of 1:1 slope line on Avenues (major collectors) which include Bubb Rd, N. Stelling Road, Stevens Creek Boulevard west of Highway 85, N. Foothill Boulevard, Bollinger Road, Miller Avenue, and N. Tantau Avenue.	- May be considered in conjunction with Housing Element upzoning
19	Plng. Comm.	Policy LU-30.1 – Fairgrove Neighborhood – Verify whether design guidelines can be applied to streamlined projects allowed by pending state legislation (e.g. SB 50).	
20	Plng. Comm.	Policy M-8.4 – Transportation Demand Management (TDM) Programs – Amend language to state "Require large employers to develop and maintain TDM programs to reduce vehicle trips....." and "Strong encourage colleges and schools to also implement TDM programs."	
21	CAO/Staff	Figure LU-2: Footnote #3: "For projects adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review." This sentence is ambiguous and someone could interpret this to mean that increased heights or reduced setbacks are permitted.	State that reduced heights or increased setbacks adjacent to single family residential areas may be required, which could only be determined during project review - May be considered in conjunction with Housing Element upzoning
22	Kitty Moore	Eliminate in lieu of fees where they are addressing a need in an area not meeting standards.	- Parkland Dedication Ordinance updated - Consider clarifying policies with Housing Element Update

POSSIBLE FUTURE WORK PROGRAM ITEMS

No.	Commenter	Comment	Response
1	Kitty Moore	Include community garden space in park land requirements for all new residential developments. Define requirement.	
2	Kitty Moore	Bicycle Level of Service	Bike/Ped Commission item?
3	Liang Chao	Look at objective standard on retail and what consider retail frontage	
4	Plng Comm.	Strategy LU 1.3.1 – Define retail and define “substantial” in Strategy LU-1.3.1. Consider restricting educational uses in retail areas.	
5	David Fung	Codify "resident-facing commercial uses" in the GP: Today's GP does not recognize a difference between commercial activities that serve the community (retail, consumer services, dentist) and those that do not (a corporate office with no local interaction) while they have very different effects on the community. We should recognize that difference and set separate land-use allocation limits in projects and city-wide.	
6	Steven Scharf	Agrees with Chao to study what is considered retail; if developer can't lease retail in mixed-use housing development than should reduce lease until retail is leased; would like more housing only and less mixed-use and have retail separate; hesitant to require certain amount of retail; have staff explore retail options;	
7	Plng Comm.	Policy LU – 5.1 neighborhood centers – Recommend preserving existing shopping centers/retail even in new developments.	
8	Lisa Warren	‘Replacement’ trees that are required for development approval should spell out clearly that any replacement tree(s) must be at grade/in similar public areas as the trees that are being replaced.	
9	David Fung	Adopt Vision Zero Standards: ...Consideration of the multi-national Vision Zero program goals would help identify best practices around non-auto mobility.	
10	Lisa Warren	Find language to use that will protect solar ‘rights’ in a variety of situation. There is a California Solar Rights Act – originally from 1978	
11	Kitty Moore	Solar Access Policy. In consideration of health and wellness, especially gardeners and urban farmers, provide a quantified requirement for allowable changes in solar access.	
12	Plng Comm.	Policy LU 1.6 – Jobs to Housing balance – Consider establishing a jobs-housing ratio for Cupertino	
13	Plng Comm.	Policy LU 8.2 – Prioritize developing ways to generate city revenue and retain retail space.	
14	Plng Comm.	Strategy LU 8.3.4 – Consider including a Costco at the Vallco Shopping District	
15	Plng Comm.	Strategy LU 13.7.4 – traffic calming – Improve Traffic signal sync, bike lanes. Request that red light cameras be implemented to ensure compliance. Request that this be sent to the Traffic Division	
16	Plng Comm.	Policy ES-6.1 – Mineral Resource Areas – Replace word “consider” with a stronger word	
17	Kitty Moore	Specify a shadow policy based on Berkeley's	

No.	Commenter	Comment	Response
1	Liang Chao	Require have to lower rent in retail if vacant until leased; important that Heart of City (HOC) have requirement of 70% frontage but how specify that so can have viable retail; phase 1 have minimum retail space identified;	Frontage requirements implemented as Conditions of Approval and with Business License and T.I. approval.  - Standards for minimum retail space already in HOC.
2	Kitty Moore	Define "gateway" on a bordering jurisdiction (are 95' hotels acceptable on a city boundary adjacent to single-4 story properties?)	Consider with next comprehensive General Plan update.
3	David Fung	Adopt parking lot shading standard: Objective standards that aim for mature tree coverage of some percentage of the grade-level footprint of parking lots/structures to reduce heat island effect should be considered. In Mountain View, this is currently 40% coverage	Standards already in place in Municipal Code.
4	Liang Chao	Consider requiring residential parking that is counted for residential FAR to be open to tenants for free in multi-family buildings, and prohibit selling the parking separately.	
5	David Fung	Reconsider the landscape review process: Identifying a more comprehensive set of requirements [for landscape plan approval] at the outset makes for a better and more objective approval.	
6	John Willey	Make very specific standards in conservative respect (footnote that developer could always ask for a General Plan Amendment (GPA) for density but not entitlement to exceed 35 foot);	Objective standards for heights already exist in General Plan.
7	David Fung	Eliminate citywide major allocation table: - Allow applications and entitlement by special area or land-use category rather than limited by citywide allocation table. - Impose developmental limits by special area or citywide limits established with GP rather than on a site basis - We should encourage redevelopment on sites as owners want to do it rather than handing out "golden tickets" during the GP update process.	For next comprehensive General Plan update.
8	David Fung	Don't require parcel consolidation: The city's requirement for parcel consolidation at Vallco was intended to facilitate complete redevelopment, but has greater impact to the community because of the size of the resultant project. This would not prohibit consolidation, but we shouldn't make this a necessity.	Future comprehensive General Plan update.
9	Kitty Moore	Define recreation area (is it an aquatic center, gym, basketball court, badminton facility) - Show on maps - Show population density expected to use	Future comprehensive General Plan update.
10	Liang Chao	Include objective standards for noise and air quality and emergency response time.	Emergency services determines response times and participate in project reviews.
11	Liang Chao	Identify and plan paths for pedestrians/bicyclists from the pedestrian sidewalks/bike paths to reach store fronts, the entrances of buildings, or bike parking spaces. Consider strengthening General Plan Policy 3.6, which requires parking lots to include clearly defined paths for pedestrians to provide a safe path to building entrances.	Building Code already addresses safe path of travel from sidewalk to building entrances.
12	Kitty Moore	Require the city to post on the website what the RHNA numbers are, how many applications have been approved and associated benefits in the developer agreements associated with the approvals.	
13	Kitty Moore	PA-3, define "more pedestrian, bicycle and transit facilities"	

ON HOLD

No.	Commenter	Comment	Response
14	Lisa Warren	Heart of the City 'boundary' should revert back to before Dec 4, 2014 and include the 'Vallco' site.	
15	Kitty Moore	Future population policies to maintain park land ratios	
16	Plng. Comm.	Policy LU 4.2 – develop uniform planting plans consistent with vision for planning area – Consider changing language to strike the word “uniform”. Consider changing the word “formal” to “varied”. Modernize landscape plan for more native and naturalistic. Integrate and implement pollinator pathways (as discussed in the Parks and Recreation Master Plan). Amend the Heart of the City Specific Plan to conform to this.	
17	Plng. Comm.	Policy LU-27.1 – Neighborhoods – Add standards to ensure protection of neighborhoods from pending state legislation (e.g. SB 50)	
18	Plng. Comm.	Policy LU-27.9 – Amenities and Services – Define equitable. Take advantage of opportunities as they arise	
19	Plng. Comm.	Policy M-2.2.4 – Suburban Road Improvement Standards – Add language regarding “ground water retention basin and pollinator pathways”	
20	Kitty Moore	<p><b>PC RECOMMENDS REMOVAL - TOO FAR IN FUTURE</b></p> <p>Potential autonomous vehicle requirements for a future city fleet concept</p> <ul style="list-style-type: none"> <li>- For instance, residents are allowed access to autonomous vehicles remaining in some mapped area</li> <li>- Parking area policy</li> <li>- Charging area determinations</li> </ul>	
21	Liang Chao	<p><b>PC RECOMMENDS REMOVAL</b></p> <p>Adopt objective standards that projects must implement the mitigation measures already identified in a certain list.</p> <p>Partial list of mitigation measures:</p> <ul style="list-style-type: none"> <li>MM TRN-1.2: Impact at De Anza/McClellan intersection</li> <li>MM TRN-2.4: Impact at Stevens Creek Blvd/Tantau</li> <li>MM TRN-7.2: Stevens Creek Blvd/SR 85 Northbound ramps</li> <li>MM TRN-7.3: De Anza Blvd (between I-280 and Homestead Road)</li> </ul>	Already part of TIF.
22	Liang Chao	<p><b>PC RECOMMENDS REMOVAL</b></p> <p>MM TRN-1.3 addresses the cost sharing of freeway segments and freeway interchange. It could be included as an objective standard on cost sharing so that such cost sharing is NOT treated as voluntary contribution by the developer.</p>	
23	Liang Chao	<p><b>PC RECOMMENDS REMOVAL</b></p> <p>Adopt objective standards that projects must implement the mitigation measures already identified in a certain list.</p> <p>These include:</p> <ul style="list-style-type: none"> <li>MM TRN-2.1: TDM Program</li> <li>MM TRN-2.3: Wolfe Rd/Vallco Pkwy</li> <li>MM TRN-7.1: TDM Program</li> </ul>	

