CUPERTINO

CITY OF CUPERTINO

AGENDA

CITY COUNCIL

10350 Torre Avenue, Council Chamber
Tuesday, September 3, 2019
5:30 PM

Televised Special Meeting Study Session (5:30) and Regular Meeting (6:45)

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, September 03, 2019, commencing at 5:30 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California 95014. Said special meeting shall be for the purpose of conducting business on the subject matters listed below under the heading, "Special Meeting." The regular meeting items will be heard at 6:45 p.m. in Community Hall Council Chamber, 10350 Torre Avenue, Cupertino, California.

SPECIAL MEETING

ROLL CALL - 5:30 PM

STUDY SESSION

1. Subject: Study Session regarding Below Market Rate (BMR) Residential Housing Mitigation and Commercial Linkage Fees for the Cupertino BMR Housing Program. Application No(s).: CP-2019-01; Applicant(s): City of Cupertino; Location: Citywide
Recommended Action: Receive update and provide any input to Staff

Staff Report
A – July 2019 Economic Feasibility Analysis prepared by Strategic Economics
B – LeSar Development Consultants Peer Review
C – Redline Draft Economic Feasibility Analysis prepared by Strategic Economics
D –Strategic Economics Memorandum Regarding Peer Review

ADJOURNMENT

REGULAR MEETING

PLEDGE OF ALLEGIANCE - 6:45 PM

ROLL CALL

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Present award to Vishnu Athrey from Saint Andrews Episcopal School for winning the Qalaxia Build_your_ BOT contest.
Recommended Action: Present award to Vishnu Athrey from Saint Andrews Episcopal School for winning the Qalaxia Build_your_ BOT contest.

2. Subject: Proclamation for September as National Preparedness Month
Recommended Action: Present Proclamation for September as National Preparedness Month

POSTPONEMENTS

ORAL COMMUNICATIONS

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda. The total time for Oral Communications will ordinarily be limited to one hour. Individual speakers are limited to three (3) minutes. As necessary, the Chair may further limit the time allowed to individual speakers, or reschedule remaining comments to the end of the meeting on a first come first heard basis, with priority given to students. In most cases, State law will prohibit the Council from discussing or making any decisions with respect to a matter not listed on the agenda.

REPORTS BY COUNCIL AND STAFF (10 minutes)

3. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

CONSENT CALENDAR

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

4. Subject: Approve the August 6 City Council minutes
Recommended Action: Approve the August 6 City Council minutes
A - Draft Minutes

5. Subject: Approve the August 20 City Council minutes
Recommended Action: Approve the August 20 City Council minutes
A - Draft Minutes

6. Subject: Resolution adopting the City of Cupertino's State-mandated Green Stormwater Infrastructure (GSI) Plan

Recommended Action: Adopt Resolution No. 19-112 adopting the City of Cupertino's Green Stormwater Infrastructure (GSI) Plan which demonstrates the City's long-term commitment to implementation of green stormwater infrastructure as required by the City's Municipal Regional Stormwater Permit for the San Francisco Bay Region

Staff Report
A - GSI Plan
B - GSI Plan Appendices
C - GSI Plan Framework
D - GSI Resolution

7. Subject: Award of contract to G. Bortolotto & Company, Inc. for $270,000 for 2019 Speed Table Installation Project No. 2019-112

Recommended Action: Authorize the City Manager to award a contract to G. Bortolotto & Company, Inc. in the amount of $246,100 and approve a construction contingency of $24,000 for a total of $270,000 for 2019 Speed Table Installation Project No. 2019-112

Staff Report
A - Contract Documents

8. Subject: 2018-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority"

Recommended Action: Approval of response to the 2019-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority"

Staff Report
A - Civil Grand Jury of Santa Clara County Report
B - Response Letter to Civil Grand Jury of Santa Clara County

9. Subject: Amendment to existing voluntary collection agreement with Airbnb regarding transient occupancy taxes to allow certain short-term rental hosts to remit taxes directly to the City

Recommended Action: Authorize the City Manager to enter into Amendment No. 1 to the voluntary collection agreement with Airbnb and to enter into other minor amendments to the voluntary collection agreement in the future

Staff Report
A - Draft Amendment to VCA
B - VCA Staff Report 6.19.18

10. Subject: Library Commission Fiscal Year (FY) 2019-20 Work Program

Recommended Action: Approve the Library Commission FY 2019-20 Work Program

Staff Report
A - Draft Library FY 2019-20 Work Program

SECOND READING OF ORDINANCES

11. Subject: Second reading of Ordinance Nos. 19-2187 and 19-2188 adopting Zoning Text and Map Amendments related to the Vallco Shopping District Special Area. (Application No(s).: MCA-2019-02, Z-2019-01 (EA-2013-03); Applicant(s): City of Cupertino; Location: 10101 to 101333 North Wolfe Road APN#s:316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095)

Recommended Action: Conduct the second reading and enact:

1. Ordinance No. 19-2187 (MCA-2019-01): "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))" and

2. Ordinance No. 19-2188 (Z-2019-01): "An Ordinance of the City Council of the City of Cupertino amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)"

Staff Report
A - Ordinance No. 19-2187 (MCA-2019-01) - Municipal Code Amendments
B - Ordinance No. 19-2188 (Z-2019-01) - Zoning Map Amendments
C - Area to be zoned P(R3, CG)

PUBLIC HEARINGS

ORDINANCES AND ACTION ITEMS

12. Subject: Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action: That the City Council find adoption of the proposed Resolution exempt from CEQA, adopt Resolution No. 19-113 for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35, and review and provide any input on the Draft Senate Bill 35 Application Package.

Staff Report
A - Draft Resolution
B - SB 35 Application Package and Forms
C - Staff Report without attachments (SB 35 item)
D - SB 35 Procedures CC Supplemental Staff Report
E - SB 35 Statute as Amended
F - HCD Guidelines (SB 35 Item)
G - Comments from PC and CC (SB 35 item)
H - Draft Resolution with redlines
I - SB35 Application Package with redlines

13. Subject: Options for unofficial transcription of City Council meetings (continued from July 16)
Recommended Action: Receive options for unofficial transcription of City Council meetings and provide direction to staff to use the free YouTube auto-captioning feature for transcription of Council meetings.
Staff Report

ORAL COMMUNICATIONS - CONTINUED (As necessary)

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

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/index.aspx?page=125 for a reconsideration petition form.

In compliance with the Americans with Disabilities Act (ADA), anyone who is planning to attend the next 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, 48 hours in advance of the Council meeting to arrange for assistance. 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. Also upon request, in advance, an assistive listening device can be made available for use during the meeting.

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, 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 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 agendized item. These written communications are accessible to the public through the City's website and kept in packet archives. You are hereby admonished not to include any personal or private information in written communications to the City that you do not wish to make public; doing so shall constitute a waiver of any privacy rights you may have on the information provided to the City.

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

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

September 3, 2019

Subject

Below Market Rate (BMR) Residential Housing Mitigation and Commercial Linkage Fees Update for the Cupertino BMR Housing Program

Recommended Action

Receive update and provide input to staff

Discussion

The City's 2014-2022 Housing Element is a comprehensive eight-year plan to address housing needs in Cupertino. During the planning process to prepare the Housing Element, City officials, staff, and the public discussed strategies to increase the supply of affordable housing in Cupertino. As adopted by the City Council in 2014, the Housing Element includes a "Residential Housing Mitigation Program" that requires all new developments to help mitigate project-related impacts on affordable housing needs. Residential development projects are required to include a percentage of their total units as below-market rate units that are affordable to moderate-income and lower-income households. This is commonly called an "inclusionary housing requirement".

The Housing Element's inclusionary housing requirements are implemented through the Below Market Rate (BMR) Housing Program required by Chapter 19.172 of the Cupertino Municipal Code (BMR Ordinance) and the BMR Housing Mitigation Program Procedural Manual (Housing Mitigation Manual). The BMR Housing Program also includes Housing Mitigation Fees for residential projects of less than seven units and commercial linkage fees for non-residential development as described in more detail below.

As part of its current work plan, the City Council is considering modification of the City's BMR Housing Program. Accordingly, the City worked with Strategic Economics to prepare an Economic Feasibility Analysis. This analysis will inform the BMR Linkage Fees update.

The remainder of this staff report discusses the City's current BMR Housing Program, the legal framework for modifying the BMR Housing Program, the results of the Economic Feasibility Analysis, and policy topics for further consideration.

Current BMR Housing Program Requirements

The City's current BMR Housing Program includes an inclusionary housing requirement of 15% on for-sale and rental residential developments with seven or more units. For rental developments, the BMR units must be affordable to very-low (up to 50% Area Median Income "AMI") or low-income (up to 80% AMI) households. For-sale developments must provide BMR units affordable to median- (up to 100% AMI) and moderate-income (up to 120% AMI) households.

Small residential projects of less than seven units can choose to pay the City's Housing Mitigation Fees or to provide one BMR unit. The Housing Mitigation Fees are based on the City's 2015 Residential Below Market Rate Housing Nexus Analysis and Non-Residential Jobs-Housing Nexus Analysis (2015 Nexus Study). Housing Mitigation Fees are currently set at $17.82 per square foot for detached single family, $19.60 per square foot for small lot single family/townhomes, $23.76 per square foot for attached multifamily residences (ownership and rental), and $11.88 per square foot for commercial/retail uses.

The City first adopted linkage fees for office and Research and Development (R&D) projects in 1992, and expanded the program to include retail and hotel developments in 2004. The City updated the commercial linkage fees in 2015 (based on the 2015 Nexus Study) to the current levels of $23.76 per square foot for office/R&D uses, and $11.88 per square foot for hotel and retail uses.

The City's Housing Mitigation Manual (most recently amended by Resolution 15-037 on May 5, 2015) includes rules and regulations for implementing the policy direction in the Housing Element and the Municipal Code. The Housing Mitigation Manual restates the Housing Element's general requirements for on-site affordable housing production with more specific requirements for affordability levels by income. Table 1 provides a summary of the affordability requirements included in the Housing Mitigation Manual.

Table 1: Affordability of BMR Units (15% of development total)

Ownership BMR Units		Rental BMR Units	
Median-Income Units	**Moderate-Income Units**	**Very-Low Income Units**	**Low-Income Units**
8% of ownership units	7% of ownership units	9% of rental units	6% of rental units

For the BMR Housing Program, the City uses household income limits established by the California Department of Housing and Community Development (HCD) that are based on adjustments to the median income in Santa Clara County. Table 2 summarizes the income levels associated with the various affordability requirements.

Table 2: 2019 Household Income Limits

Income Category	Approximate Percent of Area Median Income*	Income Limit for 4-Person Household
Very Low	Up to 50%	$73,150
Low	Up to 80%	$103,900
Median	Up to 100%	$131,400
Moderate	Up to 120%	$157,700

**HCD makes adjustments to very-low and low-income limits, which do not precisely equal 50% and 80% of the median.*

In addition to on-site BMR requirements, the Housing Mitigation Manual gives developers the option of requesting that the Council approve an alternative means of compliance (provided that the alternative gives the City affordable housing equivalent to the applicable BMR requirement). Applicants may request to: provide on-site rental BMR housing instead of for-sale BMR units; purchase off-site units to be dedicated and/or rehabilitated as BMR units; develop off-site BMR units; or donate land for the development of BMR units.

As noted above, residential developments with six or fewer units may pay the Housing Mitigation fee instead of producing one on-site BMR unit. The Housing Mitigation fee is also applied to commercial development and fractional units (as defined in Section 2.3.2 of the BMR Housing Mitigation Program Procedural Manual) required for residential developments with seven units or more. Such fees are placed in the City's BMR Affordable Housing Fund (AHF). These funds may be used to finance affordable housing within the City, often in connection with other public financing sources to provide larger numbers of affordable housing units or deeper affordability than can feasibly be required in connection with market rate development.

Legal Framework

Affordable housing policies in California take different forms, with varying legal requirements. For residential projects, cities' and counties' police power provides authority to require a percentage of new residential projects to be reserved for affordable housing. For non-residential projects, cities and counties can collect impact fees to mitigate new development's impact on the demand for affordable housing. Both approaches are subject to limitations, as discussed below.

Residential Projects

In its 2015 decision *California Building Industry Ass'n v. City of San José* (*CBIA*), the California Supreme Court determined that inclusionary requirements for residential projects are land use provisions, similar to rent and price controls. Because land use and price control authority comes from a city's general police power, residential inclusionary requirements designed to improve the public health, safety, and welfare can be adopted without justification by a nexus study as long as the requirements do not prevent a property owner from having the opportunity to earn a fair return on its property. To date, efforts to overturn the *CBIA* case at the United States Supreme Court have failed. Therefore, a nexus study is not currently required for residential inclusionary requirements. However, an economic feasibility study can be used to demonstrate that residential inclusionary requirements provide property owners with an opportunity to earn a fair and reasonable return.

The *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (*Palmer*) case was decided in 2009, and for a time, *Palmer* precluded California cities from requiring long-term rent restrictions or inclusionary requirements on rental units. On September 29, 2017, Governor Brown signed AB 1505 to restore cities' and counties' ability to require on-site affordable units within rental projects. The law became effective on January 1, 2018. Under AB 1505, cities can impose inclusionary requirements on rental residential developments provided: (1) the requirements are included in the zoning ordinance and (2) alternatives to on-site compliance are allowed. If more than 15 percent of rental units are required to be affordable to low-income households, HCD may require that the requirement be justified by an economic feasibility study under certain circumstances discussed below.

Non-Residential Projects
For non-residential projects, cities and counties are permitted to collect fees from new development to mitigate that development's impact on affordable housing, provided that the impact fees are reasonable and there is a sufficient nexus between the amount of the impact fee and the impact that the proposed development will have on the need for affordable housing. A nexus study is used to determine the upper limit for impact fees that may legally be imposed on new non-residential development and is required to justify affordable housing requirements for non-residential projects. Nexus study results are often combined with economic feasibility studies to ensure that impact fees do not preclude development.

Legal Requirements for Modifications
If the City desires to modify its BMR Housing Program, it has several options. Changes to the Housing Mitigation Manual may be adopted by Resolution, and the City Council can modify its BMR Ordinance. Unless the City also amends the Housing Element, which would require HCD approval, changes to the BMR Ordinance or the Housing Mitigation Manual would need to be consistent with the policies included in the Housing Element. For example, the Housing Element does not specify an income range requirement for for-sale residential development. Therefore, the City could amend the Housing Mitigation Manual to adjust the percentages of median- and moderate- income housing required and still be consistent with the Housing Element. Similarly, the City could require rental residential housing to be reserved for extremely-low income households, provided that the requirement is economically feasible, as such housing

would also be affordable to very-low and low-income households as required by the Housing Element.

In addition, if the City decided to amend its BMR Housing Program to require more than 15% of rental units be reserved for low-income households, HCD could require the City to prepare an economic feasibility study if the City fails to meet at least 75% of its share of the regional housing need for the above-moderate income category for five years or more or if it does not submit its annual housing element report for at least two consecutive years. The feasibility study would need to demonstrate that the City's requirements do not make market rate residential development infeasible.

Even if HCD does not require an economic feasibility study, such a study can be useful to inform the City's policy-making efforts and to ensure that its requirements are not overly burdensome. To meet the applicable legal standard for inclusionary policies, the City's requirements must not make market-rate housing development economically infeasible. To update the BMR Housing Program's requirements related to commercial projects, the 2015 Nexus Study establishes a theoretical legal maximum for impact fees, but as with residential projects, any increases should be considered in the context of economic feasibility.

Economic Feasibility Analysis Results

The City retained Strategic Economics to evaluate potential changes to the BMR Housing Program in an Economic Feasibility Analysis. The Economic Feasibility Analysis examined the following issues: (1) increasing on-site affordability requirements in residential projects; (2) requiring units for extremely-low income households or individuals with disabilities; (3) requiring units for median- and moderate-income households in rental residential projects; and (4) increasing commercial linkage fees on non-residential development projects. The Economic Feasibility Analysis also summarizes inclusionary housing programs and commercial linkage fees in other cities in Santa Clara County.

As discussed above, the 2015 Nexus Study establishes the legal maximum for impact fees that may be imposed on commercial projects. It also analyzed the "affordability gap" that creates increased demand for affordable housing when market rate housing is developed. The Economic Feasibility Analysis provides a current analysis of what increased affordability requirements and impact fees may be feasible in connection with future development in Cupertino by analyzing the economic effects of various affordability requirements on future projects. By analyzing the costs of development (such as land acquisition, soft costs, construction costs, and City requirements) in comparison to projected revenues, the Economic Feasibility Analysis evaluates whether the expected returns would be enough to support development in the City if affordability requirements were increased.

Although the Economic Feasibility Analysis is a helpful tool to aid the City in its policymaking decisions, all studies of this kind have limitations. For example, the

Economic Feasibility Analysis provides an overview-level assessment of development economics in Cupertino generally, because it is based on project prototypes rather than specific projects. Any individual future project will have unique characteristics that affect market returns and developer profit requirements. Based on individual project economics, individual projects may look more or less feasible to developers than the Economic Feasibility Analysis shows. In addition, the Economic Feasibility Analysis focuses on market conditions in 2019, making its conclusions most applicable to projects that have site control (e.g. own the property or have an agreement to acquire or develop it) and are in the pre-development stage.

As construction costs, rents, and sales prices continue to change, project feasibility will change as well. Similarly, the Economic Feasibility Analysis results are sensitive to land price assumptions, which are a major cost of development and impact a project's ability to support other costs. It is generally assumed that developers will only purchase land at a price allowing for financially feasible projects and that development costs, including affordability requirements, are reflected in land sale prices.

However, it is possible that if the City increases affordability requirements, the increase would depress land values to accommodate what developers can afford to pay while meeting the City's requirements. Accordingly, over time, the market may adjust to this cost pressure in the form of reduced land costs, potentially making certain projects more feasible than they appear today.

The final Economic Feasibility Analysis, which includes a full discussion of its methodology and conclusions, is attached to this Staff Report as Attachment A. The Analysis's key findings are summarized below.

Increasing On-Site Affordability Requirements in Residential Projects
Five different prototypes of residential development that are most likely to be developed in future projects within the City were studied: detached single family; small lot single family/townhome units; condominiums; lower-density rental apartments; and higher-density rental apartments.

For each prototype of ownership housing, the Economic Feasibility Analysis studied project feasibility under five different scenarios of affordability requirements: basic feasibility (no affordability requirements); 15% inclusionary (existing City policy of 8% to median income households and 7% to moderate income households); 20% inclusionary (10% to median income households and 10% to moderate income households); 25% inclusionary (13% to median income households and 12% to moderate income households); and in-lieu fees only.

Similarly, for each prototype of rental housing, the Economic Feasibility Analysis studied project feasibility under five different scenarios of affordability requirements: basic feasibility (no affordability requirements); 15% inclusionary (existing City policy of 9% to very low income households and 6% to low income households); 20% inclusionary

(10% to very low income households and 10% to low income households); 25% inclusionary (5% to very-low income households, 10% to very-low income households, and 10% to low income households); and in-lieu fees only.

The Economic Feasibility Analysis concludes that increasing the on-site affordability requirement from 15% to 20% of units is feasible for ownership housing prototypes (single-family detached, small lot single-family/townhouse, and condominium developments). However, neither lower-density nor higher-density rental apartments would be economically feasible if the requirement was increased above 15%. Using the assumptions regarding current market rents, construction costs, and land costs, any production requirement could be challenging for the studied prototypes. Moreover, none of the residential prototypes would be feasible if the on-site affordability requirement increased to 25% of units. The Economic Feasibility Study concludes that in-lieu fees can be increased for all but the lower density rental apartments without impacting project feasibility. (The City currently charges Housing Mitigation Fees ranging from $17.82 to $23.76 per square foot.) Table 3 summarizes key findings with respect to increasing affordability requirements in residential projects.

Table 3: Increased Inclusionary/In Lieu Fee Feasibility Summary

Residential Prototype	Feasibility of Program Change		
	20% Inclusionary	25% Inclusionary	In-Lieu Fees
Detached Single Family	Feasible	Currently Infeasible	Increase to $30/sf Feasible
Small Lot SF and Townhomes	Feasible	Currently Infeasible	Increase to $35/sf Feasible
Condos	Feasible	Currently Infeasible	Increase to $35/sf Feasible
Lower-Density Rental Apartments	Currently Infeasible	Currently Infeasible	Increase Currently Infeasible

Residential Prototype	Feasibility of Program Change		
	20% Inclusionary	**25% Inclusionary**	**In-Lieu Fees**
Higher-Density Rental Apartments	Currently Infeasible	Currently Infeasible	Increase to $30/sf Feasible

Increasing Impact Fee Requirements in Non-Residential Projects
The Economic Feasibility Analysis also studied the feasibility of increasing its commercial linkage fees on three non-residential development prototypes: office/R&D, hotel, and retail. The building characteristics of each development prototype, including size, density (floor-area-ratio), and parking assumptions are based on a review of projects that were recently built, and in planning stages in Cupertino, as well as recently built and pipeline projects in surrounding areas.

For each non-residential prototype studied, the Economic Feasibility Analysis tested various fee levels to determine if increases would be feasible. Office and R&D uses are currently subject to a linkage fee of $23.76/sf, which can feasibly be increased to $25/sf, with an increase to $30/sf remaining marginally feasible. Hotel uses are currently subject to a linkage fee of $11.88/sf that is feasible, with an increase to $15/sf remaining marginally feasible; however, increases to $20/sf are projected to be currently infeasible. Based on the prototype assumptions, stand-alone retail uses are barely feasible without any linkage fee, so no increase is projected to be supported. However, the Economic Feasibility Analysis concludes that retail uses may be feasible when developed in conjunction with office or residential uses in a mixed-use environment, but it does not identify linkage fee levels for this development style.

Peer Review
As discussed above, the Economic Feasibility Study's conclusions are sensitive to assumptions regarding land cost, construction costs, market potential, and developer profits. Therefore, to further test the methodology and conclusions presented in the Economic Feasibility Study, the City commissioned LeSar Development Consultants to conduct a peer review of the Economic Feasibility Study while it was in draft form. The peer review raised a number of questions and requested additional information related to the Economic Feasibility Study's methodology and data sources that may have influenced the Economic Feasibility Study's conclusions. The peer review is included as Attachment B.

In response, the Economic Feasibility Study was revised to include additional discussion of its approach to analysis and to provide additional analysis in support of the assumptions related to housing demand) which drives potential developer revenues and feasibility). The revised Economic Feasibility Study also expanded upon information presented in the pro forma analysis for each prototype. A "track changes" version of the Economic Feasibility Study showing changes in response to the peer review is included as Attachment C, and a supplemental memo from Strategic Economics directly answering questions from the peer review is included as Attachment D.

The revisions result in a clearer, and more comprehensive document. It is important to note that none of the revisions changed the Economic Feasibility Study's conclusions regarding feasibility of BMR program changes.

Housing Commission and Planning Commission Review and Feedback
On July 25, 2019, the Housing Commission held a special meeting to receive an update on the efforts described above. The Housing Commission supported the following recommendations to the Planning Commission and City Council:

- Define different on-site BMR production requirements for each studied residential prototype based on that development type's feasibility.
- Recommended production requirements of:
    - 20 % for single family units;
    - Between 20-25 % for townhomes and condos; and
    - 15% (no change) for rental housing.
- Consider setting affordability requirements between the current five percent increments to maximize the feasible BMR production requirement.
- Prohibit in-lieu fees for any residential development project with seven or more units in order to promote BMR unit production.
- Expand alternative compliance options to satisfy BMR requirements through an equivalent number of off-site BMR units, land donation, or acquisition and rehabilitation of off-site market rate units that can be converted to BMR units.
- Consider pending applications when deciding when modified requirements will become effective.
- Explore parking reductions or other incentives to reduce construction cost if cost savings could be used to increase affordable housing production.
- Allow some residential projects to be only housing without ground floor retail if single-use development is more feasible and could yield greater affordability requirements.
- Recommended commercial linkage fees of:
    - $25 - $30 per square foot for office;
    - $15 per square foot for hotel; and
    - $11.88 per square foot (no change) for retail.

On August 13, 2019, the Planning Commission held a regular meeting to receive the Housing Commission's recommendations and provide additional feedback. Planning Commissioners expressed general support for the Housing Commission's recommendations. The strongest support was for increasing impact fees on new office development, and there was discussion about how high such impacts fees should be set without final agreement. Planning Commissioners were generally supportive of increasing inclusionary requirements on ownership housing, but they expressed concern with changing requirements for rental housing. However, there was continued support for strategies that would create more opportunities to provide housing for households with extremely low incomes. Finally, there was discussion between the Commissioners about potentially studying other affordability mixes, for example extremely low income and moderate instead of low- and very-low income housing, depending on the feasibility of those options.

Conclusions and Next Steps
Based on its assumptions and analysis, the Economic Feasibility Study shows the potential to increase inclusionary requirements for for-sale residential development to 20% from 15% and to increase in-lieu fees.

With respect to rental residential development, higher-density rental apartments appear to be able to support an increased in-lieu fee. Most developments that include affordable units for extremely-low income households or for people with disabilities require public subsidies to operate. Therefore, the City could choose to prioritize fee collection over on-site inclusionary requirements, which could increase the amount of public funds the City would have available to contribute to projects. As discussed above, rental residential projects are not good candidates for: (1) increasing on-site production requirements; (2) deepening affordability levels to include extremely-low income households; or (3) from increasing requirements above 15% to require units affordable to median- or moderate-income households in addition to existing requirements.

In addition, it may be possible to increase linkage fees for office/R&D uses and hotels to increase resources available in the City's BMR AHF. Even with additional funding at its disposal, the City would have a challenge meeting the need for these housing types. Site acquisition and construction costs can require subsidies of several hundred thousand dollars per unit, even while leveraging other available funding sources.

Therefore, the City Council should provide direction on recommended modifications, if any, to the City's BMR Program, or what further feasibility analysis may be helpful to inform final policy directions.

<u>Sustainability Impact</u>
No sustainability impact.

<u>Fiscal Impact</u>
No fiscal impact.

<u>Prepared by</u>: Kerri Heusler, Housing Manager
<u>Reviewed by</u>: Richard Taylor, Assistant City Attorney
<u>Approved for Submission by</u>: Deborah Feng, City Manager

Attachments:
A – July 2019 Economic Feasibility Analysis prepared by Strategic Economics
B – LeSar Development Consultants Peer Review
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ECONOMIC FEASIBILITY ANALYSIS

CUPERTINO BELOW MARKET RATE (BMR) HOUSING PROGRAM

Prepared for:

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TABLE OF CONTENTS

TABLE OF FIGURES

I. INTRODUCTION

Strategic Economics was retained by the City of Cupertino (the “City) to evaluate potential changes to the Below Market Rate (BMR) Housing Program. The BMR program requirements are currently as follows:

- The City currently has a BMR Housing Program that imposes an inclusionary requirement of 15% on for-sale and rental residential developments with seven or more units. For rental developments, the BMR units must be affordable to very-low (up to 50% Area Median Income “AMI”) or low-income (up to 80% AMI) households[1]. For-sale developments must provide BMR units affordable to median- (up to 100% AMI) and moderate-income (up to 120% AMI) households.[2]
- Small residential projects of less than seven units can pay the City’s Housing Mitigation In-Lieu Fees[3] (the “Housing Mitigation Fees”) or provide one BMR unit. The Housing Mitigation Fees are based on the City’s 2015 Residential Below Market Rate Housing Nexus Analysis and Non-Residential Jobs-Housing Nexus Analysis (the “2015 Nexus Study”). Housing Mitigation Fees are currently set at $17.82 per square feet for detached single family, $19.60 per square feet for small lot single family/townhomes, $23.76 for attached multifamily residences (ownership and rental), and $11.88 per square foot for commercial/retail uses.
- The City first adopted linkage fees for office and Research and Development (“R&D”) projects in 1992 and expanded the program to apply to retail and hotel developments in 2004. The City updated the non-residential linkage fees in 2015 (based on the 2015 Nexus Study) to the current levels of $23.76 per square foot for office/R&D uses, and $11.88 per square foot for hotel and retail uses.[4]

The City Council is considering modifying the BMR Housing Program, providing direction to examine the following issues:

- Study the potential to increase the inclusionary requirements to 20% or 25%
- Explore inclusionary housing policy to include units for extremely-low income/disabled persons
- Include median- and moderate-income units in rental projects
- Study inclusionary housing programs in other cities as a comparison
- Study the economic feasibility of increasing non-residential linkage fees on new office/R&D, hotel, and retail developments

This report provides technical findings on the economic feasibility of increasing the City’s BMR requirements for residential developments and non-residential developments. It also provides findings regarding the potential for including extremely-low income housing units and/or median-and moderate-income units in rental projects. The report also summarizes inclusionary housing programs and non-residential linkage fees in other cities in Santa Clara County.

The report is divided into three sections.

[1] Rental BMR policy states that 40% of affordable units must be set aside for low income, and 60% for very low income units.
[2] For-Sale BMR policy states that half of affordable units must be set aside for median income households, and half for moderate income households.
3 Housing Mitigation In-Lieu Fees: A fee assessed in accordance with the City's General Plan Housing Element, Municipal Code (CMC 19.172) and the City's BMR Housing Mitigation Program Procedural Manual.
[4] Keyser Marston Associates, “City of Cupertino: Non-residential Jobs-Housing Nexus Analysis,” *City of Cupertino*, April 2015.

- Section II: The first section focuses on the BMR requirements on housing development.
- Section III: The second section is focused on the non-residential linkage fees on new office/R&D, hotel, and retail developments.
- Section IV: The third section provides key takeaways and conclusions.

