



# CITY OF CUPERTINO

## AGENDA

### CITY COUNCIL

10350 Torre Avenue, Council Chamber and via Teleconference

Tuesday, May 31, 2022

6:00 PM

Televised Special Meeting

### IN-PERSON AND TELECONFERENCE / PUBLIC PARTICIPATION INFORMATION

Members of the public wishing to observe the meeting may do so in one of the following ways:

- 1) Attend in person at Cupertino Community Hall, 10350 Torre Avenue.
- 2) Tune to Comcast Channel 26 and AT&T U-Verse Channel 99 on your TV.
- 3) The meeting will also be streamed live on and online at [www.Cupertino.org/youtube](http://www.Cupertino.org/youtube) and [www.Cupertino.org/webcast](http://www.Cupertino.org/webcast)

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

- 1) Appear in person at Cupertino Community Hall. Members of the audience who address the City Council must come to the lectern/microphone, and are requested to complete a Speaker Card and identify themselves. Completion of Speaker Cards and identifying yourself is voluntary and not required to attend the meeting or provide comments.
- 2) E-mail comments by 4:30 p.m. on Tuesday, May 31 to the Council at [citycouncil@cupertino.org](mailto:citycouncil@cupertino.org). These e-mail comments will also be forwarded to Councilmembers by the City Clerk's office before the meeting and posted to the City's website after the meeting.
- 3) E-mail comments during the times for public comment during the meeting to the City Clerk at [cityclerk@cupertino.org](mailto:cityclerk@cupertino.org). The City Clerk will read the emails into the record, and display any attachments on the screen, for up to three minutes (subject to the Mayor's discretion to shorten time for public comments). Members of the public that wish to share a document must email [cityclerk@cupertino.org](mailto:cityclerk@cupertino.org) prior to speaking.

Members of the public may provide oral public comments pertaining to the agenda during the teleconference meeting as follows:

Oral public comments will be accepted during the teleconference meeting. Comments may be made during the public comment period for each agenda item.

### Teleconferencing Instructions

To address the City Council, click on the link below to register in advance and access the meeting:

#### Online

Register in advance for this webinar:

[https://cityofcupertino.zoom.us/webinar/register/WN\\_h3sUsliEQXGtuYyQulC59g](https://cityofcupertino.zoom.us/webinar/register/WN_h3sUsliEQXGtuYyQulC59g)

#### Phone

Dial: 669-900-6833 and enter Webinar ID: 953 5427 1197 (Type \*9 to raise hand to speak, \*6 to unmute yourself). 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: 953 5427 1197

SIP: 95354271197@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 Mayor calls for the item on which you wish to speak, click on "raise hand," or,

if you are calling in, press \*9. 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.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this teleconference City Council 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 6 hours in advance of the Council meeting to arrange for assistance. In addition, upon request, in advance, by a person with a disability, City Council meeting agendas and writings distributed for the meeting that are public records will be made available in the appropriate alternative format.

#### NOTICE AND CALL FOR A SPECIAL MEETING OF THE CUPERTINO CITY COUNCIL

NOTICE IS HEREBY GIVEN that a special meeting of the Cupertino City Council is hereby called for Tuesday, May 31, 2022, commencing at 6:00 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California 95014 and via teleconference. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting."

#### SPECIAL MEETING

#### ROLL CALL

#### POSTPONEMENTS AND ORDERS OF THE DAY

#### REPORTS BY COUNCIL AND STAFF

1. Subject: City Manager Report regarding the Rise (Vallco) development - request for modification of approved SB 35 project pursuant to Government Code section 65913.4(g)

Recommended Action: Receive the report and public comment

[Staff Report](#)

[A - Project Description](#)

[B - Link to Project Plans](#)

#### ADJOURNMENT

*The City of Cupertino has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a final decision of the City Council must be brought within 90 days after a decision is announced unless a shorter time is required by State or Federal law.*

*Prior to seeking judicial review of any adjudicatory (quasi-judicial) decision, interested persons must*

*file a petition for reconsideration within ten calendar days of the date the City Clerk mails notice of the City's decision. Reconsideration petitions must comply with the requirements of Cupertino Municipal Code §2.08.096. Contact the City Clerk's office for more information or go to <http://www.cupertino.org/cityclerk> for a reconsideration petition form.*

*In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend this 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 6 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 Cupertino City Council after publication of the packet will be made available for public inspection in the City Clerk's Office located at City Hall, 10300 Torre Avenue, Cupertino, California 95014, during normal business hours; and in Council 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.*



# CITY OF CUPERTINO

## Agenda Item

---

**22-11041**

**Agenda Date: 5/31/2022**  
**Agenda #: 1.**

---

Subject: City Manager Report regarding the Rise (Vallco) development - request for modification of approved SB 35 project pursuant to Government Code section 65913.4(g)

Receive the report and public comment



## COMMUNITY DEVELOPMENT DEPARTMENT

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

### CITY COUNCIL STAFF REPORT

Meeting: May 31, 2022

#### Subject

City Manager Report regarding the Rise (Vallco) development - request for modification of approved SB 35 project pursuant to Government Code section 65913.4(g)

#### Recommended Action

Receive the report

#### Background

##### Summary of Modification Request

In March 2018, Sand Hill Property Company applied for approval of a housing development project pursuant to Senate Bill 35 (SB 35) (codified as amended at Government Code section 65913.4). SB 35 provides for a streamlined, ministerial local review process for residential and mixed-use developments that meet certain conditions. The intent of the legislation is to increase California's housing supply and to accelerate the development of projects that include affordable housing.

On September 21, 2018, the City approved the Vallco Town Center SB 35 project pursuant to the streamlined, ministerial process set forth in the statute. As approved, the project would consist of 2,402 residential units (half of them affordable), 485,912 square feet of retail uses, and 1,981,447 square feet of office uses.

On March 24, 2022, the applicant initiated a request for modification of the September 2018 approval under Government Code section 65913(g). The proposed modification (renamed "the Rise") proposes increasing the residential square footage of the project from approximately 4.96 million square feet to approximately 5.12 million square feet; decreasing the office square footage from approximately 1.98 million square feet to approximately 1.97 million square feet; and decreasing the retail square footage from approximately 486,000 square feet to approximately 429,000 square feet. The number of residential units (2,402) and affordable units (1,201) remains unchanged. The

modification request proposes changes to vehicular circulation and seeks to eliminate public access easements over private open space areas within the project. Additionally, the applicant proposes reducing the project's total parking from 10,500 spaces to 7,583. (See Attachments A and B)

The affordable housing component of the proposed modification request is also subject to new state law adopted by the Legislature in September 2021. The new law (Assembly Bill 1174) provides that for projects that include 500 or more units of housing and dedicate at least 50 percent of the total number of units to households making at or below 80 percent of the area median income, the rent for 30 percent of the affordable units shall be determined based on the standard for low income household established in the Health and Safety Code, and rent for the remaining 70 percent of affordable units shall be set at a rent that is consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee ["TCAC"]. (Gov. Code, § 65913.4(k)(2).) The project also remains subject to affordability requirements of State Density Bonus Law and the City's Below Market Rate ("BMR") Housing Program. A comparison of affordability levels of affordable units in the approved project and proposed modification is set forth below.

	<b>Approved Project</b>	<b>Proposed Modification</b>	<b>Allowed Rent</b>
<b>Very Low Income Units (Density Bonus, BMR &amp; SB 35)</b>	217	160	Very Low Income Per Health & Safety Code § 50053
<b>Very Low Income Units (Density Bonus &amp; SB 35)</b>	144	107	Very Low Income Per Health & Safety Code § 50053
<b><i>Very Low Income Subtotal</i></b>	<b><i>361</i></b>	<b><i>267</i></b>	
<b>Low Income Units (BMR and SB 35)</b>	144	107	Low Income Per Health & Safety Code § 50053
<b>Low Income Units (SB 35)</b>	696	827	Low Income Per TCAC <sup>1</sup>
<b><i>Low Income Subtotal</i></b>	<b><i>840</i></b>	<b><i>934</i></b>	
<b>Total</b>	<b>1,201</b>	<b>1,201</b>	

<sup>1</sup> Any project receiving TCAC financing may be subject to additional affordability requirements, including the provision of additional very low income units.

The applicant will be required to enter into regulatory agreements with the City documenting the affordability requirements for each of these categories of affordable units.

Overall, the proposed modification reduces the number of very low income units and will likely increase average affordable rents due to changes in state law. However, the applicant has also proposed adding 103 two- or three-bedroom affordable units and adding 230 additional one-bedroom affordable units that were not included in the approved project. The addition of larger units and the reduction in the number of studios is intended to make the project more accessible to low-income families.

### **Review of the Proposed Modifications**

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

In addition, the City may not reconsider "prior determinations that are not affected by the modification" (Gov. Code, § 65913.4(g)(4)) and must use "the same assumptions and analytical methodology" that it used in approving the original application. (Gov. Code, § 65913.4(g)(1)(C).) These provisions mean that the review of a modification must be limited to the proposed changes to the approved project and does not extend to SB 35 eligibility criteria that are not impacted by those changes, such as the location of the project.