No.	Commenter	Comment	Response
24	Liang Chao	<p><b>PC RECOMMENDS REMOVAL</b></p> <p>Search for "mitigation incorporated" in Vallco EIR document. If an impact could be mitigated in some measure, the City should consider adding objective standards in either General Plan or Municipal Code so that the proposed mitigation in the EIR is required for any project, especially streamlined projects.</p> <p>Whatever measure the EIR uses to determine that mitigation measures are needed, the City should consider using those measures as objective standards for any future projects, especially streamlined projects within proximity of existing residential neighborhoods.</p> <p>Some examples:                      MM AQ-2.1- BAAQMD's Basic and Enhanced Measures                      MM AQ-3.1: Use low VOC paint and no hearths of fireplaces (including gas-powered) in development                      MM AQ-7.1: Implement MM AQ-2.1                      MM CR-2.1: Archeological Resource protection                      MM GHG-1.1: Prepare and implement a GHG Reduction Plan                      MM NOI-1.1: Construction noise requirements                      MM NOI-1.2: Construction noise control plan                      MM NOI-1.3: Acoustical consultant to review mechanical noise</p>	
25	Liang Chao	<p><b>PC RECOMMENDS REMOVAL</b></p> <p>Include objective standard for infrastructure. Apparently, the sewage system under Wolfe Road is at capacity. Adding a few thousand residents and a few thousand workers at Vallco will likely affect the aging sewage system in the area. Could we include objective standard in the General Plan to ensure the infrastructure of the City is not overloaded?</p> <p>Whose responsibility is it to pay for the expansion of the sewage system under Wolfe? The City, I suppose.</p>	

September 2021 | Addendum to Environmental Impact Report  
State Clearinghouse Number 2014032007

# General Plan Amendment, Housing Element Update, and Associated Rezoning EIR Addendum No. 5

City of Cupertino

*Prepared for:*

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## APPENDICES

Appendix A Resolution No. [To Be Determined]

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# 1. Introduction and Purpose

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This document is an Addendum to the Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning project, State Clearinghouse (SCH) Number (No.) 2014032007, certified on December 4, 2014 (Certified EIR). The project analyzed in the Certified EIR and adopted by the City of Cupertino is the General Plan titled “Community Vision 2040,” which was renamed “General Plan (Community Vision 2015–2040)” in the first Addendum to the Certified EIR in October 2015, and amendments to the Title 19 (Zoning) of the Cupertino Municipal Code (CMC) (together the Approved Project). Since the EIR was certified in 2014, the City has prepared four subsequent addenda to the EIR that were approved by the City Council in October 2015,<sup>1</sup> August 2019,<sup>2</sup> and December 2019,<sup>3,4</sup> This fifth Addendum serves as the environmental review for proposed modifications to the text and figures of the General Plan (Community Vision 2015–2040) and the addition of Chapter 17.04, Standard Environmental Protection Requirements, to the CMC (Modified Project), as required pursuant to the provisions of the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et seq. and the State CEQA Guidelines.

Pursuant to the provisions of CEQA and the State CEQA Guidelines, the City of Cupertino is the lead agency charged with the responsibility of deciding whether or not to approve the proposed action. This Addendum analyzes the proposed minor changes to the Approved Project.

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<sup>1</sup> City of Cupertino, approved First Addendum to the General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, State Clearinghouse Number 2014032007. October 2015.

<sup>2</sup> City of Cupertino, approved Second Addendum to the General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, State Clearinghouse Number 2014032007. August 2019.

<sup>3</sup> City of Cupertino, approved Third Addendum to the General Plan Amendment, Housing Element Update, and Associated Rezoning, State Clearinghouse Number 2014032007. December 2019.

<sup>4</sup> City of Cupertino, approved Fourth Addendum to the General Plan Amendment, Housing Element Update, and Associated Rezoning, State Clearinghouse Number 2014032007. December 2019.

## **INTRODUCTION AND PURPOSE**

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## 2. Standard for Preparation of an Addendum

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Pursuant to Section 21166, *Subsequent or Supplement Impact Report; Conditions*, of CEQA and Section 15162, *Subsequent EIRs and Negative Declarations*, of the State CEQA Guidelines, when an Environmental Impact Report (EIR) has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines that one or more of the following conditions are met:

- Substantial project changes are proposed that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes would occur with respect to the circumstances under which the project is undertaken that require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified was adopted shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR.
  - Significant effects previously examined will be substantially more severe than identified in the previous EIR.
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measures or alternatives.
  - Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

Where none of the conditions specified in Section 15162 are present,<sup>5</sup> the lead agency must determine whether to prepare an Addendum or whether no further CEQA documentation is required (CEQA Guidelines Section 15162[b]). An Addendum is appropriate where some minor technical changes or additions to the previously certified EIR are necessary, but there are no new or substantially more severe significant impacts (CEQA Guidelines Section 15164, *Addendum to an EIR or Negative Declaration*).

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<sup>5</sup> See also Section 15163 of the State CEQA Guidelines, which applies the requirements of Section 15162 to supplemental EIRs.

**STANDARD FOR PREPARATION OF AN ADDENDUM**

In accordance with the CEQA Guidelines, the City has determined that an Addendum to the Certified EIR is the appropriate environmental document for the Modified Project. This Addendum reviews the changes proposed by the Modified Project and examines whether, as a result of any changes or new information, a subsequent EIR may be required. This examination includes an analysis pursuant to the provisions of Section 21166 of CEQA and Section 15162 of the State CEQA Guidelines concerning their applicability to the Modified Project.

## 3. Project Description

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### 3.1 LOCATION AND SETTING

Cupertino is a suburban city of 10.9 square miles on the southern portion of the San Francisco peninsula in Santa Clara County. The city is approximately 36 miles southeast of downtown San Francisco and 8 miles west of downtown San Jose. The cities of Los Altos and Sunnyvale are adjacent to the northern city boundaries, the cities of Santa Clara and San Jose lie to the east, and Saratoga lies to the south. Unincorporated areas of Santa Clara County form the western boundary of Cupertino and portions of the southern boundary. The city is accessed by Interstate 280, which functions as a major east/west regional connector, and State Route 85, which functions as the main north/south regional connector.

### 3.2 PROJECT STUDY AREA

The State of California encourages cities to look beyond their borders when undertaking the sort of comprehensive planning required of a general plan. For this reason, the General Plan delineates two areas—the urban service area and the sphere of influence (SOI). The urban service area is predominantly coterminous with the current city boundary, and the SOI extends beyond these boundaries. The Cupertino SOI includes incorporated city lands as well as areas that may be considered for future annexation by the City. The City does not propose to annex any of this area as part of this Project. The population of Cupertino is approximately 58,656 people and has a housing supply of 21,067 housing units, with an average household size of 2.92 people per household.<sup>6</sup>

### 3.3 PROJECT BACKGROUND

#### 3.3.1 Planning Process Leading to Approved Project

On November 15, 2005, the City of Cupertino adopted “City of Cupertino 2000–2020 General Plan” (2005 General Plan) containing the following elements:

- Land Use/Community Design
- Housing
- Circulation
- Environmental Resources/Sustainability
- Health and Safety

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<sup>6</sup> California Department of Finance, 2021, E-5 Population and Housing Estimates for Cities, Counties, and the State, 2011-2021 with 2010 Census Benchmark, <https://www.dof.ca.gov/forecasting/demographics/Estimates/e-5/>, accessed August 20, 2021.

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## PROJECT DESCRIPTION

On December 4, 2014, the City adopted “Community Vision 2040,” which updated the goals, policies, and strategies of the 2005 General Plan; the General Plan’s Housing Element to accommodate the Regional Housing Needs Allocation (RHNA) for the 2014-2022 planning period and meet its fair-share housing obligation; and the General Plan Land Use Map, Zoning Ordinance, and Zoning map for internal consistency as a result of changes to General Plan policies (Approved Project). As explained above, prior to adoption of Community Vision 2040, an EIR for the Approved Project was prepared and certified that contains an assessment of the potential environmental impacts of implementing the Approved Project.