The appendix to the report provides additional background data on housing trends.

II. BMR REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT

Approach

The following summarizes the methodology of the financial feasibility analysis.

Step 1. Develop Prototypes

The first step in the financial feasibility analysis is to review the types of residential and mixed-use (residential and retail) projects that would be subject to the BMR policy. In close coordination with City staff, Strategic Economics updated the residential and nonresidential prototypes used in the 2015 Nexus Study, ensuring that they represent the ownership and rental residential development types that are likely to occur in city in the short term. The prototypes varied based on assumptions regarding building type, density, unit size, etc.

Step 2. Develop Assumptions about BMR Units

Strategic Economics worked closely with City staff to develop assumptions about the percentage of inclusionary units that should be tested, the income targets, and the affordable sales prices and rents. Maximum sales prices and rents were calculated using the method and parameters established by City policy, in coordination with Hello Housing, the BMR Program administrator.

Step 3. Collect Key Inputs and Build Pro Forma

The financial feasibility of each prototype is measured using a static pro forma model that solves for the profit to the developer. A pro forma model is a tool that is commonly used to estimate whether a project is likely to be profitable. The key inputs into the financial feasibility analysis are the revenues (rents/ sales prices), development costs, and land costs. Strategic Economics collected and summarized data on land prices, residential values, and construction costs using the following data sources:

- Costar, a commercial real estate database that tracks rental multifamily properties and property transactions
- Interviews with local developers and brokers
- Redfin, a real estate brokerage firm that collects data on residential sales prices
- Review of pro formas from other projects and clients

Step 4. Calculate Financial Feasibility

The pro forma model tallies all development costs, including land costs, hard costs (construction costs), soft costs, and financing costs. The pro forma also tallies the project's total value. The project's total value is the sum of (1) the estimated value of the condominiums or townhomes (i.e. the average per unit sale price multiplied by the number of units), and (2) if applicable, the capitalized value of retail. The project's ROC is then calculated by dividing the project's net revenue (i.e. total value minus total development costs), by total development costs. To understand the potential impact of inclusionary requirements on financial feasibility, the ROC results for each prototype and inclusionary housing scenario are compared to developers' typical expectation of return, or the threshold for feasibility. If the ROC for a project is above the threshold for feasibility, it is considered financially feasible. If the ROC is below the threshold, it is not financially feasible.

More details on each step of the analysis is provided in the section below.

DEVELOPMENT PROTOTYPES

The analysis estimates the feasibility of different inclusionary requirements for five residential prototypes, as described in Figure 1. The building characteristics of each development prototype, including size, density (floor-area-ratio), and parking assumptions are based on prototypes analyzed as part of the City's 2015 Nexus Study[5]. These development prototypes represent the range of typical residential development expected to come online in Cupertino in the short term. These prototypes are mostly based on recently completed projects or development proposals in the pipeline in Cupertino. It is also assumed that future development will likely be located along Stevens Creek Boulevard, and in existing residential neighborhoods, given that these locations have been identified in the City's General Plan and Heart of the City Specific Plan as key areas for new residential and mixed-use development.

The prototypes vary based on the following characteristics:

- **Ownership and Rental.** Three of the prototypes include only for-sale units (Prototypes 1, 2, and 3) and two are rental developments (Prototypes 4 and 5).
- **Mixed-Use and Residential Only.** Two of the prototypes (Prototypes 1 and 2) are 100% residential while the attached multifamily prototypes have a ground-floor retail component (Prototypes 3, 4, and 5).
- **Project Density and Size**
    - The single-family detached prototype 1 represents detached single-family custom-built homes with an average density of 4.5 dwelling units per acre. Because this prototype has fewer than eight units, it would be allowed to pay the in-lieu fee or provide one BMR unit under the current BMR policy. The small number of units in this prototype reflects the fact that there are few potential single-family detached sites in Cupertino that can accommodate more than 7 units.
    - Prototype 2 represents two-story small lot single-family and townhome developments with a density of 15 dwelling units per acre.
    - Prototype 3 is a three-story multi-family condominium building with a density of 35 units per acre. Parking is accommodated in an above-ground podium.
    - Prototype 4 is a three-story multifamily rental building with a density of 40 units per acre. Parking is accommodated in an above-ground podium.
    - Prototype 5 is a higher-density six-story project with a density of 76 units per acre. This prototype is based on a Housing Element site that allows six to eight story heights. Parking is accommodated in an above-ground podium.
- **Parking Ratios.** The City requires 2 parking spaces per unit. However, for the multi-family prototypes there are opportunities to achieve parking reductions under certain conditions. The assumptions in the pro forma are as follows.
    - For Prototype 1 and Prototype 2, the assumption is that the development would provide all of the required parking.

[5] Keyser Marston Associates (2015). Residential Below Market Rate Housing Nexus Analysis.

- For the condominium prototype 3, developers can lower parking by 10%, assuming that the reduction is justified by a parking study.
- For multi-family rental housing prototypes 4 and 5, developers can receive parking reductions on residential units in the scenarios where 5% of the housing units are for very low-income households, in accordance with Gov't Code Sec. 65915(p).

FIGURE 1: DESCRIPTION OF PROTOTYPES

	Prototype 1 Detached Single Family	Prototype 2 Small Lot Single Family/Townhome	Prototype 3 Condominium	Prototype 4 Lower Density Rental Apartments	Prototype 5 Higher Density Rental Apartments
Tenure	For-Sale	For-Sale	For-Sale	Rental	Rental
Unit Mix	5 bedrooms	3 bedrooms	2 and 3 bedrooms	Studios, 1, 2, and 3 bedrooms	Studios, 1, 2, and 3 bedrooms
Format	Low-rise, large sites	Low-rise, small sites	Mid-rise, small sites	Mid-rise, small sites	Higher density, small sites
Number of Units	7	50	100	100	100
Parcel Size (Acres)	1.6	3.3	2.9	2.9	1.3
Residential Program					
Studios	-	-	-	10	10
1-BD	-	-	-	45	45
2-BD	-	-	50	40	40
3-BD	-	50	50	5	5
4-BD	0	-	-	-	-
5-BD	7	-	-	-	-
Total	7	50	100	100	100
Dwelling Units Per Acre	4.5	15	35	35	76
Ground Floor Retail (Sq. Ft.)	0	0	10,000	10,000	15,000
Parking	2-Car Garage + Driveway	2-Car Garage + Driveway	Podium	Podium	Podium
Parking Requirement (Per Unit)	4	2.8	2	2	2
Parking Requirement (Commercial)	n/a	n/a	4 per 1,000 sq. ft.	4 per 1,000 sq. ft.	4 per 1,000 sq. ft.
Required Parking Spaces	28	140	240	240	260
Reduced Parking Spaces (a)	28	140	216	185	205

(a) For the condominium prototype 3, developers can lower parking by 10%, assuming that the reduction is justified by a parking study. For multi-family rental housing prototypes 4 and 5, developers can receive parking reductions on residential units in the scenarios where 5% of the housing units are for very low-income households (50% AMI), in accordance with Gov't Code Sec. 65915(p).
Source: Strategic Economics, City of Cupertino.

BMR HOUSING PROGRAM ASSUMPTIONS

Strategic Economics built a pro forma model that tested the feasibility of various inclusionary housing scenarios under the existing BMR housing program and alternative scenarios. Below is a summary of the existing BMR program:

- The City currently has a BMR Housing Program that imposes an inclusionary requirement of 15% on for-sale and rental residential developments with seven or more units. For rental developments, the BMR units must be affordable to very low or low-income households[6]. For-sale developments must provide BMR units affordable to median- and moderate-income households.[7]
- Small residential projects of less than seven units can pay the housing mitigation fee or provide one BMR unit. The housing mitigation fees are based on the 2015 Nexus Study, and are currently set at $17.82 per square feet for detached single family, $19.60 per square feet for small lot single family/townhomes, $23.76 for attached multifamily residences (ownership and rental), and $11.88 per square foot for commercial/retail uses.
- The BMR program uses income limits published annually by the California Department of Housing and Community Development (HCD) for Santa Clara County, per household size. For some income categories, the income targets for pricing BMR units are slightly different from household income limits that determine eligibility. Maximum BMR sales and rent prices are determined by the City and its BMR program administrator, Hello Housing, based on the maximum affordable housing cost provisions of Section 50052.5 of the California Health and Safety Code, Section 6920 of the California Code of Regulations, and most recent published HCD income limits. The household income limits for BMR eligibility as well as the income targets for pricing BMR units are shown in Figure 2.

FIGURE 2: CITY OF CUPERTINO BMR INCOME LIMITS AND INCOME TARGET FOR PRICING BMR UNITS

	Household Income Limits	Income Target for Pricing BMR Units
Ownership		
Median	100% AMI	90% AMI
Moderate	120% AMI	110% Ami
Rental		
Extremely Low	30% AMI	30% AMI
Very Low	50% AMI	50% AMI
Low	80% AMI	60% AMI

Sources City of Cupertino Housing Element; City of Cupertino Housing Mitigation Program Procedural Manual.

The inclusionary housing scenarios tested in this analysis reflect the range of policy options under consideration by the City for ownership and rental development. They are summarized below and shown in Figure 3 and Figure 4.

[6] Rental BMR policy states that 40% of affordable units must be set aside for low income, and 60% for very low-income units.
[7] For-Sale BMR policy states that half of affordable units must be set aside for median income households, and half for moderate income households.

OWNERSHIP DEVELOPMENT

Strategic Economics tested the economic feasibility of the development of ownership housing (single-family, townhouse, and condominium prototypes) under five different inclusionary scenarios:

- Scenario 0 (No Requirements): This scenario assumes that the project is 100% market-rate, with no affordable units and no in-lieu fees required.
- Scenario 1 (Existing Policy): This scenario mirrors the City's existing inclusionary housing requirement. The development projects must provide 15% of the units at prices affordable to median- (100% AMI) and moderate-income households (120% AMI).
- Scenario 2 (20% Inclusionary): This scenario requires new ownership projects to include at least 20% BMR units, targeting median and moderate-income households.
- Scenario 3 (25% Inclusionary): This scenario requires new ownership projects to include at least 25% BMR units, targeting median and moderate-income households.
- Scenario 4 (In-Lieu Fees): This scenario assumes that the development is required to pay in-lieu fees instead of providing affordable units on-site.

These scenarios are summarized in Figure 3 below.

FIGURE 3: INCLUSIONARY HOUSING SCENARIOS TESTED FOR OWNERSHIP PROTOTYPES (DETACHED SINGLE-FAMILY PROTOTYPE 1, SMALL LOT/TOWNHOUSE PROTOTYPE 2, AND CONDOMINIUM PROTOTYPE 3)

Inclusionary Housing Scenarios	% of Units at BMR Prices	Income Targets for BMR Units*	In-Lieu Fee Payment
Scenario 0 (No Requirements)	0%	N/A	No
Scenario 1 (Existing Policy)	15%	8% of units at 90% AMI 7% of units for 110% AMI	No
Scenario 2 (20% Inclusionary)	20%	10% of units at 90% AMI 10% of units at 110% AMI	No
Scenario 3 (25% Inclusionary)	25%	13% of units at 90% AMI 12% of units at 110% AMI	No
Scenario 4 (In-Lieu Fees)	0	N/A	Yes

*Per the City of Cupertino Housing Mitigation Program Procedural Manual, the maximum sales price for median income BMR units is set at 90% AMI. The maximum sales price for moderate income BMR units is set at 110% AMI.
Sources: City of Cupertino Housing Mitigation Program Procedural Manual, 2018; Strategic Economics, 2018.

RENTAL DEVELOPMENT

Strategic Economics tested the economic feasibility of the development of ownership housing (single-family, townhouse, and condominium prototypes) under five different inclusionary scenarios:

- Scenario 0 (No Requirements): This scenario assumes that the project is 100% market-rate, with no affordable units and no in-lieu fees required.
- Scenario 1 (Existing Policy): This scenario mirrors the City's existing inclusionary housing requirement. The development projects must provide 15% of the units at prices affordable to low-income (80% AMI) and very low-income households (50% AMI).
- Scenario 2 (20% Inclusionary): This scenario requires new ownership projects to include at least 20% BMR units, targeting median and moderate-income households.

- Scenario 3 (25% Inclusionary): This scenario has a higher inclusionary requirement of 25% and targets lower income groups. The income targets include low-income (80% AMI), very low-income (50% AMI), and extremely low-income households (30% AMI).
- Scenario 4 (In-Lieu Fees): This scenario assumes that the development is required to pay in-lieu fees instead of providing affordable units on-site.

These scenarios are summarized in Figure 4 below.

FIGURE 4: INCLUSIONARY HOUSING SCENARIOS TESTED FOR RENTAL PROTOTYPES (LOWER DENSITY RENTAL PROTOTYPE 4 AND HIGHER DENSITY RENTAL PROTOTYPE 5)

Inclusionary Housing Scenarios	% of Units at BMR Rents	Income Targets for BMR Units*	In-Lieu Fee Payment
Scenario 0 (No Requirements)	0%	N/A	No
Scenario 1 (Existing Policy)	15%	9% of units at 50% AMI 6% of units at 60% AMI	No
Scenario 2 (20% Inclusionary)	20%	10% of units at 50% AMI 10% of units at 60% AMI	No
Scenario 3 (25% Inclusionary)	25%	10% of units at 50% AMI 10% of units at 60% AMI 5% of units at 30% AMI	No
Scenario 4 (In-Lieu Fees)	0	N/A	Yes

*Per City policy, pricing for low-income BMR units is set at 60% AMI.
Sources: City of Cupertino Housing Mitigation Program Procedural Manual, 2018; Strategic Economics, 2018.

Financial Feasibility Methodology

This section describes the method used to measure financial feasibility and the major cost and revenue assumptions underlying the analysis. Additional information is provided in the Appendix.

MEASURING FINANCIAL FEASIBILITY

The financial feasibility of each prototype is measured using a static pro forma model that solves for the profit to the developer. A pro forma model is a tool that is commonly used to estimate whether a project is likely to be profitable. For a policy analysis like this one, we use development prototypes to represent typical projects. However, it is important to note that individual development projects may be less or more profitable than these prototypes, depending on the specifics of the development program, development costs (construction and land), sources of financing, and other factors. Furthermore, because it is a static model reflecting today's market conditions, the pro forma analysis does not factor in changes in prices/rents, construction costs, or financing.

For the purposes of measuring financial feasibility in this analysis, developer profit was measured by using one of two metrics:

- **Return on cost (ROC) for ownership housing.** ROC is a common measure of project profitability for residential ownership development. The pro forma model tallies all development costs, including land costs, hard costs (construction costs), soft costs, and financing costs. The pro forma also tallies the project's total value. The project's total value is the sum of (1) the estimated value of the condominiums or townhomes (i.e. the average per unit sale price multiplied by the number of units), and (2) if applicable, the capitalized value of retail. The project's ROC is then calculated by dividing the project's net revenue (i.e. total value minus total development costs), by total development costs.
- **Yield on cost (YOC) for rental housing.** YOC is a common measure of profitability for income-generating projects, such as residential rental development. The pro forma model tallies all development costs (land costs, hard costs, soft costs, and financing costs). The pro forma also estimates total revenues: the project's net annual operating income is the stabilized income from the property (i.e. rental income generated from both the residential and retail uses), minus operating expenses and an allowance for vacancy. The YOC is estimated by dividing the total annual net operating income by total development costs.

RETURN THRESHOLDS

To understand the potential impact of inclusionary requirements on financial feasibility, the ROC and YOC results for each prototype and inclusionary housing scenario are compared to developers' typical expectation of return. These return thresholds are summarized in Figure 5 and discussed below:

- For the Single-Family Detached Prototype 1, the minimum ROC threshold ranges between 10 to 15%, based on developer interviews for new single-family development in Cupertino.
- For the Small Lot Single-Family/Townhouse Prototype 2 and the Condominium Prototype 3, the minimum ROC threshold ranges between 18 to 20%, based on a review of pro forma models for new multifamily ownership projects in Santa Clara County.
- For the Lower Density Apartment Prototype 4 and the Higher Density Apartment Prototype 5, the minimum YOC threshold ranges between 4.75% and 5.25%. According to the developers interviewed for this study, and a review of recent development project pro formas in the Silicon

Valley, the minimum YOC for a new multi-family development project should usually be 1.0 to 1.5 points higher than the published capitalization rate (cap rate). The current cap rate for multifamily properties in the San José Metropolitan Area is between 3.75 to 4.25%.[8] The cap rate, measured by dividing the net operating income generated by a property by the total project value, is a commonly used metric to estimate the value of an asset. Cap rates rise and fall along with interest rates. In a climate of rising interest rates, it is important to set the expectations of YOC at a conservative level, to allow for a margin between the cap rate and the rate of return. It is also important to consider that investors consider a wide range of factors to determine if a development project makes financial sense, and some investors may have different levels of risk tolerance than others.

FIGURE 5: MINIMUM RETURN THRESHOLDS BY PROTOTYPE

Return on Cost Thresholds	
Prototype 1: Detached Single Family	10-15%
Prototype 2: Small Lot/Townhomes	18-20%
Prototype 3: Condominiums	18-20%
Yield on Cost Thresholds	
Prototype 4: Lower-Density Rental Apartments	4.75-5.25%
Prototype 5: Higher-Density Rental Apartments	4.75-5.25%

Source: Developer interviews and a review of recent project pro formas, 2018; Strategic Economics, 2018.

REVENUE ASSUMPTIONS

MARKET RATE RESIDENTIAL

There is significant pent-up housing demand in Santa Clara County and the broader Bay Area region, as housing development has not kept up with employment growth. Between 2009 and 2015, Santa Clara County added over 170,000 new jobs between 2010 and 2015, but only 29,000 new housing units.[9] Apartment rents accelerated beginning in 2011, as the economy emerged from the Great Recession, and continued growing at an average annual rate of nearly eight percent until 2015. Since then rents have continued to grow at a slower pace of about four percent.

Sales prices in Cupertino and Santa Clara County have been escalating at a rapid rate over the last five years. In Cupertino, the median sales price for a single-family home increased from $1.68 million in 2014 to $2.37 million in 2018.[10] Similarly, the median sales price for a condominium climbed from $895,500 in 2014 to $1.4 million in 2018.[11]

The market-rate sale prices and rents assumed for each prototype are summarized in Figure 6. The values are calculated as a weighted average to reflect that different types of units have different unit

[8] CBRE Investor's Cap Rate Survey (H1, 2018).
[9] SPUR, "Room for More: Housing Agenda for San José," August 2017.
[10] Santa Clara County Association of Realtors, 2014 and 2018.

https://www.sccaor.com/pdf/stats/2014.pdf

https://www.sccaor.com/pdf/stats/2018.pdf.

[11] Ibid

values. For new single-family detached development (Prototype 1), sale prices were based on sales of newly built single-family homes in Cupertino as reported by Redfin. Sales prices for small lot single-family/townhomes (Prototype 2) and condominium projects (Prototype 3) were based on recent re-sales in Cupertino as reported by Redfin. The Appendix to this report (Figures A-1 through A-3) includes detailed information on the project comparables used to inform these estimates.

Because of the lack of recently built apartment projects in Cupertino, the rental rate estimates for rental units (Prototypes 4 and 5) were based on developer interviews and a review of recently built, comparable apartment projects in Cupertino and neighboring cities (Mountain View, Sunnyvale, Campbell, and Santa Clara), as reported by Costar. Since Cupertino's apartment buildings command higher rents than in the other cities, a 5% premium was applied over the market area's weighted average. Figure A-4 in the Appendix includes detailed information on the project comparables used to inform these estimates.

FIGURE 6: MARKET RATE RESIDENTIAL SALE PRICES AND MONTHLY RENTS, BY PROTOTYPE

	Unit Mix	Unit Size (Sq. Ft.)	Sale Price Per Sq. Ft.	Sale Price Per Unit
Prototype 1: Single Family				
5-BD	100%	3,700	$946	$3,500,200
Prototype 2: Small Lots/Townhomes				
3-BD	100%	1,850	$970	$1,794,500
Prototype 3: Condominiums				
2-BD	50%	1,350	$1,100	$1,485,000
3-BD	50%	1,600	$1,000	$1,600,000
Weighted Average Unit Size/Sale Price		1,475	$1,050	$1,542,500
Prototype 4: Lower-Density Rental				
Studios	10%	680	$4.94	$3,360
1-BD	45%	800	$4.73	$3,780
2-BD	40%	1,100	$4.30	$4,725
3-BD	5%	1,400	$4.13	$5,775
Weighted Average Unit Size/Monthly Rent		938	$4.54	$4,216
Prototype 5: Higher-Density Rental				
Studios	10%	680	$4.94	$3,360
1-BD	45%	800	$4.73	$3,780
2-BD	40%	1,100	$4.30	$4,725
3-BD	5%	1,400	$4.13	$5,775
Weighted Average Unit Size/Monthly Rent			$4.54	$4,216

Source: Strategic Economics, 2018.

The total value of market-rate units is summarized in Figure 7. For the ownership prototypes (Prototypes 1, 2, and 3), the total project value is obtained by multiplying the per unit sale price by the total number of units. For the rental prototypes (Prototypes 4 and 5), an income capitalization approach is used. This approach first estimates the annual net operating income (NOI) of the prototype, which is the difference between project income (annual rents) and project expenses (operating costs and vacancies). The NOI is then divided by the current cap rate to derive total project value.[12]

FIGURE 7. MARKET RATE RESIDENTIAL VALUE CALCULATION, BY PROTOTYPE

		Prototype 1	Prototype 2	Prototype 3	Prototype 4	Prototype 5
		Detached Single Family	Small Lot Single Family/ Townhome	Condo	Lower Density Rental Apartments	Higher Density Rental Apartments
Weighted Average Monthly Rent (a)	per unit	n/a	n/a	n/a	$4,216	$4,216
Annual Rent	per unit	n/a	n/a	n/a	$50,589	$50,589
Vacancy Allowance		n/a	n/a	n/a	5.00%	5.00%
Operating Expenses	% gross revenue	n/a	n/a	n/a	30.00%	30.00%
Annual Net Operating Income	per unit	n/a	n/a	n/a	**$32,883**	**$32,883**
Capitalization Rate (b)		n/a	n/a	n/a	4.25%	4.25%
Sales Value/Capitalized Value	per unit	**$3,500,200**	**$1,794,500**	**$1,542,500**	**$773,714**	**$773,714**
Total Units		7	50	100	100	100
Total Residential Value (c)	total project	**$24,501,400**	**$89,725,000**	**$154,250,000**	**$77,371,412**	**$77,371,412**

(a) See Figure 5 for details on how the per unit sale price was derived.
(b) CBRE, H1 2018 Cap Rate Survey. Cap rates for the San José Metropolitan Area were between 3.75% and 4.25% for infill multifamily Class A.
(c) Assuming all units are market rate. Total residential value is calculated by multiplying the per unit sales value/capitalized value (which is a weighted average) by the total number of units.
Sources: CBRE, 2018; CoStar, 2018; Strategic Economics, 2018.

BELOW MARKET RATE HOUSING

BMR residential values at different AMI levels are summarized in Figure 8. Maximum sales prices and rents were provided by Hello Housing, the City's BMR program administrator. Sales prices and rents for BMR units were calculated using the method and parameters established in the City's Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units ("BMR Manual").[13]

An income capitalization approach is also applied to BMR units to derive total residential value.

[12] As mentioned above, the CBRE Investor's Cap Rate Survey (H1, 2018) estimates the cap rate for infill multifamily Class A in San José Metro Area to range from 3.75 to 4.25%.
[13] Maximum sales price calculations incorporate a 10% down payment, as well as an interest rate based on a 10-year rolling average for 30-year fixed-rate mortgages, according to data from Freddie Mac. Resale prices for existing BMR units are determined by the City. Annual housing costs associated with BMR rental units, including rent, utility costs, parking fees, and other costs, may not in sum exceed 30% of the annual income associated with the income target for which the unit is designated.

FIGURE 8. BELOW MARKET RATE RESIDENTIAL VALUES, BY PROTOTYPE AND AMI LEVEL

Income Target for Pricing BMR Units	Prototype 1 Detached Single Family	Prototype 2 Small Lot Single Family/ Townhomes	Prototype 3 Condominium	Prototype 4 Lower Density Rental Apartments	Prototype 5 Higher Density Rental Apartments
30% AMI (Extremely Low)	n/a	n/a	n/a	$116,806	$116,806
50% AMI (Very Low)	n/a	n/a	n/a	$211,968	$211,968
60% AMI (Low)*	n/a	n/a	n/a	$260,224	$260,224
90% AMI (Median)*	$483,270	$344,879	$322,981	n/a	n/a
110% AMI (Moderate)*	$612,662	$462,872	$435,374	n/a	n/a

*Per policy, the maximum price for BMR units for low income is set at 60% AMI, median income at 90% AMI, and moderate income at 110% AMI.
Note: All values are weighted averages, according to each prototype's unit mix. Affordable sale prices and rents were provided by the City of Cupertino and Hello Housing, based on 2018 Santa Clara County income and rent limits, published by the California Tax Credit Allocation Committee, and the 2018 Santa Clara County maximum utility allowance, published by HUD.

RETAIL COMMERCIAL

Retail lease assumptions were developed from Costar listings for comparable ground floor retail spaces in Cupertino, with capitalization rates reported by CBRE for the San José Metro Area. The annual net operating income and capitalized value were calculated based on the assumptions shown in Figure 9.

FIGURE 9. RETAIL REVENUE ASSUMPTIONS AND CAPITALIZED VALUE

	Unit	New Retail (NNN)
Assumptions		
Monthly Rent, Triple Net (a)	Per SF	$4.25
Vacancy	Percent	10%
Operating Expenses	Percent	Pass through
Capitalization Rate	Percent	7.00%
Capitalized Value		
Gross Annual Retail Income	Per SF	$51.00
Less Retail Vacancy	Per SF	-$5.10
Less Operating Expenses	Per SF	$0.00
Annual Net Operating Income	Per SF	$45.90
Capitalized Value	**Per SF**	**$655.71**

(a) Based on recent lease transactions in Cupertino for recently constructed ground-floor retail. Under a triple net lease (NNN) the tenant pays operating expenses, including real estate taxes, building insurance, and maintenance (the three "nets") on the property in addition to the rents.
(b) Based on the CBRE H1 2018 Cap Rate Survey. Cap rates for the San José Metropolitan Area were between 4.5% to 5.5% for (Class A) and 6.25% to 7.25% (Class B) for Neighborhood Retail.

Source: CBRE, 2018; Costar, 2018; Strategic Economics, 2018.

DEVELOPMENT COSTS

The development costs incorporated into the pro forma analysis include land costs, hard costs (construction materials and labor), soft costs, and financing costs. Cost assumptions are summarized in Figure 10 and described below.

LAND COSTS

A critical factor for development feasibility is the cost of land. To determine the market value of sites zoned for residential use in Cupertino, Strategic Economics interviewed developers and reviewed recent pro formas for similar development projects in Cupertino and nearby communities. Recognizing that one of the key factors that drives the value of the site is the permitted density, this analysis assumes that sites zoned for single family detached homes are valued at $9 million per acre ($207 per square foot), while sites zoned for higher-density housing are valued at $10 million per acre ($230 per square foot).

Note that these values are approximations for the purposes of the feasibility analysis; in reality, the value of any particular site is likely to vary based on its location, amenities, and property owner expectations.

HARD COSTS

Hard costs are based on Strategic Economics' review of pro formas for similar development projects, as well as interviews with developers active in Cupertino and surrounding cities. The assumptions for hard costs, shown in Figure 10, include estimates for basic site improvements and construction costs for residential areas, retail areas, and parking structures.

It should be noted that construction costs have been escalating rapidly in the Bay Area in the last several years[14]; project feasibility is highly sensitive to changes in construction cost assumptions.

SOFT COSTS AND FINANCING COSTS

Soft costs include items such as architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, developer overhead, and city fees, as shown in Figure 10. City fees and other development impact fees were calculated for the individual prototypes based on data provided by City staff. Detailed fee calculations are shown in Figure 21. Other soft costs were estimated based on standard industry ratios, calculated as a percentage of hard costs.

[14] Terner Center for Housing Innovation, UC Berkeley. Understanding the Drivers of Rising Construction Costs in California (Ongoing Research), https://ternercenter.berkeley.edu/construction-costs.

FIGURE 10: DEVELOPMENT COST ASSUMPTIONS

	Metric	Estimate
Land Costs		
Land zoned for single-family	per site acre	$9 million
Land zoned for townhomes/multi-family/mixed-use	per site acre	$10 million
Hard Costs		
Site Costs (demo, infrastructure, etc.)	per site sq. ft.	$30
Residential Area		
Single Family (includes 2-car garage)	per gross sq. ft.	$95
Townhomes (includes 2-car garage)	per gross sq. ft.	$150
Stacked condominiums (Type V)	per gross sq. ft.	$275
Stacked apartments (Type V)	per gross sq. ft.	$235
Higher density apartments (Type 3 modified)	per gross sq. ft.	$300
Retail Area (Including T.I)	per gross retail sq. ft.	$130
Surface parking	per space	$10,000
Podium parking	per space	$35,000
Soft Costs		
Architectural, Engineering, Consulting	% of hard costs	6%
Taxes, Insurance, Legal, Accounting	% of hard costs	3%
Other	% of hard costs	3%
Contingency	% of hard costs	5%
Developer Overhead and Fees	% of hard costs	4%
City Permits and Fees (a)		
Prototype 1	per unit	$153,022
Prototype 2	per unit	$83,463
Prototype 3	per unit	$67,755
Prototype 4	per unit	$65,949
Prototype 5	per unit	$67,241
Financing Costs		
Financing	% of hard and soft costs	6%

(a) Includes City fees and permits, school district fees, and sanitation district fees paid on the residential and retail component of each prototype for market rate units. Includes housing mitigation fee for the retail component.