The modification request also includes a request for modification of the approved tentative subdivision map for the project. The streamlined approval provisions of SB 35 apply to approval of a tentative subdivision map if "(A) [t]he development has received or will receive financing or funding by means of a low-income housing tax credit," or "(B) [t]he development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used." (Gov. Code, § 65913.4(a)(9).) A finding of compliance with prevailing wage requirements was made in connection with the approval of the original Vallco project and is not affected by the requested modification. The tentative subdivision map will be reviewed and approved in compliance with the Subdivision Map Act (Gov. Code, §§ 66410 – 66499.58). Under Government Code section



65913.4(g), review must be limited to objective subdivision standards that were in place at the time of the original application.

Under Government Code section 65913.4(g)(2), the City must complete ministerial review of the proposed modification request within 60 days. The deadline for completing review of the Vallco/Rise modification request is June 3, 2022. The determination under section 65913.4(g) will be made by the City Manager. This City Manager's report provides the City Council and public with information on staff's evaluation of the modification request and the opportunity to provide input for the City Manager to consider.

### **Analysis**

#### **Eligibility for Modification Request Under Government Code Section 65913.4(g)**

Under Government Code section 65913.4(g)(3), a proposed project modification qualifies for limited-scope review under 65913.4(g) unless (A) "[t]he development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more, or (B) "[t]he development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, . . . and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact." The number of residential units is unchanged in the modified project, and the proposed modifications increase the total square footage of construction by approximately 1.3%. Thus, the modified project qualifies for review as a modification request under Government Code section 65914.4(g).

#### **Eligibility for Streamlined Review Under SB 35**

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

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

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

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

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

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

The proposed project continues to be a mixed use development with 2,402 residential units and therefore, qualifies as a multifamily housing development.

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

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

In 2018, HCD had identified the City of Cupertino as a “50% Affordable Housing jurisdiction” for purposes of SB 35 streamlining and ministerial review. The approved project and the modification request both include 50% (1,201 units) of the total (2,402 units) as affordable to very low income or low income households earning annual incomes less than 80% of the area median income.

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

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

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

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

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

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

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

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

#### Residential or Mixed Use Designation

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

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

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

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

#### Residential Square Footage

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

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

In 2018, the definition of “floor area” in the 2018 Cupertino Municipal Code section 19.08.030(F) was used to determine what percentage of the proposed development is designated for residential use. The Municipal Code defines “floor area” to mean “the total

area of all floors of a building measured to the outside surfaces of exterior walls, and including the following:

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

"Floor area" shall not include the following:

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

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

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

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

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

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

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

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

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

- Coastal zone – The project site is outside a coastal zone. The City of Cupertino's General Plan does not identify any portions of the City within a Coastal Zone.
- Prime farmland or farmland of statewide importance – The project site is outside prime farmland or farmland of statewide importance. The City of Cupertino's General Plan does not identify any portions within the City to be prime farmland or farmland of statewide importance.
- Wetlands as defined under federal law – The project is outside any wetlands as defined under federal law. There are no wetlands as defined under federal law identified on the project site.
- High or very high fire hazard severity zones – The project site is outside the high or very high fire hazard severity zones. The high or very high fire hazard severity zones are identified in Chapter 16.74 of the Municipal Code.
- Hazardous waste site – The site is not listed as a hazardous waste site pursuant to Health and Safety Code section 65962.5 or 25356.
- Earthquake fault zones in an official map published by the State Geologist, unless the development complies with state seismic protection building code standards and by local building standards – The project site is outside earthquake fault zones and will comply with applicable state seismic protection building code standards and local building standards.

- FEMA designated flood plain or floodway – The project site is outside a FEMA designated flood plain or floodway.
- Lands designated for conservation in a habitat conservation plan – The project site is outside lands designated for conservation in a habitat conservation plan.
- Protected species habitat – The project site is outside any protected species habitat.
- Lands under a conservation easement – The project site does not include lands under a conservation easement.
- Require demolition of (a) housing subject to recorded rent restrictions, (b) housing subject to rent control, (c) housing occupied by tenants within past 10 years, or (d) an historic structure placed on a local, state, or federal register – The project site is outside an area that would involve the demolition of any housing subject to rent restriction, rent control or occupied by tenants in the past 10 years or an historic structure placed on a local, state, or federal register. The site has historically been used and operated as a regional mall. There has never been any housing located on the project site. While the site is identified as a “Community Landmark” in the City’s General Plan, the site does not contain an historic structure that was placed on a national, state, or local historic register as referenced in SB 35.
- Land governed by the Mobilehome Residency law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act – The project site is not located on land governed by the Mobilehome Residency law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

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

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

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

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

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

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

## **Compliance with Objective Standards**

### *Density*

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

The project meets the maximum allowable General Plan density for the site. The project is located on 50.822 acres, prior to dedication of required right-of-way to accommodate frontage improvements. In 2018, the City determined that the base maximum residential yield would be 1,779 units. With a 35% density bonus (as the Density Bonus provisions stood at the time the project application was made), the maximum residential yield is 2,402 units.

### *Objective Zoning Standards*

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

The General Plan related to the Vallco Shopping Center Special Area in effect in 2018 (see Attachment B) contemplated the preparation of a specific plan for the project site. The specific plan was expected to include zoning standards. The draft specific plan was being prepared and was not adopted as of the date the original project application was submitted to the City in March 2018.<sup>2</sup> Only objective planning standards in effect at the time that the original application was submitted to the City can be applied to the project or to the modification request. (Gov. Code, §§ 65913.4(a)(5), 65913.4(g)). As a result, there was no specific plan or associated zoning standards, applicable to the project application.

As determined in 2018, there are no height limits applicable to the original or modified project. However, the Community Form Diagram (Figure LU-2) in the Land Use Element of the 2018 General Plan identifies building planes the project must meet. Figure LU-2 states as a foot note: “Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area” and “For the North and South Vallco Park areas (except for the Vallco Shopping District Special

---

<sup>2</sup> The Vallco Town Center Specific Plan was adopted on September 18, 2018. However, upon a referendum by local residents, the City Council eventually rescinded the adopted Plan in May 2019.

Area): Maintain the primary building bulk below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.” In 2018, it was determined that the original project met this standard. The 2022 modified project continues to meet this standard by maintaining the 1:1 slope line for all proposed buildings, including the green roof deck, from the arterial/boulevard curb line.

### *Objective Design Review Standards*

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

As was determined in 2018, there are no specific “objective design review standards” for this site (e.g., architectural design standards). However, there are standard project requirements that are broadly applicable to development within the City (for example, standards that relate to streets). There have been no changes to the project which impact standard project requirements and therefore, the modification request complies with design review standards.

## **Density Bonus Ordinance**

### *Density Bonus*

Revisiting the density bonus received by the project is not required since there are no modifications proposed which impact the density bonus calculation.

The proposed modified project continues to request a 35% density bonus based on the level of proposed level of affordability. 15% of the base units in the project (267 units) will be affordable to very low income households (those making 50% or below of the area median income (“AMI”). Based on the number of very low income units provided, the applicant could request a density bonus of up to 50% under current State Density Bonus Law. The requested 35% density bonus is unchanged from the approved project and is consistent with state law.

### *Density Bonus Incentives*

Revisiting the density bonus incentives awarded to the project is not required since there are no modifications proposed which impact the incentives.

The approved project was eligible for three incentives since they provided at least 15% of the base units (267 units) as affordable to very low income households. The applicant is



not proposing any changes to the incentives received for the approved project. The three incentives approved in 2018 are as follows:

1. A concession to allow the affordable units to be studios and one bedroom units instead of a mix of units comparable to the units within the development pursuant to BMR Housing Mitigation Procedure Manual section 2.3.4 (A);
2. A concession to allow the studio and one bedroom affordable units to be smaller in size than the studio and one bedroom market rate units pursuant to BMR Housing Mitigation Procedure Manual section 2.3.4 (B); and
3. A concession to allow 400,000 square feet of retail, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.

In 2018, the City determined that these three concessions: a) would result in identifiable and actual costs to provide for affordable housing costs; b) would not result in specific, adverse impacts upon public health or safety or the physical environment or any property that is listed in the California Register of Historical Resources; and c) would not be contrary to state or federal law. (Gov. Code, § 65915(d)(1)(A)–(C).) These findings are unchanged by the proposed project modifications.

### **Sustainability Impact**

Approval of the project will result in short-term and long-term increases in carbon emissions and other sustainability impacts due to construction and operations. However, those impacts may be offset by emissions reductions and reduced resource consumption associated with higher density, mixed-use development. The impacts have not been evaluated because the approved project and the modification request are ministerial determinations that are not subject to review under the California Environmental Quality Act.

### **Fiscal Impact**

The building permits and construction taxes from this project will bring one time revenues to the City. Additionally, ongoing sales tax, business-to-business taxes, and property taxes will potentially bring tax revenue to the City.

### **Next Steps**

The City Manager will make a decision on the applicant's modification request based on the criteria for ministerial approval set forth in Government Code section 65913.4(g). The 60-day review period under section 65913.4(g) expires on June 3, 2022.