### 3.3.2 Planning Process Leading to Proposed Modified Project

To ensure that the City has objective standards applicable to housing developments, the City Council and Planning Commission authorized staff to conduct a review of the existing language in the General Plan. A review of the language identified areas of the General Plan that could benefit from clarification. After several public meetings about the changes, the proposed changes are presented for evaluation by the City Council. In addition, during the public meetings, several members of the public and the appointed and elected officials commented that the City is lacking standard environmental protection requirements that would require applicable projects (including projects that do not have to undergo environmental review) to adhere to certain standards, such as identification and treatment of contaminated soils, protections for nesting birds, treatment of cultural resources. As a result, an ordinance which would amend the CMC to add Chapter 17.04, Standard Environmental Protection Requirements, has been prepared to address these areas of concern.

## 3.4 PROPOSED CHANGES

### 3.4.1 Summary of Proposed Changes

The proposed Modified Project consists of the following revisions to the General Plan (Community Vision 2015–2040), described in more detail Section 3.4.2, Description of Proposed Changes Evaluated in this Addendum:

- text edits to Figure LU-2, Community Form Diagram, for clarification;
- text edits to Chapter 3, Land Use and Community Design Element, for clarification;
- text edit to Chapter 6, Environmental Resources and Sustainability Element, for emphasis;
- addition of Chapter 17.04 to the CMC establishing standard environmental protection requirements.

The proposed changes to the Approved Project, which constitute the Modified Project, are shown in the following section in ~~strikeout~~ text to indicate deletions and in underlined text to signify additions.

### 3.4.2 Description of Proposed Changes Evaluated in this Addendum

The Modified Project consists of changes to the General Plan (Community Vision 2015–2040) and the CMC.

## PROJECT DESCRIPTION

### 3.4.2.1 PROPOSED CHANGES TO THE GENERAL PLAN

The proposed changes to the General Plan would amend the following General Plan chapters:

- Chapter 3: Land Use and Community Design Element
- Chapter 6: Environmental Resources and Sustainability Element

#### Chapter 3: Land Use and Community Design Element

This Element includes goals, policies and strategies that provide direction on land use and design principles that will shape future change in Cupertino. The changes shown below represent the changes to the text that was adopted in December 2014.

- (Page LU-11) **Policy LU-1.1: Land use and Transportation:** Focus higher land use intensities and densities within a half-mile of public transit service, and along major corridors. Figure LU-2 indicates the maximum residential densities for sites that allow residential land uses.
- (Page LU-41) **Heart of the City Special Area:** The Heart of the City will remain the core commercial corridor in Cupertino, with a series of commercial and mixed-use centers and a focus on creating a walkable, bikeable boulevard that can support transit. General goals, policies and strategies (as identified in Goal LU-13) will apply throughout the entire area; while more specific goals, policies, and strategies for each subarea are designed to address their individual settings and characteristics and are identified in Goals LU-14 through LU-18.
- (Figure LU-2) **Community Form Diagram:** In addition, the Modified Project includes revisions to Figure LU-2, Community Form Diagram, which consist of text clarifications and corrections. These are shown in Figure 3-1, Revisions to Figure LU-2, Community Form Diagram.

#### Chapter 6: Environmental Resources and Sustainability Element

**Strategy ES-6.1.1: Public Participation.** Strongly Encourage Santa Clara County to engage with the affected neighborhoods when considering changes to restoration plans and mineral extraction activity.

### 3.4.2.2 PROPOSED CHANGES TO THE CUPERTINO MUNICIPAL CODE

The proposed changes to the CMC include the addition of Chapter 17.04, Standard Environmental Protection Requirements. Appendix A, Resolution No. [To Be Determined], provides the full text of the proposed additions to the CMC. These concern the environmental topic areas of air quality, greenhouse gas emissions and energy, biological resources, cultural resources, hazardous materials, hydrology and water quality, noise and vibration, paleontological resources, and utilities and service systems, and include requirements to achieve the following goals:

## PROJECT DESCRIPTION

### Air Quality

- Control diesel particulate matter from non-residential projects during operation
- Manage indoor air pollution
- Control fugitive dust during construction
- Control construction exhaust

### Greenhouse Gas Emissions and Energy

- Reduce greenhouse gas emissions and energy use

### Biological Resources

- Avoid nesting birds during construction
- Avoid special-status roosting bats during construction

### Cultural Resources

- Protect archaeological resources and tribal cultural resources
- Protect human remains and Native American burials

### Hazardous Materials

- Manage soil and/or groundwater contamination

### Hydrology and Water Quality

- Control stormwater runoff contamination

### Noise and Vibration

- Manage vibration during construction
- Implement notice and signage requirements
- Manage noise during construction

### Paleontological Resources

- Protect paleontological resources during construction

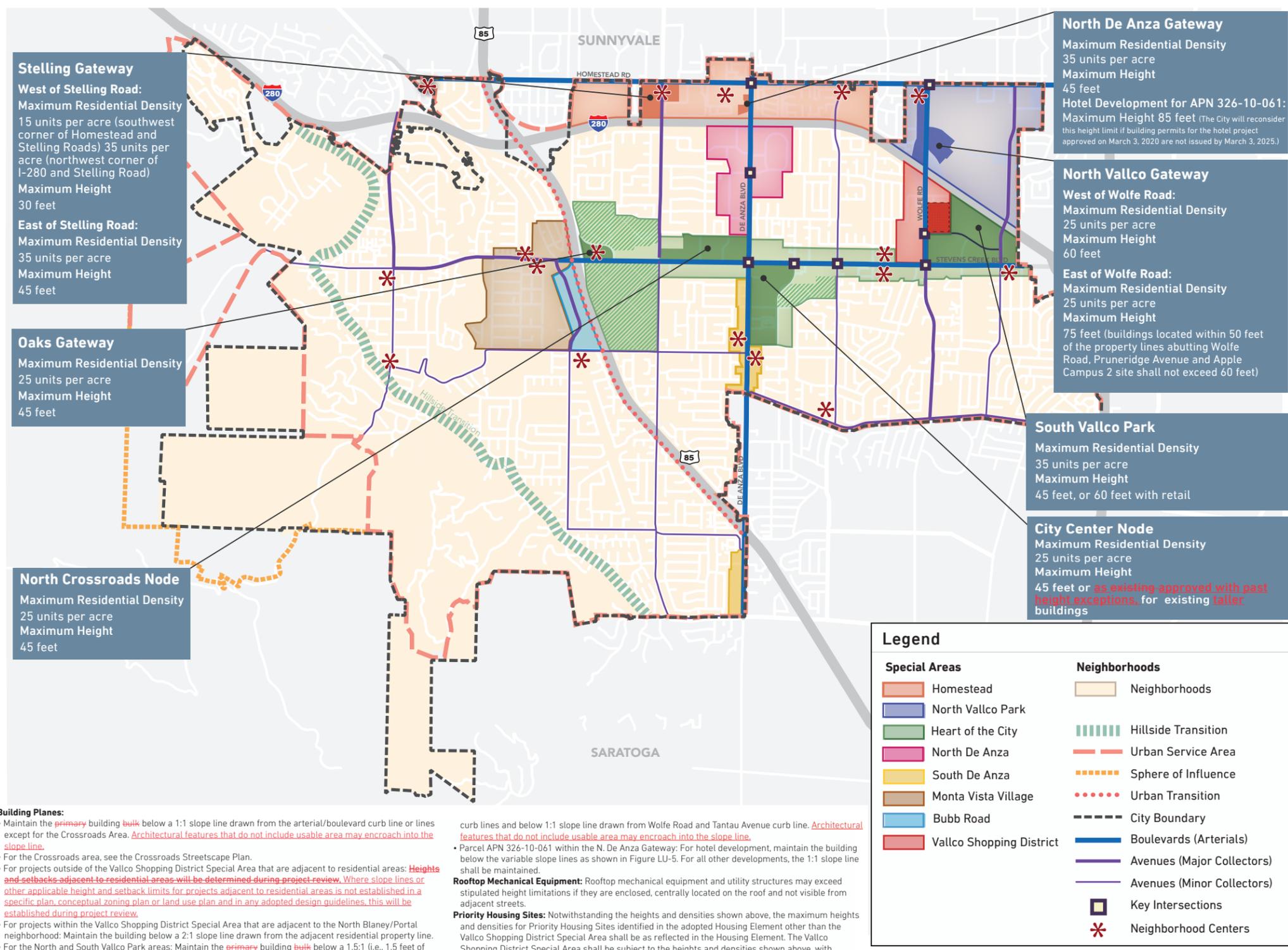
### Utilities and Service Systems

- Manage wastewater inflow and infiltration to sewer system
- Ensure adequate water supply and infrastructure

### Vehicle Miles Traveled

- Evaluate vehicle miles traveled or VMT.