Sources: Developer interviews, 2018; City of Cupertino, 2018; Cupertino School District and Fremont High School District, 2018; Strategic Economics, 2018.

Key Results

This section summarizes the findings of the financial feasibility analysis under different inclusionary housing scenarios for each prototype. Figure 11 and Figure 12 demonstrate the return obtained by each prototype, compared to the minimum threshold for feasibility. Figure 21 shows development costs by type and detailed City fees. Figure 22 through Figure 26 provide the pro forma results for each prototype.

Ownership residential development can feasibly support higher inclusionary requirements than rental development. While growth in apartment rents has reportedly started to plateau in Santa Clara County in the last year, ownership prices (including condominium prices) continue to increase, making it generally more feasible to build ownership projects.[15]

Detached single-family development (Prototype 1) can support an inclusionary requirement of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, the single-family detached Prototype 1 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return on cost (ROC) well above the minimum threshold of 10%. Recent sales prices of newly constructed single-family homes in Cupertino are sufficient to offset development costs as well as support inclusionary requirements or the payment of Housing Mitigation Fees. However, the single-family detached prototype cannot support an inclusionary requirement of 25% (Scenario 3), which generates a return of less than 1%. Figure 22 provides more detailed pro forma results for this prototype.

Small lot/townhome development (Prototype 2) can also support all inclusionary requirement of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, Prototype 2 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return exceeding the minimum threshold of 15% required for feasibility. Although there has been limited townhome construction in recent years in Cupertino, recent townhome re-sales suggest that prices for new construction would generate sufficient revenues to offset development costs as well as support any inclusionary requirement or the payment of Housing Mitigation Fees. Figure 23 provides more detailed pro forma results for this prototype.

A mixed-use condominium prototype (Prototype 3) can support inclusionary requirements of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, Prototype 3 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return well above the minimum threshold of 15%. Despite the lack of recent condominium construction in Cupertino, condominium re-sales suggest that prices for new construction would support any of the scenarios that impose an inclusionary requirement or the payment of in-lieu fees. Figure 24 provides more detailed pro forma results for this prototype.

The lower density mixed-use apartment prototype (Prototype 4) is nearly feasible as a 100% market-rate project. Without any BMR requirements, the lower density rental prototype achieves a yield on cost of 4.5%, below the minimum requirement of 4.75%, as shown in Figure 12. The lower density rental prototype does not generate sufficient revenues to support inclusionary requirements or in-lieu fees under current rents and costs. Figure 25 provides the pro forma for this prototype.

[15] Mercury News, Louis Hansen, May 16, 2018. Bay Area condo market heats up as alternative to pricey homes. https://www.mercurynews.com/2018/05/16/bay-area-condo-market-heats-up-as-alternative-to-pricier-homes/

The higher density rental multifamily prototype (Prototype 5) can support Housing Mitigation Fee payments (Scenario 4) but cannot feasibly provide inclusionary BMR units under current market rents, construction costs, and land costs. Prototype 5 achieves a higher YOC than Prototype 4, largely due to the greater efficiencies of a higher density project, and is financially feasible in Scenario 1 and Scenario 4 (see Figure 12). Figure 26 provides more detailed pro forma results.

The lower density mixed-use apartment prototype (Prototype 4) can feasibly provide up to 15% inclusionary BMR units if it could command 15% higher revenues or if construction and land costs were reduced by 15%. If a lower density rental project were able to achieve higher revenues (15% higher) on the apartment units and on the ground-floor retail space, as shown in Figure 13 and Figure 14, the project could feasibly accommodate an inclusionary requirement of 15% BMR units. Alternatively, if a development project were able to secure a construction bid and purchase a site that reduced these costs by 15%, the lower density mixed-use apartment prototype could feasibly provide 15% inclusionary BMR units (see Figure 15 and Figure 16).

The higher density mixed-use apartment prototype (Prototype 5) can feasibly provide inclusionary BMR units if it can command 10% higher revenues or if construction and land costs were reduced by 5%. If a higher density rental project can achieve 10% higher rents on the apartments and retail space, the project can feasibly accommodate an inclusionary requirement of 15% BMR units (see Figure 17 and Figure 18). In another scenario, if a higher density mixed-use apartment could secure a construction bid and site that is 5% less expensive, this prototype could also feasibly provide 15% inclusionary BMR units (see Figure 19 and Figure 20).

Figure 11: Return On Cost for Ownership Prototypes by Inclusionary Housing Scenario

Inclusionary Housing Scenarios	Prototype 1: Single Family Detached	Prototype 2: Small Lot SF/Townhouse	Prototype 3: Condominiums
Minimum Required Return	10-15%	18-20%	18-20%
Scenario 0 (No Requirements)	31%	41%	38%
Scenario 1 (Existing Policy)	15%	26%	23%
Scenario 2 (20% Inclusionary)	14%	21%	19%
Scenario 3 (25% Inclusionary)	1%	16%	14%
Scenario 4 (In-Lieu Fees)	28%	37%	33%

Source: Strategic Economics, 2019.

Figure 12: Yield on Cost under Different Inclusionary Housing Scenarios for Multi-Family Rental Prototypes 4 and 5

Inclusionary Housing Scenarios	Prototype 4: Lower Density Rental	Prototype 5: Higher Density Rental
Minimum Required Yield on Cost	4.75%-5.25%	4.75%-5.25%
Scenario 0 (No Requirements)	4.52%	4.93%
Scenario 1 (15% Inclusionary)	4.22%	4.63%
Scenario 2 (20% Inclusionary)	4.10%	4.50%
Scenario 3 (25% Inclusionary)	3.94%	4.34%
Scenario 4 (In Lieu Fees)	4.40%	4.76%

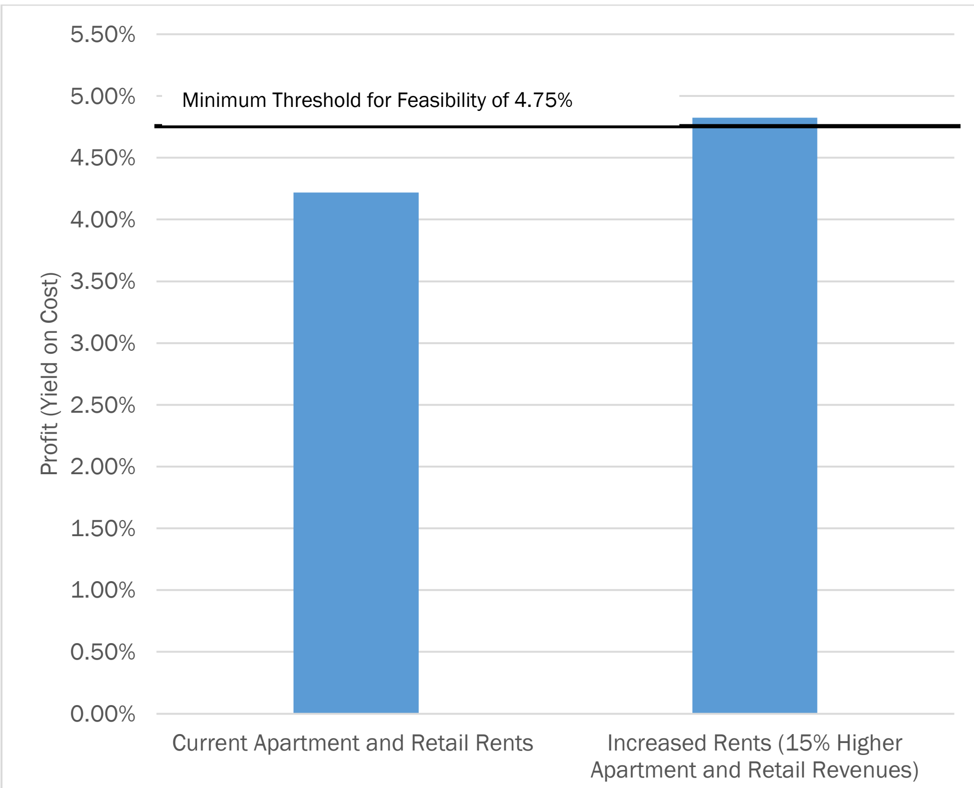
Source: Strategic Economics, 2019.

FIGURE 13: YIELD ON COST UNDER DIFFERENT REVENUE ASSUMPTIONS FOR LOWER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 4) WITH 15% BMR REQUIREMENT

Revenue Assumptions	Monthly Market Rate Apt. Rent per Unit	Monthly Retail Rent per SF	Yield on Cost	Feasibility Results
Current Apartment and Retail Rents	$4,216	$4.25	4.22%	Not Feasible
Increased Rents (15% Higher Revenues)	$4,848	$4.89	4.82%	Feasible

Source: Strategic Economics, 2019.

FIGURE 14: FEASIBILITY OF LOWER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 4) WITH 15% INCLUSIONARY BMR REQUIREMENT AND INCREASED REVENUES



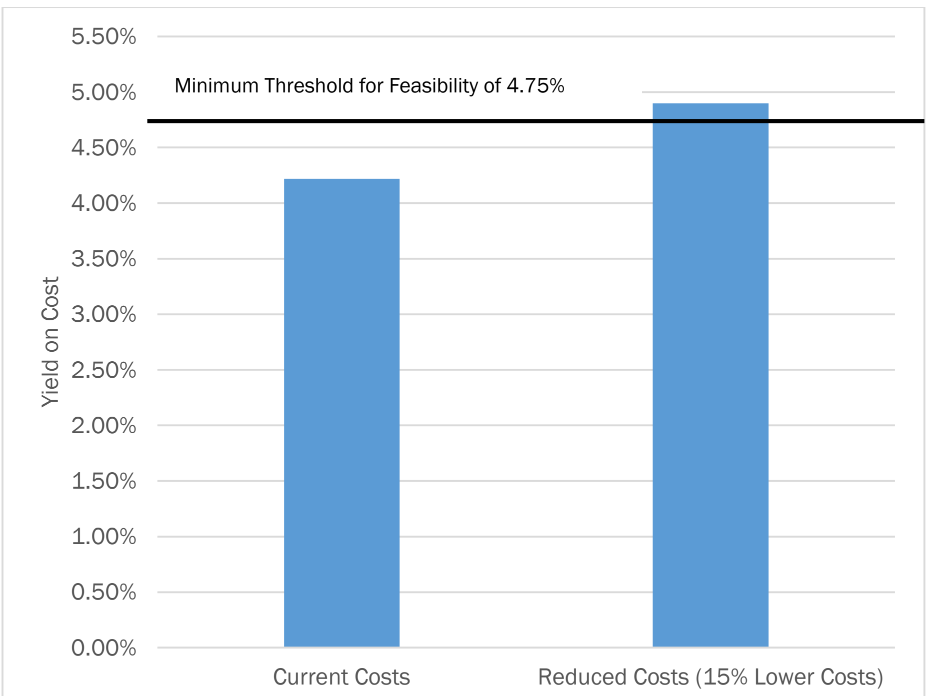
Source: Strategic Economics, 2019.

FIGURE 15: YIELD ON COST UNDER DIFFERENT COST ASSUMPTIONS FOR LOWER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 4) WITH 15% BMR REQUIREMENT

Cost Assumptions	Construction Cost per Unit	Land Cost per Unit	Yield on Cost	Feasibility Results
Current Costs	$385,958	$250,000	4.22%	Not Feasible
Reduced Costs (15% Lower Costs)	$328,064	$212,500	4.90%	Feasible

Source: Strategic Economics, 2019.

FIGURE 16: FEASIBILITY RESULTS OF LOWER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 4) WITH 15% INCLUSIONARY BMR REQUIREMENT AND LOWER COSTS



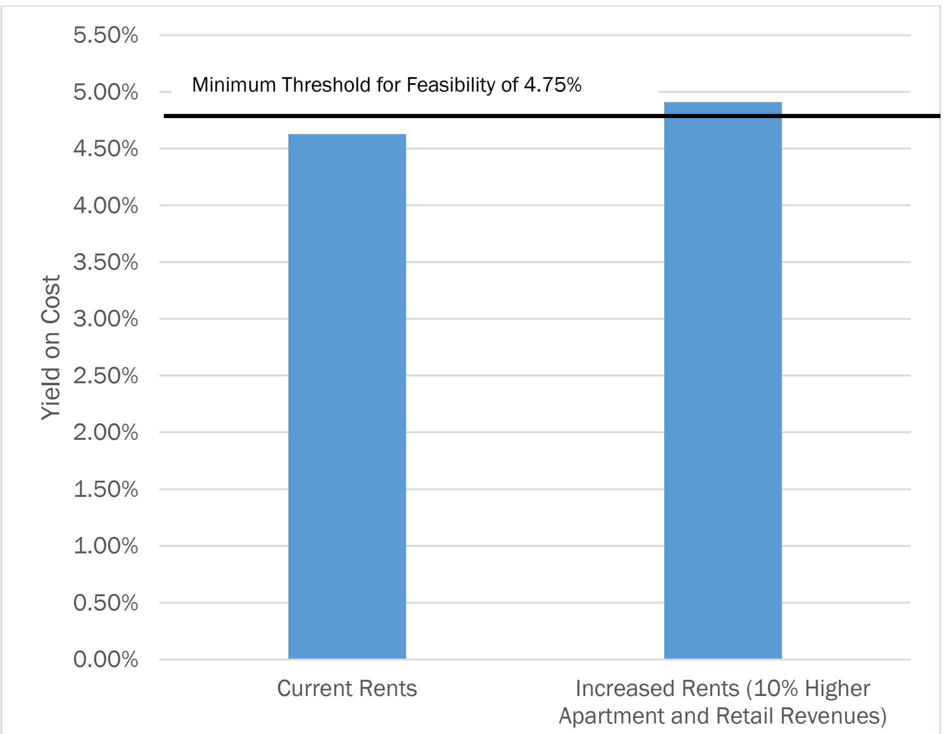
Source: Strategic Economics, 2019.

FIGURE 17: YIELD ON COST UNDER DIFFERENT REVENUE ASSUMPTIONS FOR HIGHER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 5) WITH 15% BMR REQUIREMENT

Revenue Assumptions	Monthly Market Rate Apt. Rent per Unit	Monthly Retail Rent per SF	Yield on Cost	Feasibility Results
Current Rents	$4,216	$4.25	4.63%	Not Feasible
Increased Rents (10% Higher Revenues)	$4,637	$4.68	4.91%	Feasible

Source: Strategic Economics, 2019.

FIGURE 18: FEASIBILITY RESULTS OF HIGHER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 5) WITH 15% INCLUSIONARY BMR REQUIREMENT AND HIGHER REVENUES



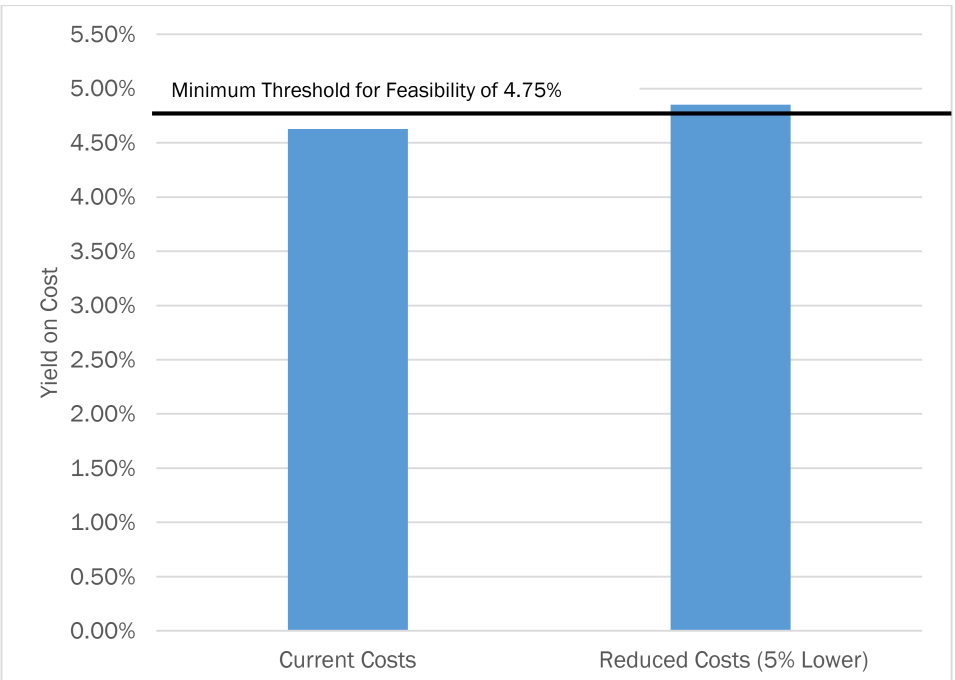
Source: Strategic Economics, 2019.

Figure 19: Yield on Cost Under Different Cost Assumptions for Higher Density Multi-Family Rental (Prototype 5) with 15% BMR Requirement

Cost Assumptions	Construction Cost per Unit	Land Cost per Unit	Yield on Cost	Feasibility Results
Current Costs	$460,195	$131,579	4.63%	Not Feasible
Reduced Costs (5% Lower Costs)	$437,185	$125,000	4.85%	Feasible

Source: Strategic Economics, 2019.

Figure 20: Feasibility Results of Higher Density Multi-Family Rental Prototype (Prototype 5) with 15% Inclusionary BMR Requirement and Lower Costs



Source: Strategic Economics, 2019.

FIGURE 21. DETAILED CALCULATION OF THE CITY OF CUPERTINO'S PERMITS AND FEES FOR EACH PROTOTYPE (PER UNIT)

	Prototype 1 Detached Single Family	Prototype 2 Small Lot Single Family/Townhome	Prototype 3 Condominium	Prototype 4 Lower Density Rental Apartments	Prototype 5 Higher Density Rental Apartments
Planning Fees					
Planning Applications	$9,210	$1,289	$645	$400	$400
CEQA	$3,571	$2,447	$1,223	$1,223	$1,223
Consultant Review	$2,111	$296	$148	$148	$148
Housing Mitigation Fee (Non-residential only)	$0	$0	$1,188	$1,188	$1,782
Public Works Fees					
Transportation Impact Fee	$6,177	$3,380	$4,374	$4,374	$4,871
Grading	$420	$59	$29	$29	$29
Tract Map	$1,350	$189	$94	$94	$94
Plan Check and Inspection	$543	$76	$38	$38	$38
Storm Drain Fees	$4,902	$501	$367	$354	$312
Parkland Dedication (a)	$105,000	$60,000	$54,000	$54,000	$54,000
Building Division Fees					
Building Fees	$11,428	$10,592	$1,664	$1,133	$1,199
Construction Tax	$752	$752	$1,075	$1,075	$1,237
Other Fees					
School District Fees (b)	$7,012	$3,506	$2,826	$1,808	$1,823
Sanitary Sewer District Connection Permit Fee	$350	$350	$70	$70	$70
Stormwater Management Fee	$197	$28	$14	$14	$14
Estimated City Fees, Total Per Unit	**$153,022**	**$83,463**	**$67,755**	**$65,949**	**$67,241**

(a) Parkland dedication fees waived for affordable units.
(b) Based on the average of Cupertino School District and Fremont Union High School District school fees.
Sources: City of Cupertino, 2018; Fremont Union School District; Cupertino School District; Cupertino Sanitary Sewer District, 2018.

FIGURE 22: FINANCIAL FEASIBILITY RESULTS FOR SINGLE-FAMILY DETACHED PROTOTYPE 1

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	7	7	7	7	7
Market Rate Units	7	6	6	5	7
Affordable Units	0	1	1	2	0
Fractional Units	0	0.05	0.4	0	0
Revenues					
Residential Capitalized Value	$24,501,400	$21,484,470	$21,484,470	$18,596,932	$24,501,400
Per Unit	$3,500,200	$3,069,210	$3,069,210	$2,656,705	$3,500,200
Development Costs					
Land Costs					
Land Costs	$14,000,000	$14,000,000	$14,000,000	$14,000,000	$14,000,000
Per Unit	*$2,000,000*	*$2,000,000*	*$2,000,000*	*$2,000,000*	*$2,000,000*
Direct Costs					
Gross Residential Area (a)	$2,775,564	$2,775,564	$2,775,564	$2,775,564	$2,775,564
Subtotal Direct Costs	$2,775,564	$2,775,564	$2,775,564	$2,775,564	$2,775,564
Per Unit	*$396,509*	*$396,509*	*$396,509*	*$396,509*	*$396,509*
Per Gross Sq. Ft.	*$95*	*$95*	*$95*	*$95*	*$95*
Indirect Costs					
City Fees (b)	$1,071,155	$991,537	$1,169,211	$861,155	$1,532,693
Other Soft Costs (c)	$582,868	$582,868	$582,868	$582,868	$582,868
Per Unit	$83,266.92	$83,266.92	$83,266.92	$83,266.92	$83,266.92
Subtotal Indirect Costs	$1,654,023	$1,574,405	$1,752,079	$1,444,023	$2,115,561
Per Unit	$236,289	$224,915	$250,297	$206,289	$302,223
Financing	$265,775	$260,998	$271,659	$253,175	$293,468
Per Unit	$37,968	$37,285	$38,808	$36,168	$41,924
Total Development Costs	$18,695,363	$18,610,968	$18,799,302	$18,472,763	$19,184,593
Per Unit	$2,670,766	$2,658,710	$2,685,615	$2,638,966	$2,740,656
Per Gross Sq. Ft.	$640	$637	$643	$632	$657
Feasibility					
Net Revenue (d)	$5,806,037	$2,873,502	$2,685,168	$124,169	$5,316,807
Return on Cost (e)	31%	15%	14%	1%	28%

(a) Includes costs for site prep and 2-car parking garage

(b) Figure 14 shows detailed City fees. Includes fractional in-lieu housing mitigation fee for scenario 1 and 2. Parkland dedication fees waived for affordable units.

(c) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead

(d) Net revenue is the project total revenue minus total development costs. (d) Return on cost is the net revenue, divided by total development costs.

(e) Return on cost is the net revenue, divided by total development costs.

Source: Strategic Economics, 2018.

FIGURE 23: FINANCIAL FEASIBILITY RESULTS FOR SMALL LOT SINGLE-FAMILY/TOWNHOUSE PROTOTYPE 2

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	50	50	50	50	50
Market Rate Units	50	42	40	37	50
Affordable Units	0	8	10	13	0
Revenues					
Residential Capitalized Value	$89,725,000	$79,265,818	$75,818,755	$72,312,696	$89,725,000
Retail Capitalized Value	$0	$0	$0	$0	$0
Total Capitalized Value	$89,725,000	$79,265,818	$75,818,755	$72,312,696	$89,725,000
Per Unit	$1,794,500	$1,585,316	$1,516,375	$1,446,254	$1,794,500
Development Costs					
Land Costs					
Land Costs	$33,333,333	$33,333,333	$33,333,333	$33,333,333	$33,333,333
Per Unit	$666,667	$666,667	$666,667	$666,667	$666,667
Direct Costs					
Site Prep/Demo	$4,356,000	$4,356,000	$4,356,000	$4,356,000	$4,356,000
Gross Residential Area (a)	$15,651,677	$15,651,677	$15,651,677	$15,651,677	$15,651,677
Subtotal Direct Costs	$20,007,677	$20,007,677	$20,007,677	$20,007,677	$20,007,677
Per Unit	$400,154	$400,154	$400,154	$400,154	$400,154
Per Gross Sq. Ft.	$192	$192	$192	$192	$192
Indirect Costs					
City Fees (b)	$4,173,154	$3,693,154	$3,573,154	$3,393,154	$5,986,154
Other Soft Costs (c)	$4,201,612	$4,201,612	$4,201,612	$4,201,612	$4,201,612
Per Unit	$84,032	$84,032	$84,032	$84,032	$84,032
Subtotal Indirect Costs	$8,374,767	$7,894,767	$7,774,767	$7,594,767	$10,187,767
Per Unit	$167,495	$157,895	$155,495	$151,895	$203,755
Financing	$1,702,947	$1,674,147	$1,666,947	$1,656,147	$1,811,727
Per Unit	$34,059	$33,483	$33,339	$33,123	$36,235
Total Development Costs	$63,418,723	$62,909,923	$62,782,723	$62,591,923	$65,340,503
Per Unit	$1,268,374	$1,258,198	$1,255,654	$1,251,838	$1,306,810
Per Gross Sq. Ft.	$608	$603	$602	$600	$626
Feasibility					
Net Revenue (d)	$26,306,277	$16,355,895	$13,036,032	$9,720,772	$24,384,497
Return on Cost (e)	41%	26%	21%	16%	37%

(a) Includes 2-car parking garage
(b) Figure 14 shows applicable city fees. Only Scenario 4 pays in-lieu housing mitigation fees. Parkland dedication fees waived for affordable units.
(c) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead
(d) Net revenue is the project total revenue minus total development costs. (d) Return on cost is the net revenue, divided by total development costs.
(e) Return on cost is the net revenue, divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 24: FINANCIAL FEASIBILITY RESULTS FOR CONDOMINIUM PROTOTYPE 3

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Capitalized Value	$154,250,000	$136,743,959	$130,983,540	$125,110,729	$154,250,000
Retail Capitalized Value	$6,557,143	$6,557,143	$6,557,143	$6,557,143	$6,557,143
Total Capitalized Value	$160,807,143	$143,301,101	$137,540,683	$131,667,871	$160,807,143
Per Unit	$1,608,071	$1,433,011	$1,375,407	$1,316,679	$1,608,071
Development Costs					
Land Costs					
Land Costs	$28,571,429	$28,571,429	$28,571,429	$28,571,429	$28,571,429
Per Unit	$285,714	$285,714	$285,714	$285,714	$285,714
Direct Costs					
Site Prep/Demo	$3,733,714	$3,733,714	$3,733,714	$3,733,714	$3,733,714
Gross Residential Area	$50,703,125	$50,703,125	$50,703,125	$50,703,125	$50,703,125
Gross Retail Area	$1,300,000	$1,300,000	$1,300,000	$1,300,000	$1,300,000
Parking	$7,560,000	$7,560,000	$7,560,000	$7,560,000	$7,560,000
Subtotal Direct Costs	$63,296,839	$63,296,839	$63,296,839	$63,296,839	$63,296,839
Per Unit	$632,968	$632,968	$632,968	$632,968	$632,968
Per Gross Sq. Ft.	$343	$343	$343	$343	$343
Indirect Costs					
City Fees (a)	$6,775,479	$5,965,479	$5,695,479	$5,425,479	$10,398,879
Other Soft Costs (b)	$13,292,336	$13,292,336	$13,292,336	$13,292,336	$13,292,336
Per Unit	$132,923	$132,923	$132,923	$132,923	$132,923
Subtotal Indirect Costs	$20,067,815	$19,257,815	$18,987,815	$18,717,815	$23,572,415
Per Unit	$200,678	$192,578	$189,878	$187,178	$235,724
Financing	$5,001,879	$4,953,279	$4,937,079	$4,920,879	$5,212,155
Per Unit	$50,019	$49,533	$49,371	$49,209	$52,122
Total Development Costs	$116,937,963	$116,079,363	$115,793,163	$115,506,963	$120,652,839
Per Unit	$1,169,380	$1,160,794	$1,157,932	$1,155,070	$1,206,528
Per Gross Sq. Ft.	$634	$630	$628	$626	$654
Feasibility					
Net Revenue (c)	$43,869,180	$27,221,739	$21,747,520	$16,160,909	$40,154,304
Return on Cost (d)	38%	23%	19%	14%	33%

(a) Figure 14 shows detailed city fees. In-lieu housing mitigation fees apply to non-residential sq. ft. and Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Return on cost is the net revenue, divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 25: FINANCIAL FEASIBILITY RESULTS FOR LOWER DENSITY RENTAL APARTMENTS PROTOTYPE 4

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Net Operating Income	$3,288,285	$2,942,477	$2,831,310	$2,691,717	$3,288,285
Retail Net Operating Income	$459,000	$459,000	$459,000	$459,000	$459,000
Total Net Operating Income	$3,747,285	$3,401,477	$3,290,310	$3,150,717	$3,747,285
Total Capitalized Value	$83,928,555	$75,791,903	$73,176,197	$69,891,657	$83,928,555
Per Unit	$839,286	$757,919	$731,762	$698,917	$839,286
Development Costs					
Land Costs					
Land Costs	$25,000,000	$25,000,000	$25,000,000	$25,000,000	$25,000,000
Per Unit	$250,000	$250,000	$250,000	$250,000	$250,000
Direct Costs					
Site Prep/Demo	$3,267,000	$3,267,000	$3,267,000	$3,267,000	$3,267,000
Gross Residential Area	$27,553,750	$27,553,750	$27,553,750	$27,553,750	$27,553,750
Gross Retail Area	$1,300,000	$1,300,000	$1,300,000	$1,300,000	$1,300,000
Parking	$7,560,000	$6,475,000	$6,475,000	$6,475,000	$7,560,000
Subtotal Direct Costs	$39,680,750	$38,595,750	$38,595,750	$38,595,750	$39,680,750
Per Unit	$396,808	$385,958	$385,958	$385,958	$396,808
Per Gross Sq. Ft.	$338	$329	$329	$329	$338
Indirect Costs					
City Fees (a)	$6,594,875	$5,784,875	$5,514,875	$5,244,875	$8,942,363
Other Soft Costs (b)	$8,332,958	$8,105,108	$8,105,108	$8,105,108	$8,332,958
Per Unit	$83,329.58	$81,051.08	$81,051.08	$81,051.08	$83,329.58
Subtotal Indirect Costs	$14,927,832	$13,889,982	$13,619,982	$13,349,982	$17,156,520
Per Unit	$149,278	$138,900	$136,200	$133,500	$171,565
Financing	$3,276,515	$3,149,144	$3,132,944	$3,116,744	$3,410,236
Per Unit	$32,765	$31,491	$31,329	$31,167	$34,102
Total Development Costs	$82,885,097	$80,634,876	$80,348,676	$80,062,476	$85,247,506
Per Unit	$828,851	$806,349	$803,487	$800,625	$852,475
Per Gross Sq. Ft.	$707	$688	$685	$683	$727
Feasibility					
Net Revenue (c)	$1,043,457	($4,842,973)	($7,172,479)	($10,170,819)	($1,318,952)
Yield on Cost (d)	4.5%	4.2%	4.1%	3.9%	4.4%

(a) Appendix shows detailed city fees. Excludes affordable housing mitigation in-lieu fee, except in Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Yield on cost is the total project net operating income divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 26: FINANCIAL FEASIBILITY RESULTS FOR HIGHER DENSITY RENTAL APARTMENTS PROTOTYPE 5

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Net Operating Income	$3,288,285	$2,942,477	$2,831,310	$2,691,717	$3,288,285
Retail Net Operating Income	$688,500	$688,500	$688,500	$688,500	$688,500
Total Net Operating Income	$3,976,785	$3,630,977	$3,519,810	$3,380,217	$3,976,785
Total Capitalized Value	$87,207,126	$79,070,475	$76,454,769	$73,170,229	$87,207,126
Per Unit	$872,071	$790,705	$764,548	$731,702	$872,071
Development Costs					
Land Costs					
Land Costs	$13,157,895	$13,157,895	$13,157,895	$13,157,895	$13,157,895
Per Unit	$131,579	$131,579	$131,579	$131,579	$131,579
Direct Costs					
Site Prep/Demo	$1,719,474	$1,719,474	$1,719,474	$1,719,474	$1,719,474
Gross Residential Area	$35,175,000	$35,175,000	$35,175,000	$35,175,000	$35,175,000
Gross Retail Area	$1,950,000	$1,950,000	$1,950,000	$1,950,000	$1,950,000
Parking	$8,190,000	$7,175,000	$7,175,000	$7,175,000	$8,190,000
Subtotal Direct Costs	$47,034,474	$46,019,474	$46,019,474	$46,019,474	$47,034,474
Per Unit	$470,345	$460,195	$460,195	$460,195	$470,345
Per Gross Sq. Ft.	$401	$392	$392	$392	$401
Indirect Costs					
City Fees (a)	$6,724,069	$5,914,069	$5,644,069	$5,374,069	$9,688,129
Other Soft Costs (b)	$9,877,239	$9,664,089	$9,664,089	$9,664,089	$9,877,239
Per Unit	$98,772	$96,641	$96,641	$96,641	$98,772
Subtotal Indirect Costs	$16,601,308	$15,578,158	$15,308,158	$15,038,158	$19,387,168
Per Unit	$166,013	$155,782	$153,082	$150,382	$193,872
Financing	$3,818,147	$3,695,858	$3,679,658	$3,663,458	$3,985,299
Per Unit	$38,181	$36,959	$36,797	$36,635	$39,853
Total Development Costs	$80,611,823	$78,451,384	$78,165,184	$77,878,984	$83,564,835
Per Unit	$806,118	$784,514	$781,652	$778,790	$835,648
Per Gross Sq. Ft.	$688	$669	$667	$664	$713
Feasibility					
Net Revenue (c)	$6,595,303	$619,090	($1,710,416)	($4,708,755)	$3,642,291
Yield on Cost (d)	4.9%	4.6%	4.5%	4.3%	4.8%

(a) Appendix shows detailed city fees. Excludes affordable housing mitigation in-lieu fee, except in Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Yield on cost is the total project net operating income divided by total development costs.
Source: Strategic Economics, 2018.