---

Prepared by:

Piu Ghosh, Planning Manager

Reviewed by:

Benjamin Fu, Director of Community Development

Christopher Jensen, City Attorney

M-2022-001, ASA-2022-003, TR-2022-015

May 31, 2022

The Rise (Vallco) Development

Page 13

Approved for Submission: Jim Throop, City Manager

Attachments:

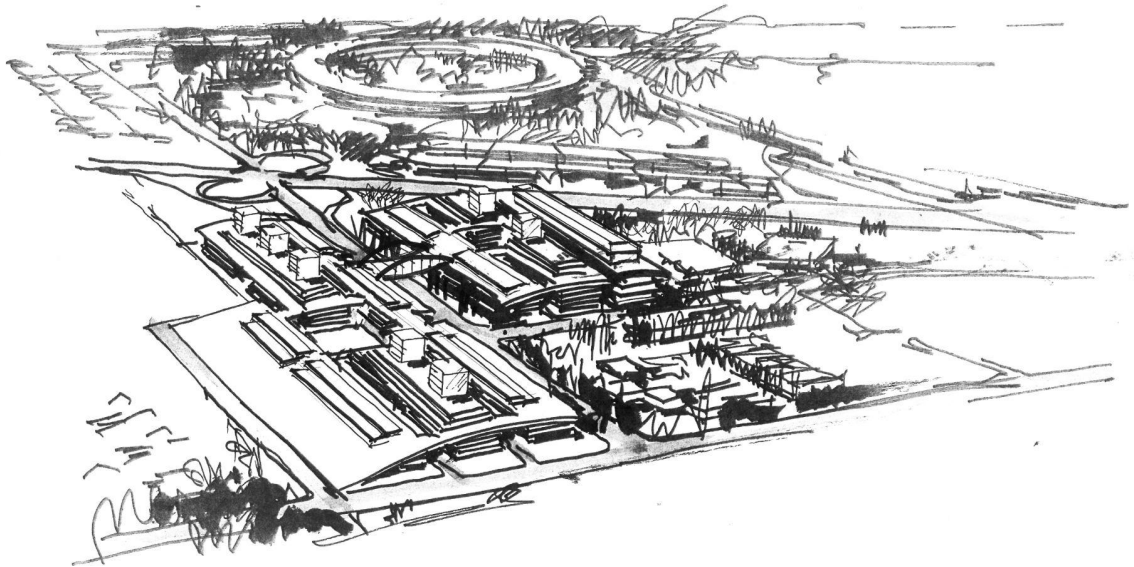
A – Project Description

B – Plans available online at: [www.cupertino.org/vallcosb35](http://www.cupertino.org/vallcosb35) or  
<https://apps.cupertino.org/pdf/Vallco/>

# THE RISE

## SB 35 Development – Modification Request Project Description

March 24, 2022



## Table of Contents

<b>1</b>	<b>Introduction</b>	<b>2</b>
<b>2</b>	<b>Summary of Modification Request</b>	<b>3</b>
<b>3</b>	<b>Summary of Modification Request Entitlement Amendments</b>	<b>16</b>
<b>4</b>	<b>Residential Affordability and Density Bonus</b>	<b>19</b>

# 1 Introduction

Vallco Property Owner LLC (Applicant) submitted its initial application for the Vallco Town Center Project (Project) pursuant to Government Code section 65913.4 (SB 35) on March 27, 2018 (SB 35 Application), which was approved by the City of Cupertino (City) on September 21, 2018 (SB 35 Approval). This modification request application (the modification request) is now being submitted in connection with the approved Project in order to make necessary revisions based on design advancements that are typical of all large-scale projects. This project description provides a high-level summary of the modification request.

Since the 2018 SB 35 Approval, Applicant has made significant progress in readying the Project site for construction and bringing forth much-anticipated transformational change to the 50.82-acre former Vallco Mall property. To date, the City has issued certain construction-related permits for preparation of the site including demolition, make-ready utility, shoring and excavation, and foundation permits. Meanwhile, Applicant has continued to advance the Project design. The proposed design refinements reflected in this modification request serve to enhance the public realm, improve circulation, better health and safety, and continue to deliver on high quality architecture while keeping intact the original land use program, site plan, general architecture and key community benefits.

The progressed design remains in substantial compliance with the SB 35 Approval and carries forward the same vision for the Project site. However, the City has asserted a narrow interpretation of how close the Project must match the SB 35 Approval, finding that refinement of design coordination components, such as modest changes to the size and programming of the West Plaza, did not meet SB 35's "substantial compliance" standard and would require modification to the Tentative Map. With that recent experience in mind, and as we look towards the next stage of construction and development activity, this modification request is being submitted to obtain approval for these Project refinements and to provide a clear path for the building permit review and issuance process moving forward.

As a threshold issue, this modification request remains in compliance with SB 35 and the objective standards applicable to the Project. The modification request remains consistent with the City's Community Vision 2040 General Plan (General Plan) vision for redeveloping the aging and outdated indoor mall into a vibrant, sustainable, walkable and safe neighborhood. Specifically, this modification request retains the key hallmark features of the approved Project:

- 2,402 units of critically needed housing, 50% of which will remain affordable to low- and very-low income residents;
- Robust open space and bicycle and pedestrian connectivity;
- A vibrant mixed-use "town center" design with residential, retail, entertainment, and office uses in a pedestrian-friendly, grid street network with high-quality architecture that serves as a community gateway for the City of Cupertino; and
- Sustainable design that reduces heat-island effect; optimizes energy efficiency across program types; implements significant water conservation, reclamation, and recycling; enhances the quality and wellness of indoor environments for all occupants; and replaces an obsolete indoor mall with 40 acres of naturally landscaped open space.

Importantly, this modification request also reflects design updates due to the changed realities learned from the COVID-19 public health crisis, which has fundamentally impacted the way in which Cupertino and Bay Area residents live, work and play. To that end, key Project updates within this modification request include increased access to communal and private outdoor space; residential design and vehicle

parking changes as a result of work-from-home realities; increased outdoor dining and outdoor programming opportunities; and adjustments to the design of indoor spaces (for example, increased ceiling heights and access to natural light) to improve environmental quality and wellness throughout the Project. Additional Project updates within this modification request reflect community feedback, including a revised unit-type mix that now includes two- and three-bedroom affordable units and the removal of the residential amenity uses on the Wolfe Road bridge. Additional detail regarding design updates is provided in **Section 2.4** below.

SB 35 allows for applicants to request modifications to previously approved developments through a ministerial modification process set forth under Gov Code § 65913.4(g). SB 35 establishes that the local government must approve that modification request if it does not affect the City's prior determinations regarding the Project's consistency with the objective planning standards in effect at the time of the original SB 35 application. As described by the statute, the City's role is "strictly limited" to determining consistency with objective planning standards, a determination it must make within 60 days after submission of the modification where design review does not apply, as is the case here<sup>1</sup>. (§ 65913.4(g)(2)<sup>2</sup>.) Applicant is committed to supporting the City with its review of this modification request and looks forward to a collaborative process over the next 60 days.

## 2 Summary of Modification Request

### 2.1 Key Project Elements and Land Use Program Remain Unchanged

The modification request does not impact the key Project features and land use program as approved under the 2018 SB 35 Approval. Consistent with the General Plan vision in effect at the time of the SB 35 Application submittal, including the Vallco Shopping District Special Area, the Project will continue to implement strategies to revitalize the aging and outdated indoor mall into a vibrant, sustainable, walkable and safe "town center" neighborhood.

The Project continues to incorporate the following key components and design approaches:

- **Total 2,402 Residential Unit Count and 50% Affordability:** 2,402 units of high-quality housing, 50% of which will remain affordable to low- and very-low income, making a substantial impact in addressing the worsening housing and affordability crisis;
- **Mixed-Use Town Center Design:** Vibrant mixed-use "town center" design with residential, retail, entertainment, office, and open space uses in a pedestrian-friendly, grid street network with world-class architecture that serves as a community gateway;
- **Traditional Neighborhood Layout:** Site plan that connects the community (internally and externally) via walkable, pedestrian- and bike-friendly streets, squares/plazas, trails, and pathways;
- **Open Space and Bicycle and Pedestrian Connectivity:** Robust open space program, including significant ground level and rooftop open space that will feature a diverse set of programmatic uses, including event and community gathering spaces, recreational lawns, playgrounds, trails, and acres of natural landscape; and
- **Sustainable Design:** Over 26 acres of programmed open space; 1,271 new, relocated and retained trees; and extensive natural, drought tolerant landscape and green roofs will replace

<sup>1</sup> The City's June 22, 2018 letter determining that the Project is eligible for streamlining under SB 35 confirmed that there are no applicable "objective design review standards."

<sup>2</sup> Unless otherwise stated, all references are to the California Government Code.

the 50-acre hardscape of Vallco Mall to create a sustainable, climate responsive project with an unprecedented connection to nature in the heart of Silicon Valley.

## 2.2 Modification Request Land Use Program Summary

The modification request includes refinements to the Project land use program, while maintaining the general mixed-use design approach and compliance with the two-thirds residential requirement under SB 35. The SB 35 Application provided a comprehensive overview of the Project design features, most of which remain intact under this modification request. This Section 2.2 provides an overview of the land use program set forth under the modification request. Section 2.4 below provides additional details regarding notable design and program features to assist the City’s review of the modification request. Additional detailed information regarding design updates and the modification request project data is provided in [Appendix III, Modification Request Plan Sets, Sheets P-0101 and P-0102](#).

[Table 1: Land Use Program Summary](#) provides a comparative summary of the Project land use program as approved under the 2018 SB 35 Approval and the modification request. As shown in [Table 1](#), the modification request results in a Project-wide change in square footage of only 1.25% as compared with the 2018 SB 35 Approval. Notably, the growth of the residential component is responsible for all of the increase in project square footage.