### 3. Project Description



**Building Planes:**

- 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. Architectural features that do not include usable area may encroach into the slope line.
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For projects outside of the Vallco Shopping District Special Area that are adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review. Where slope lines or other applicable height and setback limits for projects adjacent to residential areas is not established in a specific plan, conceptual zoning plan or land use plan and in any adopted design guidelines, this will be established during project review.
- For projects within the Vallco Shopping District Special Area that are adjacent to the North Blaney/Portal neighborhood: Maintain the building below a 2:1 slope line drawn from the adjacent residential property line.
- For the North and South Vallco Park areas: 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. Architectural features that do not include usable area may encroach into the slope line.

- Parcel APN 326-10-061 within the N. De Anza Gateway: For hotel development, maintain the building below the variable slope lines as shown in Figure LU-5. For all other developments, the 1:1 slope line shall be maintained.

**Rooftop Mechanical Equipment:** Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are enclosed, centrally located on the roof and not visible from adjacent streets.

**Priority Housing Sites:** Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element other than the Vallco Shopping District Special Area shall be as reflected in the Housing Element. The Vallco Shopping District Special Area shall be subject to the heights and densities shown above, with residential uses permitted in the Regional Shopping/Residential designation as shown in Figure LU-4.

Homestead Special Area	
<b>Maximum Residential Density</b>	
Up to 35 units per acre per General Plan Land Use Map	
15 units per acre (two parcels at southeast corner of Homestead Rd and Blaney Ave). All other areas - Maximum land use density as indicated in the General Plan Land Use Map or 35 units per acre where none indicated.	
<b>Maximum Height</b> 30 feet, or 45 feet (south side between De Anza and Stelling)	

North Vallco Park Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
25 units per acre	60 feet

Heart of the City Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
Up to 25 units per acre per General Plan Land Use Map or 35 units per acre (South Vallco)-All other areas - Maximum land use density as indicated in the Heart of the City Land Use Map and, if none indicated, 25 units per acre	45 feet, or 30 feet where designated by hatched line

North De Anza Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
25 units per acre	45 feet

South De Anza Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
25 units per acre (north of Bollinger)	30 feet
5-15 units per acre (south of 85)	

Monta Vista Village Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
Up to 15 units per acre, per General Plan Land Use Map Maximum density as indicated in the General Plan Land Use Map, and if none indicated, 15 units per acre	Up to 30 feet

Bubb Road Special Area	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
20 units per acre	45 feet

Vallco Shopping District Special Area	
<b>Regional Shopping/Residential Maximum Residential Density</b>	<b>Regional Shopping Maximum Residential Density</b>
35 units per acre in areas identified in Figure LU-4	N/A - residential is not a permitted use
<b>Minimum Residential Density</b>	<b>Maximum Height</b>
29.7 units per acre in areas identified in Figure LU-4	Up to 60 feet
<b>Maximum Height</b>	
Up to 60 feet	

Neighborhoods	
<b>Maximum Residential Density</b>	<b>Maximum Height</b>
Per-Maximum density as indicated in the General Plan Land Use Map; 15 units per acre for Neighborhood Commercial Sites	30 feet

Source: City of Cupertino, 2021.

Figure 3-1  
Community Form Diagram

**PROJECT DESCRIPTION**

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## 4. Environmental Analysis

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As previously described in Section 2, Standard for Preparation of an Addendum, this Addendum has been prepared pursuant to CEQA Guidelines Sections 15162 and 15164 to determine whether implementation of the Modified Project would result in any new impacts or substantially more severe significant environmental impacts than were previously analyzed in the Certified EIR. Accordingly, this Addendum only considers the extent to which the proposed changes could result in new or substantially more severe significant impacts; it does not reevaluate impacts that would remain consistent with the analysis in the Certified EIR. The environmental topic areas analyzed in the Certified EIR includes:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology, Soils, and Seismicity
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise and Vibration
- Population and Housing
- Public Services and Recreation
- Transportation and Traffic
- Utilities and Service Systems

The Modified Project is a plan-level project. It does not include any site-specific designs or proposals, nor does it grant any entitlements for development that would have the potential to result in physical impacts on the environment or involve any ground disturbance. Any future construction-level projects occurring from implementation of the Modified Project would be subject to applicable federal, State, and/or City regulations and undergo an appropriate level of environmental review as required.

As described in Section 3.4, Proposed Changes, the Modified Project would consist of minor text revisions to Chapter 3, Land Use and Community Design Element, and Chapter 6, Environmental Resources and Sustainability Element, of the General Plan, and minor revisions to Figure LU-2, Community Form Diagram. In addition to these edits, the Modified Project includes the proposed addition of Chapter 17.04, Standard Environmental Protection Requirements, to the CMC that would serve as objective conditions of approval intended to mitigate potentially significant impacts for the applicable projects identified in the proposed chapter (see Appendix A, Resolution No. [To Be Determined]). The proposed Standard Environmental Protection Requirements concern the environmental topic areas of air quality, greenhouse gas emissions and energy, biological resources, cultural resources, hazardous materials, hydrology and water quality, noise and vibration, paleontological resources, and utilities and service systems.

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## ENVIRONMENTAL ANALYSIS

The Modified Project would have no impacts to agriculture, forestry, or mineral resources, because those resources are not found within the City of Cupertino. The Modified Project, therefore, would not result in any new or substantially more severe significant impacts to agriculture, forestry, or mineral resources than were analyzed and disclosed in the Certified EIR.

The Modified Project does not modify the assumption that infill, mixed-use, multi-family development is anticipated within the Special Areas and major corridors. The Modified Project includes minor edits to provide clarification to the existing text in the General Plan, and that do not change the content of the General Plan. For this reason, the Modified Project would result in the same land use and planning impacts as disclosed in the Certified EIR, and would not result in any new or substantially more severe significant land use impacts than were analyzed and disclosed in the Certified EIR.

The Standard Environmental Protection Requirements (also referred to in this discussion as “standard requirements”) that would be added to the CMC are proposed for the purpose of reducing potential environmental impacts and would, therefore, not cause a new significant impact or a substantial increase in the severity of the impacts analyzed and disclosed in the Certified EIR. Standard requirements may involve temporary physical effects during construction or short-term physical effects during operation that would have the potential to create or contribute to an effect on the environment. For example, some standard requirements could have minor aesthetic effects by requiring the installation of signage during construction, the use of temporary construction fencing, or the incorporation of solid barriers to improve air quality for sensitive uses in certain areas. Other standard requirements may require the use of equipment to, for example, collect soil samples or install landscaping. Construction and operational activities and equipment use could involve water and energy consumption, generate noise, and/or create air emissions. However, the environmental effects of implementing the standard requirements would generally be nominal when compared to the overall effects of construction and operation of the future development projects with which they are associated. In addition, implementation of some of the standard requirements would be temporary during construction, and it would be speculative to attempt to quantify their effects when implemented as part of future development projects. For example, standard requirements include preconstruction surveys to protect nesting birds and roosting bats during construction, control of construction exhaust and fugitive dust during construction, monitoring for and compliance with applicable regulations to protect cultural and paleontological resources from development, and conducting of Phase I and Phase II environmental site assessments for evaluation of potentially existing hazardous materials prior to development. These requirements would reduce potential impacts to biological resources, air quality, cultural resources, paleontological resources, and impacts from hazardous materials. Other standard requirements that would reduce environmental impacts include control of diesel particulate matter from non-residential projects during operation through conducting health risk assessments and use of best available control technologies for toxic air contaminants and management of indoor air pollution, completion of the City’s Climate Action Plan Development Consistency Checklist for reduction of greenhouse gas emissions and energy usage,

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## ENVIRONMENTAL ANALYSIS

compliance with the City's Municipal Code for control of stormwater runoff contamination, demonstration that projects would be adequately accommodated for with existing sewer and water supply systems prior to project approval, and evaluation of vehicle miles traveled to ensure compliance with City municipal code standards. In summary, the combined effect of the standard requirements, when implemented as part of construction and operation of future development projects, would be to reduce environmental effects.

The physical condition and characteristics of the properties within the City have not substantially changed since the certification of the Certified EIR. The urban nature, trees, soil characteristics, seismic potential, and drainage on-site are in the same or similar condition as they were in 2014. The Modified Project would not change any of the potential development under the General Plan that was already analyzed in the Certified EIR. For this reason, the Modified Project would result in the same impacts to biological resources, cultural resources, geology and soils, hazards and hazardous materials, and hydrology and water quality as disclosed in the Certified EIR and would not result in any new or substantially more severe significant impacts to these resources than were analyzed and disclosed in the Certified EIR.

The number of residential units that could be built in the City would not be affected by the Modified Project compared to the analysis contained in the Certified EIR. The residential densities would remain unchanged, and no changes are proposed to the residential development allocation in the General Plan. For this reason, the Modified Project would have the same population and housing impacts as disclosed in the Certified EIR and would not result in any new or substantially more severe significant impacts to these resources than were analyzed and disclosed in the Certified EIR.

Because no changes are proposed to the overall development program analyzed in the Certified EIR, there would be no changes to the daily or peak hour vehicle trips. For this reason, the Modified Project would not result in new or substantially more severe significant traffic impacts than were analyzed and disclosed in the Certified EIR. In addition, there would be no changes to pollutant emissions, noise and vibration, and energy and utility demand compared to the analysis in the Certified EIR.