Peer Cities

Strategic Economics researched BMR housing programs in peer cities, including: San Jose, Santa Clara, Campbell, Mountain View, Sunnyvale, and Palo Alto. The key findings from the research are explained below and summarized in Figure 27.

INCLUSIONARY REQUIREMENTS

As shown in Figure 27, all of the cities have inclusionary requirements for ownership housing. They are typically set at 15%, with the exception of Mountain View and Sunnyvale, which have requirements of 10% and 12.5%, respectively. For rental housing, Palo Alto and Sunnyvale have a housing mitigation fee, but no inclusionary requirements. However, both cities are considering revising their policies on rental housing.

TARGET INCOME

For inclusionary requirements on ownership housing, all of the peer cities have targeted moderate-income households, roughly defined as between 80 and 120% of AMI. For rental housing, the income target is typically low-income (up to 80% AMI), although San Jose also targets very low-income households (up to 50% AMI). Santa Clara has targeted moderate-income households for both ownership and rental housing requirements.

Cities that charge housing mitigation fees on rental or ownership housing have set their fees based on nexus studies that measure the affordable housing needs of very-low, low-, and moderate-income households.

None of the peer cities have targeted extremely-low income households for their inclusionary requirements. However, city staff from Sunnyvale and San Jose have indicated that they are providing funding to develop housing for extremely-low income households through the revenues they have collected from housing mitigation fees, in-lieu fees, and other housing funds. Local revenues are often combined with Santa Clara County Measure A funds – which are specifically targeted to extremely-low income households – as well as 9% and 4% Low Income Housing Tax Credits (LIHTC) and Section 8 vouchers from the Santa Clara County Housing Authority.

ALTERNATIVE MEANS OF COMPLIANCE

All of the cities prefer that units are built onsite, but they allow alternative means of complying with inclusionary requirements. Developers can typically satisfy the requirement by providing units off-site, paying in-lieu fees, or dedicating land for affordable housing. However, in some cases, the developer must first demonstrate that the inclusionary requirement is not feasible. For example, the City of Palo Alto requires that the applicant present “substantial evidence to support a finding of infeasibility” and of “feasibility of any proposed alternative.” In other cities, like Mountain View, Sunnyvale, and Santa Clara, developers must receive approval from the City Council for the alternative. In Sunnyvale and San Jose, developers that pursue an alternative to the onsite inclusionary requirement must provide a higher number of affordable units.

FIGURE 27: INCLUSIONARY HOUSING REQUIREMENTS AND HOUSING MITIGATION FEES IN PEER CITIES

	Inclusionary Requirement		Target Income for BMR Policy		Housing Mitigation Fee/In Lieu Fees		
City	Ownership	Rental	Ownership	Rental	Ownership	Rental	Alternatives to compliance
Cupertino	15%	15%	1/2 of BMR units at Median (100% AMI) and 1/2 of BMR units at Moderate (120% AMI)*	60% of BMR units at Very Low (50% AMI) and 40% of BMR units at Low (60% AMI)	-Single family: $17.82/sf -Small lot single family/Townhome: $19.60/sf -Multifamily attached: $23.76/sf	-Multifamily Attached (up to 35 du/ac): $23.76/sf -Multifamily attached (over 35 du/ac): $29.70/sf	Onsite units are preferred, but alternatives may be possible with City Council approval. These include: on-site BMR rental units where ownership units or a fee is required; purchase of off-site units to be dedicated/rehabbed as for-sale or rental BMR units; development of off-site units to be dedicated as for-sale or rental BMR units; land for development of affordable housing. An Affordable Housing Plan is required.
Mountain View	10%	15%	Moderate (80 - 120% AMI)	Low (50-80% AMI)	In-lieu fee of 3% of sales price	$34/sf (applies to fractional units only)	Onsite units are preferred, but City Council can approve other alternatives.
Sunnyvale	12.5%	None	Moderate (Below 120% AMI)	Low (Below 80% AMI)	In-lieu fee of 7% of sales price	$17/sf	For ownership units, onsite units are preferred. With Council approval, developers may provide alternatives if they result in a higher number of BMR units.
San Jose	15%	15%	Moderate (Below 120% AMI)	9% Mod (80% AMI) 6% VLI (30-50% AMI)	In-lieu fee of $153,000 per unit.	$17.41/sf for projects of 3 to 19 units in size	Developers have the option of providing units off-site or paying in-lieu fees, but the affordable housing requirement is 20%, and the target income is lower.
Santa Clara	15%	15%	Moderate (Below 100% AMI)	Moderate (Below 100% AMI)		$20-$30/sf, depending on housing type	Alternatives include dedication of land for affordable housing, development of affordable units at an off-site location, or some combination thereof, with approval from City Council through a Development Agreement.
Campbell	15%	15%	Moderate (Below 110% AMI)	Low (Below 70% AMI)	$34.50/sf for projects of 6 units or less	None	Developers can dedicate land or pay in lieu fees.
Palo Alto	15%	None	2/3 BMR units at 80-100% AMI and 1/3 BMR units at 100-120% AMI	Mod (80-120% AMI) Low (50-80% AMI) VLI (30-50% AMI)	$50-$75/sf depending on housing type	$20/sf	Developers can dedicate land, pay in lieu fees, provide rental units within the ownership project, convert or rehabilitate affordable housing units. They must first demonstrate that the inclusionary requirement is not feasible.

*Sales prices set at 110% for BMR moderate income unit and 90% for a BMR median income unit.
Source: Interviews with City staff, BMR housing ordinances, Strategic Economics,

III. NON-RESIDENTIAL LINKAGE FEE

The City is considering updating non-residential fees, otherwise known as commercial linkage fees, on new workplace buildings (office, R&D, hotel, and retail development projects). Linkage fees are used to mitigate the impacts of an increase in affordable housing demand associated with a net increase in worker households. as employees at new non-residential developments seek housing nearby. The funds raised by the linkage fees are deposited into a housing fund specifically reserved for use by a local jurisdiction to increase the supply of affordable housing for the workforce. Linkage fees are one of several funding sources that jurisdictions can use to help meet affordable housing needs of new workers.

The City first adopted linkage fees for office and R&D projects in 1992, and expanded the program to apply to retail and hotel developments in 2004. Following a 2015 nexus study update completed by Keyser Marston Associates, the City amended the fees for all three uses to their current levels--$23.76 for office/R&D uses, and $11.88 for hotel and retail uses.[16] This memo report provides updated policy analysis, including a financial feasibility analysis, and a review of current non-residential linkage fees in neighboring cities to establish a recommendation on updated linkage fees in Cupertino.

Approach

METHODOLOGY

The financial feasibility of establishing updated non-residential linkage fees in Cupertino was tested using a pro forma model that measures profit for the developer or investor. Yield on cost (YOC) is a commonly used metric indicating the profitability of a non-residential project. The pro forma model tallies all development costs, including land, direct construction costs, indirect costs (including financing), and developer fees. Revenues from lease rates or hotel room rates are the basis for calculating annual income from the new non-residential development. The total operating costs are subtracted from the total revenues to calculate the annual net operating income. The YOC is then estimated by dividing the annual net operating income by the total development costs. The fee levels were then added as an additional development cost to measure the resulting change in the YOC.

DEVELOPMENT PROTOTYPES

The analysis estimates the feasibility of potential linkage fees for three non-residential prototypes: office/R&D, hotel, and retail. The building characteristics of each development prototype, including size, density (floor-area-ratio), and parking assumptions are based on a review of projects that were recently built, and in planning stages in Cupertino, as well as recently built and pipeline projects in surrounding areas.

Based on the development activity in Cupertino, the following is assumed regarding each prototype:

- Office/R&D: Based on a review of market activity in the City, recent and proposed developments in neighboring cities, it is assumed that the office/R&D development project would be a speculative building serving the tech industry.

[16] Keyser Marston Associates, "City of Cupertino: Non-residential Jobs-Housing Nexus Analysis," *City of Cupertino*, April 2015.

- Hotel: Newer hotel development projects in Cupertino and surrounding areas are typically upscale, select-service chains that serve business travelers.
- Retail: The retail development prototype is assumed to be a small low-density retail center.

The details regarding the size, density (floor-area ratio), parking, and other key assumptions for each prototype are summarized in Figure 28 below.

FIGURE 28. DESCRIPTION OF DEVELOPMENT PROTOTYPES

Prototype Description	Office/R&D	Hotel	Retail
Project Type	Class A Office Speculative Building	Select-Service Upscale Business Hotel	Neighborhood Retail Shopping Center
Parcel Size (Sq. Ft.)	174,240	87,120	21,780
Parcel Size (Acres)	4	2	0.5
Total Stories	4	5	1
Floor-Area Ratio (without parking) (a)	1.50	1.20	0.35
Gross Building Area (GSF)	261,360	104,544	7,623
Efficiency Ratio (b)	90%	n/a	90%
Net area (NSF)	235,224	n/a	6,861
Number of rooms	n/a	140	n/a
Total Parking Spaces	825	155	30
Surface	93	70	30
Structured Garage	732	0	0
Underground	0	85	0
Parking Ratio (per room)	n/a	1.1	n/a
Parking Ratio (per 1,000 SF)	3.2	1.5	4.0

Notes:
(a) The Floor-Area Ratio (FAR) is often used as a measure of density. In this analysis, it is calculated as the gross building area, not including parking, divided by the parcel size.
(b) The Efficiency Ratio refers to the ratio of gross building area to ne leasable area. An efficiency ratio of 90% means that 90% of the gross building area is leasable space. In hotels, revenue is informed by room count, rather than square footage, and therefore the net area is omitted.

DEVELOPMENT COSTS

The development costs incorporated into the pro forma analysis include hard costs, (construction materials and labor) land costs, soft costs (indirect costs), and financing costs.

HARD COSTS

Hard costs are based on Strategic Economics' review of pro formas for similar development projects, industry publications, and interviews with developers with projects in Cupertino and nearby jurisdictions. The assumptions for hard costs by prototype are described in Figure 29. They include estimates for basic site improvements, construction costs for the building, and costs for parking by type. In addition, the cost of construction includes a tenant improvement allowance for office/R&D and retail uses, as well as a Furniture, Fixtures, and Equipment (FF&E) allotment for hotel uses, which are both typical for this market.

FIGURE 29. HARD COSTS ASSUMPTIONS BY PROTOTYPE

Cost Category	Metric	Office/R&D	Hotel	Retail
Site Prep	Per Site Sq. Ft.	$3	$3	$3
Construction Costs	Per Gross Building Sq. Ft.	$300	$250	$165
	Per Room		$342,472	
Parking Costs	Cost per Space			
Surface	$7,000			
Structured Garage	$30,000			
Underground	$60,000			
Land Costs				
Entitled Land	Per Site St. Ft.	$137.74	$137.74	$75.00
	Per Acre	$6,000,000	$6,000,000	$3,267,000
Tenant Improvement Allowance	Per Building Net Sq. Ft.	$75	n/a	$35
Furniture, Fixtures, Equipment	Per Room	n/a	$35,000	n/a

Source: Costar, 2019; HVS Consulting, 2017; review of pro formas for comparable development projects in Santa Clara County; interviews with developers in Cupertino and Santa Clara County, 2019; Strategic Economics, 2019.

LAND COSTS

One of the critical cost factors for a non-residential development project is land cost. To determine the land value of sites zoned for commercial uses, Strategic Economics analyzed recent sales transactions and estimates for properties in Santa Clara County and interviewed developers.

Land values are similar for both hotel and office development in the Cupertino area, based on a review of recent transactions. Comparable values for office and hotel sites are showed in Figure 22 below. As shown, the land values typically range from $120 to $185 per square foot. One exception in the Cinnabar Street land sale for over $200 per square foot, which is in the Diridon Station Area, and planned for higher intensity development projects than the prototypes for this study. For the purposes of this analysis, it is assumed that sites zoned for office/R&D or hotel would have a land value of $138 per square foot ($6 million per acre).

There are fewer land sales transactions for sites that are entitled for low-density retail development. However, a review of smaller retail property transactions shows that typically the land values are usually under $100 per square foot. For the purposes of this analysis, it is assumed that a low-density retail site in Cupertino would have a land value of $75 per square foot (about $3.2 million per acre).

FIGURE 30. LAND COMPARABLES FOR OFFICE AND HOTEL

Property	Jurisdiction	Year Sold	Acres	Estimated Value Per Sq. Ft. Land	Proposed Land Use
4995 Patrick Henry Dr.	Santa Clara	2016	48.6	$118	Office
357-387 Cinnabar St. (a)	San Jose	2017	5.6	$210	Office
767 Mathilda Ave.	Sunnyvale	2017	3.28	$146	Hotel
10801 N. Wolfe Rd. (b)	Cupertino	2018	1.72	$185	Hotel

Notes:
(a) 357-387 Cinnabar St. is in the Diridon Station area, and part of Google's transit village, which will have a significantly higher FAR than the office prototype.
(b) Estimated value for 10801 N. Wolfe Rd. is based on valuation from CBRE in 2018 rather than a sales transaction.
Sources: Costar, 2019; CBRE, 2018;

SOFT COSTS

Soft costs (often referred to as indirect costs) include items such as architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, city fees, and marketing costs. Cupertino’s Traffic Impact Fee was calculated based on the City’s fee schedule. Other permits and fees were calculated for each prototypes based on estimates generated for new development projects as part of the feasibility analysis for the Vallco Specific Plan. Soft costs were estimated based on standard industry ratios, calculated as a percentage of hard costs. These assumptions are shown in Figure 31.

FIGURE 31. SOFT COST ASSUMPTIONS BY PROTOTYPE

Soft Cost	Metric	Office/R&D	Hotel	Retail
City Permits and Fees				
Traffic Impact Fee				
Office	Per Gross Building Sq. Ft.	$17.40	$4.70	$9.94
Hotel	Per Room		$3,387	
Other Permits and Fees	Per Gross Building Sq. Ft.	$48.01	$38.34	$57.16
Subtotal City Permits and Fees	Per Gross Building Sq. Ft.	$65.41	$43.04	$67.10
Other Soft Costs				
Arch, Eng., & Consulting	% of Hard Costs	5%	5%	5%
Taxes, Insurance, Legal, Acct	% of Hard Costs	3%	3%	3%
Developer Overhead	% of Hard Costs	4%	4%	4%
Subtotal Other Soft Costs (Excluding Fees)	% of Hard Costs	12%	12%	12%
Construction Financing	% of Hard + Soft Costs	6%	6%	6%

Source: Review of pro formas for comparable development projects in Cupertino, 2019; Individual developer interviews, 2019; Vallco Specific Plan Feasibility Analysis, 2018; Strategic Economics, 2019.

REVENUES

Revenue assumptions for each prototype are informed by a range of resources, including commercial broker reports, hospitality industry reports, and Costar, as well as from interviews with developers and brokers active in Cupertino and Santa Clara County. They are summarized in Figure 32.

Office: For office rents, Strategic Economics reviewed Cupertino's office market and the greater Santa Clara County office market. The largest office development in Cupertino has been the Apple Park project, which is a build-to-suit development specifically intended for Apple. There has been minimal recent speculative office development in Cupertino targeting other users. (Main Street was the only such project completed in the last five years, and most of the space has also been leased to Apple.) Buildings that are leased by Apple typically achieve rents of $4 per square foot per month (NNN), compared to lease rates of $4.50-$5.00 per square foot for tech office buildings in neighboring West San Jose and Sunnyvale (see Figure 33). This is due to the fact that landlords are willing to accept a lower rent for a long-term lease with Apple, due to the low risk associated with a major corporation. According to brokers and developers, there is potential to achieve higher rents for buildings that attract other smaller tech office tenants. For the purposes of this analysis, the rental rate assumption is $4.50 per square foot per month (NNN). While this rental rate is higher than the current average office rent in Cupertino, it is a reasonable estimate for a new, multi-tenant tech office building in the Silicon Valley.

Hotel: The assumptions of hotel revenues are based on a combination of data sources, including interviews with hotel developers in Cupertino, and data from STR, a hotel research firm that tracks hotel room rates, vacancy rates, and revenues per available room for properties in Cupertino (see Figure 32).

Retail: Strategic Economics reviewed leases from 2018 and 2019 for retail spaces in Cupertino, as summarized in Figure 34. Average lease rates (asking NNN) were between 4.25 to 5.42. All of these recent leases were for restaurant spaces on Stevens Creek Boulevard. For the purposes of this analysis, it is assumed that the retail space would lease for about $4 per square foot per month (NNN).

FIGURE 32. REVENUE ASSUMPTIONS BY PROTOTYPE

Prototypes	Metric	Assumption
Retail		
Annual Rent (NNN)	Per Net Sq. Ft.	$48.00
Vacancy Rate		5%
Operating Expenses	% of Gross Revenue	10%
Annual Net Operating Income	Per Net Sq. Ft.	$40.80
Office/R&D		
Annual Rent (NNN)	Per Net Sq. Ft.	$54.00
Vacancy Rate		5%
Operating Expenses	% of Gross Revenue	7%
Annual Net Operating Income	Per Net Sq. Ft.	$47.52
Hotel		
Gross annual Room Income	RevPAR (a)	$79,154
Gross Annual Other Revenue (b)	Per Room	$27,704
Gross Revenue	Per Room	$106,858
Vacancy Rate (c)		n/a
Operating Expenses	70% of Gross Revenue	($74,800)
Annual Net Operating Income		$32,057

Source: Costar, 2019; STR Trends Report, 2019; Individual developer interviews, 2019; Strategic Economics, 2019.

Notes:

(a) RevPAR is a measure of revenue per room, calculated as occupancy percentage times average daily rate.

(b) Other Revenue for hotels based on data from STR Consulting, and from hotel developer interviews.

(c) Vacancy is already reflected in RevPAR estimate.

FIGURE 33. OFFICE COMPARABLES

Project Name	Address	City	Year Built	Mo. Rent/ Sq. Ft.	Lease Type	Source
Lot 11 @ Santana Row	500 Santana Row	San Jose	2017	$4.45	NNN	Costar
Santana Row	700 Santana Row	San Jose	2019	$4.45	NNN	Costar
Bldg. 5 Pathline Park (a)	700 Mary Ave	Sunnyvale	2019	$4.95	NNN	Costar
Main Street	19319 Stevens Ck.	Cupertino	2016	$3.75-$4.00	NNN	Interviews

FIGURE 34: RETAIL COMPARABLES IN CUPERTINO

Project Name	Address	Year Built	Mo. Rent/ Sq. Ft.	Lease Type	Source
The Biltmore	20030-80 Stevens Creek Blvd	2015	$4.50	NNN (asking)	Costar
Main Street	19369 Stevens Creek Blvd	2016	$5.42	full service	Costar
Saich Way Station	20803 Stevens Creek Blvd	2015	$4.25	NNN (asking)	Costar

YIELD ON COST THRESHOLDS

In order to understand how the introduction of non-residential linkage fees impacts financial feasibility, the yield on cost (YOC) results can be compared to an investor's expectations of return for each type of development. The YOC thresholds for this analysis were established relative to capitalization rates (cap rates) for each product type in the Bay Area. The cap rate, which is measured by dividing net income generated by a property by the total project value, is a commonly used metric to estimate potential returns.

To ensure that the financial analysis is conservative and does not reflect peak market conditions, the thresholds selected for determining project feasibility are slightly higher than the published cap rates. Office/R&D projects with a YOC of above 6.0% and hotel projects with a YOC above 7.5% were considered feasible in this analysis. Retail projects were considered feasible with a YOC higher than 7.0%. These thresholds are summarized in the Figure 35 below.

FIGURE 35: YIELD ON COST THRESHOLDS BY PROTOTYPE

Prototype	Yield on Cost Threshold	Published Cap Rate
Office/R&D (Class AA)	6.0%	4.50%-5.25%
Hotel (Select Service)	7.5%	7.0%-8.0%
Retail	7.0%	6.25-7.25%

Source: CBRE Cap Rate Survey, H2 2018; HVS, 2019; Developer interviews.

RESULTS

Using the YOC thresholds defined above, the following summarizes the results of the financial feasibility of different linkage fee scenarios for each prototype. The pro formas for each prototype is shown in Figure 39, Figure 40, and Figure 41.

OFFICE/ R&D

As shown in Figure 36 and Figure 39, the prototypical office/R&D project can support the existing linkage fee of $23.76 per square foot, which generates a YOC of 6.04%. A linkage fee of $25 (Scenario 2) would also be feasible. However, the prototype cannot feasibly support a fee higher than $30 per square foot. At this fee level, the prototype is only marginally feasible, with a yield on cost of 5.99%.

FIGURE 36. SUMMARY OF FINANCIAL FEASIBILITY OF OFFICE/R&D PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Office Feasibility
Current Linkage Fee	$23.76	6.04%	Feasible
Scenario 1 (No Fee)	$0	6.25%	Feasible
Scenario 2	$25	6.03%	Feasible
Scenario 3	$30	5.99%	Marginally Feasible

Note: Office/R&D projects must have a minimum yield on cost of 6.0% to be considered feasible
Source: Strategic Economics, 2019.

HOTEL

As summarized in Figure 37 for hotel projects, the existing linkage fee of $11.88 is financially feasible, with a yield of cost of 7.65%. A fee of $15 per square foot (Scenario 2) is marginally feasible, resulting in a YOC of 7.46%. A higher linkage fee of $20 per square foot (Scenario 3) is not feasible (see Figure 40).

FIGURE 37. SUMMARY OF FINANCIAL FEASIBILITY OF HOTEL PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Hotel Feasibility
Current Linkage Fee	$11.88	7.50%	Feasible
Scenario 1 (No Fee)	$0	7.65%	Feasible
Scenario 2	$15	7.46%	Marginally Feasible
Scenario 3	$20	7.39%	Not Feasible

Note: Hotel projects must have a minimum yield on cost of 7.5% to be considered feasible
Source: Strategic Economics, 2019.

RETAIL

The financial feasibility analysis shows that retail developments are not financially feasible under current market conditions. Even without a linkage fee (Scenario 1), the retail project achieves a yield on cost that is lower than the threshold of 7.0 % (see Figure 38 and Figure 41). There may be cases in which a retail project could support the current Housing Mitigation Fee if it were combined with other land uses (residential or office) in a mixed-use project.

FIGURE 38. SUMMARY OF FINANCIAL FEASIBILITY OF RETAIL PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Retail Feasibility
Current Linkage Fee	$11.88	6.35%	Not Feasible
Scenario 1 (No Fee)	$0	6.48%	Not Feasible
Scenario 2	$15	6.32%	Not Feasible
Scenario 3	$20	6.26%	Not Feasible

Note: Retail projects must have a minimum yield on cost of 7.0% to be considered feasible.
Source: Strategic Economics, 2019.

FIGURE 39. OFFICE/R&D PRO FORMA RESULTS

	Office/R&D
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	174,240
Parcel Size (acres)	4.00
Total Stories	4 - 5 stories
Building Type	Steel
FAR (without parking)	1.50
Revenues	
Income	$12,702,096
Net Operating Income	$11,177,844
Project Costs	
Land Costs	$24,000,000
Direct Costs	
Site Prep	$522,720
Gross Building Area	$78,408,000
Tenant Improvement Allowance	$17,641,800
Parking	$22,611,000
Subtotal Direct Costs	$119,183,520
per net Sq. Ft.	$507
per gross Sq. Ft.	$456
Indirect Costs	
Soft Costs	$14,302,022
City Permits and Fees (excl. non-residential linkage)	$12,548,925
Subtotal Indirect Costs	$26,850,948
Financing Costs	$8,762,068
Total Development Cost Including Land (TDC)	$178,796,536
per net Sq. Ft.	$760
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $25/Sq. Ft.	2.84%
Scenario 3: Linkage Fee of $30/Sq. Ft.	3.53%
Current Linkage Fee ($23.76/Sq. Ft.)	3.36%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	6.25%
Scenario 2: Linkage Fee of $25/Sq. Ft.	6.03%
Scenario 3: Linkage Fee of $30/Sq. Ft.	5.99%
Current Linkage Fee ($23.76/Sq. Ft.)	6.04%

Source: Strategic Economics, 2019.

FIGURE 40. HOTEL PRO FORMA RESULTS

	Hotel
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	87,120
Parcel Size (acres)	2.00
Total Stories	5 stories
Building Type	Concrete
FAR (without parking)	1.20
Revenues	
Income	$15,494,376
Net Operating Income	$4,648,313
Project Costs	
Land Costs	$12,000,000
Direct Costs	
Site Prep	$261,360
Gross Building Area	$26,136,000
FF&E	$5,075,000
Parking	$5,590,000
Subtotal Direct Costs	$37,062,360
per gross Sq. Ft.	$355
Indirect Costs	
Soft Costs	$4,447,483
City Permits and Fees (excl. non-residential linkage)	$4,499,679
Subtotal Indirect Costs	$8,947,162
Financing Costs	$2,760,571
Total Development Cost Including Land (TDC)	$60,770,093
per room	$419,104
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $15/Sq. Ft.	1.69%
Scenario 3: Linkage Fee of $20/Sq. Ft.	2.52%
Current Linkage Fee ($11.88/Sq. Ft.)	2.00%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	7.65%
Scenario 2: Linkage Fee of $15/Sq. Ft.	7.46%
Scenario 3: Linkage Fee of $20/Sq. Ft.	7.39%
Current Linkage Fee ($11.88/Sq. Ft.)	7.50%

Source: Strategic Economics, 2019.