The residential area expansion was driven by an increase in unit area, notably including an approximate 10% increase in BMR unit area, which was implemented in response to community requests for more housing opportunities for low income families (though there presently is unmet demand for all low-income housing types in Cupertino). Wellness and lifestyle changes as a result of COVID-19 have guided the majority of the other land use area changes.

The Project’s residential units continue to allow for both rental and for-sale tenures, and support a wide variety of household types. Of the Project’s 2,402 residential units, 1,201 units (50% total units) remain affordable to low income households making less than 80% area median income (AMI) and 50% AMI in accordance with applicable SB 35, state Density Bonus Law, and local affordable housing requirements.

## Appendix II, Modification Request Project Description

**Table 1: Land Use Program Summary – Modification Request & Comparison to SB 35 Approval<sup>1</sup>**

	2018 SB 35 Approval		Modification Request	
Land Use	Amount <sup>1</sup>	% Project	Amount <sup>1</sup>	% Project
Residential Dwelling Units	2,402 units	N/A	2,402 units	N/A
Residential Uses (sq. ft.)	4,961,904 sq. ft.	66.8 %	5,119,005 sq. ft.	68.1%
Office (sq. ft.)	1,981,447 sq. ft.	26.7 %	1,973,494 sq. ft.	26.2%
Retail / Entertainment (sq. ft.) <sup>2</sup>	485,912 sq. ft.	6.5 %	429,408 sq. ft.	5.7 %
<b>Total Square footage<sup>3</sup></b>	7,429,263 sq. ft.	100 %	7,521,907 sq. ft.	100 %
<b>Percent Change<sup>3</sup></b>	<b>N/A</b>		<b>Unit Count: 0% change Square footage: 1.25%</b>	

Notes:

1. Calculations provided in this **Table 1** are based on the Cupertino Municipal Code 19.08.030 “floor area” methodology as utilized in the SB 35 Approval.

2. The Entertainment component will be no more than 30% the total retail area in compliance with the City of Cupertino’s General Plan.

3. Pursuant to SB 35, underground space shall not be included for purposes of calculating either (i) the two-thirds residential requirement or (ii) the square footage of construction changes for modifications. (See § 65913.4(a)(2)(C); see also § 65913.4(g)(3)(A)-(B).) Therefore, consistent with statutory requirements, this **Table 1** summarizes only at- and above-grade square footages.

## 2.3 Two-Thirds Residential Compliance

As shown in [Table 1: Land Use Program Summary](#), the modification request remains in compliance with the SB 35 requirement that “at least two-thirds of the square footage of the development is designated for residential use.” SB 35 establishes additional parameters for the calculation of the two-thirds requirement: (1) the square footage of the development shall not include underground space, such as basements or underground parking garages; and (2) any additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law shall be included in the square footage calculation. (§ 65913.4(a)(2)(C).)

As described in the City’s June 22, 2018 letter (“90-Day Letter”), in evaluating the original SB 35 Application, the City utilized the definition of “floor area” as defined in the Cupertino Municipal Code Section 19.08.030(F) to determine what percentage of the proposed development is designated for residential use. In its 90-Day Letter, the City confirmed that the original SB 35 Application materials appropriately designated the residential and non-residential floor areas for purposes of calculating the two-thirds requirement. This approach was also upheld as proper by the Santa Clara County Superior Court.

This modification request utilizes the same approach as in the original SB 35 Application for calculating the two-thirds requirement, as shown in [Appendix III, Modification Request Plan Sets, Sheets P-0101 and P-0106 through 0108](#). This approach is consistent with the SB 35 requirement that, when processing a modification application, the City must utilize the same “assumptions and analytical methodology” that it



used when processing the original application to assess consistency with objective planning standards. (§ 65913.4(g)(1)(C).)

### 2.3.1 Updated HCD Guidelines Methodology Regarding Two-Thirds Residential Compliance

Since the SB 35 Approval, the City has adopted procedures for implementing SB 35 project applications, including its SB 35 Eligibility Checklist and related SB 35 Application Form. The City now utilizes an updated approach to calculating the two-thirds residential requirement that is no longer based on the “floor area” definition described above, and instead utilizes a revised approach based on the HCD Guidelines. (See Updated HCD Guidelines §400(c)(1).) The Updated HCD Guidelines establish that the two-thirds calculation is based upon the “proportion of gross square footage of residential space and related facilities<sup>3</sup> as defined in Section 102(w), to gross development building square footage for an unrelated use such as commercial,” and that structures used for both residential and nonresidential uses “shall be credited proportionally to each intended use.” (Id.) The primary differences between the original “floor area” approach utilized in the 2018 SB 35 Approval and this new HCD Guidelines methodology is that, under the new methodology, (i) certain square footage is allocated proportionally and (ii) some common areas that are not “substantially enclosed,” such as residential balconies, are included.

While utilizing this revised approach would be appropriate for new SB 35 applications, it is inapplicable to this modification request because the statute requires that the City utilize the same “assumptions and analytical methodology” used for the original SB 35 Application. Therefore, using the 2018 “analytical methodology,” the City must use the Municipal Code “floor area” definition and must exclude the same types of spaces that were previously excluded. Moreover, pursuant to SB 35, any updated HCD Guidelines adopted or amended after the Project approval “shall not be used as a basis to deny proposed modifications.” (§ 65913.4(g)(1)(D).) Therefore, the fact that the HCD Guidelines adopted an updated approach is not a basis for deviating from the original methodology.

Nevertheless, the modification request remains in compliance with the Updated HCD Guidelines two-thirds residential methodology as demonstrated in [Attachment A: Two-Thirds Analysis Per Updated HCD Guidelines \(Informational Only\)](#), which includes analysis – for informational purposes only – regarding the modification request square footage allocations based on the Updated HCD Guidelines methodology.

## 2.4 Modification Request Design Changes

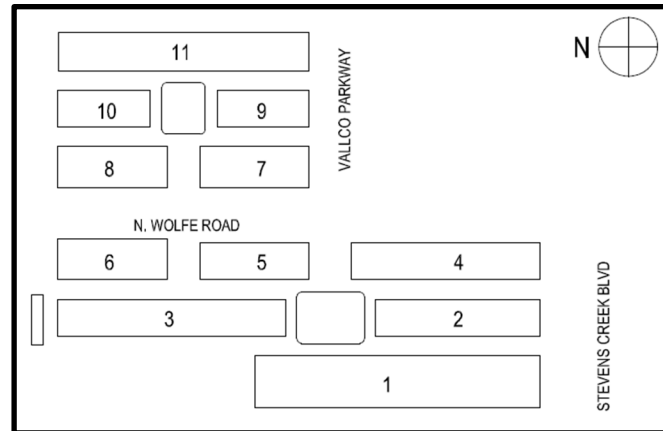
### 2.4.1 Land Use Program

As described above, the overall Town Center-based land use program remains the same. Each of the eleven major blocks comprising the Project site retains the general mix of land uses as set forth in the SB 35 Approval (i.e., Block 1 remains dedicated to residential and retail uses; Block 6 remains dedicated to office use, etc.). For reference, [Figure 1: Project Site Diagram](#) provides a simplified overview of the Project site layout and block numbering.

---

<sup>3</sup> The term “related facilities” is defined to mean “any manager’s units and any and all common area spaces that are included within the physical boundaries of the housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas that are exclusively available to residential users, except any portions of the overall development that are specifically commercial space.” Updated HCD Guidelines § 102(w)

## Appendix II, Modification Request Project Description



**Figure 1: Project Site Diagram**

In certain areas, the specific locations of land uses have shifted within particular blocks. For example, within Blocks 4 and 5, townhome units have been replaced with street fronting retail uses (shifting residential area to, and intensifying residential use at, the upper levels, including those above the green roof). Retail has also been added in the plazas: while the East Plaza's pavilion was removed, two new pavilions were added to the West Plaza. Furthermore, in response to community concern over the private residential amenity enclosed within the bridge over Wolfe Road, the modification request includes the removal of this structure and replaces it with a turfed play field providing a new area of open space and enhancing connectivity across the green roof. The displaced residential amenity has been distributed to the various residential blocks in the project, which also serves to improve access thereto by residents.

As a result, the modification request includes certain adjustments to the gross square footage of office, retail, and residential land uses, as set forth in [Table 1](#) above. Under the modification request, gross square footage allocations are as follows:

- **Residential:** 5,119,005 square feet of residential areas, including 2,402 residential units, 50% of which will be income-restricted affordable units, which remains within with the General Plan maximum residential density for Vallco Shopping District Special Area of 35 units per acre, including the 35% density bonus;<sup>4</sup>
- **Office:** 1,973,494 square feet of office space, which remains within the General Plan maximum office allocation of 2,000,000 square feet (see footnote #5 below); and
- **Retail:** 429,408 square feet of retail space, consistent with the retail area minimum of 400,000 square feet approved per the density bonus concessions included in the SB 35 Approval, which remains applicable to this modification request.

Additional details regarding the land use program distribution is shown in [Appendix III, Modification Request Plan Sets, Sheets P-0101, and P-0106 through P-0108](#).

<sup>4</sup> It should be noted that due to amendments to the State Density Bonus Law, the Project qualifies for a 50% density bonus, which would allow 2,669 units. However, the present modification request does not propose a change to the unit count.

### 2.4.1.1 Residential Unit Mix, Layouts and Distribution

As described above, the overall unit mix count remains unchanged at 2,402 total residential units with 1,201 offered at market rate and 1,201 at income-restricted affordable levels.