The Certified EIR project identifies height limitations and includes slope line criteria for development; these standards are not impacted by the Modified Project. Therefore, implementation of the proposed text amendments in the General Plan and standard environmental protection requirements in the CMC would not result in greater impacts to aesthetics, air quality, energy, greenhouse gas emissions, public services, recreation, transportation, and utilities and service systems than were analyzed and disclosed in the Certified EIR because the amount of development analyzed remains the same.

The City does not anticipate that the Modified Project would result in reduced amounts of development as compared to the Approved Project. However, the Certified EIR evaluated alternatives to the Approved Project that included reduced amounts of development, and concluded that these alternatives would result in essentially the same impacts as the Approved Project.

**ENVIRONMENTAL ANALYSIS**

CEQA identifies and analyzes the significant effects on the environment, where “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical condition (CEQA Guidelines Section 15382). The proposed changes would not alter the meaning of the policies or result in new adverse physical impacts to the environment.

Table 4-1, *Comparison of Impacts of the Approved Project and Modified Project*, summarizes the impacts of the proposed modifications to the Certified EIR compared to Approved Project.

**Table 4-1: Comparison of Impacts of the Approved Project and Modified Project**

	Compared to Impacts Disclosed in the Certified EIR, the Impacts of the Modified Project:		
	Same	Lesser	New Significant or More Substantial
Aesthetics	X		
Agricultural and Forestry Resources	X		
Air Quality	X		
Biological Resources	X		
Cultural Resources	X		
Geology, Soils, and Seismicity	X		
Greenhouse Gas Emissions	X		
Hazards and Hazardous Materials	X		
Hydrology and Water Quality	X		
Land Use and Planning	X		
Mineral Resources	X		
Noise and Vibration	X		
Population and Housing	X		
Public Services and Recreation	X		
Transportation and Traffic	X		
Utilities and Service Systems	X		

Based on the information provided in this Addendum, implementation of the Modified Project would not result in any new impacts or increase the severity of previously identified significant impacts analyzed in the Certified EIR. The proposed modifications to the Approved Project would not result in a substantial change to the project and, therefore, additional environmental review is not necessary.

## 5. Comparison to the Conditions Listed in CEQA Guidelines Section 15162

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### 5.1 SUBSTANTIAL CHANGES TO THE PROJECT

The proposed changes to the General Plan are minor text revisions and are not a substantial change to the Approved Project analyzed in the Certified EIR; nor are the proposed additions to the CMC a substantial change to the Approved Project analyzed in the Certified EIR, because the additions serve to mitigate or reduce potential environmental impacts, such as through preconstruction surveys, control of construction emissions, compliance with applicable regulations, conducting of Phase I and Phase II environmental site assessments, conducting of health risk assessments, and demonstration that projects would be adequately accommodated with existing utilities systems, and more. Consequently, there are no substantial changes proposed to the Approved Project that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

### 5.2 SUBSTANTIAL CHANGES IN CIRCUMSTANCES

As described above in Section 4, Environmental Analysis, the Modified Project would not result in new significant environmental impacts beyond those identified in the Certified EIR, would not substantially increase the severity of significant environmental effects identified in the Certified EIR, and thus would not require major revisions to the Certified EIR. The Modified Project, therefore, is not substantial and does not require major revisions to the Certified EIR or a subsequent EIR. In addition, the physical conditions within the City have not changed substantially since the certification of the Certified EIR, although some structures have been improved and others have been demolished.

### 5.3 NEW INFORMATION

No new information of substantial importance, which was not known and could not have been known when the Certified EIR was certified, has been identified which shows that the Modified Project would be expected to result in: 1) new significant environmental effects not identified in the Certified EIR; 2) substantially more severe environmental effects than shown in the Certified EIR; 3) mitigation measures or alternatives previously determined to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project sponsor declines to adopt the mitigation or alternative; or 4) mitigation measures or alternatives which are considerably different from

**COMPARISON TO THE CONDITIONS LISTED IN CEQA GUIDELINES SECTION 15162**

those identified in the Certified EIR would substantially reduce one or more significant effects of the project but the project sponsor declines to adopt the mitigation measure or alternative.

## 6. Conclusion

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For the reasons stated above, the City has concluded that the Modified Project would not result in any new impacts not previously identified in the Certified EIR; nor would it result in a substantial increase in the severity of any significant environmental impact previously identified in the Certified EIR. For these reasons, a subsequent EIR is not required and an addendum to the Certified EIR is the appropriate CEQA document to address the proposed amendments to the General Plan and the CMC.

## **CONCLUSION**

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## 7. List of Preparers

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### LEAD AGENCY

#### City of Cupertino

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*Piu Ghosh..... Planning Manager*

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*Allison Dagg ..... Associate, Project Manager*  
*Alexis Mena..... Senior Associate*

## **LIST OF PREPARERS**

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# Appendix A Resolution No. [To Be Determined]

**APPENDIX**

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF CUPERTINO RECOMMENDING THAT THE CITY COUNCIL  
ADOPT AN ORDINANCE ADDING A NEW CHAPTER 17.04  
(STANDARD ENVIRONMENTAL PROTECTION REQUIREMENTS)  
TO THE CUPERTINO MUNICIPAL CODE**

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The Planning Commission recommends that the City Council:

1. Determine that Project is not a project under the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq., and the State CEQA Guidelines, California Code of Regulations Section 15000 et. seq., (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that it is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) (General Rule) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action, the adoption of new standard environmental protection requirements, would have no or only a de minimis effect on the environment because it does not commit the City to any particular project. In addition, the new standard environmental protection requirements consist of previously adopted mitigation measures, City conditions of approval, existing regulatory requirements, and other best practices and are adopted for the purpose of reducing the effects of land use development and infrastructure projects on the environment.
2. Adopt the proposed amendments to the Municipal Code as indicated in Exhibit A.

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PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by the following roll call vote:

AYES:

NOES:

Ordinance No. \_\_\_\_\_

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ABSENT:

ABSTAIN:

**ATTEST:**

**APPROVED:**

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Piu Ghosh  
Planning Manager

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R. Wang  
Chair, Planning Commission

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADDING CHAPTER 17.04 (STANDARD ENVIRONMENTAL PROTECTION  
REQUIREMENTS) TO THE CUPERTINO MUNICIPAL CODE**

The City Council of the City of Cupertino finds that:

1. WHEREAS, requiring all projects involving construction, grading, excavation, or tree removal activity that require a permit or approval by the City to comply with applicable standard environmental protection requirements, based on objective standards, will reduce the environmental consequences of projects that are not subject to review under the California Environmental Quality Act; and
2. WHEREAS, amending the Cupertino Municipal Code to specify the standard environmental protection requirements that apply to projects for which City permits for or approval of construction, grading, excavation, or tree removal activity is required will provide certainty to project applicants; and
3. WHEREAS, the City Council desires to have objective standards applicable to projects that are clear and understandable to ensure there are no unacceptable risks to human health or safety or the environment; and
4. WHEREAS, the Planning Commission held a duly noticed public hearing on September 28, 2021 regarding the proposed ordinance; and
3. WHEREAS, the City of Cupertino wishes to adopt the standard environmental protection requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES  
ORDAIN AS FOLLOWS:**

**SECTION 1. Adoption.**

The City of Cupertino hereby adopts Standard Environmental Protection Requirements and amends the Cupertino Municipal Code as set forth in Attachment A.

**SECTION 2: Severability and Continuity.**

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this

Ordinance No. \_\_\_\_\_

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ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

**SECTION 3: California Environmental Quality Act.**

This Ordinance is not a project under the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq., and, together with related State CEQA Guidelines, California Code of Regulations Section 15000 et. seq., (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) (General Rule) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

In this circumstance, the proposed action, adoption of new standard environmental protection requirements, would have no or only a de minimis effect on the environment because it does not commit the City to any particular project. In addition, the new standard environmental protection requirements consist of previously adopted mitigation measures, City conditions of approval, existing regulatory requirements, and other best practices and are adopted for the purpose of reducing the effects of land use development and infrastructure projects on the environment. The foregoing determination is made by the City Council in its independent judgment.

**SECTION 4: Effective Date.**

This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code Section 36937.