FIGURE 41. RETAIL PRO FORMA RESULTS

	Retail
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	21,780
Parcel Size (acres)	0.50
Total Stories	1 story
Building Type	Concrete
FAR (without parking)	0.35
Revenues	
Income	$329,314
Net Operating Income	$279,917
Project Costs	
Land Costs	$1,633,500
Direct Costs	
Site Prep	$65,340
Gross Building Area	$1,257,795
Tenant Improvement Allowance	$266,805
Parking	$213,444
Subtotal Direct Costs	$1,803,384
per net Sq. Ft.	$263
per gross Sq. Ft.	$237
Indirect Costs	
Soft Costs	$216,406
City Permits and Fees (excl. non-residential linkage)	$511,470
Subtotal Indirect Costs	$727,876
Financing Costs	$151,876
Total Development Cost Including Land (TDC)	$4,316,636
per net Sq. Ft.	$629
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $15/Sq. Ft.	1.74%
Scenario 3: Linkage Fee of $20/Sq. Ft.	2.58%
Current Linkage Fee ($11.88/Sq. Ft.)	2.05%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	6.48%
Scenario 2: Linkage Fee of $15/Sq. Ft.	6.32%
Scenario 3: Linkage Fee of $20/Sq. Ft.	6.26%
Current Linkage Fee ($11.88/Sq. Ft.)	6.35%

Source: Strategic Economics, 2019.

Peer Cities

A large share of municipalities in San Mateo and Santa Clara counties, particularly cities that are desirable locations for tech and biotech companies, have adopted non-residential linkage fees. Figure 42 summarizes non-residential linkage fees in these jurisdictions.

For office/R&D uses, most cities have set linkage fees between $15 and $25 per square foot. The majority of cities have lower fee levels for retail uses, typically in the range of $5 to $10 per square foot. The non-residential linkage fees for hotel uses are usually between $5 and $15 per square foot. The cities of Palo Alto and San Francisco have higher linkage fees than the rest of the local jurisdictions. These cities also have higher average retail and office rents, and hotel room rates than other Bay Area locations.

Many municipalities provide exemptions or fee reductions for the following types of projects:

- Smaller non-residential projects. For example, non-residential linkage fees do not apply to projects adding less than 5,000 gross square feet in Redwood City, San Carlos, San Mateo City, Colma, or Burlingame. Projects adding less than 3,500 gross square feet in unincorporated land in San Mateo County, and less than 10,000 gross square feet in Menlo Park or East Palo Alto are also exempt. Some cities also tie their fee to building size on a sliding scale. Mountain View offers a 50% fee reduction for office projects under 10,000 square feet, and hotel or retail projects under 25,000 square feet. Sunnyvale also offers a 50% fee discount for the first 25,000 square feet of any project.
- Prevailing wage. Multiple jurisdictions, including Redwood City, San Carlos, San Mateo City, and San Mateo County, provide 25% fee reductions for projects that pay prevailing wage.
- Community-serving facilities. Most cities exempt projects such as hospitals/clinics, child care, public, educational, religious, and/or non-profit uses. Additionally, projects that are replacing property damaged from natural disasters are also often exempted.

It is common for jurisdictions to allow alternative means of complying with non-residential linkage fee requirements. Developers can typically satisfy the requirement by providing affordable housing either on or off-site, or by dedicating land for affordable housing. East Palo Alto and Palo Alto allow for the requirement to be met by either converting market-rate units to affordable units, or by rehabilitating existing affordable units. In most cases, the applicant must first prove that an alternative is necessary. For example, Palo Alto requires that the applicant present “substantial evidence to support a finding of infeasibility” of paying the fee, and of “feasibility of any proposed alternative.”

Many cities have either enacted or updated their fees in the last four years, and fees are typically adjusted annually, based on either ENR’s Construction Cost Index for the San Francisco Bay area, or on the national Consumer Price Index.

FIGURE 42. NON-RESIDENTIAL LINKAGE FEES (PER GROSS S. FT. OF NET NEW SPACE) IN NEARBY CITIES

Jurisdiction	Office/ R&D/ Medical Office	Hotel	Retail/ Restaurant/ Services	Date Fee Was Adopted
Burlingame (a)	$18 - $25	$12	$7	2017
Colma	$5	$5	$5	2006
Cupertino	$23.76	$11.88	$11.88	2015
East Palo Alto	$10.72	none	none	2016
Foster City	$27.50	$12.50	$6.25	2016
Los Altos	$25	$15	$15	2018
Menlo Park	$17.79	$9.66	$9.66	2018
Mountain View (a)	$13.14 - $26.27	$1.41 - $2.81	$1.41 - $2.81	2014
Palo Alto	$36.22	$21.08	$21.08	2017
Redwood City	$20	$5	$5	2015
San Bruno	$12.50	$12.50	$6.25	2015
San Carlos	$20	$10	$5	2017
San Francisco (b)	$19.04 - $28.57	$21.39	$26.66	1996
San Mateo City	$25	$10	$7.50	2016
San Mateo County	$25	$10	$5	2016
Santa Clara City (a)	$10 - $20	$5	$5	2017
South San Francisco	$15	$5	$2.50	2018
Sunnyvale (a)	$8.25 - $16.50	$8.25	$8.25	2015

Source: City Ordinances and Fee Schedules; 21 Elements, 2019; Silicon Valley at Home, 2019; Strategic Economics, 2019

Notes:

(a) Fees vary based on project size in four cities: Burlingame, Mountain View, Santa Clara, and Sunnyvale. Hotel and retail projects under 25,000 sq. ft, and office projects under 10,000 sq. ft. in Mountain View are charged the lower fee; In Burlingame, Santa Clara and Sunnyvale, office projects under 50,000 sq. ft., 20,000 sq. ft. and 25,000 sq. ft. respectively pay the lower fee.
(b) San Francisco's fees for R&D are $19.04 per sq. ft., while its fees for office are $28.57 per sq ft. Small Enterprise Workspace and Production/Distribution/Repair fees are $22.46 per sq. ft.

IV. KEY TAKEAWAYS

Based on the economic feasibility analysis, Strategic Economics offers the following conclusions regarding the City Council's direction on the BMR Housing Program.

Is it financially feasible to increase the inclusionary requirements to 20% or 25%?

- **For ownership housing prototypes, it would be financially feasible to raise the inclusionary requirement from 15% to 20%.** The analysis indicates that the existing requirement of 15% and a higher requirement of 20% are economically feasible for single-family detached, small lot single-family/townhouse, and condominium developments.

- **Ownership housing prototypes can support a higher Housing Mitigation Fee per square foot.** The analysis shows that single-family detached, small lot single-family/townhouse, and condominium developments could support paying the maximum housing mitigation fee (in-lieu fee). The maximum nexus-based fees are $30.10-$30.60 per square foot for single-family detached; $35.60 per square foot for small lot single-family/townhouse development; and $35.10 per square foot for condominiums. The City's Housing Mitigation Fees cannot exceed the maximum housing impact fees justified by the 2015 Nexus Study (see Figure 43 below). Exceeding the amounts shown below would require conducting a new nexus study.

FIGURE 43: CURRENT AND MAXIMUM HOUSING MITIGATION FEES BASED ON NEXUS FOR OWNERSHIP PROTOTYPES

Prototype	Current Housing Mitigation Fee	Maximum Nexus-Based Fee	Return on Cost At Maximum Fee	Is Maximum Fee Feasible?
Single-Family Detached	$17.82	$30.10-$30.60	25.5%	Yes
Small Lot SF/ Townhouse	$19.60	$35.60	34.2%	Yes
Condominium	$23.76	$35.10	31.4%	Yes

Source: Keyser Marston Associates (2015). Residential Below Market Rate Housing Nexus Analysis

- **The rental apartment prototypes cannot feasibly support an inclusionary requirement under current rents and construction/land costs.** The higher density rental housing prototype can support payment of Housing Mitigation Fees of nearly $30 per square foot, but cannot feasibly provide inclusionary BMR units under today's rents, construction costs and land costs. However, with increases in rental revenues or decreases in construction costs and land costs, rental housing development could potentially support the current inclusionary requirement of 15%.

Can the inclusionary housing policy be amended to include units for extremely low income/ disabled persons?

The results from the feasibility analysis show that rental development in Cupertino cannot feasibly provide BMR units on-site under current market conditions. An increase in revenues or a decrease in construction and land costs could make it possible for lower density and higher density rental prototypes to provide 15% inclusionary BMR units for very low income and low income households. Under current market conditions, it is not financially feasible for the inclusionary housing policy to include units for extremely low-income households.

However, there are strategies that could allow the City to generate funding for the development of extremely low-income units, and for disabled persons. City staff from Sunnyvale and San Jose have indicated that they are providing funding to develop housing for extremely low-income households through the revenues they have collected from housing mitigation fees, in-lieu fees, and other housing funds. These local revenues are often combined with Santa Clara County Measure A funds – which are specifically targeted to extremely-low income households – as well as 9% and 4% Low Income Housing Tax Credits (LIHTC) and Section 8 vouchers from the Santa Clara County Housing Authority.

Can the inclusionary housing policy be amended to include median-income and moderate-income units in rental projects?

The results from the feasibility analysis show that rental housing development in Cupertino is not feasible with an inclusionary requirement of 15% under current conditions (see Figure 25 and Figure 26). However, a 15% increase in project revenues or a decrease in construction and land costs of 15% could make the low density rental prototype feasible with a 15% BMR requirement. The higher-density rental prototype can feasibly provide Housing Mitigation Fees at the current level. An increase in revenues of 10% or a decrease in construction and land costs of 5% can make the higher density rental prototype feasible with a 15% BMR requirement.

Adding a requirement for median-income and moderate-income units in addition to the existing inclusionary requirement of 15% would not be economically feasible for the rental prototypes. For this reason, it is not financially feasible for the inclusionary housing policy to be amended to also require units for median-income and moderate-income households.

Can the BMR requirements for non-residential development (linkage fees) be increased for office/R&D, hotel, and retail developments?

- **For office and R&D development, it would be possible to raise the Housing Mitigation Fees to a level between $25 to $30 per square foot.** As shown in Figure 39, the office/R&D prototype is feasible with a non-residential linkage fee of $25 per square foot. At $30 per square foot, the prototype achieves a yield on cost that is slightly under the threshold required for feasibility.

- **For hotel development, it may be possible to increase the Housing Mitigation Fees to between $12 and $15 per square foot.** At the current fee level of $11.88, a hotel project is feasible (Figure 37). With a fee of $15 per square foot, the project achieves a yield on cost that is slightly lower than the threshold for feasibility.

- **The financial feasibility analysis shows that retail developments are not financially feasible under current market conditions.** Even without a Housing Mitigation Fees, the retail project achieves a yield on cost that is lower than the threshold of 7.0% (see Figure 38). There may be cases in which a retail project could support the current Housing Mitigation Fee if it were combined with other land uses (residential or office) in a mixed-use project.

APPENDIX

The appendix includes additional information on:

- Recent single-family sales for new construction in Cupertino (Figure A-1)
- Recent townhome re-sales in Cupertino (Figure A-2)
- Recent condominium re-sales in Cupertino (Figure A-3)
- Recent rental project comparables in Cupertino and surrounding cities (Figure A-4)

FIGURE A-1: RECENTLY BUILT SINGLE FAMILY COMPARABLES

Address	City	Lot Size	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
21825 Lomita Ave	Cupertino	9,671	5	4.5	$3,380,000	3,891	$869	2016
21800 Almaden Ave	Cupertino	11,098	5	3.5	$3,220,000	3,555	$906	2017
10240 Lebanon Dr	Cupertino	9,048	5	4.5	$4,100,000	3,623	$1,132	2018
10257 Glencoe Dr	Cupertino	9,375	5	4.5	$3,593,800	3,727	$964	2016
7425 Heatherwood Dr	Cupertino	9,396	5	4	$3,650,000	3,763	$970	2017
805 Rose Blossom Dr	Cupertino	8,660	5	4.5	$2,980,000	3,339	$892	2017
10308 N Stelling Rd	Cupertino	9,612	5	4.5	$3,350,000	3,769	$889	2017
10381 Bret Ave	Cupertino	9,374	5	4.5	$3,270,000	3,727	$877	2016
20861 Dunbar Dr	Cupertino	9,750	5	3.5	$3,998,000	3,949	$1,012	2016
				Weighted Average	**$3,512,995**	**3,705**	**$946**	

Sources: Redfin, 2018; Strategic Economics, 2018.

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-2: RECENTLY BUILT TOWNHOME COMPARABLES

Address	City	Lot Size	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
10280 Park Green Ln #836	Cupertino	2,176	3	2.5	$1,760,000	1,670	$1,054	2006
10281 Torre Ave #817	Cupertino	2,176	3	2.5	$1,800,000	1,670	$1,078	2006
10700 Stevens Canyon Rd	Cupertino	1,570	3	2.5	$1,852,000	2,239	$827	2007
20652 Gardenside Cir	Cupertino	1,480	3	2.5	$1,680,000	1,704	$986	1990
20679 Gardenside Cir	Cupertino	1,440	3	2	$1,665,000	1,640	$1,015	1990
23020 Stonebridge St	Cupertino	3,348	3	2	$1,830,000	2,202	$831	1980
23030 Stonebridge	Cupertino	3,348	3	2	$1,698,000	2,202	$771	1980
22981 Stonebridge	Cupertino	3,348	3	2	$1,710,000	2,202	$777	1980
10910 Lucky Oak St	Cupertino	1,312	3	3.5	$1,780,000	2,082	$855	1980
10826 Northridge Sq	Cupertino	1,487	3	2	$1,455,000	1,389	$1,048	1978
10107 Lamplighter Sq	Cupertino	1,753	3	2.5	$1,740,000	1,727	$1,008	1975
10174 Potters Hatch Cmn	Cupertino	1,575	3	2.5	$1,816,000	1,785	$1,017	1974
10020 Mossy Oak Ct	Cupertino	1,662	3	2.5	$1,680,000	1,645	$1,021	1972
10142 Amador Oak Ct	Cupertino	1,854	3	2.5	$1,600,000	1,614	$991	1970
				Weighted Averages:				
				All years	$1,728,250	1,841	$934	
				Since 2000	$1,808,896	1,860	$970	

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-2: RECENT RE-SALES OF TOWNHOME COMPARABLES

Address	City	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
20488 Stevens Creek Blvd #2207	Cupertino	2	2	$1,338,000	1,171	$1,143	2003
20488 Stevens Creek Blvd #2309	Cupertino	2	2	$1,430,000	1,171	$1,221	2003
19999 Stevens Creek Blvd #209	Cupertino	2	2	$1,266,000	1,039	$1,218	2003
19999 Stevens Creek Blvd #101	Cupertino	2	2	$1,265,000	1,192	$1,061	2003
19503 Stevens Creek Blvd #317	Cupertino	2	2	$1,400,000	1,158	$1,209	2006
19503 Stevens Creek Blvd #251	Cupertino	2	2	$1,200,000	1,087	$1,104	2006
19503 Stevens Creek Blvd #139	Cupertino	2	2	$1,468,000	1,130	$1,299	2006
19503 Stevens Creek Blvd #261	Cupertino	2	2	$1,530,000	1,359	$1,126	2006
19503 Stevens Creek Blvd #331	Cupertino	3	2	$1,728,000	1,502	$1,150	2006
20488 Stevens Creek Blvd #1813	Cupertino	3	3	$1,930,000	1,766	$1,093	2003
20488 Stevens Creek Blvd #1401	Cupertino	3	2	$1,480,000	1,578	$938	2003
			Weighted Averages:				
			2-Bd	$1,367,604	1163	$1,171	
			3-Bd	$1,720,858	1615	$1,060	

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-3: RECENT RE-SALES OF CONDOMINIUM COMPARABLES

Address	City	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
20488 Stevens Creek Blvd #2207	Cupertino	2	2	$1,338,000	1,171	$1,143	2003
20488 Stevens Creek Blvd #2309	Cupertino	2	2	$1,430,000	1,171	$1,221	2003
19999 Stevens Creek Blvd #209	Cupertino	2	2	$1,266,000	1,039	$1,218	2003
19999 Stevens Creek Blvd #101	Cupertino	2	2	$1,265,000	1,192	$1,061	2003
19503 Stevens Creek Blvd #317	Cupertino	2	2	$1,400,000	1,158	$1,209	2006
19503 Stevens Creek Blvd #251	Cupertino	2	2	$1,200,000	1,087	$1,104	2006
19503 Stevens Creek Blvd #139	Cupertino	2	2	$1,468,000	1,130	$1,299	2006
19503 Stevens Creek Blvd #261	Cupertino	2	2	$1,530,000	1,359	$1,126	2006
19503 Stevens Creek Blvd #331	Cupertino	3	2	$1,728,000	1,502	$1,150	2006
20488 Stevens Creek Blvd #1813	Cupertino	3	3	$1,930,000	1,766	$1,093	2003
20488 Stevens Creek Blvd #1401	Cupertino	3	2	$1,480,000	1,578	$938	2003
			Weighted Averages:				
			2-Bd	$1,367,604	1163	$1,171	
			3-Bd	$1,720,858	1615	$1,060	

Sources: Polaris Pacific, 2018; Redfin, 2018; Strategic Economics, 2018.

Figure A-4: Recently Built Rental Comparables

				Rent Per Unit				Unit Size				Rent Per Sq. Ft.			
Project Name	City	Year Built	Stories	Studios	1-BD	2-BD	3-BD	Studios	1-BD	2-BD	3-BD	Studios	1-BD	2-BD	3-BD
Nineteen 800	Cupertino	2014	6			$4,026	$5,477		0	1,339	1,562			$3.01	$3.51
Main Street Lofts	Cupertino	2018	4	$3,508	$3,995			916	1,044			$3.83	$3.83		
Verve	Mountain View	2017	3		$3,860	$5,071	$6,195		737	1,112	1,286		$5.24	$4.56	$4.82
Domus on the Boulevard	Mountain View	2015	4		$3,868	$4,876			788	1,061			$4.91	$4.60	
Elan Mountain View	Mountain View	2018	4		$3,860	$5,071	$6,195		737	1,112	1,286		$5.24	$4.56	$4.82
Montrose	Mountain View	2016	4		$3,816	$5,443			739	1,154			$5.16	$4.72	
Madera Apartments	Mountain View	2013	4		$4,113	$5,510			849	1,181			$4.84	$4.67	
Carmel the Village	Mountain View	2013	5	$3,282	$3,623	$5,866		573	797	1,258		$5.73	$4.55	$4.66	
6tenEAST	Sunnyvale	2017	4	$3,309	$3,515	$4,414	$5,185	701	808	1,136	1,406	$4.72	$4.35	$3.89	$3.69
Naya	Sunnyvale	2016	4		$3,250	$4,336			693	1,038		-	$4.69	$4.18	
481 On Mathilda	Sunnyvale	2016	4	$3,098	$3,251	$4,160		701	781	1,174		$4.42	$4.16	$3.54	
Encasa Apartments	Sunnyvale	2016	3	$2,854	$3,356	$4,235	$5,854	572	856	1,163	1,688	$4.99	$3.92	$3.64	$3.47
Anton 1101	Sunnyvale	2015	4	$3,145	$3,280	$4,490		569	704	1,069		$5.53	$4.66	$4.20	
2295-2305 Winchester Blvd	Sunnyvale	2014	3		$3,371	$4,248			662	1,005			$5.09	$4.23	
Ironworks	Sunnyvale	2017	7		$3,520	$4,036	$5,109	.	784	1,174	1,365		$4.49	$3.44	$3.74
Solstice	Sunnyvale	2013	6	$2,955	$3,329	$4,099		462	778	1,122		$6.40	$4.28	$3.65	
Orchard City Lofts	Campbell	2018	3		$2,946	$3,707	$4,817		607	924	1,237		$4.85	$4.01	$3.89
Revere Campbell	Campbell	2015	5		$3,662	$3,912	$5,219		1,015	1,198	1,233		$3.61	$3.27	$4.23
Monticello Village	Santa Clara	2016	6	$3,356	$3,244	$4,074		920	842	1,251		$3.65	$3.85	$3.26	
			Weighted Average	**$3,225**	**$3,568**	**$4,541**	**$5,516**	**677**	**790**	**1,137**	**1,383**	**$4.71**	**$4.49**	**$3.98**	**$3.98**

Sources: Costar, 2018; Strategic Economics, 2018.

LESAR DEVELOPMENT CONSULTANTS

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To: Kerri Heusler, Housing Manager, City of Cupertino
From: Diana Elrod, Principal
Date: June 26, 2019
Re: Peer Review of Draft Economic Feasibility Study for the City of Cupertino's BMR Program

---

Thank you for the opportunity to provide comments on the economic feasibility study drafted by Strategic Economics (SE) for the update of the City's BMR Program requirements. It is my understanding that SE conducted this study to discern whether, and to what extent, inclusionary requirements for residential development and commercial impact fees may be modified from the baselines established in 2015. That year, Keyser Marston Associates (KMA) completed an extensive nexus study on both commercial and market-rate residential development to assess the impacts of new development on the need for affordable housing.

As the nexus was established in 2015, a further nexus study was not required here. Rather, SE's current study is intended to analyze the feasibility of applying different inclusionary percentages (from the current requirement of 15%), as well as analyze whether the current mitigation fees for new market rate residential and commercial development can be increased.

I have reviewed SE's draft in conjunction with a review of KMA's analyses from 2015 to help evaluate the report's conclusions. I have identified a set of questions to assist in further understanding SE's work, and more information about SE's methodology is needed before I finalize my assessment of the report's recommendations.

Residential Analysis

1. It is hard to understand the step-by-step process that SE used for its methodology. The report lacks a clear narrative how it got from point A to point B to point C. It would be helpful to explain in simple language how the process works and why the particular data points are used.

2. Most inclusionary feasibility studies we typically see are based on a residual land cost analysis, rather than on a return on cost (ROC) or yield on cost (YOC). Can SE provide more background as to why ROC and YOC analysis were used rather than a residual land cost analysis and if that difference would meaningfully change any of the reported results?

3. The ROC analysis's sources on page 10 reference "recent project proformas" and developer interviews. Can further documentation be provided on what recent proformas were analyzed, and what developers were interviewed?

4. I am curious about the use of Redfin for data in the analysis. There are a number of professional data aggregators that one typically sees, such as DataQuick, Costar, etc. which SE does use for some of the analysis. What was the thought behind using Redfin (which I personally experienced containing incorrect data in reporting sales)?

5. The report uses comps for townhomes and other housing types in Cupertino that are quite old. Typically, if the review of comps finds that no development is currently taking place, then adding an additional requirement would further constrain the development of housing. Is that the case here, or are there other market factors influencing the types of projects proposed and approved in Cupertino?

6. Figure A-3 in the appendix is titled "Recent Re-Sales of Condominium Comparables" when in fact the table shows rents. Figure A-4 repeats this information but calls the table "Recently Built Rental Comparables." Can SE update the table to include the dates when these comps were built?

7. On page 11, the sales prices per unit are in some cases significantly different than what was shown in the KMA report just four years ago. For example, condominiums in the 2015 report were on the order of $800,000. What accounts for the more than 100% increase in four years? Is this the result of construction cost escalation, and can SE say more about the market's ability to sustain the higher current sale prices while absorbing additional affordability requirements?

8. In addition, rents shown on that page are also substantially higher than in KMA's study. Can SE provide some additional explanation about the market forces that are driving these increases?

9. On page 13, should the income limits be updated to the 2019 counts? Would showing increased rents using the 2019 data result in higher affordability requirements being feasible?

Non-Residential Analysis

1. KMA provided information on mitigation fees as a percentage of total development cost as one way to measure a fee's reasonableness. How does SE's methodology compare?

2. The pool of comparables used in the analysis is quite small. Would that impact the resulting outcomes?

Summary

Based on the questions and comments outlined above, additional information is necessary to assess whether there may be additional potential to feasibly modify the City's affordability requirements. I am happy to provide additional input and further evaluation once these questions are fully fleshed out.

STRATEGIC ECONOMICS

ECONOMIC FEASIBILITY ANALYSIS

CUPERTINO BELOW MARKET RATE (BMR) HOUSING PROGRAM

Prepared for:

City of Cupertino

~~7/16/19~~7/16/19

TABLE OF CONTENTS

TABLE OF FIGURES

I. INTRODUCTION

Strategic Economics was retained by the City of Cupertino (the "City) to evaluate potential changes to the Below Market Rate (BMR) Housing Program. The BMR program requirements are currently as follows:

- The City currently has a BMR Housing Program that imposes an inclusionary requirement of 15% on for-sale and rental residential developments with seven or more units. For rental developments, the BMR units must be affordable to very-low (up to 50% Area Median Income "AMI") or low-income (up to 80% AMI) households[1]. For-sale developments must provide BMR units affordable to median- (up to 100% AMI) and moderate-income (up to 120% AMI) households.[2]
- Small residential projects of less than seven units can pay the City's Housing Mitigation In-Lieu Fees[3] (the "Housing Mitigation Fees") or provide one BMR unit. The Housing Mitigation Fees are based on the City's 2015 Residential Below Market Rate Housing Nexus Analysis and Non-Residential Jobs-Housing Nexus Analysis (the "2015 Nexus Study"). Housing Mitigation Fees are currently set at $17.82 per square feet for detached single family, $19.60 per square feet for small lot single family/townhomes, $23.76 for attached multifamily residences (ownership and rental), and $11.88 per square foot for commercial/retail uses.
- The City first adopted linkage fees for office and Research and Development ("R&D") projects in 1992 and expanded the program to apply to retail and hotel developments in 2004. The City updated the non-residential linkage fees in 2015 (based on the 2015 Nexus Study) to the current levels of $23.76 per square foot for office/R&D uses, and $11.88 per square foot for hotel and retail uses.[4]

The City Council is considering modifying the BMR Housing Program, providing direction to examine the following issues:

- Study the potential to increase the inclusionary requirements to 20% or 25%
- Explore inclusionary housing policy to include units for extremely-low income/disabled persons
- Include median- and moderate-income units in rental projects
- Study inclusionary housing programs in other cities as a comparison
- Study the economic feasibility of increasing non-residential linkage fees on new office/R&D, hotel, and retail developments

This report provides technical findings on the economic feasibility of increasing the City's BMR requirements for residential developments and non-residential developments. It also provides findings regarding the potential for including extremely-low income housing units and/or median-and moderate-income units in rental projects. The report also summarizes inclusionary housing programs and non-residential linkage fees in other cities in Santa Clara County.

The report is divided into three sections.

[1] Rental BMR policy states that 40% of affordable units must be set aside for low income, and 60% for very low income units.
[2] For-Sale BMR policy states that half of affordable units must be set aside for median income households, and half for moderate income households.
3 Housing Mitigation In-Lieu Fees: A fee assessed in accordance with the City's General Plan Housing Element, Municipal Code (CMC 19.172) and the City's BMR Housing Mitigation Program Procedural Manual.
[4] Keyser Marston Associates, "City of Cupertino: Non-residential Jobs-Housing Nexus Analysis," *City of Cupertino*, April 2015.

- Section II: The first section focuses on the BMR requirements on housing development.
- Section III: The second section is focused on the non-residential linkage fees on new office/R&D, hotel, and retail developments.
- Section IV: The third section provides key takeaways and conclusions.

The appendix to the report provides additional background data on housing trends.

II. BMR REQUIREMENTS FOR RESIDENTIAL DEVELOPMENT

Approach

The following ~~describes~~summarizes the methodology of ~~steps taken in~~ the financial feasibility analysis.

Step 1. Develop Prototypes ~~for Pro Forma Analysis~~

The first step in the financial feasibility analysis is to review the types of residential and mixed-use (residential and retail) projects that would be subject to the BMR policy. In close coordination with City staff, Strategic Economics updated the residential and nonresidential prototypes used in the 2015 Nexus Study, ensuring that they represent the ownership and rental residential development types that are likely to occur in city in the short term. The prototypes varied based on assumptions regarding building type, density, unit size, etc.

Step 2. Develop Assumptions about BMR Units

Strategic Economics worked closely with City staff to develop assumptions about the percentage of inclusionary units that should be tested, the income targets, and the affordable sales prices and rents. Maximum sales prices and rents were calculated using the method and parameters established by City policy, in coordination with Hello Housing, the BMR Program administrator.

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Step 3. Collect Key Inputs and Build ~~for~~ Pro Forma

The financial feasibility of each prototype is measured using a static pro forma model that solves for the profit to the developer. A pro forma model is a tool that is commonly used to estimate whether a project is likely to be profitable. The key inputs into the financial feasibility analysis are the revenues (rents/ sales prices), development costs, and land costs. Strategic Economics collected and summarized data on land prices, residential values, and construction costs using the following data sources:

- Costar, a commercial real estate database that tracks rental multifamily properties and property transactions
- Interviews with local developers and brokers
- Redfin, a real estate brokerage firm that collects data on residential sales prices
- Review of pro formas from other projects and clients

Step 4~~3~~. Calculate Financial Feasibility

The pro forma model tallies all development costs, including land costs, hard costs (construction costs), soft costs, and financing costs. The pro forma also tallies the project's total value. The project's total value is the sum of (1) the estimated value of the condominiums or townhomes (i.e. the average per unit sale price multiplied by the number of units), and (2) if applicable, the capitalized value of retail. The project's ROC is then calculated by dividing the project's net revenue (i.e. total value minus total development costs), by total development costs. To understand the potential impact of inclusionary requirements on financial feasibility, the ROC results for each prototype and inclusionary housing scenario are compared to developers' typical expectation of return, or the threshold for feasibility. If the ROC for a project is above the threshold for feasibility, it is considered financially feasible. If the ROC is below the threshold, it is not financially feasible.~~Approach~~

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~~Approach~~

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~~To examine the potential impact of new BMR requirements on the financial feasibility of new development, Strategic Economics worked with City staff to make assumptions about development prototypes, which represent the types of new residential development projects likely to be built in Cupertino. The five development prototypes include ownership and rental development types. Then, Strategic Economics built a pro forma model to test the financial feasibility of different inclusionary requirements or the payment of in lieu fees on each prototype. The pro forma model's inputs are based on present day estimates of revenues and costs.~~

~~This section outlines the development prototypes and inclusionary housing scenarios tested in this analysis.~~

More details on each step of the analysis is provided in the section below.