The modification request includes certain changes to the unit mix for both market-rate and affordable unit types. Under the SB 35 Approval, the affordable units were designed primarily as studios, with no multi-bedroom layouts; the modification request now includes 103 affordable units as larger 2- and 3-bedroom unit types, as well as over 230 additional 1-bedroom units by converting affordable studios to larger units. This change will enable more low-income families to live and work in Cupertino, resulting in greater equity and benefiting the community in many ways.

Additionally, unit layout design throughout the Project has been informed by market changes from the COVID-19 pandemic and refined to accommodate work-from-home configurations and offer improved access to outdoor spaces and amenities.

The distribution of residential units has also shifted within the Project site in an effort to improve project quality and constructability and optimize unit layouts for livability and quality of life, including prioritizing: sun exposure, access to outdoors, and flexible work-from-home configurations, while also optimizing constructability of residences in a market where construction costs continue to escalate. The unit mix was altered to adjust for the increased unit areas due to the additional multi-bedroom affordable units and residential market changes. Additional information regarding the modification unit mix allocation and residential program distribution is further described in [Appendix III, Modification Request Plan Sets, Sheets P-0102](#).

### 2.4.1.2 Office Use

The modification request involves a modest reduction in the office square footage to 1,973,494 SF, which remains within the 2 million square foot cap established under the General Plan<sup>5</sup>; the office distribution remains located in Blocks 6, 7, 8 and 11.

The modification request also includes certain changes to the layouts of the office buildings within Blocks 6, 7, 8 and 11. The office area has been redistributed between Blocks 6, 7, 8 and 11 to meet post-COVID market requirements and the evolving types of office users in the Bay Area. Blocks 6, 7 and 8 have been standardized to a similar size to accommodate and appeal to multi-tenant, single tenant and multi-building campus users alike. The floorplates of these buildings have also been optimized to meet requirements of office, R&D, and life science users. The office entrances have been revised to coordinate with the Project site's sloped grading and are located to account for anticipated future office tenant preferences. Overall, typical floor to floor heights have been reduced from approximately 17'-8" to approximately 15'-2" (resulting in typical floor to ceiling heights of 14'-5"). As described in **Section 2.4.3.5** below, major mechanical, electrical and plumbing infrastructure has been relocated to the ground floor, which has allowed for improved loading and service functions to be located at-grade rather than in

---

<sup>5</sup> This is a conservative approach because this square footage is based on the "floor area" definition, but the City's approach to office allocation is to exclude "amenity" space because such space does not generate additional vehicle trips. For example, the City excluded several categories of space from Apple Park, including the restaurant, entries, security receptions, wider hallways, among other areas. The Project includes several similar features, but they are not accounted for in this project description (nor are they deducted from the Project's floor area).

## Appendix II, Modification Request Project Description

basement levels. As a result, new loading docks have been provided for each building from the Wolfe Road Frontage Road along Blocks 6, 7, and 8.

As the City previously confirmed that life science is an allowed use for the Project, Block 11 has been reconfigured to accommodate life science tenants, including the potential for laboratory fit-outs and with the design and operational criteria required for life science uses, including appropriate loading and staging, clear heights, floor loads and MEP criteria, among other features. The prospect of life sciences at the Project would be of significant benefit to the City given market demand for this use, the job and fiscal diversity life science uses would introduce to Cupertino, along with the comparatively lower employee density and resulting lower traffic volume impacts as compared to traditional office uses.

### 2.4.1.3 Retail Use

The modification request retains a comparable amount of retail square footage of 429,408 SF, which remains consistent with the retail area minimum of 400,000 square feet approved per the density bonus concessions included in the SB 35 Approval; retail uses remain located throughout Blocks 1 through 5. The modification request includes certain changes to the location, configuration and layouts of the retail uses throughout the Project site to improve retail siting and create more robust retail environments, as well as to account for required circulation, services and structural components, which impact retail area. For example, Block 1 retail depths were decreased by at least one structural bay in order to accommodate a rear loading area and enhance leaseability given the market demand for storefront-oriented street retail, as opposed to urban big box retail format.

With that same goal in mind, retail space has been extended along Street 7 to enhance the retail and shopping environment. Similarly, within Blocks 4 and 5, retail uses have been expanded in that location, with the townhome units previously in those locations relocated elsewhere, and a pedestrian-only paseo has been added at the ground floor in Block 4 to facilitate connectivity and create a unique retail and dining atmosphere. Finally, sidewalks have been increased in depth throughout the Project site to provide for expanded outdoor dining opportunities to meet newly intensified demand, provide opportunities for the community to enjoy Cupertino's temperate climate, and create an improved pedestrian experience.

Collectively, these changes will further the City and community's vision for an unparalleled retail, dining, and entertainment destination that will become the social heart of Silicon Valley and ensure that the vibrancy and urban energy once offered by the former Vallco Mall is restored.

### 2.4.2 Open Space

The modification request maintains the Project's commitment to providing an inspired open space design that connects the community with miles of trails and acres of natural landscape, recreational lawns, play areas and community gathering spaces in a City that is built-out with few remaining opportunities for these important features, much less additional future parks such as what this Project provides. Built and natural environments complement one another to create thriving communities. The pandemic has demonstrated that open space and parks are not just an amenity but are instead a necessity for basic human health and wellness.

The City, through its General Plan and Parks & Recreation System Master Plan, has identified eastern Cupertino, i.e., where the Project site is located, as an area with limited existing parks and an area where the City should focus new parks. However, given the limited availability of land to be made into new open space and parks, the primary strategy for achieving this goal is through incorporation of onsite open space within private developments such as the Project. The Project provides an innovative solution to address

## Appendix II, Modification Request Project Description

the need for a natural environment in this region of the City with inadequate existing open space or parks by providing acres of open space intended for community gathering, play areas, and pedestrian/bicycle trails.

The modification request includes certain limited changes to the configurations and layouts of the Project open space to accommodate the other design refinements described herein while maintaining over 26 acres of programmed open space throughout the Project, including meeting the requirements for private park credit under the Cupertino Municipal Code.

### West Perimeter Park

The West Perimeter Park combines existing park spaces from the SB 35 approval into a programmed 3.79 acre park at the western edge of Block 1 on the west side of the Project site. (For reference, the West Perimeter Park is comparable in size to the City's Portal Park.) The West Perimeter Park includes children's play areas, family picnic areas, recreational lawns, accessible pedestrian paths and an informal amphitheater that will provide a unique programmed park for the community. The West Perimeter Park begins at-grade on Stevens Creek Boulevard and Perimeter Road and maintains accessible routes as it slopes up. Because portions of the West Perimeter Park slope upwards, a new elevator has also been added to the north end of Block 1 to provide additional improved access to the topmost portions of the West Perimeter Park.

### Town Center Plazas

The modification request retains the "town center" design centered around two outdoor plaza areas – the West and East Plazas – which will provide transformational placemaking for the Project site and surrounding area. The modification request includes limited changes to the design and configuration of the West and East Plazas.

The dimensions of the West Plaza have been reduced by approximately 0.14 acres from 1.26 acres to 1.12 acres in order to increase the area of the sidewalks immediately adjacent to the West Plaza at Blocks 2 and 3, which will provide an expanded and improved outdoor dining opportunities to meet newly intensified demand as described above and a more vibrant setting. Within the West Plaza, design and program elements have evolved in terms of landscape planting, seating, and retail pavilions to support the activation of the plaza and create the dynamic destination envisioned for the community in the SB 35 approval. The West Plaza will include three retail pavilions (increased from one), which will create more intimate dining and retail opportunities while activating the plaza throughout the day. Additionally, two public access points have been added from the below grade parking to the plaza to facilitate pedestrian circulation and provide convenient entrance points.

The dimensions of the East Plaza have been increased from 0.74 acres to 1.88 acres. This increased size is achieved through incorporation and programming of the pedestrian-only areas adjacent to the East Plaza and between Blocks 9, 10 and 11. Specifically, the East Plaza has been reconfigured to limit vehicular travel around the plaza and to create a more pedestrian friendly setting, with pedestrian/bicycle paths, seating and landscaped plantings. The single retail pavilion has been removed, along with the escalator/elevator bank, in order to maximize the usable East Plaza area. Dedicating all of the below-grade parking to the office use allowed for the removal of the central escalator/elevator bank, improving garage layout efficiency, strengthening the individual connections between the garage and each office building.

## Pedestrian and Bicycle Trails

The Project continues to incorporate a vast network of trails, including a pedestrian and Class I bikeway along Perimeter Road with potential connection to future City trails, to allow residents, workers and commuters alternatives to single-occupancy vehicles. The Class I bikeway follows the perimeter of the site and will increase the City's existing Class I bikeway mileage by approximately 15%. Protected Class IV bike lanes are incorporated in the design at Wolfe and Stevens Creek. Class II and III paths connect the internal project street grid. This bikeway network will provide much needed safe bike routes in what currently is one of the City's highest stress biking areas. Pedestrian trails and sidewalks are provided throughout the project on both the ground level and on the rooftop.

## Green Roof Feature

Between the opportunity to master plan a 51-acre site and Applicant's commitment to a development of the utmost quality and benefit, the Project continues to provide the largest green roof in the world. With this modification, the Project will deliver robust rooftop open space featuring a range of active and passive programming, including: a turfed playfield area; game, fitness, and sport court areas; picnic areas; swimming pools; and natural landscaping. The modification request makes certain refinements to the programming of the green roof area. Notably, the outdoor residential amenity area previously located above Block 5 has been relocated to the bridge located between Blocks 4 and 5. The pedestrian bridge diagonally crossing the West Plaza has been removed. As noted above, the bridge crossing Wolfe Road also has been reconfigured to remove the residential amenity space and has been replaced with a protected outdoor turfed playfield.