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**SECTION 5: Publication.**

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

**INTRODUCED** at a regular meeting of the Cupertino City Council on October 19, 2021, and **ENACTED** at a regular meeting of the Cupertino City Council on November 2, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Darcy Paul, Mayor City of Cupertino	  _____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	  _____ Date
APPROVED AS TO FORM:  _____ Chris Jensen, City Attorney	  _____ Date

## **Attachment A – Adding Chapter 17.04 (Standard Environmental Protection Requirements)**

*The sections of the Cupertino Municipal Code set forth below are adopted as follows:*

Add new Chapter 17.04 (Standard Environmental Protection Requirements) to Title 17

### **CHAPTER 17.04 Standard Environmental Protection Requirements**

#### **Section**

17.04.010 Purpose

17.04.020 Definitions

17.04.030 Applicability

17.04.040 Standard Environmental Protection Technical Report Submittal Requirements

17.04.050 Standard Environmental Protection Permit Submittal Requirements

17.04.060 Violations

#### **17.04.010 Purpose.**

The purpose of this chapter is to identify standard environmental protection requirements that all construction projects must meet, including but not limited to environmental mitigation measures identified in any environmental documents required as part of a General Plan update.

#### **17.04.020 Definitions.**

The following words and phrases when used in this chapter shall have the following meanings set forth in this section:

- A. “Applicable Construction Document” means a construction management plan or a permit plan, which are the project plans associated with permit applications.
- B. “Approval” means issuance of permits under Title 18 or Title 19, and when permits pursuant to Title 18 or Title 19 are not required issuance of other required City permits by the City of Cupertino.
- C. “Construction Management Plan” means a document that includes the details the construction manager is required to enforce to minimize potential construction impacts related to construction crew parking, equipment staging, off-site circulation, noise, and air quality on residents and commercial operations during the construction phase.

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- D. "Construction" or "Ground-disturbing activities" include any paving, excavation, soil removal, grading, utility trenching, removal of foundations and structures, regardless of whether the soils have been previously disturbed or not.
- E. "Permit" means any discretionary or ministerial permit or approval that is required pursuant to Title 14, Title 16, Title 18, or Title 19 of the Cupertino Municipal Code to allow a project.
- F. "Permit Plan" means any project plan(s) that are required for permit approval pursuant to Title 14, Title 16, Title 18, or Title 19 of the Cupertino Municipal Code to allow a project.
- G. "Project" means any construction, ground-disturbing activity, or tree removal activity.
- H. "Project Applicant" means the project proponent or property owner.
- I. "Regulated Projects" means any development that is subject to oversight by an environmental regulatory agency, including but not limited to oversight by the State Water Resources Control Board and other similar agencies.
- J. "Sensitive Receptor" means the types of land uses, populations, and buildings or structures that are considered sensitive to air pollution, noise, and vibration.
  - 1. Air quality-sensitive population groups include children, the elderly, the acutely ill, and the chronically ill, especially those with cardiorespiratory diseases. Disadvantaged communities identified in CalEnviroScreen 3.0 (i.e., environmental justice communities), as subsequently revised, supplemented, or replaced, may be disproportionately affected by and vulnerable to poor air quality.
  - 2. Noise-sensitive receptors include land uses where quiet environments are necessary for enjoyment and public health and safety. Residences, schools, hotels, libraries, religious institutions, hospitals, and nursing homes are examples.
  - 3. Vibration-sensitive receptors include land uses residences and buildings where people normally sleep (e.g., residences and hotels, and buildings or structures that are susceptible to architectural damage (e.g., non-engineered timber and masonry buildings and historic buildings).
- K. "Tenant Improvement" means any construction activity that modifies interior space in non-residential space.
- L. "Tree" means Protected Trees and Public Trees under the Cupertino Municipal Code, unprotected trees, or any other vegetation suitable for nesting birds.

### **17.04.030 Applicability and Demonstration of Compliance.**

- A. Every project within the City of Cupertino shall comply with all applicable standard environmental protection requirements identified in Section 17.04.040 and Section 17.04.050.
- B. Compliance with the requirements shall be demonstrated as follows:
1. For all non-residential projects, residential projects involving the development of four or more residential units, and mixed-use projects, compliance shall be demonstrated through submittal and implementation of a construction management plan and/or permit plans, as applicable, prior to issuance of an approval to the satisfaction of the City.
  2. For residential projects with three or fewer units, for residential additions/remodels and Tenant Improvements, compliance shall be demonstrated on permit plans to the satisfaction of the City.
  3. For projects that do not require the issuance of a permit and for tree removal projects, the property owner must demonstrate compliance by ensuring that all applicable standard environmental protection requirements are implemented.

### **17.04.040 Standard Environmental Protection Technical Report Submittal Requirements.**

Every project shall implement the following standard environmental protection technical report submittal requirements, which reports are subject to third-party peer review under the direction of the City at the applicant's cost, prior to the approval of the project unless they are not applicable to the project as demonstrated by a written explanation of why any standard environmental protection technical report submittal requirement is not applicable to the project, subject to the review and approval of the Director of Community Development and/or the City Engineer, or his or her designee, as appropriate:

#### **A. Air Quality**

1. **Control Diesel Particulate Matter from Non-Residential Projects During Operation.** Applicants for new non-residential land uses within the city that either have the potential to generate 100 or more diesel truck trips per day or have 40 or more trucks with operating diesel-powered Transport Refrigeration Units (TRUs), or are within 1,000 feet of a sensitive land use (e.g., residential, schools, hospitals, nursing homes), as measured from the property line of the project to the property line of the nearest sensitive use, shall:
  - a. Prepare and submit an operational Health Risk Assessment (HRA) for approval by the City prior to approval of the project.

- b. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment (OEHHA) and the Bay Area Air Quality Management District (BAAQMD).
- c. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM<sub>2.5</sub> concentrations exceed 0.3 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), or the appropriate noncancer hazard index exceeds 1.0, the project applicant shall be required to identify and demonstrate that Best Available Control Technologies for Toxics (T-BACTs) are capable of reducing potential cancer and noncancer risks to an acceptable level, including appropriate enforcement mechanisms.
- d. T-BACTs identified in the HRA shall be indicated in the appropriate applicable construction document prior to approval of the project. T-BACTs may include the following measures from BAAQMD's *Planning Healthy Places Guidebook* but are not limited to:
  - i. Restricting nonessential idling on-site to no more than two minutes.
  - ii. Providing electric charging capable truck trailer spaces to accommodate Zero Emissions (ZE) Trucks.
  - iii. Providing electric charging capable warehousing docks to accommodate ZE Transport Refrigeration Units (TRUs).
  - iv. Requiring use of Near Zero Emissions (NZE) or ZE equipment (e.g., yard trucks and forklifts) and/or vehicles.
  - v. Restricting offsite truck travel through the creation of truck routes.

## **2. Manage Indoor Air Pollution.**

- a. Applicants for residential and other sensitive land use projects (e.g., hospitals, nursing homes, day care centers) in areas identified on the Bay Area Air Quality Management District's (BAAQMD) "Conduct Further Study" on the Planning Healthy Places Map shall:
  - i. Prepare and submit an operational Health Risk Assessment (HRA) to the City prior to approval of the project.
  - ii. The HRA shall be prepared in accordance with policies and procedures of the State Office of Environmental Health Hazard Assessment (OEHHA) and BAAQMD. The latest OEHHA guidelines shall be used for the analysis, including age sensitivity factors, breathing rates, and body weights appropriate for children ages 0 to 16 years.

- iii. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM<sub>2.5</sub> concentrations exceed 0.3 micrograms per cubic meter (µg/m<sup>3</sup>), or the appropriate noncancer hazard index exceeds 1.0, the project applicant shall identify and demonstrate measures that are capable of reducing potential cancer and non-cancer risks to an acceptable level (i.e., below ten in one million or a hazard index of 1.0), including appropriate enforcement mechanisms.
- iv. Measures to reduce risk may include, but are not limited to:
  1. Air intakes located away from high volume roadways and/or truck loading zones.
  2. Heating, ventilation, and air conditioning systems of the buildings provided with appropriately sized Minimum Efficiency Reporting Value (MERV) filters.
- b. Applicants for residential and/or other sensitive land use projects (e.g., hospitals, nursing homes, day care centers) must state in the applicable construction document where the site is located on the Bay Area Air Quality Management District (BAAQMD) Planning Healthy Places Map, as subsequently revised, supplemented, or replaced. If the site is located in an area identified as "Implement Best Practices," the project applicant shall implement, and include in applicable construction documents, the following best practices identified in the BAAQMD *Planning Healthy Places Guidebook*:
  - i. Install air filters rated at a MERV 13 or higher.
  - ii. Locate operable windows, balconies, and building air intakes as far away from any emission source as is feasible.
  - iii. Incorporate solid barriers or dense rows of trees in a minimum planter width of 5 feet per row of trees between the residential and/or sensitive land use, and the emissions source into site design.
  - iv. Do not locate residential and/or sensitive land use on the ground floor units of buildings near non-elevated sources (e.g., ground level heavily traveled roadways and freeways).
- c. The project applicant shall include the applicable measures identified in subsections (a) and (b) above in the applicable construction documents prior to approval of the project. Specifically, the air intake design and MERV filter requirements shall be included on all applicable construction documents submitted to the City and verified by the City's Planning Division.