DEVELOPMENT PROTOTYPES

The analysis estimates the feasibility of different inclusionary requirements for five residential prototypes, as described in Figure 1. The building characteristics of each development prototype, including size, density (floor-area-ratio), and parking assumptions are based on prototypes analyzed as part of the City's 2015 Nexus Study[5]. These development prototypes represent the range of typical residential development expected to come online in Cupertino in the short term. These prototypes are mostly based on recently completed projects or development proposals in the pipeline in Cupertino. It is also assumed that future development will likely be located along Stevens Creek Boulevard, and in existing residential neighborhoods, given that these locations have been identified in the City's General Plan and Heart of the City Specific Plan as key areas for new residential and mixed-use development.

The prototypes vary based on the following characteristics:

- **Ownership and Rental**. Three of the prototypes include only for-sale units (Prototypes 1, 2, and 3) and two are rental developments (Prototypes 4 and 5).
- **Mixed-Use and Residential Only.** Two of the prototypes (Prototypes 1 and 2) are 100% residential while the attached multifamily prototypes have a ground-floor retail component (Prototypes 3, 4, and 5).
- **Project Density and Size**
  - The single-family detached prototype 1 represents detached single-family custom-built homes with an average density of 4.5 dwelling units per acre. Because this prototype has fewer than eight units, it would be allowed to pay the in-lieu fee or provide one BMR unit under the current BMR policy. The small number of units in this prototype reflects the fact that there are few potential single-family detached sites in Cupertino that can accommodate more than 7 units.
  - Prototype 2 represents two-story small lot single-family and townhome developments with a density of 15 dwelling units per acre.
  - Prototype 3 is a three-story multi-family condominium building with a density of 35 units per acre. Parking is accommodated in an above-ground podium.

[5] Keyser Marston Associates (2015). Residential Below Market Rate Housing Nexus Analysis.

- Prototype 4 is a three-story multifamily rental building with a density of 40 units per acre. Parking is accommodated in an above-ground podium.
- Prototype 5 is a higher-density six-story project with a density of 76 units per acre. This prototype is based on a Housing Element site that allows six to eight story heights. Parking is accommodated in an above-ground podium.

- **Parking Ratios.** The City requires 2 parking spaces per unit. However, for the multi-family prototypes there are opportunities to achieve parking reductions under certain conditions. The assumptions in the pro forma are as follows.
  - For Prototype 1 and Prototype 2, the assumption is that the development would provide all of the required parking.
  - For the condominium prototype 3, developers can lower parking by 10%, assuming that the reduction is justified by a parking study.
  - For multi-family rental housing prototypes 4 and 5, developers can receive parking reductions on residential units in the scenarios where 5% of the housing units are for very low-income households, in accordance with Gov't Code Sec. 65915(p).

FIGURE 1: DESCRIPTION OF PROTOTYPES

	Prototype 1	Prototype 2	Prototype 3	Prototype 4	Prototype 5
	Detached Single Family	Small Lot Single Family/Townhome	Condominium	Lower Density Rental Apartments	Higher Density Rental Apartments
Tenure	For-Sale	For-Sale	For-Sale	Rental	Rental
Unit Mix	5 bedrooms	3 bedrooms	2 and 3 bedrooms	Studios, 1, 2, and 3 bedrooms	Studios, 1, 2, and 3 bedrooms
Format	Low-rise, large sites	Low-rise, small sites	Mid-rise, small sites	Mid-rise, small sites	Higher density, small sites
Number of Units	7	50	100	100	100
Parcel Size (Acres)	1.6	3.3	2.9	2.9	1.3
Residential Program					
Studios	-	-	-	10	10
1-BD	-	-	-	45	45
2-BD	-	-	50	40	40
3-BD	-	50	50	5	5
4-BD	0	-	-	-	-
5-BD	7	-	-	-	-
Total	7	50	100	100	100
Dwelling Units Per Acre	4.5	15	35	35	76
Ground Floor Retail (Sq. Ft.)	0	0	10,000	10,000	15,000
Parking	2-Car Garage + Driveway	2-Car Garage + Driveway	Podium	Podium	Podium
Parking Requirement (Per Unit)	4	2.8	2	2	2
Parking Requirement (Commercial)	n/a	n/a	4 per 1,000 sq. ft.	4 per 1,000 sq. ft.	4 per 1,000 sq. ft.
Required Parking Spaces	28	140	240	240	260
Reduced Parking Spaces (a)	28	140	216	185	205

(a) For the condominium prototype 3, developers can lower parking by 10%, assuming that the reduction is justified by a parking study. For multi-family rental housing prototypes 4 and 5, developers can receive parking reductions on residential units in the scenarios where 5% of the housing units are for very low-income households (50% AMI), in accordance with Gov't Code Sec. 65915(p).

Source: Strategic Economics, City of Cupertino.

BMR HOUSING PROGRAM ASSUMPTIONS

Strategic Economics built a pro forma model that tested the feasibility of various inclusionary housing scenarios under the existing BMR housing program and alternative scenarios. Below is a summary of the existing BMR program:

- The City currently has a BMR Housing Program that imposes an inclusionary requirement of 15% on for-sale and rental residential developments with seven or more units. For rental developments, the BMR units must be affordable to very low or low-income households[6]. For-sale developments must provide BMR units affordable to median- and moderate-income households.[7]
- Small residential projects of less than seven units can pay the housing mitigation fee or provide one BMR unit. The housing mitigation fees are based on the 2015 Nexus Study, and are currently set at $17.82 per square feet for detached single family, $19.60 per square feet for small lot single family/townhomes, $23.76 for attached multifamily residences (ownership and rental), and $11.88 per square foot for commercial/retail uses.
- The BMR program uses income limits published annually by the California Department of Housing and Community Development (HCD) for Santa Clara County, per household size. For some income categories, the income targets for pricing BMR units are slightly different from household income limits that determine eligibility. Maximum BMR sales and rent prices are determined by the City and its BMR program administrator, Hello Housing, based on the maximum affordable housing cost provisions of Section 50052.5 of the California Health and Safety Code, Section 6920 of the California Code of Regulations, and most recent published HCD income limits. The household income limits for BMR eligibility as well as the income targets for pricing BMR units are shown in Figure 2.

FIGURE 2: CITY OF CUPERTINO BMR INCOME LIMITS AND INCOME TARGET FOR PRICING BMR UNITS

	Household Income Limits	Income Target for Pricing BMR Units
Ownership		
Median	100% AMI	90% AMI
Moderate	120% AMI	110% Ami
Rental		
Extremely Low	30% AMI	30% AMI
Very Low	50% AMI	50% AMI
Low	80% AMI	60% AMI

Sources City of Cupertino Housing Element; City of Cupertino Housing Mitigation Program Procedural Manual.

The inclusionary housing scenarios tested in this analysis reflect the range of policy options under consideration by the City for ownership and rental development. They are summarized below and shown in Figure 3 and Figure 4.

[6] Rental BMR policy states that 40% of affordable units must be set aside for low income, and 60% for very low-income units.
[7] For-Sale BMR policy states that half of affordable units must be set aside for median income households, and half for moderate income households.

Ownership Development

Strategic Economics tested the economic feasibility of the development of ownership housing (single-family, townhouse, and condominium prototypes) under five different inclusionary scenarios:

- Scenario 0 (No Requirements): This scenario assumes that the project is 100% market-rate, with no affordable units and no in-lieu fees required.
- Scenario 1 (Existing Policy): This scenario mirrors the City's existing inclusionary housing requirement. The development projects must provide 15% of the units at prices affordable to median- (100% AMI) and moderate-income households (120% AMI).
- Scenario 2 (20% Inclusionary): This scenario requires new ownership projects to include at least 20% BMR units, targeting median and moderate-income households.
- Scenario 3 (25% Inclusionary): This scenario requires new ownership projects to include at least 25% BMR units, targeting median and moderate-income households.
- Scenario 4 (In-Lieu Fees): This scenario assumes that the development is required to pay in-lieu fees instead of providing affordable units on-site.

These scenarios are summarized in Figure 3 below.

FIGURE 3: INCLUSIONARY HOUSING SCENARIOS TESTED FOR OWNERSHIP PROTOTYPES (DETACHED SINGLE-FAMILY PROTOTYPE 1, SMALL LOT/TOWNHOUSE PROTOTYPE 2, AND CONDOMINIUM PROTOTYPE 3)

Inclusionary Housing Scenarios	% of Units at BMR Prices	Income Targets for BMR Units*	In-Lieu Fee Payment
Scenario 0 (No Requirements)	0%	N/A	No
Scenario 1 (Existing Policy)	15%	8% of units at 90% AMI 7% of units for 110% AMI	No
Scenario 2 (20% Inclusionary)	20%	10% of units at 90% AMI 10% of units at 110% AMI	No
Scenario 3 (25% Inclusionary)	25%	13% of units at 90% AMI 12% of units at 110% AMI	No
Scenario 4 (In-Lieu Fees)	0	N/A	Yes

*Per the City of Cupertino Housing Mitigation Program Procedural Manual, the maximum sales price for median income BMR units is set at 90% AMI. The maximum sales price for moderate income BMR units is set at 110% AMI.
Sources: City of Cupertino Housing Mitigation Program Procedural Manual, 2018; Strategic Economics, 2018.

Rental Development

Strategic Economics tested the economic feasibility of the development of ownership housing (single-family, townhouse, and condominium prototypes) under five different inclusionary scenarios:

- Scenario 0 (No Requirements): This scenario assumes that the project is 100% market-rate, with no affordable units and no in-lieu fees required.
- Scenario 1 (Existing Policy): This scenario mirrors the City's existing inclusionary housing requirement. The development projects must provide 15% of the units at prices affordable to low-income (80% AMI) and very low-income households (50% AMI).
- Scenario 2 (20% Inclusionary): This scenario requires new ownership projects to include at least 20% BMR units, targeting median and moderate-income households.

- Scenario 3 (25% Inclusionary): This scenario has a higher inclusionary requirement of 25% and targets lower income groups. The income targets include low-income (80% AMI), very low-income (50% AMI), and extremely low-income households (30% AMI).
- Scenario 4 (In-Lieu Fees): This scenario assumes that the development is required to pay in-lieu fees instead of providing affordable units on-site.

These scenarios are summarized in Figure 4 below.

FIGURE 4: INCLUSIONARY HOUSING SCENARIOS TESTED FOR RENTAL PROTOTYPES (LOWER DENSITY RENTAL PROTOTYPE 4 AND HIGHER DENSITY RENTAL PROTOTYPE 5)

Inclusionary Housing Scenarios	% of Units at BMR Rents	Income Targets for BMR Units*	In-Lieu Fee Payment
Scenario 0 (No Requirements)	0%	N/A	No
Scenario 1 (Existing Policy)	15%	9% of units at 50% AMI 6% of units at 60% AMI	No
Scenario 2 (20% Inclusionary)	20%	10% of units at 50% AMI 10% of units at 60% AMI	No
Scenario 3 (25% Inclusionary)	25%	10% of units at 50% AMI 10% of units at 60% AMI 5% of units at 30% AMI	No
Scenario 4 (In-Lieu Fees)	0	N/A	Yes

*Per City policy, pricing for low-income BMR units is set at 60% AMI.
Sources: City of Cupertino Housing Mitigation Program Procedural Manual, 2018; Strategic Economics, 2018.

Financial Feasibility Methodology

This section describes the method used to measure financial feasibility and the major cost and revenue assumptions underlying the analysis. Additional information is provided in the Appendix.

MEASURING FINANCIAL FEASIBILITY

The financial feasibility of each prototype is measured using a static pro forma model that solves for the profit to the developer. A pro forma model is a tool that is commonly used to estimate whether a project is likely to be profitable. For a policy analysis like this one, we use development prototypes to represent typical projects. However, it is important to note that individual development projects may be less or more profitable than these prototypes, depending on the specifics of the development program, development costs (construction and land), sources of financing, and other factors. Furthermore, because it is a static model reflecting today's market conditions, the pro forma analysis does not factor in changes in prices/rents, construction costs, or financing.

For the purposes of measuring financial feasibility in this analysis, developer profit was measured by using one of two metrics:

- **Return on cost (ROC) for ownership housing.** ROC is a common measure of project profitability for residential ownership development. The pro forma model tallies all development costs, including land costs, hard costs (construction costs), soft costs, and financing costs. The pro forma also tallies the project's total value. The project's total value is the sum of (1) the estimated value of the condominiums or townhomes (i.e. the average per unit sale price multiplied by the number of units), and (2) if applicable, the capitalized value of retail. The project's ROC is then calculated by dividing the project's net revenue (i.e. total value minus total development costs), by total development costs.
- **Yield on cost (YOC) for rental housing.** YOC is a common measure of profitability for income-generating projects, such as residential rental development. The pro forma model tallies all development costs (land costs, hard costs, soft costs, and financing costs). The pro forma also estimates total revenues: the project's net annual operating income is the stabilized income from the property (i.e. rental income generated from both the residential and retail uses), minus operating expenses and an allowance for vacancy. The YOC is estimated by dividing the total annual net operating income by total development costs.

RETURN THRESHOLDS

To understand the potential impact of inclusionary requirements on financial feasibility, the ROC and YOC results for each prototype and inclusionary housing scenario are compared to developers' typical expectation of return. These return thresholds are summarized in Figure 5 and discussed below:

- For the Single-Family Detached Prototype 1, the minimum ROC threshold ranges between 10 to 15%, based on developer interviews for new single-family development in Cupertino.
- For the Small Lot Single-Family/Townhouse Prototype 2 and the Condominium Prototype 3, the minimum ROC threshold ranges between 18 to 20%, based on a review of pro forma models for new multifamily ownership projects in Santa Clara County.
- For the Lower Density Apartment Prototype 4 and the Higher Density Apartment Prototype 5, the minimum YOC threshold ranges between 4.75% and 5.25%. According to the developers interviewed for this study, and a review of recent development project pro formas in the Silicon

Valley, the minimum YOC for a new multi-family development project should usually be 1.0 to 1.5 points higher than the published capitalization rate (cap rate). The current cap rate for multifamily properties in the San José Metropolitan Area is between 3.75 to 4.25%.[8] The cap rate, measured by dividing the net operating income generated by a property by the total project value, is a commonly used metric to estimate the value of an asset. Cap rates rise and fall along with interest rates. In a climate of rising interest rates, it is important to set the expectations of YOC at a conservative level, to allow for a margin between the cap rate and the rate of return. It is also important to consider that investors consider a wide range of factors to determine if a development project makes financial sense, and some investors may have different levels of risk tolerance than others.

FIGURE 5: MINIMUM RETURN THRESHOLDS BY PROTOTYPE

Return on Cost Thresholds	
Prototype 1: Detached Single Family	10-15%
Prototype 2: Small Lot/Townhomes	18-20%
Prototype 3: Condominiums	18-20%
Yield on Cost Thresholds	
Prototype 4: Lower-Density Rental Apartments	4.75-5.25%
Prototype 5: Higher-Density Rental Apartments	4.75-5.25%

Source: Developer interviews and a review of recent project pro formas, 2018; Strategic Economics, 2018.

REVENUE ASSUMPTIONS

MARKET RATE RESIDENTIAL

There is significant pent-up housing demand in Santa Clara County and the broader Bay Area region, as housing development has not kept up with employment growth. Between 2009 and 2015, Santa Clara County added over 170,000 new jobs between 2010 and 2015, but only 29,000 new housing units.[9] Apartment rents accelerated beginning in 2011, as the economy emerged from the Great Recession, and continued growing at an average annual rate of nearly eight percent until 2015. Since then rents have continued to grow at a slower pace of about four percent.

Sales prices in Cupertino and Santa Clara County have been escalating at a rapid rate over the last five years. In Cupertino, the median sales price for a single-family home increased from $1.68 million in 2014 to $2.37 million in 2018. [10] Similarly, the median sales price for a condominium climbed from $895,500 in 2014 to $1.4 million in 2018.[11]

The market-rate sale prices and rents assumed for each prototype are summarized in Figure 6. The values are calculated as a weighted average to reflect that different types of units have different unit

[8] CBRE Investor's Cap Rate Survey (H1, 2018).
[9] SPUR, "Room for More: Housing Agenda for San José," August 2017.
[10] Santa Clara County Association of Realtors, 2014 and 2018.

https://www.sccaor.com/pdf/stats/2014.pdf

https://www.sccaor.com/pdf/stats/2018.pdf.

[11] Ibid

values. For new single-family detached development (Prototype 1), sale prices were based on sales of newly built single-family homes in Cupertino as reported by Redfin. Sales prices for small lot single-family/townhomes (Prototype 2) and condominium projects (Prototype 3) were based on recent re-sales in Cupertino as reported by Redfin. The Appendix to this report (Figures A-1 through A-3) includes detailed information on the project comparables used to inform these estimates.

Because of the lack of recently built apartment projects in Cupertino, the rental rate estimates for rental units (Prototypes 4 and 5) were based on developer interviews and a review of recently built, comparable apartment projects in Cupertino and neighboring cities (Mountain View, Sunnyvale, Campbell, and Santa Clara), as reported by Costar. Since Cupertino's apartment buildings command higher rents than in the other cities, a 5% premium was applied over the market area's weighted average. Figure A-4 in the Appendix includes detailed information on the project comparables used to inform these estimates.

FIGURE 6: MARKET RATE RESIDENTIAL SALE PRICES AND MONTHLY RENTS, BY PROTOTYPE

	Unit Mix	Unit Size (Sq. Ft.)	Sale Price Per Sq. Ft.	Sale Price Per Unit
Prototype 1: Single Family				
5-BD	100%	3,700	$946	$3,500,200
Prototype 2: Small Lots/Townhomes				
3-BD	100%	1,850	$970	$1,794,500
Prototype 3: Condominiums				
2-BD	50%	1,350	$1,100	$1,485,000
3-BD	50%	1,600	$1,000	$1,600,000
Weighted Average Unit Size/Sale Price		1,475	$1,050	$1,542,500
Prototype 4: Lower-Density Rental				
Studios	10%	680	$4.94	$3,360
1-BD	45%	800	$4.73	$3,780
2-BD	40%	1,100	$4.30	$4,725
3-BD	5%	1,400	$4.13	$5,775
Weighted Average Unit Size/Monthly Rent		938	$4.54	$4,216
Prototype 5: Higher-Density Rental				
Studios	10%	680	$4.94	$3,360
1-BD	45%	800	$4.73	$3,780
2-BD	40%	1,100	$4.30	$4,725
3-BD	5%	1,400	$4.13	$5,775
Weighted Average Unit Size/Monthly Rent			$4.54	$4,216

Source: Strategic Economics, 2018.

The total value of market-rate units is summarized in Figure 7. For the ownership prototypes (Prototypes 1, 2, and 3), the total project value is obtained by multiplying the per unit sale price by the total number of units. For the rental prototypes (Prototypes 4 and 5), an income capitalization approach is used. This approach first estimates the annual net operating income (NOI) of the prototype, which is the difference between project income (annual rents) and project expenses (operating costs and vacancies). The NOI is then divided by the current cap rate to derive total project value.[12]

FIGURE 7. MARKET RATE RESIDENTIAL VALUE CALCULATION, BY PROTOTYPE

		Prototype 1	Prototype 2	Prototype 3	Prototype 4	Prototype 5
		Detached Single Family	Small Lot Single Family/ Townhome	Condo	Lower Density Rental Apartments	Higher Density Rental Apartments
Weighted Average Monthly Rent (a)	per unit	n/a	n/a	n/a	$4,216	$4,216
Annual Rent	per unit	n/a	n/a	n/a	$50,589	$50,589
Vacancy Allowance		n/a	n/a	n/a	5.00%	5.00%
Operating Expenses	% gross revenue	n/a	n/a	n/a	30.00%	30.00%
Annual Net Operating Income	per unit	n/a	n/a	n/a	**$32,883**	**$32,883**
Capitalization Rate (b)		n/a	n/a	n/a	4.25%	4.25%
Sales Value/Capitalized Value	per unit	**$3,500,200**	**$1,794,500**	**$1,542,500**	**$773,714**	**$773,714**
Total Units		7	50	100	100	100
Total Residential Value (c)	total project	**$24,501,400**	**$89,725,000**	**$154,250,000**	**$77,371,412**	**$77,371,412**

(a) See Figure 5 for details on how the per unit sale price was derived.
(b) CBRE, H1 2018 Cap Rate Survey. Cap rates for the San José Metropolitan Area were between 3.75% and 4.25% for infill multifamily Class A.
(c) Assuming all units are market rate. Total residential value is calculated by multiplying the per unit sales value/capitalized value (which is a weighted average) by the total number of units.
Sources: CBRE, 2018; CoStar, 2018; Strategic Economics, 2018.

BELOW MARKET RATE HOUSING

BMR residential values at different AMI levels are summarized in Figure 8. Maximum sales prices and rents were provided by Hello Housing, the City's BMR program administrator. Sales prices and rents for BMR units were calculated using the method and parameters established in the City's Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units ("BMR Manual").[13]

An income capitalization approach is also applied to BMR units to derive total residential value.

[12] As mentioned above, the CBRE Investor's Cap Rate Survey (H1, 2018) estimates the cap rate for infill multifamily Class A in San José Metro Area to range from 3.75 to 4.25%.
[13] Maximum sales price calculations incorporate a 10% down payment, as well as an interest rate based on a 10-year rolling average for 30-year fixed-rate mortgages, according to data from Freddie Mac. Resale prices for existing BMR units are determined by the City. Annual housing costs associated with BMR rental units, including rent, utility costs, parking fees, and other costs, may not in sum exceed 30% of the annual income associated with the income target for which the unit is designated.

FIGURE 8. BELOW MARKET RATE RESIDENTIAL VALUES, BY PROTOTYPE AND AMI LEVEL

Income Target for Pricing BMR Units	Prototype 1 Detached Single Family	Prototype 2 Small Lot Single Family/ Townhomes	Prototype 3 Condominium	Prototype 4 Lower Density Rental Apartments	Prototype 5 Higher Density Rental Apartments
30% AMI (Extremely Low)	n/a	n/a	n/a	$116,806	$116,806
50% AMI (Very Low)	n/a	n/a	n/a	$211,968	$211,968
60% AMI (Low)*	n/a	n/a	n/a	$260,224	$260,224
90% AMI (Median)*	$483,270	$344,879	$322,981	n/a	n/a
110% AMI (Moderate)*	$612,662	$462,872	$435,374	n/a	n/a

*Per policy, the maximum price for BMR units for low income is set at 60% AMI, median income at 90% AMI, and moderate income at 110% AMI.
Note: All values are weighted averages, according to each prototype's unit mix. Affordable sale prices and rents were provided by the City of Cupertino and Hello Housing, based on 2018 Santa Clara County income and rent limits, published by the California Tax Credit Allocation Committee, and the 2018 Santa Clara County maximum utility allowance, published by HUD.

RETAIL COMMERCIAL

Retail lease assumptions were developed from Costar listings for comparable ground floor retail spaces in Cupertino, with capitalization rates reported by CBRE for the San José Metro Area. The annual net operating income and capitalized value were calculated based on the assumptions shown in Figure 9.

FIGURE 9. RETAIL REVENUE ASSUMPTIONS AND CAPITALIZED VALUE

	Unit	New Retail (NNN)
Assumptions		
Monthly Rent, Triple Net (a)	Per SF	$4.25
Vacancy	Percent	10%
Operating Expenses	Percent	Pass through
Capitalization Rate	Percent	7.00%
Capitalized Value		
Gross Annual Retail Income	Per SF	$51.00
Less Retail Vacancy	Per SF	-$5.10
Less Operating Expenses	Per SF	$0.00
Annual Net Operating Income	Per SF	$45.90
Capitalized Value	**Per SF**	**$655.71**

(a) Based on recent lease transactions in Cupertino for recently constructed ground-floor retail. Under a triple net lease (NNN) the tenant pays operating expenses, including real estate taxes, building insurance, and maintenance (the three "nets") on the property in addition to the rents.
(b) Based on the CBRE H1 2018 Cap Rate Survey. Cap rates for the San José Metropolitan Area were between 4.5% to 5.5% for (Class A) and 6.25% to 7.25% (Class B) for Neighborhood Retail.

Source: CBRE, 2018; Costar, 2018; Strategic Economics, 2018.

DEVELOPMENT COSTS

The development costs incorporated into the pro forma analysis include land costs, hard costs (construction materials and labor), soft costs, and financing costs. Cost assumptions are summarized in Figure 10 and described below.

LAND COSTS

A critical factor for development feasibility is the cost of land. To determine the market value of sites zoned for residential use in Cupertino, Strategic Economics interviewed developers and reviewed recent pro formas for similar development projects in Cupertino and nearby communities. Recognizing that one of the key factors that drives the value of the site is the permitted density, this analysis assumes that sites zoned for single family detached homes are valued at $9 million per acre ($207 per square foot), while sites zoned for higher-density housing are valued at $10 million per acre ($230 per square foot).

Note that these values are approximations for the purposes of the feasibility analysis; in reality, the value of any particular site is likely to vary based on its location, amenities, and property owner expectations.

HARD COSTS

Hard costs are based on Strategic Economics' review of pro formas for similar development projects, as well as interviews with developers active in Cupertino and surrounding cities. The assumptions for hard costs, shown in Figure 10, include estimates for basic site improvements and construction costs for residential areas, retail areas, and parking structures.

It should be noted that construction costs have been escalating rapidly in the Bay Area in the last several years[14]; project feasibility is highly sensitive to changes in construction cost assumptions.

SOFT COSTS AND FINANCING COSTS

Soft costs include items such as architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, developer overhead, and city fees, as shown in Figure 10. City fees and other development impact fees were calculated for the individual prototypes based on data provided by City staff. Detailed fee calculations are shown in Figure 21. Other soft costs were estimated based on standard industry ratios, calculated as a percentage of hard costs.

[14] Terner Center for Housing Innovation, UC Berkeley. Understanding the Drivers of Rising Construction Costs in California (Ongoing Research), https://ternercenter.berkeley.edu/construction-costs.

FIGURE 10: DEVELOPMENT COST ASSUMPTIONS

	Metric	Estimate
Land Costs		
Land zoned for single-family	per site acre	$9 million
Land zoned for townhomes/multi-family/mixed-use	per site acre	$10 million
Hard Costs		
Site Costs (demo, infrastructure, etc.)	per site sq. ft.	$30
Residential Area		
Single Family (includes 2-car garage)	per gross sq. ft.	$95
Townhomes (includes 2-car garage)	per gross sq. ft.	$150
Stacked condominiums (Type V)	per gross sq. ft.	$275
Stacked apartments (Type V)	per gross sq. ft.	$235
Higher density apartments (Type 3 modified)	per gross sq. ft.	$300
Retail Area (Including T.I)	per gross retail sq. ft.	$130
Surface parking	per space	$10,000
Podium parking	per space	$35,000
Soft Costs		
Architectural, Engineering, Consulting	% of hard costs	6%
Taxes, Insurance, Legal, Accounting	% of hard costs	3%
Other	% of hard costs	3%
Contingency	% of hard costs	5%
Developer Overhead and Fees	% of hard costs	4%
City Permits and Fees (a)		
Prototype 1	per unit	$153,022
Prototype 2	per unit	$83,463
Prototype 3	per unit	$67,755
Prototype 4	per unit	$65,949
Prototype 5	per unit	$67,241
Financing Costs		
Financing	% of hard and soft costs	6%

(a) Includes City fees and permits, school district fees, and sanitation district fees paid on the residential and retail component of each prototype for market rate units. Includes housing mitigation fee for the retail component.

Sources: Developer interviews, 2018; City of Cupertino, 2018; Cupertino School District and Fremont High School District, 2018; Strategic Economics, 2018.

Key Results

This section summarizes the findings of the financial feasibility analysis under different inclusionary housing scenarios for each prototype. Figure 11 and Figure 12 demonstrate the return obtained by each prototype, compared to the minimum threshold for feasibility. Figure 21 shows development costs by type and detailed City fees. Figure 22 through Figure 26 provide the pro forma results for each prototype.

Ownership residential development can feasibly support higher inclusionary requirements than rental development. While growth in apartment rents has reportedly started to plateau in Santa Clara County in the last year, ownership prices (including condominium prices) continue to increase, making it generally more feasible to build ownership projects.[15]

Detached single-family development (Prototype 1) can support an inclusionary requirement of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, the single-family detached Prototype 1 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return on cost (ROC) well above the minimum threshold of 10%. Recent sales prices of newly constructed single-family homes in Cupertino are sufficient to offset development costs as well as support inclusionary requirements or the payment of Housing Mitigation Fees. However, the single-family detached prototype cannot support an inclusionary requirement of 25% (Scenario 3), which generates a return of less than 1%. Figure 22 provides more detailed pro forma results for this prototype.

Small lot/townhome development (Prototype 2) can also support all inclusionary requirement of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, Prototype 2 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return exceeding the minimum threshold of 15% required for feasibility. Although there has been limited townhome construction in recent years in Cupertino, recent townhome re-sales suggest that prices for new construction would generate sufficient revenues to offset development costs as well as support any inclusionary requirement or the payment of Housing Mitigation Fees. Figure 23 provides more detailed pro forma results for this prototype.

A mixed-use condominium prototype (Prototype 3) can support inclusionary requirements of 15%, 20%, or the payment of Housing Mitigation Fees. As shown in Figure 11, Prototype 3 shows positive project revenues for Scenarios 1, 2, and 4, achieving a return well above the minimum threshold of 15%. Despite the lack of recent condominium construction in Cupertino, condominium re-sales suggest that prices for new construction would support any of the scenarios that impose an inclusionary requirement or the payment of in-lieu fees. Figure 24 provides more detailed pro forma results for this prototype.