The Applicant's vision for the green roof has always been for it to be a well-used place—by residents, workers, and visitors—and that its best use is, consistent with its urban setting, as an active outdoor environment. This modification takes additional steps to ensure the activation of the green roof, including: introducing office use and adding more housing units at the green roof level; creating additional means of access to the green roof, specifically elevator service at the West Plaza providing general access to the West Perimeter Park as well as additional residential common area access points; and creation of a gentler and more walkable slope along with the refinement of the trail and pathway design.

## Project Open Space Programming and Operations

As described below, because the City has elected not to provide park fee credit for a public access easement dedication that had been offered over the open space areas, including the plazas, the Tentative Map is being amended to remove this easement. Given Applicant's interest in providing a parkland solution for the park-deficient east side of Cupertino, these areas will continue to provide community gathering spaces, connectivity, and opportunities for community events, but with more flexibility for the Owner to develop appropriate rules and regulations related to security, use, hours of operation and conduct and to make necessary operational and/or design changes over time. The public access easement – and the property rights such an easement would afford the public – could be restored if the City agrees to provide park fee credit as originally envisioned (and consistent with City policy to require park dedication rather than in-lieu fees).

### 2.4.3 Building Bulk, Setbacks, and Height

The General Plan requires the Project to create a vibrant, mixed-use town center with residential, retail, office and open space uses. The modification design maintains the basic programming of the SB 35 approval with some adjustments to building bulk and height to accommodate market driven changes to



## Appendix II, Modification Request Project Description

residential and commercial uses, in part due to design changes that respond to COVID-19. The peak height of the project (which is reached at the Block 9 and 10 tower elements) remains effectively unchanged from the SB 35 approval (the height of Blocks 9 and 10 as measured from NAVD-88 increased by 6 inches). However, under the modification request, some heights and bulks of other structures have increased, as shown in the [Appendix III, Modification Request Plan Sets](#). In some areas, floors have been added to accommodate the increase in residential unit area and redistribution of residential amenity space. Given the constraints of the site and General Plan requirements, the only way to accommodate this additional area is to increase building bulk. Floor to floor heights for all uses have been adjusted to meet prevailing market expectations for indoor design quality and access to natural light.

Countering these changes to building bulk and heights, the peak of the green roof surface has generally been lowered by approximately 9 feet on the west side and approximately 20 feet on the east side, and while the green roof's surface or edges are not a part of the primary building bulk, the lowering of this architectural feature may also contribute to an enhanced visual connection from the ground level with the green roof and a reduction in the overall perception of the height of the buildings adjacent to it from Stevens Creek Boulevard, Wolfe Road, Vallco Parkway, and neighboring properties. The updated rooftop design provides for more accessible and gradually sloping paths and spaces on the roof.

The Project is sensitive to its neighbors and these changes were made with the utmost consideration. In addition to lowering the main green roof plane, setbacks have been utilized to minimize the perceived building height from streets and neighboring properties. Upper floors are substantially setback at the green roof level by at least 25' (and in most locations, 40') and continue to be further setback on higher floors to minimize perceived bulk and height.

The design changes remain in compliance with the General Plan requirement to maintain the "primary building bulk" below the 1:1 set-back plane from the arterial/boulevard curb line; no other applicable development standards apply to the Project's height or bulk. Although the term "primary building bulk" is not defined in the General Plan, its plain meaning would allow some features to exceed the setback. The word "primary" suggests that "secondary" or "non-primary" portions, such as architectural features, may exceed the setback plane and "bulk" suggests the primary massing. This interpretation is also consistent with recent City practice.<sup>6</sup> See [Appendix IV, Updated Objective Standards Consistency Analysis](#) for additional information regarding the modification request compliance with applicable objective standards.

These changes to the project's heights, setbacks and bulk will serve to improve the ground floor retail offering, enable the expansion of the affordable units, maximize the placement of residential units above the green roof, provide improved outdoor access to residents and employees, and deliver a more activated rooftop open space experience.

### 2.4.3.1 Vehicular Circulation

The Project's overall vehicular circulation plan remains the same, including maintaining the major egress and ingress along Wolfe Road, Stevens Creek Boulevard and Vallco Parkway and centering internal vehicular circulation within the Project site around an internal small block-street network, which has been designed consistent with the City's "complete streets" General Plan Policies M-2 and M-2.2. The modification request includes minor changes to the Project vehicular circulation and mobility features.

---

<sup>6</sup> For example, recent City staff reports for the Westport project excluded the roof overhang when depicting the location of the "primary building bulk."

## Project Ingress and Egress

A new central entry ramp has been incorporated at the Vallco Parkway and Wolfe Road intersection (entering the west-side below grade garage and arriving at a new rideshare hub and visitor services facility described below), which improves arrival efficiency, reduces traffic, and promotes a safer pedestrian environment throughout the Project. Three additional non-residential parking entrances have been added to the perimeter of the Project at Blocks 4 and 5 along Wolfe Road and at Block 6 along Street C, and the Perimeter Road ramp at Stevens Creek Boulevard has been modified to coordinate with the progression of the basement parking layout; taken together, these changes further enhance the pedestrian experience in the internal street grid as well as motorist convenience.

Certain residential parking ramp locations have been modified to better coordinate with surrounding retail storefronts and merchandising and improve the walkability of the Project site street grid.<sup>§</sup>

## Internal Circulation

The modification request includes certain changes to internal vehicular circulation. For example, Street 1 (crossing beneath Blocks 2 and 4) has been converted to a pedestrian-only paseo in Block 4 that connects the retail environments between Wolfe Road and the Project site. Street 1 has been removed from Block 2 to provide a better pedestrian retail experience along Streets B and C.<sup>7</sup> Additionally, residential porte cocheres have been incorporated into Blocks 3, 4, 5, 9 and 10 to provide covered entrances for additional loading and pick-up and drop-off access for residents.

## Mobility Services and Features

Additionally, a new rideshare hub has been introduced at the center of the below grade parking structure on the west side, which provides convenient access to the West Plaza located above. The rideshare hub includes areas for transportation network company pickup/dropoff areas, valet, concierge and parking services, security, and restrooms, including accommodations for shuttles and ADA vans and parking spaces for car share vehicles. The parking garage entrances have been directly aligned with the rideshare hub to provide direct vehicular access, and allow Project visitors to easily access the West Plaza using newly located escalators and elevators. The 15 car-share parking spaces under the Block 1 mezzanine have been relocated to the rideshare hub. Direct pedestrian access is provided from the rideshare hub to the pavilions at the West Plaza, providing efficient and intuitive wayfinding for pedestrians. The rideshare hub was designed in collaboration with transportation networking companies and parking industry experts to optimize traffic and pedestrian flow and circulation.

### 2.4.3.2 Transportation Demand Management

The Project will continue to incorporate and implement various Transportation Demand Management (TDM) measures that will result in reduced single occupancy vehicle trips, consistent with City policies favoring alternative mode use and alternate transit solutions. The following TDM infrastructure and operational measures remain incorporated in the modification request and will result in significant vehicle trip reductions:

- Parking supply limits

---

<sup>7</sup> City Staff has reviewed these changes to Street 1 during review of the draft Final Map and has confirmed that they are in substantial conformance with the SB 35 Approval. Nonetheless, this modification request includes these changes so that the plan set and updated Tentative Map are complete.



## Appendix II, Modification Request Project Description

- Unbundled residential parking
- High quality transit stop on Stevens Creek (which also will serve as a mobility hub, in that the facility will include bike storage and repair along with transit service)
- Transit stops on Wolfe Road (one of which will also serve as a mobility hub)
- Rideshare/Transportation Network Company Hub
- Bike hubs (bicycle storage and repair facilities) distributed throughout the Project
- Class IV bike lanes on Wolfe Road and Stevens Creek
- A grid network of pedestrian connectivity throughout the Project for shortest walking paths
- Pick-up and drop-off areas for private shuttle buses on the east and west side of the Project
- Showers and lockers for office users
- Potential space for a day care facility for children
- Valet service to reduce on-site travel
- Carpool parking spaces
- EV parking spaces
- Infrastructure for priced retail and workplace parking
- BMR units (which have reduced VMT)

Through marketing and tenant agreements, among other means, the Project will also promote various TDM measures, such as work-from-home, car-pooling, bicycling, walking between office spaces, residential units, and restaurants and shops, the use of VTA transit, and the use of private shuttles. Additional details regarding operational TDM components may change over time depending, in part, on new transit services and emerging technologies, as new commuter patterns and preferences arise, and based on tenant needs and market conditions at the time of implementation.

In addition to mitigating the potential traffic impacts of the Project and removing vehicle trips from the City's roadway network, these TDM measures include certain improvements identified on the City's TIF improvement plan in addition to improvements that are a similar type and provide the same benefits as those included in the TIF improvement plan. Furthermore, as modified the Project also dedicates significant land to the City for implementation of traffic improvements, such as frontage roads, bikeways, sidewalks, and turn lanes.