## **B. Hazardous Materials**

**Manage Soil and/or Groundwater Contamination.** Projects that involve tree removal only are not subject to this Section B. For all other projects, except as provided for in Section B.3, the project applicant shall complete Section B.1 and B.2, as required, prior to approval of the project.

- 1. Phase I ESA.** Retain the services of a qualified environmental consultant with experience preparing Phase I Environmental Site Assessments (ESAs) to prepare a Phase I ESA in accordance with the American Society for Testing and Materials (ASTM) Standards on Environmental Site Assessments, ASTM E 1527-13 (ASTM 1527-13) and in accordance with the U.S. Environmental Protection Agency's (EPA's) Standards and Practices for All Appropriate Inquiries (40 Code of Federal Regulations 312), published November 2005, as subsequently revised, supplemented, or replaced. The goal of an ASTM Phase I ESA is to evaluate site history, existing observable conditions, current site use, and current and former uses of surrounding properties to identify the potential presence of Recognized Environmental Conditions (RECs) as defined in ASTM E 1527-13, associated with the site. If the Phase I ESA does not identify any RECs, then no further action is needed. If the Phase I ESA identifies RECs, then a Phase II ESA shall be prepared as described in Section B.2.
- 2. Phase II ESA.** A Phase II ESA shall be prepared by a qualified environmental consultant and signed and stamped by a Professional Geologist or Professional Engineer hired by the project applicant. The Phase II ESA shall include the collection and analysis of samples designed to evaluate RECs identified in the Phase I ESA, in compliance with ASTM standards, and a health risk assessment to evaluate whether the RECs pose an unacceptable or potentially unacceptable health risk to future users of the site. Depending on the health risks identified in the Phase II ESA, the project applicant shall proceed as follows:
  - a. If the Phase II ESA identifies no unacceptable or potentially unacceptable health risk associated with the RECs, then no further action is needed.
  - b. If the Phase II ESA identifies an unacceptable or a potentially unacceptable health risk, the requirements related to soil remediation in Section 17.04.050B shall apply.
- 3. Focused Phase I and II ESAs.** Projects that are on sites which are known to have current or former orchards or other irrigated agricultural activities that were active in 1950 or later are assumed to contain RECs associated with organic pesticides and are required to prepare a Focused Phase I ESA that addresses only RECs other than those associated with organic pesticides. Depending on the

contaminants found in the Focused Phase I ESA, the project applicant shall proceed as follows:

- a. If the Focused Phase I ESA identifies no other unacceptable or potentially unacceptable health risks, then the project applicant shall prepare a Focused Phase II ESA that addresses only the potential hazards associated with organic pesticides.
- b. If the Focused Phase I ESA identifies RECs other than organic pesticides, then the project applicant shall prepare the Phase II ESA as described in Section B.2 to address both the organic pesticides RECs and all other RECs.

### **C. Vehicle Miles Traveled**

**Evaluate Vehicle Miles Traveled or VMT.** Project applicants shall prepare a vehicle miles traveled (VMT) analysis, which shall include a comparison of existing VMT and project-generated VMT, for review and approval prior to project approval, indicating that the project meets the standards in Section 17.08.040 (Vehicle Miles Traveled (VMT) Standards).

### **D. Vibration**

1. **Manage Vibration During Construction.** The project applicant shall provide a vibration study to determine vibration levels due to construction to the City, prior to approval of the project, when the following activities would occur within the screening distance to buildings or structures: pile driving within 100 feet, vibratory roller within 25 feet, or other heavy equipment (e.g., bulldozer) within 15 feet; and for historical structures: pile driving within 135 feet, vibratory roller within 40 feet, or other heavy equipment within 20 feet. If vibration levels due to construction activities exceeds 0.2 inches per second peak particle velocity (in/sec PPV) at nearby buildings or structures, or 0.12 in/sec PPV at historical structures, the project shall implement the following alternative methods/equipment:
  - a. For pile driving, one of the following options shall be used: caisson drilling (drilled piles), vibratory pile drivers, oscillating or rotating pile installation methods, or jetting or partial jetting of piles into place using a water injection at the tip of the pile.
  - b. For paving, use a static roller in lieu of a vibratory roller.
  - c. For grading and earthwork activities, off-road equipment that shall be limited to 100 horsepower or less.

## **Section 17.04.050 Standard Environmental Protection Permit Submittal Requirements**

Every project shall implement the following standard environmental protection permit submittal requirements prior to the issuance of permits by the City unless they are not applicable to the project as demonstrated by a written explanation of why any standard environmental protection permit submittal requirement is not applicable to the project, subject to the review and approval of the Director of Community Development and/or the City Engineer, or his or her designee, as appropriate:

### **A. Air Quality**

- 1. Control Fugitive Dust During Construction.** Projects shall implement the Bay Area Air Quality Management District Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter PM<sub>2.5</sub> and PM<sub>10</sub>) during demolition, ground disturbing activities and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit.
- 2. Control Construction Exhaust.** Projects that disturb more than one-acre and are more than two months in duration, shall implement the following measures and the project applicant shall include them in the applicable construction document, prior to issuance of the first permit:
  - a. Utilize off-road diesel-powered construction equipment that is rated by the U.S. Environmental Protection Agency (EPA) as Tier 4 or higher for equipment more than 25 horsepower. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Tier 4 interim emissions standard for a similarly sized engine, as defined by the California Air Resources Board's (CARB) regulations. Applicable construction documents shall clearly show the selected emission reduction strategy for construction equipment over 25 horsepower.
  - b. Ensure that the construction contractor shall maintain a list of all operating equipment in use on the project site for verification by the City. The construction equipment list shall state the makes, models, and number of construction equipment on-site.
  - c. Ensure that all equipment shall be properly serviced and maintained in accordance with the manufacturer's recommendations.

3. **Control Volatile Organic Compound Emissions from Paint.** Projects shall use low-VOC paint (i.e., 50 grams per liter [g/L] or less) for interior and exterior wall architectural coatings. The project applicant shall include the use of low-VOC paint in the applicable construction documents prior to issuance of the first permit.

## **B. Hazardous Materials**

**Soil Remediation Required.** If a Focused or other Phase II ESA, as required pursuant to Section 17.04.040(B)(1), identifies an unacceptable or a potentially unacceptable health risk, the project applicant shall, depending on the contaminant, contact either the Environmental Protection Agency (EPA), Department of Toxic Substances Control (DTSC), Regional Water Quality Control Board (RWQCB) or local Certified Unified Program Agency (CUPA). The project applicant shall enter into a regulatory agency oversight program with an appropriate regulatory agency, or an established voluntary oversight program alternative with an appropriate regulatory agency, as determined by the City, and follow the regulatory agency's recommended response actions until the agency reaches a no further action determination, prior to issuance of any permit for a project that allows ground disturbing activity.

## **C. Greenhouse Gas Emissions and Energy**

**Reduce Greenhouse Gas Emissions (GHG) and Energy Use.** The project applicant shall complete the City of Cupertino Climate Action Plan – Development Project Consistency Checklist, for review and approval by the City Environment and Sustainability Department prior to issuance of the first permit, to demonstrate how the project is consistent with the Cupertino Climate Action Plan, as subsequently revised, supplemented, or replaced, in order to reduce greenhouse gas emissions and conserve energy.

## **D. Biological Resources**

1. **Avoid Nesting Birds During Construction.** For all projects that involve removal of a tree (either protected or unprotected) or other vegetation suitable for nesting birds, or construction or ground-disturbing activities defined in Section 17.04.020, the project applicant shall comply with, and the construction contractor shall indicate the following on all construction plans, when required to ensure the following measures are performed to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and California Department of Fish and Game Code when in active use:
  - a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible.

If feasible, construction, ground-disturbing, or tree removal/pruning activities shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for construction, ground-disturbing, or tree removal/pruning activities outside the nesting period.