The lower density mixed-use apartment prototype (Prototype 4) is nearly feasible as a 100% market-rate project. Without any BMR requirements, the lower density rental prototype achieves a yield on cost of 4.5%, below the minimum requirement of 4.75%, as shown in Figure 12. The lower density rental prototype does not generate sufficient revenues to support inclusionary requirements or in-lieu fees under current rents and costs. Figure 25 provides the pro forma for this prototype.

[15] Mercury News, Louis Hansen, May 16, 2018. Bay Area condo market heats up as alternative to pricey homes. https://www.mercurynews.com/2018/05/16/bay-area-condo-market-heats-up-as-alternative-to-pricier-homes/

The higher density rental multifamily prototype (Prototype 5) can support Housing Mitigation Fee payments (Scenario 4) but cannot feasibly provide inclusionary BMR units under current market rents, construction costs, and land costs. Prototype 5 achieves a higher YOC than Prototype 4, largely due to the greater efficiencies of a higher density project, and is financially feasible in Scenario 1 and Scenario 4 (see Figure 12). Figure 26 provides more detailed pro forma results.

The lower density mixed-use apartment prototype (Prototype 4) can feasibly provide up to 15% inclusionary BMR units if it could command 15% higher revenues or if construction and land costs were reduced by 15%. If a lower density rental project were able to achieve higher revenues (15% higher) on the apartment units and on the ground-floor retail space, as shown in Figure 13 and Figure 14, the project could feasibly accommodate an inclusionary requirement of 15% BMR units. Alternatively, if a development project were able to secure a construction bid and purchase a site that reduced these costs by 15%, the lower density mixed-use apartment prototype could feasibly provide 15% inclusionary BMR units (see Figure 15 and Figure 16).

The higher density mixed-use apartment prototype (Prototype 5) can feasibly provide inclusionary BMR units if it can command 10% higher revenues or if construction and land costs were reduced by 5%. If a higher density rental project can achieve 10% higher rents on the apartments and retail space, the project can feasibly accommodate an inclusionary requirement of 15% BMR units (see Figure 17 and Figure 18). In another scenario, if a higher density mixed-use apartment could secure a construction bid and site that is 5% less expensive, this prototype could also feasibly provide 15% inclusionary BMR units (see Figure 19 and Figure 20).

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FIGURE 11: RETURN ON COST FOR OWNERSHIP PROTOTYPES BY INCLUSIONARY HOUSING SCENARIO

Inclusionary Housing Scenarios	Prototype 1: Single Family Detached	Prototype 2: Small Lot SF/Townhouse	Prototype 3: Condominiums
Minimum Required Return	10-15%	18-20%	18-20%
Scenario 0 (No Requirements)	31%	41%	38%
Scenario 1 (Existing Policy)	15%	26%	23%
Scenario 2 (20% Inclusionary)	14%	21%	19%
Scenario 3 (25% Inclusionary)	1%	16%	14%
Scenario 4 (In-Lieu Fees)	28%	37%	33%

Source: Strategic Economics, 2019.

FIGURE 12: YIELD ON COST UNDER DIFFERENT INCLUSIONARY HOUSING SCENARIOS FOR MULTI-FAMILY RENTAL PROTOTYPES 4 AND 5

Inclusionary Housing Scenarios	Prototype 4: Lower Density Rental	Prototype 5: Higher Density Rental
Minimum Required Yield on Cost	4.75%-5.25%	4.75%-5.25%
Scenario 0 (No Requirements)	4.52%	4.93%
Scenario 1 (15% Inclusionary)	4.22%	4.63%
Scenario 2 (20% Inclusionary)	4.10%	4.50%
Scenario 3 (25% Inclusionary)	3.94%	4.34%
Scenario 4 (In Lieu Fees)	4.40%	4.76%

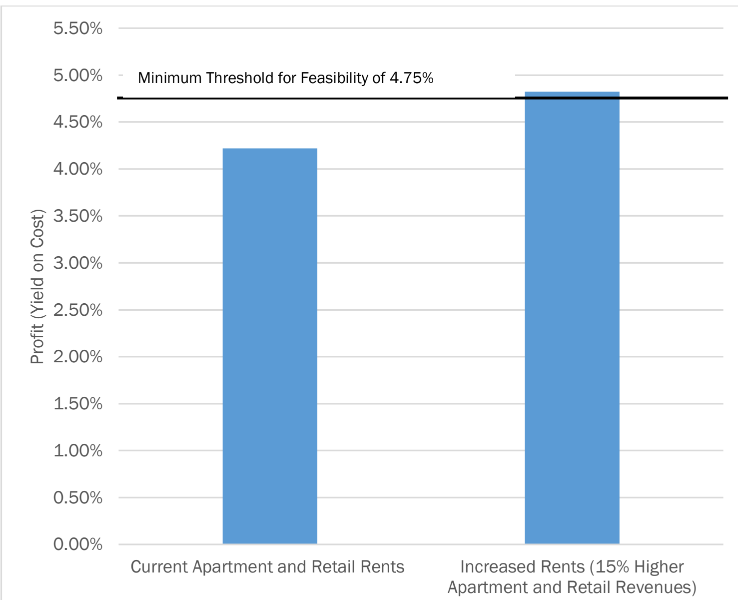
Source: Strategic Economics, 2019.

FIGURE 13: YIELD ON COST UNDER DIFFERENT REVENUE ASSUMPTIONS FOR LOWER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 4) WITH 15% BMR REQUIREMENT

Revenue Assumptions	Monthly Market Rate Apt. Rent per Unit	Monthly Retail Rent per SF	Yield on Cost	Feasibility Results
Current Apartment and Retail Rents	$4,216	$4.25	4.22%	Not Feasible
Increased Rents (15% Higher Revenues)	$4,848	$4.89	4.82%	Feasible

Source: Strategic Economics, 2019.

FIGURE 14: FEASIBILITY OF LOWER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 4) WITH 15% INCLUSIONARY BMR REQUIREMENT AND INCREASED REVENUES



Source: Strategic Economics, 2019.

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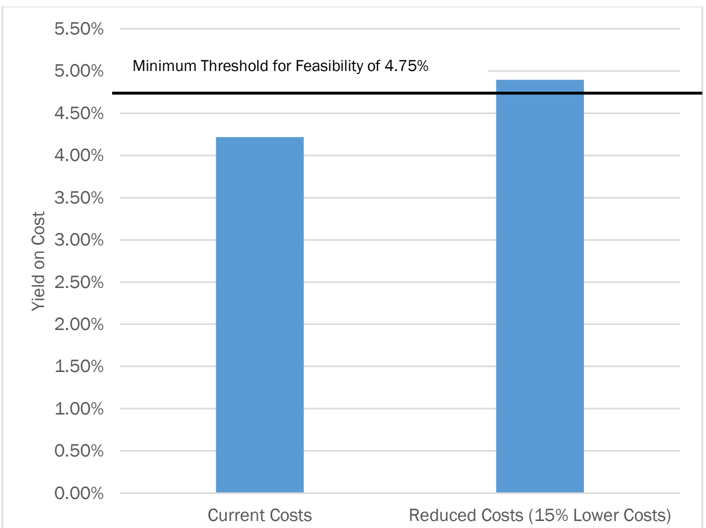
FIGURE 15: YIELD ON COST UNDER DIFFERENT COST ASSUMPTIONS FOR LOWER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 4) WITH 15% BMR REQUIREMENT

Cost Assumptions	Construction Cost per Unit	Land Cost per Unit	Yield on Cost	Feasibility Results
Current Costs	$385,958	$250,000	4.22%	Not Feasible
Reduced Costs (15% Lower Costs)	$328,064	$212,500	4.90%	Feasible

Source: Strategic Economics, 2019.

FIGURE 16: FEASIBILITY RESULTS OF LOWER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 4) WITH 15% INCLUSIONARY BMR REQUIREMENT AND LOWER COSTS



Source: Strategic Economics, 2019.

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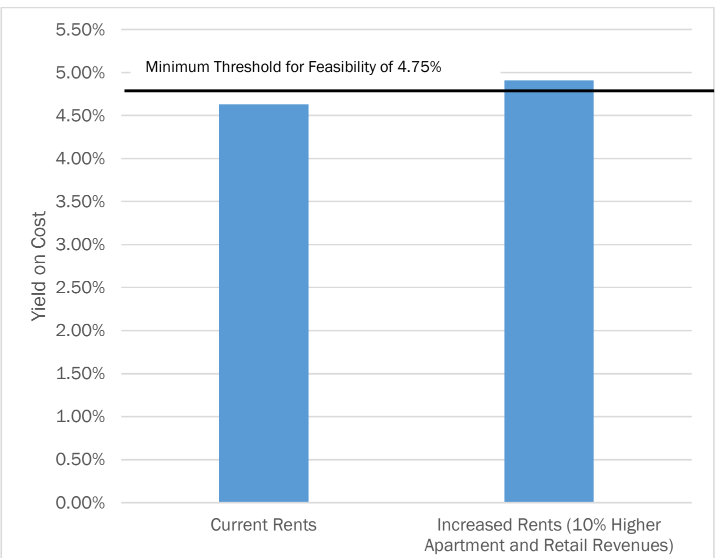
FIGURE 17: YIELD ON COST UNDER DIFFERENT REVENUE ASSUMPTIONS FOR HIGHER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 5) WITH 15% BMR REQUIREMENT

Revenue Assumptions	Monthly Market Rate Apt. Rent per Unit	Monthly Retail Rent per SF	Yield on Cost	Feasibility Results
Current Rents	$4,216	$4.25	4.63%	Not Feasible
Increased Rents (10% Higher Revenues)	$4,637	$4.68	4.91%	Feasible

Source: Strategic Economics, 2019.

FIGURE 18: FEASIBILITY RESULTS OF HIGHER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 5) WITH 15% INCLUSIONARY BMR REQUIREMENT AND HIGHER REVENUES



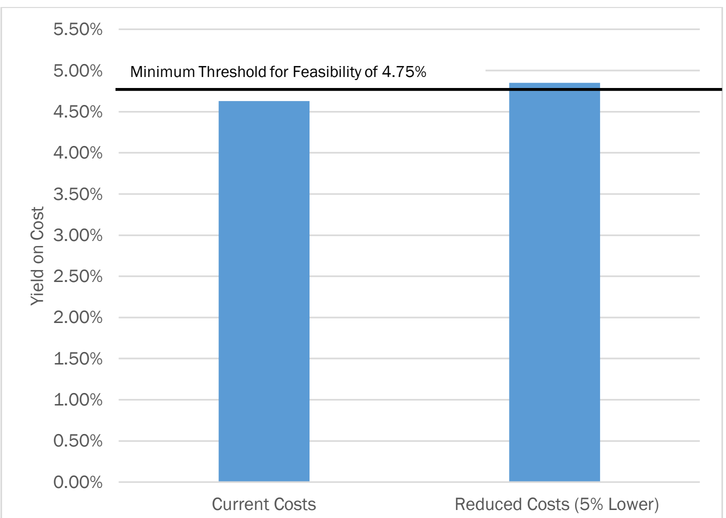
Source: Strategic Economics, 2019.

FIGURE 19: YIELD ON COST UNDER DIFFERENT COST ASSUMPTIONS FOR HIGHER DENSITY MULTI-FAMILY RENTAL (PROTOTYPE 5) WITH 15% BMR REQUIREMENT

Cost Assumptions	Construction Cost per Unit	Land Cost per Unit	Yield on Cost	Feasibility Results
Current Costs	$460,195	$131,579	4.63%	Not Feasible
Reduced Costs (5% Lower Costs)	$437,185	$125,000	4.85%	Feasible

Source: Strategic Economics, 2019.

FIGURE 20: FEASIBILITY RESULTS OF HIGHER DENSITY MULTI-FAMILY RENTAL PROTOTYPE (PROTOTYPE 5) WITH 15% INCLUSIONARY BMR REQUIREMENT AND LOWER COSTS



Source: Strategic Economics, 2019.

FIGURE 21. DETAILED CALCULATION OF THE CITY OF CUPERTINO'S PERMITS AND FEES FOR EACH PROTOTYPE (PER UNIT)

	Prototype 1 Detached Single Family	Prototype 2 Small Lot Single Family/Townhome	Prototype 3 Condominium	Prototype 4 Lower Density Rental Apartments	Prototype 5 Higher Density Rental Apartments
Planning Fees					
Planning Applications	$9,210	$1,289	$645	$400	$400
CEQA	$3,571	$2,447	$1,223	$1,223	$1,223
Consultant Review	$2,111	$296	$148	$148	$148
Housing Mitigation Fee (Non-residential only)	$0	$0	$1,188	$1,188	$1,782
Public Works Fees					
Transportation Impact Fee	$6,177	$3,380	$4,374	$4,374	$4,871
Grading	$420	$59	$29	$29	$29
Tract Map	$1,350	$189	$94	$94	$94
Plan Check and Inspection	$543	$76	$38	$38	$38
Storm Drain Fees	$4,902	$501	$367	$354	$312
Parkland Dedication (a)	$105,000	$60,000	$54,000	$54,000	$54,000
Building Division Fees					
Building Fees	$11,428	$10,592	$1,664	$1,133	$1,199
Construction Tax	$752	$752	$1,075	$1,075	$1,237
Other Fees					
School District Fees (b)	$7,012	$3,506	$2,826	$1,808	$1,823
Sanitary Sewer District Connection Permit Fee	$350	$350	$70	$70	$70
Stormwater Management Fee	$197	$28	$14	$14	$14
Estimated City Fees, Total Per Unit	**$153,022**	**$83,463**	**$67,755**	**$65,949**	**$67,241**

(a) Parkland dedication fees waived for affordable units.
(b) Based on the average of Cupertino School District and Fremont Union High School District school fees.
Sources: City of Cupertino, 2018; Fremont Union School District; Cupertino School District; Cupertino Sanitary Sewer District, 2018.

FIGURE 22: FINANCIAL FEASIBILITY RESULTS FOR SINGLE-FAMILY DETACHED PROTOTYPE 1

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	7	7	7	7	7
Market Rate Units	7	6	6	5	7
Affordable Units	0	1	1	2	0
Fractional Units	0	0.05	0.4	0	0
Revenues					
Residential Capitalized Value	$24,501,400	$21,484,470	$21,484,470	$18,596,932	$24,501,400
Per Unit	$3,500,200	$3,069,210	$3,069,210	$2,656,705	$3,500,200
Development Costs					
Land Costs					
Land Costs	$14,000,000	$14,000,000	$14,000,000	$14,000,000	$14,000,000
Per Unit	*$2,000,000*	*$2,000,000*	*$2,000,000*	*$2,000,000*	*$2,000,000*
Direct Costs					
Gross Residential Area (a)	$2,775,564	$2,775,564	$2,775,564	$2,775,564	$2,775,564
Subtotal Direct Costs	$2,775,564	$2,775,564	$2,775,564	$2,775,564	$2,775,564
Per Unit	*$396,509*	*$396,509*	*$396,509*	*$396,509*	*$396,509*
Per Gross Sq. Ft.	*$95*	*$95*	*$95*	*$95*	*$95*
Indirect Costs					
City Fees (b)	$1,071,155	$991,537	$1,169,211	$861,155	$1,532,693
Other Soft Costs (c)	$582,868	$582,868	$582,868	$582,868	$582,868
Per Unit	$83,266.92	$83,266.92	$83,266.92	$83,266.92	$83,266.92
Subtotal Indirect Costs	$1,654,023	$1,574,405	$1,752,079	$1,444,023	$2,115,561
Per Unit	$236,289	$224,915	$250,297	$206,289	$302,223
Financing	$265,775	$260,998	$271,659	$253,175	$293,468
Per Unit	$37,968	$37,285	$38,808	$36,168	$41,924
Total Development Costs	$18,695,363	$18,610,968	$18,799,302	$18,472,763	$19,184,593
Per Unit	$2,670,766	$2,658,710	$2,685,615	$2,638,966	$2,740,656
Per Gross Sq. Ft.	$640	$637	$643	$632	$657
Feasibility					
Net Revenue (d)	$5,806,037	$2,873,502	$2,685,168	$124,169	$5,316,807
Return on Cost (e)	31%	15%	14%	1%	28%

(a) Includes costs for site prep and 2-car parking garage
(b) Figure 14 shows detailed City fees. Includes fractional in-lieu housing mitigation fee for scenario 1 and 2. Parkland dedication fees waived for affordable units.
(c) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead
(d) Net revenue is the project total revenue minus total development costs. (d) Return on cost is the net revenue, divided by total development costs.
(e) Return on cost is the net revenue, divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 23: FINANCIAL FEASIBILITY RESULTS FOR SMALL LOT SINGLE-FAMILY/TOWNHOUSE PROTOTYPE 2

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	50	50	50	50	50
Market Rate Units	50	42	40	37	50
Affordable Units	0	8	10	13	0
Revenues					
Residential Capitalized Value	$89,725,000	$79,265,818	$75,818,755	$72,312,696	$89,725,000
Retail Capitalized Value	$0	$0	$0	$0	$0
Total Capitalized Value	$89,725,000	$79,265,818	$75,818,755	$72,312,696	$89,725,000
Per Unit	$1,794,500	$1,585,316	$1,516,375	$1,446,254	$1,794,500
Development Costs					
Land Costs					
Land Costs	$33,333,333	$33,333,333	$33,333,333	$33,333,333	$33,333,333
Per Unit	$666,667	$666,667	$666,667	$666,667	$666,667
Direct Costs					
Site Prep/Demo	$4,356,000	$4,356,000	$4,356,000	$4,356,000	$4,356,000
Gross Residential Area (a)	$15,651,677	$15,651,677	$15,651,677	$15,651,677	$15,651,677
Subtotal Direct Costs	$20,007,677	$20,007,677	$20,007,677	$20,007,677	$20,007,677
Per Unit	$400,154	$400,154	$400,154	$400,154	$400,154
Per Gross Sq. Ft.	$192	$192	$192	$192	$192
Indirect Costs					
City Fees (b)	$4,173,154	$3,693,154	$3,573,154	$3,393,154	$5,986,154
Other Soft Costs (c)	$4,201,612	$4,201,612	$4,201,612	$4,201,612	$4,201,612
Per Unit	$84,032	$84,032	$84,032	$84,032	$84,032
Subtotal Indirect Costs	$8,374,767	$7,894,767	$7,774,767	$7,594,767	$10,187,767
Per Unit	$167,495	$157,895	$155,495	$151,895	$203,755
Financing	$1,702,947	$1,674,147	$1,666,947	$1,656,147	$1,811,727
Per Unit	$34,059	$33,483	$33,339	$33,123	$36,235
Total Development Costs	$63,418,723	$62,909,923	$62,782,723	$62,591,923	$65,340,503
Per Unit	$1,268,374	$1,258,198	$1,255,654	$1,251,838	$1,306,810
Per Gross Sq. Ft.	$608	$603	$602	$600	$626
Feasibility					
Net Revenue (d)	$26,306,277	$16,355,895	$13,036,032	$9,720,772	$24,384,497
Return on Cost (e)	41%	26%	21%	16%	37%

(a) Includes 2-car parking garage
(b) Figure 14 shows applicable city fees. Only Scenario 4 pays in-lieu housing mitigation fees. Parkland dedication fees waived for affordable units.
(c) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead
(d) Net revenue is the project total revenue minus total development costs. (d) Return on cost is the net revenue, divided by total development costs.
(e) Return on cost is the net revenue, divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 24: FINANCIAL FEASIBILITY RESULTS FOR CONDOMINIUM PROTOTYPE 3

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Capitalized Value	$154,250,000	$136,743,959	$130,983,540	$125,110,729	$154,250,000
Retail Capitalized Value	$6,557,143	$6,557,143	$6,557,143	$6,557,143	$6,557,143
Total Capitalized Value	$160,807,143	$143,301,101	$137,540,683	$131,667,871	$160,807,143
Per Unit	$1,608,071	$1,433,011	$1,375,407	$1,316,679	$1,608,071
Development Costs					
Land Costs					
Land Costs	$28,571,429	$28,571,429	$28,571,429	$28,571,429	$28,571,429
Per Unit	$285,714	$285,714	$285,714	$285,714	$285,714
Direct Costs					
Site Prep/Demo	$3,733,714	$3,733,714	$3,733,714	$3,733,714	$3,733,714
Gross Residential Area	$50,703,125	$50,703,125	$50,703,125	$50,703,125	$50,703,125
Gross Retail Area	$1,300,000	$1,300,000	$1,300,000	$1,300,000	$1,300,000
Parking	$7,560,000	$7,560,000	$7,560,000	$7,560,000	$7,560,000
Subtotal Direct Costs	$63,296,839	$63,296,839	$63,296,839	$63,296,839	$63,296,839
Per Unit	$632,968	$632,968	$632,968	$632,968	$632,968
Per Gross Sq. Ft.	$343	$343	$343	$343	$343
Indirect Costs					
City Fees (a)	$6,775,479	$5,965,479	$5,695,479	$5,425,479	$10,398,879
Other Soft Costs (b)	$13,292,336	$13,292,336	$13,292,336	$13,292,336	$13,292,336
Per Unit	$132,923	$132,923	$132,923	$132,923	$132,923
Subtotal Indirect Costs	$20,067,815	$19,257,815	$18,987,815	$18,717,815	$23,572,415
Per Unit	$200,678	$192,578	$189,878	$187,178	$235,724
Financing	$5,001,879	$4,953,279	$4,937,079	$4,920,879	$5,212,155
Per Unit	$50,019	$49,533	$49,371	$49,209	$52,122
Total Development Costs	$116,937,963	$116,079,363	$115,793,163	$115,506,963	$120,652,839
Per Unit	$1,169,380	$1,160,794	$1,157,932	$1,155,070	$1,206,528
Per Gross Sq. Ft.	$634	$630	$628	$626	$654
Feasibility					
Net Revenue (c)	$43,869,180	$27,221,739	$21,747,520	$16,160,909	$40,154,304
Return on Cost (d)	38%	23%	19%	14%	33%

(a) Figure 14 shows detailed city fees. In-lieu housing mitigation fees apply to non-residential sq. ft. and Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Return on cost is the net revenue, divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 25: FINANCIAL FEASIBILITY RESULTS FOR LOWER DENSITY RENTAL APARTMENTS PROTOTYPE 4

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Net Operating Income	$3,288,285	$2,942,477	$2,831,310	$2,691,717	$3,288,285
Retail Net Operating Income	$459,000	$459,000	$459,000	$459,000	$459,000
Total Net Operating Income	$3,747,285	$3,401,477	$3,290,310	$3,150,717	$3,747,285
Total Capitalized Value	$83,928,555	$75,791,903	$73,176,197	$69,891,657	$83,928,555
Per Unit	$839,286	$757,919	$731,762	$698,917	$839,286
Development Costs					
Land Costs					
Land Costs	$25,000,000	$25,000,000	$25,000,000	$25,000,000	$25,000,000
Per Unit	$250,000	$250,000	$250,000	$250,000	$250,000
Direct Costs					
Site Prep/Demo	$3,267,000	$3,267,000	$3,267,000	$3,267,000	$3,267,000
Gross Residential Area	$27,553,750	$27,553,750	$27,553,750	$27,553,750	$27,553,750
Gross Retail Area	$1,300,000	$1,300,000	$1,300,000	$1,300,000	$1,300,000
Parking	$7,560,000	$6,475,000	$6,475,000	$6,475,000	$7,560,000
Subtotal Direct Costs	$39,680,750	$38,595,750	$38,595,750	$38,595,750	$39,680,750
Per Unit	$396,808	$385,958	$385,958	$385,958	$396,808
Per Gross Sq. Ft.	$338	$329	$329	$329	$338
Indirect Costs					
City Fees (a)	$6,594,875	$5,784,875	$5,514,875	$5,244,875	$8,942,363
Other Soft Costs (b)	$8,332,958	$8,105,108	$8,105,108	$8,105,108	$8,332,958
Per Unit	$83,329.58	$81,051.08	$81,051.08	$81,051.08	$83,329.58
Subtotal Indirect Costs	$14,927,832	$13,889,982	$13,619,982	$13,349,982	$17,156,520
Per Unit	$149,278	$138,900	$136,200	$133,500	$171,565
Financing	$3,276,515	$3,149,144	$3,132,944	$3,116,744	$3,410,236
Per Unit	$32,765	$31,491	$31,329	$31,167	$34,102
Total Development Costs	$82,885,097	$80,634,876	$80,348,676	$80,062,476	$85,247,506
Per Unit	$828,851	$806,349	$803,487	$800,625	$852,475
Per Gross Sq. Ft.	$707	$688	$685	$683	$727
Feasibility					
Net Revenue (c)	$1,043,457	($4,842,973)	($7,172,479)	($10,170,819)	($1,318,952)
Yield on Cost (d)	4.5%	4.2%	4.1%	3.9%	4.4%

(a) Appendix shows detailed city fees. Excludes affordable housing mitigation in-lieu fee, except in Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Yield on cost is the total project net operating income divided by total development costs.
Source: Strategic Economics, 2018.

FIGURE 26: FINANCIAL FEASIBILITY RESULTS FOR HIGHER DENSITY RENTAL APARTMENTS PROTOTYPE 5

	Scenario 0 (No BMR Req.)	Scenario 1 (15% On-Site)	Scenario 2 (20% On-Site)	Scenario 3 (25% On-Site)	Scenario 4 (In-Lieu Fees)
Total Units	100	100	100	100	100
Market Rate Units	100	85	80	75	100
Affordable Units	0	15	20	25	0
Revenues					
Residential Net Operating Income	$3,288,285	$2,942,477	$2,831,310	$2,691,717	$3,288,285
Retail Net Operating Income	$688,500	$688,500	$688,500	$688,500	$688,500
Total Net Operating Income	$3,976,785	$3,630,977	$3,519,810	$3,380,217	$3,976,785
Total Capitalized Value	$87,207,126	$79,070,475	$76,454,769	$73,170,229	$87,207,126
Per Unit	$872,071	$790,705	$764,548	$731,702	$872,071
Development Costs					
Land Costs					
Land Costs	$13,157,895	$13,157,895	$13,157,895	$13,157,895	$13,157,895
Per Unit	$131,579	$131,579	$131,579	$131,579	$131,579
Direct Costs					
Site Prep/Demo	$1,719,474	$1,719,474	$1,719,474	$1,719,474	$1,719,474
Gross Residential Area	$35,175,000	$35,175,000	$35,175,000	$35,175,000	$35,175,000
Gross Retail Area	$1,950,000	$1,950,000	$1,950,000	$1,950,000	$1,950,000
Parking	$8,190,000	$7,175,000	$7,175,000	$7,175,000	$8,190,000
Subtotal Direct Costs	$47,034,474	$46,019,474	$46,019,474	$46,019,474	$47,034,474
Per Unit	$470,345	$460,195	$460,195	$460,195	$470,345
Per Gross Sq. Ft.	$401	$392	$392	$392	$401
Indirect Costs					
City Fees (a)	$6,724,069	$5,914,069	$5,644,069	$5,374,069	$9,688,129
Other Soft Costs (b)	$9,877,239	$9,664,089	$9,664,089	$9,664,089	$9,877,239
Per Unit	$98,772	$96,641	$96,641	$96,641	$98,772
Subtotal Indirect Costs	$16,601,308	$15,578,158	$15,308,158	$15,038,158	$19,387,168
Per Unit	$166,013	$155,782	$153,082	$150,382	$193,872
Financing	$3,818,147	$3,695,858	$3,679,658	$3,663,458	$3,985,299
Per Unit	$38,181	$36,959	$36,797	$36,635	$39,853
Total Development Costs	$80,611,823	$78,451,384	$78,165,184	$77,878,984	$83,564,835
Per Unit	$806,118	$784,514	$781,652	$778,790	$835,648
Per Gross Sq. Ft.	$688	$669	$667	$664	$713
Feasibility					
Net Revenue (c)	$6,595,303	$619,090	($1,710,416)	($4,708,755)	$3,642,291
Yield on Cost (d)	4.9%	4.6%	4.5%	4.3%	4.8%

(a) Appendix shows detailed city fees. Excludes affordable housing mitigation in-lieu fee, except in Scenario 4. Parkland dedication fees waived for affordable units.
(b) Includes architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, marketing costs, and developer overhead.
(c) Net revenue is the project total revenue minus total development costs.
(d) Yield on cost is the total project net operating income divided by total development costs.
Source: Strategic Economics, 2018.

Peer Cities

Strategic Economics researched BMR housing programs in peer cities, including: San Jose, Santa Clara, Campbell, Mountain View, Sunnyvale, and Palo Alto. The key findings from the research are explained below and summarized in Figure 27.

INCLUSIONARY REQUIREMENTS

As shown in Figure 27, all of the cities have inclusionary requirements for ownership housing. They are typically set at 15%, with the exception of Mountain View and Sunnyvale, which have requirements of 10% and 12.5%, respectively. For rental housing, Palo Alto and Sunnyvale have a housing mitigation fee, but no inclusionary requirements. However, both cities are considering revising their policies on rental housing.

TARGET INCOME

For inclusionary requirements on ownership housing, all of the peer cities have targeted moderate-income households, roughly defined as between 80 and 120% of AMI. For rental housing, the income target is typically low-income (up to 80% AMI), although San Jose also targets very low-income households (up to 50% AMI). Santa Clara has targeted moderate-income households for both ownership and rental housing requirements.

Cities that charge housing mitigation fees on rental or ownership housing have set their fees based on nexus studies that measure the affordable housing needs of very-low, low-, and moderate-income households.