### 2.4.3.3 Vehicle and Bicycle Parking

Because the Project site is located within one-half mile of public transit, parking standards are not applicable to the Project, including this modification request. (See §65913.4(e)(1).) Nonetheless, the Project continues to provide parking to adequately meet the demands of the various uses, as described below for informational purposes.

The modification request includes changes to vehicle parking counts and locations as detailed in [Appendix III - Modification Request Plan Sets, Sheets P-0101](#). Because one of the most effective TDM measures for reducing vehicular trip generation and encouraging the use of alternative modes of transportation is to reduce parking supply, and after further analysis of the parking allocations demonstrated that surplus below-grade parking was available for office and retail uses under the parking ratio included in the SB 35 Approval, the Project's total parking area has been reduced to include 7,583 vehicle stalls. The parking count is inclusive only of striped stalls and does not include additional parking accommodation that may be provided through parking management strategies, including valet parking programs and mechanical stackers, which would be deployed based on future tenant requirements. It is estimated that implementing these parking demand strategies could increase the parking capacity by at least 30%,

## Appendix II, Modification Request Project Description

yielding a similar effective parking supply as included under the SB 35 Approval, but avoids construction of surplus physical parking, consistent with best TDM practices.

The reduction in parking is consistent with City policies, including General Plan Strategy LU-8.3.2, which encourages shared or reduced strategies where appropriate as incentives to construct new commercial and mixed-use development, while increasing opportunities for other modes of transportation. Reduction in parking is further supported by a reduced office parking demand resulting from expanded work-from-home policies, the opportunity for a shared parking approach between the Project's retail and office uses and increasing utilization of rideshare services. Additionally, the Project may incorporate a significant life sciences component within the office square footage allocation given the notable recent expansion of the life sciences market within Silicon Valley. It is well established that life science and research & development land uses generate lower parking demands based on a lower yield of occupied space due to research and laboratory design requirements. The associated reduction in total parking square footage also results in reductions in construction-related impacts relating to subterranean grading activity, offhaul- and construction-related trips, and the extent of hard materials necessary for construction (e.g., concrete and steel).

The modification request incorporates 2,780 Class I bicycle parking spaces and 326 Class II bicycle parking spaces, an increase from the approved Project. Additionally, the modification locates several bike hubs throughout the project, at which cyclists can store and repair bikes, creating convenient and frequent facilities to encourage bicycle commuting to and from the Project.

### 2.4.3.4 Central Utility Plant & Accommodation of Fire Station (4 Person Facility)

The modification request retains the standalone central utility plant included within the Project located at Block 3A, which provides utility services to the Project site. Based on further design progression and coordination with utility providers, the central utility plant has been developed to include the equipment required to provide primary incoming power, heating and cooling, recycled water with treatment, tier-four life safety generators, and a cooling tower condenser water loop to serve all buildings on the property. The above grade area of the central utility plant has decreased from 16,000 square feet to 12,000 square feet. The use of a condensed water loop throughout the Project site will provide an environmentally sustainable heating and cooling sink that takes energy from one use and uses it in another.

Under the SB 35 Approval, the approved plan sets included an approximately 7,000 square foot area for an optional fire station accommodating four SCCFD staff in the northwest of the Project site. Under the modification request, the central utility plant continues to include demised space for an approximately 7,000-square foot fire station (4-person) to accommodate two vehicle apparatus bays (one apparatus bay accommodating an approximately 168" wheelbase fire truck and one accommodating a Captains Vehicle), which has been reviewed with Santa Clara County Fire Department ("SCCFD"), as a possible future tenant fit-out. While a fire station is not required by the Project approvals or any other applicable regulatory requirement, the Applicant intends to continue to provide this new fire station, as designed, which will be a community benefit for the Project and the surrounding community. The City has estimated the value of this benefit to be \$10,000,000.

### 2.4.3.5 Mechanical, Electrical and Plumbing Configurations

Under the SB 35 Approval, the majority of mechanical, electrical and plumbing (MEP) equipment was located in various below-grade areas. Based on further design progression and as a result of advanced coordination with PG&E, this equipment has now been relocated to ground-floor levels. This relocation

## Appendix II, Modification Request Project Description

has allowed for the reduction in the below-grade garage perimeters by eliminating the MEP space reserved for below-grade transformers and other MEP equipment has now been placed at grade within the buildings. This relocation remains in compliance with PG&E Electric and Gas Service Requirements (Greenbook).

Under the modification request, the distribution of cisterns for water capture, retention, and reuse have also been relocated to below the garage parking slabs following the natural slope of the site. Through consultation with the various City, County, and State agencies, certain infrastructure utility points of connection, sizes, and distribution have been refined according to meet these agencies' respective requirements, including relocations of above-grade components that will be screened to meet Cupertino standards.

### 2.4.3.6 Construction Phasing

Development of the Project is expected to occur in multiple phases over several years, depending on market absorption rates, with both sequenced starts and concurrent openings. The construction phasing plan remains conceptual until such time as building permits are issued, and actual phases may vary as to scope or sequence at that time.

In response to community feedback, Applicant has prioritized the delivery of the Project's much-needed housing, as well as the majority of the retail and a significant portion of the at-grade open space in the first phase of construction, as well as the complete road network and supporting infrastructure. In particular, the first construction phase is anticipated to include the central utility plant, the below-grade parking structure podium on the west side, and construction of Blocks 1, 2, 4, and the West Plaza. The second construction phase is anticipated to include the remaining west side buildings on Blocks 3, 5, and 6. The final third construction phase is anticipated to include the entirety of the east side, inclusive of the two levels of podium, Blocks 7, 8, 9, 10, and 11. (Note that, compared to the original phasing plan, this phasing plan contains a greater percentage of affordable housing and greater amount of retail delivered in the first phase, the same amount of office delivered in the first phase, and a lower amount of office delivered in the first two phases).

Consistent with the building permit applications on file with the City, it is anticipated that the subterranean garage structures/podia will be developed, and they will then support no less than the construction of superstructures above the ground plane. Again, this conceptual phasing plan is subject to further refinement (which could include the modification or swapping of any phase), and the completion of any individual building will depend upon a number of factors, including construction logistics, relocation of any remaining existing tenants, availability of contractors, and other market conditions and will continue to be implemented with the Conditions of Approval, such that the last certificate of occupancy for non-residential construction shall not be issued until two-thirds residential square footage is constructed.

## 3 Summary of Modification Request Entitlement Amendments

In connection with the SB 35 Approval, the City issued the following specific entitlements: (1) Development Permit – Major; (2) Architectural and Site Approval – Major; (3) Tentative Subdivision Map for Condominium Purposes (Tentative Map); and (4) Tree Removal Permit. Applicant anticipates that this modification request will require amendments to each of these permits.

### 3.1 Planning Permit Amendments

Specifically, Applicant anticipates that the Development Permit – Major and Architectural and Site Approval – Major will be amended to reflect the design revisions described above and as reflected in the **Appendix III, Modification Request Plan Sets**. The Tree Removal Permit amendment will be required to account for removal of twelve (12) additional on-site tree removals consistent with Condition 30, which states that a Tree Removal Permit is required for removal of additional on-site protected trees. These additional tree removals are required due to location of Project driveways and loading areas along Wolfe Road; these additional trees include #63, 65, 66, 67, 277, 284, 440, 441, 442, 466, 467, and 1245 as shown in the tree disposition plan in **Appendix III, Modification Request Plan Sets, Sheets P-0101 and P-0602B** and as described in the **Appendix VIII, Updated Arborist Report**. In total, the Project will include 1,271 trees inclusive of new, relocated and retained trees; the total number of trees on the Project site has been reduced compared to the SB 35 Approval but tree replacements on the Project site will continue to exceed City replacement requirements. No additional amendments to the Tree Removal Permit are anticipated. Additional details regarding the Tentative Map amendments are described in Section 3.2 below.

Because the modification request is being submitted pursuant to SB 35, the City's normal permitting process and any findings or other requirements are not applicable to the extent that such requirements go beyond confirming SB 35 compliance and whether the modification affects the City's prior determination of the Project's consistency with objective standards. SB 35 prohibits the City from requiring discretionary approvals for the modification request, consistent with the original SB 35 Approval process.

### 3.2 Tentative Map Amendments

The Tentative Map amendment is proposed primarily to remove a Public Access Easement that had been included originally on the areas proposed for public parks and open space, including the plazas, the bike/ped path and access to the green roof. However, because the City has elected not to recognize these areas as public park dedications for purposes of providing Park Fee credit, the dedications are being removed. In addition, we are proposing to modify the area dedicated to the City at the corner of Wolfe Road and Stevens Creek Boulevard to align with other project changes. There are also other minor changes that through the Final Map processing, the City has confirmed are in substantial conformance with the original Tentative map. Although these minor changes have been determined to be in substantial conformance, the Tentative Map is being updated to reflect them as well.

**Table 2** below describes all the changes. Overall, the core components of the Tentative Map remain as approved under the SB 35 Approval, including: the proposed configuration of Parcel A and Parcel B; allowance for up to 2,500 condominium units (not to exceed 2,402 residential and 98 commercial/retail condominium units); and the option to utilize phased final maps pursuant to Section 66456.1 of the Government Code.

None of the proposed changes to the Tentative Map relate to an objective standard applicable to the Property.