- b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 and August 31), preconstruction surveys shall be conducted as follows:
  - i. No more than 7 days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities, in order to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.
  - ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in, and immediately adjacent to, the construction areas for active nests, while ensuring that they do not disturb the nests as follows:
    1. For projects that require the demolition or construction one single-family residence, ground disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct the preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.
    2. For any other demolition, construction and ground disturbing activity or the removal of four or more trees, a qualified ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.
- c. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be

- documented, and the qualified ornithologist or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.
- d. Protective measures may include, but are not limited to, establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist or biologist, taking into account the species of birds nesting, their tolerance for disturbance and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.
  - e. A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist and submitted to the Director of Community Development or his or her designee, through the appropriate permit review process (e.g., demolition, construction, tree removal, etc.), and be completed to the satisfaction of the Community Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

## **2. Avoid Special-Status Roosting Bats During Construction.**

- a. For all projects that involve demolition, renovation, or re-tenanting of an abandoned or vacant building or structure, where the property owner cannot show evidence to the satisfaction of the City of Cupertino Building Inspector that the building or structure was appropriately sealed at the time the building or structure was vacated to prevent bats from roosting, the project applicant shall retain a qualified biologist to conduct preconstruction surveys of the on-site buildings or structures prior to commencing any demolition, renovation, or re-tenanting activities. A building or structure is not appropriately sealed unless seal holes that are more than 0.5 inches in diameter or cracks that are 0.25 by 1.5 inches or larger are filled or closed with suitable material such as

- caulking, putty, duct tape, self-expanding polyurethane foam, 0.25-inch mesh hardware cloth, 0.5-inch or smaller welded wire mesh, installing tighter-fitting screen doors, or steel wool.
- b. The project applicant shall comply with, and the construction contractor shall include in the applicable construction documents, the following to ensure appropriate preconstruction surveys are performed and adequate avoidance provided for any special-status roosting bats, if encountered on the site. Preconstruction surveys shall:
- i. Be conducted by a qualified biologist prior to tree removal or building demolition, renovation, or re-tenanting. Note that the preconstruction survey for roosting bats is required at any time of year since there is no defined bat roosting season as there is with nesting birds.
  - ii. Be conducted no more than 14 days prior to start of tree removal or demolition, renovation, or re-tenanting.
  - iii. Be repeated at 14-day intervals until construction has been initiated after which surveys can be stopped, unless construction activities are suspended for more than 7 consecutive days at which point the surveys shall be reinitiated.
  - iv. If no special-status bats are found during the survey(s), then no additional measures are warranted.
- c. Protective measures shall be included in the applicable construction documents and implemented prior to issuance of permits, if any special-status bat species are encountered or for any roosts detected within the existing structures, where individual bats could be inadvertently trapped and injured or killed during demolition unless passively evicted in advance of construction activities. Protective measures shall include:
- i. If no maternity roosts are detected, adult bats can be flushed out of the structure or tree cavity using a one-way eviction door placed over the exit location for a minimum 48-hour period prior to the time tree removal or building demolition is to commence.
  - ii. Confirmation by the qualified biologist that the one-way eviction door was effective, and that all bats have dispersed from the roost location, modifying any exclusion efforts to ensure individual bats have been successfully evicted in advance of initiating tree removal or building demolition.
  - iii. If a maternity roost is detected, and young are found roosting in a building identified for demolition, renovation, or re-tenanting, work shall be

postponed until the young are flying free and are feeding on their own, as determined by the qualified biologist.

- iv. Once the qualified biologist has determined that any young bats can successfully function without the maternity roost, then the adults and young bats can be excluded from the structure to be demolished using the one-way eviction methods described above.
- v. Monitoring shall be provided by the qualified biologist as necessary to determine status of any roosting activity, success of any required bat exclusion, and status of any maternity roosting activity by bats, in the remote instance a maternity roost is encountered on the site.

## E. Cultural Resources

**1. Protect Archaeological Resources and Tribal Cultural Resources:** For all projects requiring ground-disturbing activities on land with no known archaeological or tribal cultural resources that has not been previously disturbed and/or where ground-disturbing activities would occur at a greater depth or affect a greater area than previously disturbed, the following shall be required:

**a. Areas with No Known Cultural Resources.** For all projects within areas where there are no known cultural resources, prior to soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

- i. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.
- ii. The potential for undiscovered archaeological resources or tribal cultural resources on site.
- iii. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.

iv. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:

1. All soil disturbing work within 25 feet of the find shall cease.
2. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.
3. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

**b. Areas with Known Cultural Resources.** For all projects within areas of known cultural resources as documented in the 2015 General Plan EIR Table 4.4-2, Cultural Resources in the Project Study Area and Vicinity, as subsequently revised, supplemented, or replaced by the City, and the archaeological or tribal cultural resources cannot be avoided, in addition to the requirements in Section E.1.a for all construction projects with ground-disturbing activities, the following additional actions shall be implemented prior to ground disturbance:

- i. The project applicant shall retain a qualified archaeologist to conduct a subsurface investigation of the project site, and to ascertain the extent of the deposit of any buried archaeological materials relative to the project's area of potential effects, in consultation with a tribal representative as applicable. The archaeologist shall prepare a site record and file it with the California Historical Resource Information System and the City of Cupertino.

- ii. If the resource extends into the project's area of potential effects as determined by the archaeologist, the resource shall be evaluated by a qualified archaeologist to determine if the resource is eligible for listing on the California Register of Historical Resources. If the qualified archaeologist determines that the resource is not eligible, no further action is required unless there is a discovery of additional resources during construction (as required above for all construction projects with ground-disturbing activities). If the qualified archaeologist determines that the resource is eligible, the qualified archaeologist shall identify ways to minimize the effect which the project applicant shall implement. A written report of the results of investigations and mitigations shall be prepared by the qualified archaeologist and filed with the California Historic Resources Information System Northwest Information Center and the City of Cupertino.
- 2. Protect Human Remains and Native American Burials.** The project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.
- a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.
  - b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.
  - c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.
  - d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.
  - e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains. If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's

recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded.

## F. Hydrology and Water Quality

**Control Stormwater Runoff Contamination.** The project applicant shall demonstrate compliance with Chapter 9.18 (Stormwater Pollution Prevention and Watershed Protection) of the Cupertino Municipal Code, to the satisfaction of the City of Cupertino. All identified stormwater runoff control measures shall be included in the applicable construction documents.

## G. Noise and Vibration

### 1. Notice and Signage:

- a. At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, the project applicant shall send notices of the planned activity by first class mail as follows:
  - i. For projects on sites that are more than 0.5 acres or four or more residential units the notices shall be sent to off-site businesses and residents within 500 feet of the project site;
  - ii. For projects on sites between 0.25 to 0.5 acres, or two or three residential units (not including Accessory Dwelling Units) notices shall be sent to off-site businesses and residents within 250 feet of the project site; or
  - iii. For projects on sites less than 0.25 acres or one residential unit, the notices shall be sent to off-site businesses and residents within 100 feet of the project site.

The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The project applicant shall provide the City with evidence of mailing of the notice, upon request. If pile driving, see additional noticing requirements in subsection 3(b) below.

- b. At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the

authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the action to the City within three business days of receiving the complaint.

- 2. Manage Noise During Construction.** Projects shall implement the following measures to reduce noise during construction and demolition activity:
  - a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment) and may include, but not be limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.
  - b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.
  - c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.
  - d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

- 3. Manage Vibrations During Construction:** In the event pile driving is required, the project applicant shall:
- a. Notify all vibration-sensitive receptors within 300 feet of the project site of the schedule 10 days prior to its commencement and include the contact information for the person responsible for responding to complaints on site.
  - b. The project applicant shall retain a qualified acoustical consultant or structural engineer, to prepare and implement a Construction Vibration Monitoring Plan, which is subject to third-party peer review under the direction of the City at the applicant's cost, for areas within 100 feet for pile driving, 25 feet for vibratory roller, or 15 feet for other heavy equipment (e.g., bulldozer); and for historical structures: within 135 feet for pile driving, 40 feet for vibratory roller, or 20 feet for other heavy equipment. The plan shall include surveying the condition of existing structures; and determining the number, type, and location of vibration sensors and establish a vibration velocity limit (as determined based on a detailed review of the proposed building), method (including locations and instrumentation) for monitoring vibrations during construction, location of notices displaying the contact information for on-site coordination and complaints on site, and method for alerting responsible persons who have the authority to halt construction should limits be exceeded or damaged observed.
  - c. Submit final monitoring reports to the City upon completion of vibration related construction activities.
  - d. Conduct a post-survey on any structure where either monitoring has indicated high vibration levels or complaints that damage has occurred are received.
  - e. The project applicant shall be responsible for appropriate repairs as determined by the qualified acoustical consultant or structural engineer where damage has occurred as a result of construction activities.

## **H. Paleontological Resources**

**Protect Paleontological Resources During Construction.** If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a qualified paleontologist, City staff, and property owner. Appropriate

actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may include, but are not limited to, salvage of unearthened fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

## **I. Utilities and Service Systems**

### **1. Manage Wastewater Inflow and Infiltration to Sewer System.** Project applicants shall implement the following measures to reduce wastewater flow:

- a. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD) that the project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:
  - i. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows, or
  - ii. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

The project's estimated wastewater generation shall be calculated using the current generation rates used by the CSD unless alternative (i.e., lower) generation rates achieved by the project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

- b. The project applicant shall obtain a letter of clearance from the Cupertino Sanitary District and provide a copy of the letter of clearance to the City prior to issuance of the first permit.

### **2. Ensure Adequate Water Supply and Infrastructure.** The project applicant shall obtain written approval from the appropriate water service provider for water connections, service capability, and location and layout of water lines and backflow preventers, prior to issuance of the first permit.

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### **17.04.050 Violations**

Violation of any of the standard environmental protection requirements, except for any such standard environmental protection requirements that the Director of Community Development and/or the City Engineer, or his or her designee, has deemed inapplicable pursuant to Section 17.04.040 and Section 17.04.050, constitutes a violation of this Code.