**Table 2: Tentative Map Revisions per Modification Request**

Map Component/Features	Additional Details
<b>No Modification Proposed</b>	
<b>Parcel Number</b>	<b>No change proposed.</b> Tentative Map revision retains proposed Parcel A and Parcel B configuration on either side of Wolfe Road.
<b>Condominium Purpose</b>	<b>No change proposed.</b> Tentative Map revision retains proposed allowance for up to 2,500 condominium units (not to exceed 2,402 residential and 98 commercial/retail condominium units).
<b>Phased Final Mapping</b>	<b>No change proposed.</b> Tentative Map revision retains option to utilize phased final maps pursuant to Section 66456.1 of the Government Code.
<b>Easement Relocation</b>	<b>No change proposed.</b> Tentative Map revision maintains all easements proposed for relocation by the approved Tentative Map pursuant to Section 66434(g) of the Government Code remain as previously shown.
<b>Modification Proposed</b>	
<b>Dedications</b>	<b>Modification proposed.</b> Tentative Map revision continues to provide dedications of the Vallco property along the Project frontages, but the specific dedication alignments have been updated based on direction from the City Engineer and the City's surveyor. Namely, the property lines after dedication along Wolfe Road and Stevens Creek Boulevard were adjusted to comply with requests from Public Works: (1) On Stevens Creek Boulevard, the dedication area was revised to ensure that the Property line is parallel to the centerline of the right of way; and (2) on Wolfe Road, the dedication area was revised to follow the line of the five foot public sidewalk. In addition, the property lines after dedication at the corner of Wolfe Road and Stevens Creek Boulevard were adjusted to align with the modification request site plan, resulting in dedication of a five-foot public sidewalk in that location. Lastly, easement rights have been reserved along the dedicated areas on Wolfe Road adjacent to the pedestrian bridge to accommodate air rights, supports, footings and columns associated with the bridge.
<b>Public Utility Easements (PUE)</b>	<b>Modification proposed.</b> Tentative Map generally maintains all public utility easements for maintenance and operation of public utilities across the Project site; one minor change has been included to relocate a portion of the 10-foot PUE to the other side of Perimeter Road.
<b>Emergency Vehicle Access Easements (EVAE)</b>	<b>Modification proposed.</b> Tentative Map revision continues to provide EVAEs on all vehicular streets throughout the Project site; however, based on the updated design, a vehicular street has been removed from Blocks 2 and 4 so the corresponding EVAE has been removed from that location.
<b>Public Access Easements (PAE)</b>	<b>Modification proposed.</b> The original Tentative Map included public access easements over the plazas, bike/ped facilities through the Project and onto the green roof. The intent of these public parks was to satisfy the City's Parkland Ordinance. However, and notwithstanding General Plan policies favoring dedications over fees, the City has elected not to treat these areas as parks and to instead charge a fee. Therefore, the Tentative Map revision removes PAEs on plaza areas, as well from certain bicycle pathways and the access point to the green roof. If the City determines that credit should be given for the PAEs, the Applicant would be willing to maintain the PAEs.

## 4 Residential Affordability and Density Bonus

As described in the SB 35 Application and the SB 35 Approval, the Project qualified for and was granted a density bonus under the State Density Bonus Law (as implemented by the Cupertino Municipal Code). Under the SB 35 Approval, the City granted a density bonus of 35 percent, yielding 623 additional market rate density bonus units, and granted three concessions as described below.

The modification request remains eligible for the 35% bonus and three concessions as approved. Under the applicable General Plan Land Use Element policies, the “base density” for the Project site remains 1,779 units. Under the modification request, the Project will continue to provide 50% of the units (i.e., 1,201 units) affordable to at least 80% AMI households; these 1,201 units exceed the number of affordable units required by SB 35, as has been clarified by HCD. The requirement to provide 50% affordable units is calculated excluding any market rate density bonus units, which yields a total Project requirement of 890 affordable units. (See HCD Guidelines § 402(b)(3).) Therefore, by including 1,201, the Project is voluntarily providing an additional 311 affordable units as a community benefit above the required 890 affordable units. Consistent with the SB 35 Approval, the Project’s density bonus units remain geographically separate, as allowed under the state Density Bonus Law. Also, although the Project now qualifies for a 50% density bonus due to changes in state law, because of the advanced stage of design and the relatively significant changes to building heights and land use distribution that would be necessary to accommodate the additional units, the Project continues to propose a 35% bonus resulting in the same number of total units.

The modification request includes a reduction of the Very Low Income units to 267, which represents 15% of the base density of 1,779 units. The State Density Bonus Law allows three concessions for projects with 15% of the “total units,” where that term is defined to exclude units added by the density bonus, available for very low-income households. As a result, the Project continues to qualify for three concessions, as further described in **Section 4.1** below.

See **Table 3** below for a comparative summary of the density bonus calculation under the SB 35 Application and this modification request.

**Table 3: Density Bonus Summary Table**

	Maximum Units Permitted Excluding Bonus	Maximum Units Permitted with Bonus	Affordable Units by Income Level	Bonus Percentage	Incentives/ Concessions	Bonus Units	Total Units Proposed
Original SB 35 Approval	1,779	2,402	Very Low: 361 Low: 840	35%	3	623	<b>2,402</b>
Modification Request	1,779	2,669	Very Low: 267 Low: 934	35%	3	623	<b>2,402</b>

## 4.1 Density Bonus Incentives/Concessions

In addition to increasing the Project's density, the Project qualified for 3 concessions under the State Density Bonus Law based on the inclusion of 15% of the total units for very low-income households. As further described in the SB 35 Approval, the City granted the following concessions under the State Density Bonus Law:

1. A concession to allow the affordable units to be studios and one-bedroom units instead of a mix of units comparable to the units within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (A);<sup>8</sup>
2. A concession to allow the affordable units to be smaller in size than the market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(B); and
3. A concession to allow 400,000 square feet of retail, a reduction of 200,000 square feet, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.

The Project, as modified, would continue to include these three concessions. Under SB 35, additional density or other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law are not taken into account when evaluating compliance with the City's "objective zoning standards" and "objective design review standards." Despite recent case law that brings clarity to and would facilitate the use of waivers in the Project, no Density Bonus waivers are currently proposed.

Under the State Density Bonus law, the City can only deny an incentive or concession if it finds that an incentive or concession does not result in identifiable and actual cost reductions; would have a specific, adverse impact on public health and safety or the physical environment; or would violate state or federal law. The City has already granted these concessions, and they remain applicable, so that determination cannot be revisited. As required by the State Density Bonus Law, the obligation to maintain these units as affordable units will be recorded in an agreement between Applicant and the City.

---

<sup>8</sup> Although the modification request adds two- and three-bedroom units, as requested by the City, the proportion of affordable and market unit types is not the same so this concession remains applicable.



## Attachment A – Two-Thirds Residential Compliance – Updated HCD Guidelines Methodology (Informational Purposes Only)

This **Attachment A** provides information regarding the original SB 35 Approval and modification request square footage measurements based on the Updated HCD Guidelines methodology, which is utilized in the City's SB 35 Eligibility Checklist and related SB 35 Application Form. This is provided for informational purposes and the City must use the "floor area" definition because that was the "analytical methodology" utilized in the SB 35 Approval. As shown in **Table 4** below, the modification request remains in compliance with the two-thirds residential requirement when utilizing the Updated HCD Guidelines methodology, as well as the floor area approach (see above Project Description, **Section 2.2, Table 1**).

The key ways in which the Updated HCD Guidelines Methodology differs from the "floor area" definition are that areas that service both residential and non-residential are apportioned and residential balconies are included. (The City's practice is to not count non-residential balconies as building area, and so we have adopted that approach here. However, if we were to include nonresidential balconies in the calculation, the Project would still comply with the 2/3s test.) Because the HCD Guidelines Methodology focuses on types of uses and not on measurement methodologies, this approach continues to use some City conventions, such as excluding attics, counting stairwells/elevators only at the base, and double counting areas with extra high ceilings (15 or 20 feet, depending on the floor). As it relates to the modification of the 2018 approval, the current design reflects a COVID-driven increase in private open space, such as yards and terraces.

**Table 4: Two-Thirds Residential Compliance – Updated HCD Guidelines Methodology<sup>1</sup>**

	2018 SB 35 Approval (Recalculated Utilizing HCD Methodology)		Modification Request	
Land Use	Amount	% Project	Amount	% Project
Residential Dwelling Units	2,402 units	N/A	2,402 units	N/A
Residential Uses (sq. ft.)	5,410,304 sq. ft.	68.7%	5,656,995 sq. ft.	69.7%
Office (sq. ft.)	1,981,447 sq. ft.	25.2%	1,985,600 sq. ft.	24.4%
Retail / Entertainment (sq. ft.)	485,912 sq. ft.	6.2%	475,122 sq. ft.	5.9%
<b>Total Square footage</b>	<b>7,877,663 sq. ft.</b>	<b>100 %</b>	<b>8,117,717 sq. ft.</b>	<b>100%</b>
<b>Percent Change<sup>4</sup></b>	<b>N/A</b>		<b>Unit Count: 0% change Square footage: 3.05%</b>	

Notes:

1. Information in this Table 4 is provided for informational purposes only; the floor area methodology described in **Section 2.2, Table 1** of the Project Description remains the applicable methodology for purposes of determining two-thirds residential compliance required under SB 35 and determining the percent-change of the modification request compared to the SB 35 Approval.



Rise Modification Plans are available online at:

[www.cupertino.org/vallcosb35](http://www.cupertino.org/vallcosb35) or  
<https://apps.cupertino.org/pdf/Vallco/>