None of the peer cities have targeted extremely-low income households for their inclusionary requirements. However, city staff from Sunnyvale and San Jose have indicated that they are providing funding to develop housing for extremely-low income households through the revenues they have collected from housing mitigation fees, in-lieu fees, and other housing funds. Local revenues are often combined with Santa Clara County Measure A funds – which are specifically targeted to extremely-low income households – as well as 9% and 4% Low Income Housing Tax Credits (LIHTC) and Section 8 vouchers from the Santa Clara County Housing Authority.

ALTERNATIVE MEANS OF COMPLIANCE

All of the cities prefer that units are built onsite, but they allow alternative means of complying with inclusionary requirements. Developers can typically satisfy the requirement by providing units off-site, paying in-lieu fees, or dedicating land for affordable housing. However, in some cases, the developer must first demonstrate that the inclusionary requirement is not feasible. For example, the City of Palo Alto requires that the applicant present “substantial evidence to support a finding of infeasibility” and of “feasibility of any proposed alternative.” In other cities, like Mountain View, Sunnyvale, and Santa Clara, developers must receive approval from the City Council for the alternative. In Sunnyvale and San Jose, developers that pursue an alternative to the onsite inclusionary requirement must provide a higher number of affordable units.

FIGURE 27: INCLUSIONARY HOUSING REQUIREMENTS AND HOUSING MITIGATION FEES IN PEER CITIES

	Inclusionary Requirement		Target Income for BMR Policy		Housing Mitigation Fee/In Lieu Fees		
City	Ownership	Rental	Ownership	Rental	Ownership	Rental	Alternatives to compliance
Cupertino	15%	15%	1/2 of BMR units at Median (100% AMI) and 1/2 of BMR units at Moderate (120% AMI)*	60% of BMR units at Very Low (50% AMI) and 40% of BMR units at Low (60% AMI)	-Single family: $17.82/sf -Small lot single family/Townhome: $19.60/sf -Multifamily attached: $23.76/sf	-Multifamily Attached (up to 35 du/ac): $23.76/sf -Multifamily attached (over 35 du/ac): $29.70/sf	Onsite units are preferred, but alternatives may be possible with City Council approval. These include: on-site BMR rental units where ownership units or a fee is required; purchase of off-site units to be dedicated/rehabbed as for-sale or rental BMR units; development of off-site units to be dedicated as for-sale or rental BMR units; land for development of affordable housing. An Affordable Housing Plan is required.
Mountain View	10%	15%	Moderate (80 - 120% AMI)	Low (50-80% AMI)	In-lieu fee of 3% of sales price	$34/sf (applies to fractional units only)	Onsite units are preferred, but City Council can approve other alternatives.
Sunnyvale	12.5%	None	Moderate (Below 120% AMI)	Low (Below 80% AMI)	In-lieu fee of 7% of sales price	$17/sf	For ownership units, onsite units are preferred. With Council approval, developers may provide alternatives if they result in a higher number of BMR units.
San Jose	15%	15%	Moderate (Below 120% AMI)	9% Mod (80% AMI) 6% VLI (30-50% AMI)	In-lieu fee of $153,000 per unit.	$17.41/sf for projects of 3 to 19 units in size	Developers have the option of providing units off-site or paying in-lieu fees, but the affordable housing requirement is 20%, and the target income is lower.
Santa Clara	15%	15%	Moderate (Below 100% AMI)	Moderate (Below 100% AMI)		$20-$30/sf, depending on housing type	Alternatives include dedication of land for affordable housing, development of affordable units at an off-site location, or some combination thereof, with approval from City Council through a Development Agreement.
Campbell	15%	15%	Moderate (Below 110% AMI)	Low (Below 70% AMI)	$34.50/sf for projects of 6 units or less	None	Developers can dedicate land or pay in lieu fees.
Palo Alto	15%	None	2/3 BMR units at 80-100% AMI and 1/3 BMR units at 100-120% AMI	Mod (80-120% AMI) Low (50-80% AMI) VLI (30-50% AMI)	$50-$75/sf depending on housing type	$20/sf	Developers can dedicate land, pay in lieu fees, provide rental units within the ownership project, convert or rehabilitate affordable housing units. They must first demonstrate that the inclusionary requirement is not feasible.

*Sales prices set at 110% for BMR moderate income unit and 90% for a BMR median income unit.
Source: Interviews with City staff, BMR housing ordinances, Strategic Economics,

III. NON-RESIDENTIAL LINKAGE FEE

The City is considering updating non-residential fees, otherwise known as commercial linkage fees, on new workplace buildings (office, R&D, hotel, and retail development projects). Linkage fees are used to mitigate the impacts of an increase in affordable housing demand associated with a net increase in worker households. as employees at new non-residential developments seek housing nearby. The funds raised by the linkage fees are deposited into a housing fund specifically reserved for use by a local jurisdiction to increase the supply of affordable housing for the workforce. Linkage fees are one of several funding sources that jurisdictions can use to help meet affordable housing needs of new workers.

The City first adopted linkage fees for office and R&D projects in 1992, and expanded the program to apply to retail and hotel developments in 2004. Following a 2015 nexus study update completed by Keyser Marston Associates, the City amended the fees for all three uses to their current levels--$23.76 for office/R&D uses, and $11.88 for hotel and retail uses.[16] This memo report provides updated policy analysis, including a financial feasibility analysis, and a review of current non-residential linkage fees in neighboring cities to establish a recommendation on updated linkage fees in Cupertino.

Approach

METHODOLOGY

The financial feasibility of establishing updated non-residential linkage fees in Cupertino was tested using a pro forma model that measures profit for the developer or investor. Yield on cost (YOC) is a commonly used metric indicating the profitability of a non-residential project. The pro forma model tallies all development costs, including land, direct construction costs, indirect costs (including financing), and developer fees. Revenues from lease rates or hotel room rates are the basis for calculating annual income from the new non-residential development. The total operating costs are subtracted from the total revenues to calculate the annual net operating income. The YOC is then estimated by dividing the annual net operating income by the total development costs. The fee levels were then added as an additional development cost to measure the resulting change in the YOC.

DEVELOPMENT PROTOTYPES

The analysis estimates the feasibility of potential linkage fees for three non-residential prototypes: office/R&D, hotel, and retail. The building characteristics of each development prototype, including size, density (floor-area-ratio), and parking assumptions are based on a review of projects that were recently built, and in planning stages in Cupertino, as well as recently built and pipeline projects in surrounding areas.

Based on the development activity in Cupertino, the following is assumed regarding each prototype:

- Office/R&D: Based on a review of market activity in the City, recent and proposed developments in neighboring cities, it is assumed that the office/R&D development project would be a speculative building serving the tech industry.

[16] Keyser Marston Associates, "City of Cupertino: Non-residential Jobs-Housing Nexus Analysis," *City of Cupertino*, April 2015.

- Hotel: Newer hotel development projects in Cupertino and surrounding areas are typically upscale, select-service chains that serve business travelers.
- Retail: The retail development prototype is assumed to be a small low-density retail center.

The details regarding the size, density (floor-area ratio), parking, and other key assumptions for each prototype are summarized in Figure 28 below.

FIGURE 28. DESCRIPTION OF DEVELOPMENT PROTOTYPES

Prototype Description	Office/R&D	Hotel	Retail
Project Type	Class A Office Speculative Building	Select-Service Upscale Business Hotel	Neighborhood Retail Shopping Center
Parcel Size (Sq. Ft.)	174,240	87,120	21,780
Parcel Size (Acres)	4	2	0.5
Total Stories	4	5	1
Floor-Area Ratio (without parking) (a)	1.50	1.20	0.35
Gross Building Area (GSF)	261,360	104,544	7,623
Efficiency Ratio (b)	90%	n/a	90%
Net area (NSF)	235,224	n/a	6,861
Number of rooms	n/a	140	n/a
Total Parking Spaces	825	155	30
Surface	93	70	30
Structured Garage	732	0	0
Underground	0	85	0
Parking Ratio (per room)	n/a	1.1	n/a
Parking Ratio (per 1,000 SF)	3.2	1.5	4.0

Notes:
(a) The Floor-Area Ratio (FAR) is often used as a measure of density. In this analysis, it is calculated as the gross building area, not including parking, divided by the parcel size.
(b) The Efficiency Ratio refers to the ratio of gross building area to ne leasable area. An efficiency ratio of 90% means that 90% of the gross building area is leasable space. In hotels, revenue is informed by room count, rather than square footage, and therefore the net area is omitted.

DEVELOPMENT COSTS

The development costs incorporated into the pro forma analysis include hard costs, (construction materials and labor) land costs, soft costs (indirect costs), and financing costs.

HARD COSTS

Hard costs are based on Strategic Economics' review of pro formas for similar development projects, industry publications, and interviews with developers with projects in Cupertino and nearby jurisdictions. The assumptions for hard costs by prototype are described in Figure 29. They include estimates for basic site improvements, construction costs for the building, and costs for parking by type. In addition, the cost of construction includes a tenant improvement allowance for office/R&D and retail uses, as well as a Furniture, Fixtures, and Equipment (FF&E) allotment for hotel uses, which are both typical for this market.

FIGURE 29. HARD COSTS ASSUMPTIONS BY PROTOTYPE

Cost Category	Metric	Office/R&D	Hotel	Retail
Site Prep	Per Site Sq. Ft.	$3	$3	$3
Construction Costs	Per Gross Building Sq. Ft.	$300	$250	$165
	Per Room		$342,472	
Parking Costs	Cost per Space			
Surface	$7,000			
Structured Garage	$30,000			
Underground	$60,000			
Land Costs				
Entitled Land	Per Site St. Ft.	$137.74	$137.74	$75.00
	Per Acre	$6,000,000	$6,000,000	$3,267,000
Tenant Improvement Allowance	Per Building Net Sq. Ft.	$75	n/a	$35
Furniture, Fixtures, Equipment	Per Room	n/a	$35,000	n/a

Source: Costar, 2019; HVS Consulting, 2017; review of pro formas for comparable development projects in Santa Clara County; interviews with developers in Cupertino and Santa Clara County, 2019; Strategic Economics, 2019.

LAND COSTS

One of the critical cost factors for a non-residential development project is land cost. To determine the land value of sites zoned for commercial uses, Strategic Economics analyzed recent sales transactions and estimates for properties in Santa Clara County and interviewed developers.

Land values are similar for both hotel and office development in the Cupertino area, based on a review of recent transactions. Comparable values for office and hotel sites are showed in Figure 22 below. As shown, the land values typically range from $120 to $185 per square foot. One exception in the Cinnabar Street land sale for over $200 per square foot, which is in the Diridon Station Area, and planned for higher intensity development projects than the prototypes for this study. For the purposes of this analysis, it is assumed that sites zoned for office/R&D or hotel would have a land value of $138 per square foot ($6 million per acre).

There are fewer land sales transactions for sites that are entitled for low-density retail development. However, a review of smaller retail property transactions shows that typically the land values are usually under $100 per square foot. For the purposes of this analysis, it is assumed that a low-density retail site in Cupertino would have a land value of $75 per square foot (about $3.2 million per acre).

FIGURE 30. LAND COMPARABLES FOR OFFICE AND HOTEL

Property	Jurisdiction	Year Sold	Acres	Estimated Value Per Sq. Ft. Land	Proposed Land Use
4995 Patrick Henry Dr.	Santa Clara	2016	48.6	$118	Office
357-387 Cinnabar St. (a)	San Jose	2017	5.6	$210	Office
767 Mathilda Ave.	Sunnyvale	2017	3.28	$146	Hotel
10801 N. Wolfe Rd. (b)	Cupertino	2018	1.72	$185	Hotel

Notes:
(a) 357-387 Cinnabar St. is in the Diridon Station area, and part of Google's transit village, which will have a significantly higher FAR than the office prototype.
(b) Estimated value for 10801 N. Wolfe Rd. is based on valuation from CBRE in 2018 rather than a sales transaction.
Sources: Costar, 2019; CBRE, 2018;

SOFT COSTS

Soft costs (often referred to as indirect costs) include items such as architectural fees, engineering fees, insurance, taxes, legal fees, accounting fees, city fees, and marketing costs. Cupertino's Traffic Impact Fee was calculated based on the City's fee schedule. Other permits and fees were calculated for each prototypes based on estimates generated for new development projects as part of the feasibility analysis for the Vallco Specific Plan. Soft costs were estimated based on standard industry ratios, calculated as a percentage of hard costs. These assumptions are shown in Figure 31.

FIGURE 31. SOFT COST ASSUMPTIONS BY PROTOTYPE

Soft Cost	Metric	Office/R&D	Hotel	Retail
City Permits and Fees				
Traffic Impact Fee				
Office	Per Gross Building Sq. Ft.	$17.40	$4.70	$9.94
Hotel	Per Room		$3,387	
Other Permits and Fees	Per Gross Building Sq. Ft.	$48.01	$38.34	$57.16
Subtotal City Permits and Fees	Per Gross Building Sq. Ft.	$65.41	$43.04	$67.10
Other Soft Costs				
Arch, Eng., & Consulting	% of Hard Costs	5%	5%	5%
Taxes, Insurance, Legal, Acct	% of Hard Costs	3%	3%	3%
Developer Overhead	% of Hard Costs	4%	4%	4%
Subtotal Other Soft Costs (Excluding Fees)	% of Hard Costs	12%	12%	12%
Construction Financing	% of Hard + Soft Costs	6%	6%	6%

Source: Review of pro formas for comparable development projects in Cupertino, 2019; Individual developer interviews, 2019; Vallco Specific Plan Feasibility Analysis, 2018; Strategic Economics, 2019.

REVENUES

Revenue assumptions for each prototype are informed by a range of resources, including commercial broker reports, hospitality industry reports, and Costar, as well as from interviews with developers and brokers active in Cupertino and Santa Clara County. They are summarized in Figure 32.

Office: For office rents, Strategic Economics reviewed Cupertino's office market and the greater Santa Clara County office market. The largest office development in Cupertino has been the Apple Park project, which is a build-to-suit development specifically intended for Apple. There has been minimal recent speculative office development in Cupertino targeting other users. (Main Street was the only such project completed in the last five years, and most of the space has also been leased to Apple.) Buildings that are leased by Apple typically achieve rents of $4 per square foot per month (NNN), compared to lease rates of $4.50-$5.00 per square foot for tech office buildings in neighboring West San Jose and Sunnyvale (see Figure 33). This is due to the fact that landlords are willing to accept a lower rent for a long-term lease with Apple, due to the low risk associated with a major corporation. According to brokers and developers, there is potential to achieve higher rents for buildings that attract other smaller tech office tenants. For the purposes of this analysis, the rental rate assumption is $4.50 per square foot per month (NNN). While this rental rate is higher than the current average office rent in Cupertino, it is a reasonable estimate for a new, multi-tenant tech office building in the Silicon Valley.

Hotel: The assumptions of hotel revenues are based on a combination of data sources, including interviews with hotel developers in Cupertino, and data from STR, a hotel research firm that tracks hotel room rates, vacancy rates, and revenues per available room for properties in Cupertino (see Figure 32).

Retail: Strategic Economics reviewed leases from 2018 and 2019 for retail spaces in Cupertino, as summarized in Figure 34. Average lease rates (asking NNN) were between 4.25 to 5.42. All of these recent leases were for restaurant spaces on Stevens Creek Boulevard. For the purposes of this analysis, it is assumed that the retail space would lease for about $4 per square foot per month (NNN).

FIGURE 32. REVENUE ASSUMPTIONS BY PROTOTYPE

Prototypes	Metric	Assumption
Retail		
Annual Rent (NNN)	Per Net Sq. Ft.	$48.00
Vacancy Rate		5%
Operating Expenses	% of Gross Revenue	10%
Annual Net Operating Income	Per Net Sq. Ft.	$40.80
Office/R&D		
Annual Rent (NNN)	Per Net Sq. Ft.	$54.00
Vacancy Rate		5%
Operating Expenses	% of Gross Revenue	7%
Annual Net Operating Income	Per Net Sq. Ft.	$47.52
Hotel		
Gross annual Room Income	RevPAR (a)	$79,154
Gross Annual Other Revenue (b)	Per Room	$27,704
Gross Revenue	Per Room	$106,858
Vacancy Rate (c)		n/a
Operating Expenses	70% of Gross Revenue	($74,800)
Annual Net Operating Income		$32,057

Source: Costar, 2019; STR Trends Report, 2019; Individual developer interviews, 2019; Strategic Economics, 2019.

Notes:

(a) RevPAR is a measure of revenue per room, calculated as occupancy percentage times average daily rate.

(b) Other Revenue for hotels based on data from STR Consulting, and from hotel developer interviews.

(c) Vacancy is already reflected in RevPAR estimate.

FIGURE 33. OFFICE COMPARABLES

Project Name	Address	City	Year Built	Mo. Rent/ Sq. Ft.	Lease Type	Source
Lot 11 @ Santana Row	500 Santana Row	San Jose	2017	$4.45	NNN	Costar
Santana Row	700 Santana Row	San Jose	2019	$4.45	NNN	Costar
Bldg. 5 Pathline Park (a)	700 Mary Ave	Sunnyvale	2019	$4.95	NNN	Costar
Main Street	19319 Stevens Ck.	Cupertino	2016	$3.75-$4.00	NNN	Interviews

FIGURE 34: RETAIL COMPARABLES IN CUPERTINO

Project Name	Address	Year Built	Mo. Rent/ Sq. Ft.	Lease Type	Source
The Biltmore	20030-80 Stevens Creek Blvd	2015	$4.50	NNN (asking)	Costar
Main Street	19369 Stevens Creek Blvd	2016	$5.42	full service	Costar
Saich Way Station	20803 Stevens Creek Blvd	2015	$4.25	NNN (asking)	Costar

YIELD ON COST THRESHOLDS

In order to understand how the introduction of non-residential linkage fees impacts financial feasibility, the yield on cost (YOC) results can be compared to an investor's expectations of return for each type of development. The YOC thresholds for this analysis were established relative to capitalization rates (cap rates) for each product type in the Bay Area. The cap rate, which is measured by dividing net income generated by a property by the total project value, is a commonly used metric to estimate potential returns.

To ensure that the financial analysis is conservative and does not reflect peak market conditions, the thresholds selected for determining project feasibility are slightly higher than the published cap rates. Office/R&D projects with a YOC of above 6.0% and hotel projects with a YOC above 7.5% were considered feasible in this analysis. Retail projects were considered feasible with a YOC higher than 7.0%. These thresholds are summarized in the Figure 35 below.

FIGURE 35: YIELD ON COST THRESHOLDS BY PROTOTYPE

Prototype	Yield on Cost Threshold	Published Cap Rate
Office/R&D (Class AA)	6.0%	4.50%-5.25%
Hotel (Select Service)	7.5%	7.0%-8.0%
Retail	7.0%	6.25-7.25%

Source: CBRE Cap Rate Survey, H2 2018; HVS, 2019; Developer interviews.

RESULTS

Using the YOC thresholds defined above, the following summarizes the results of the financial feasibility of different linkage fee scenarios for each prototype. The pro formas for each prototype is shown in Figure 39, Figure 40, and Figure 41.

OFFICE/ R&D

As shown in Figure 36 and Figure 39, the prototypical office/R&D project can support the existing linkage fee of $23.76 per square foot, which generates a YOC of 6.04%. A linkage fee of $25 (Scenario 2) would also be feasible. However, the prototype cannot feasibly support a fee higher than $30 per square foot. At this fee level, the prototype is only marginally feasible, with a yield on cost of 5.99%.

FIGURE 36. SUMMARY OF FINANCIAL FEASIBILITY OF OFFICE/R&D PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Office Feasibility
Current Linkage Fee	$23.76	6.04%	Feasible
Scenario 1 (No Fee)	$0	6.25%	Feasible
Scenario 2	$25	6.03%	Feasible
Scenario 3	$30	5.99%	Marginally Feasible

Note: Office/R&D projects must have a minimum yield on cost of 6.0% to be considered feasible
Source: Strategic Economics, 2019.

HOTEL

As summarized in Figure 37 for hotel projects, the existing linkage fee of $11.88 is financially feasible, with a yield of cost of 7.65%. A fee of $15 per square foot (Scenario 2) is marginally feasible, resulting in a YOC of 7.46%. A higher linkage fee of $20 per square foot (Scenario 3) is not feasible (see Figure 40).

FIGURE 37. SUMMARY OF FINANCIAL FEASIBILITY OF HOTEL PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Hotel Feasibility
Current Linkage Fee	$11.88	7.50%	Feasible
Scenario 1 (No Fee)	$0	7.65%	Feasible
Scenario 2	$15	7.46%	Marginally Feasible
Scenario 3	$20	7.39%	Not Feasible

Note: Hotel projects must have a minimum yield on cost of 7.5% to be considered feasible
Source: Strategic Economics, 2019.

RETAIL

The financial feasibility analysis shows that retail developments are not financially feasible under current market conditions. Even without a linkage fee (Scenario 1), the retail project achieves a yield on cost that is lower than the threshold of 7.0 % (see Figure 38 and Figure 41). There may be cases in which a retail project could support the current Housing Mitigation Fee if it were combined with other land uses (residential or office) in a mixed-use project.

FIGURE 38. SUMMARY OF FINANCIAL FEASIBILITY OF RETAIL PROTOTYPE

Fee Scenario	Fee Level Per Sq. Ft.	Yield on Cost	Retail Feasibility
Current Linkage Fee	$11.88	6.35%	Not Feasible
Scenario 1 (No Fee)	$0	6.48%	Not Feasible
Scenario 2	$15	6.32%	Not Feasible
Scenario 3	$20	6.26%	Not Feasible

Note: Retail projects must have a minimum yield on cost of 7.0% to be considered feasible.
Source: Strategic Economics, 2019.

FIGURE 39. OFFICE/R&D PRO FORMA RESULTS

	Office/R&D
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	174,240
Parcel Size (acres)	4.00
Total Stories	4 - 5 stories
Building Type	Steel
FAR (without parking)	1.50
Revenues	
Income	$12,702,096
Net Operating Income	$11,177,844
Project Costs	
Land Costs	$24,000,000
Direct Costs	
Site Prep	$522,720
Gross Building Area	$78,408,000
Tenant Improvement Allowance	$17,641,800
Parking	$22,611,000
Subtotal Direct Costs	$119,183,520
per net Sq. Ft.	$507
per gross Sq. Ft.	$456
Indirect Costs	
Soft Costs	$14,302,022
City Permits and Fees (excl. non-residential linkage)	$12,548,925
Subtotal Indirect Costs	$26,850,948
Financing Costs	$8,762,068
Total Development Cost Including Land (TDC)	$178,796,536
per net Sq. Ft.	$760
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $25/Sq. Ft.	2.84%
Scenario 3: Linkage Fee of $30/Sq. Ft.	3.53%
Current Linkage Fee ($23.76/Sq. Ft.)	3.36%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	6.25%
Scenario 2: Linkage Fee of $25/Sq. Ft.	6.03%
Scenario 3: Linkage Fee of $30/Sq. Ft.	5.99%
Current Linkage Fee ($23.76/Sq. Ft.)	6.04%

Source: Strategic Economics, 2019.

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FIGURE 40. HOTEL PRO FORMA RESULTS

	Hotel
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	87,120
Parcel Size (acres)	2.00
Total Stories	5 stories
Building Type	Concrete
FAR (without parking)	1.20
Revenues	
Income	$15,494,376
Net Operating Income	$4,648,313
Project Costs	
Land Costs	$12,000,000
Direct Costs	
Site Prep	$261,360
Gross Building Area	$26,136,000
FF&E	$5,075,000
Parking	$5,590,000
Subtotal Direct Costs	$37,062,360
per gross Sq. Ft.	$355
Indirect Costs	
Soft Costs	$4,447,483
City Permits and Fees (excl. non-residential linkage)	$4,499,679
Subtotal Indirect Costs	$8,947,162
Financing Costs	$2,760,571
Total Development Cost Including Land (TDC)	$60,770,093
per room	$419,104
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $15/Sq. Ft.	1.69%
Scenario 3: Linkage Fee of $20/Sq. Ft.	2.52%
Current Linkage Fee ($11.88/Sq. Ft.)	2.00%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	7.65%
Scenario 2: Linkage Fee of $15/Sq. Ft.	7.46%
Scenario 3: Linkage Fee of $20/Sq. Ft.	7.39%
Current Linkage Fee ($11.88/Sq. Ft.)	7.50%

Source: Strategic Economics, 2019.

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FIGURE 41. RETAIL PRO FORMA RESULTS

	Retail
Site and Building Characteristics	
Parcel Size (Sq. Ft.)	21,780
Parcel Size (acres)	0.50
Total Stories	1 story
Building Type	Concrete
FAR (without parking)	0.35
Revenues	
Income	$329,314
Net Operating Income	$279,917
Project Costs	
Land Costs	$1,633,500
Direct Costs	
Site Prep	$65,340
Gross Building Area	$1,257,795
Tenant Improvement Allowance	$266,805
Parking	$213,444
Subtotal Direct Costs	$1,803,384
per net Sq. Ft.	$263
per gross Sq. Ft.	$237
Indirect Costs	
Soft Costs	$216,406
City Permits and Fees (excl. non-residential linkage)	$511,470
Subtotal Indirect Costs	$727,876
Financing Costs	$151,876
Total Development Cost Including Land (TDC)	$4,316,636
per net Sq. Ft.	$629
Fee as % of Total Development Cost	
Scenario 1: No Linkage Fee	0%
Scenario 2: Linkage Fee of $15/Sq. Ft.	1.74%
Scenario 3: Linkage Fee of $20/Sq. Ft.	2.58%
Current Linkage Fee ($11.88/Sq. Ft.)	2.05%
Yield on Cost (NOI/TDC)	
Scenario 1: No Linkage Fee	6.48%
Scenario 2: Linkage Fee of $15/Sq. Ft.	6.32%
Scenario 3: Linkage Fee of $20/Sq. Ft.	6.26%
Current Linkage Fee ($11.88/Sq. Ft.)	6.35%

Source: Strategic Economics, 2019.

Peer Cities

A large share of municipalities in San Mateo and Santa Clara counties, particularly cities that are desirable locations for tech and biotech companies, have adopted non-residential linkage fees. Figure 42 summarizes non-residential linkage fees in these jurisdictions.

For office/R&D uses, most cities have set linkage fees between $15 and $25 per square foot. The majority of cities have lower fee levels for retail uses, typically in the range of $5 to $10 per square foot. The non-residential linkage fees for hotel uses are usually between $5 and $15 per square foot. The cities of Palo Alto and San Francisco have higher linkage fees than the rest of the local jurisdictions. These cities also have higher average retail and office rents, and hotel room rates than other Bay Area locations.

Many municipalities provide exemptions or fee reductions for the following types of projects:

- Smaller non-residential projects. For example, non-residential linkage fees do not apply to projects adding less than 5,000 gross square feet in Redwood City, San Carlos, San Mateo City, Colma, or Burlingame. Projects adding less than 3,500 gross square feet in unincorporated land in San Mateo County, and less than 10,000 gross square feet in Menlo Park or East Palo Alto are also exempt. Some cities also tie their fee to building size on a sliding scale. Mountain View offers a 50% fee reduction for office projects under 10,000 square feet, and hotel or retail projects under 25,000 square feet. Sunnyvale also offers a 50% fee discount for the first 25,000 square feet of any project.
- Prevailing wage. Multiple jurisdictions, including Redwood City, San Carlos, San Mateo City, and San Mateo County, provide 25% fee reductions for projects that pay prevailing wage.
- Community-serving facilities. Most cities exempt projects such as hospitals/clinics, child care, public, educational, religious, and/or non-profit uses. Additionally, projects that are replacing property damaged from natural disasters are also often exempted.

It is common for jurisdictions to allow alternative means of complying with non-residential linkage fee requirements. Developers can typically satisfy the requirement by providing affordable housing either on or off-site, or by dedicating land for affordable housing. East Palo Alto and Palo Alto allow for the requirement to be met by either converting market-rate units to affordable units, or by rehabilitating existing affordable units. In most cases, the applicant must first prove that an alternative is necessary. For example, Palo Alto requires that the applicant present “substantial evidence to support a finding of infeasibility” of paying the fee, and of “feasibility of any proposed alternative.”

Many cities have either enacted or updated their fees in the last four years, and fees are typically adjusted annually, based on either ENR’s Construction Cost Index for the San Francisco Bay area, or on the national Consumer Price Index.

FIGURE 42. NON-RESIDENTIAL LINKAGE FEES (PER GROSS S. FT. OF NET NEW SPACE) IN NEARBY CITIES

Jurisdiction	Office/ R&D/ Medical Office	Hotel	Retail/ Restaurant/ Services	Date Fee Was Adopted
Burlingame (a)	$18 - $25	$12	$7	2017
Colma	$5	$5	$5	2006
Cupertino	$23.76	$11.88	$11.88	2015
East Palo Alto	$10.72	none	none	2016
Foster City	$27.50	$12.50	$6.25	2016
Los Altos	$25	$15	$15	2018
Menlo Park	$17.79	$9.66	$9.66	2018
Mountain View (a)	$13.14 - $26.27	$1.41 - $2.81	$1.41 - $2.81	2014
Palo Alto	$36.22	$21.08	$21.08	2017
Redwood City	$20	$5	$5	2015
San Bruno	$12.50	$12.50	$6.25	2015
San Carlos	$20	$10	$5	2017
San Francisco (b)	$19.04 - $28.57	$21.39	$26.66	1996
San Mateo City	$25	$10	$7.50	2016
San Mateo County	$25	$10	$5	2016
Santa Clara City (a)	$10 - $20	$5	$5	2017
South San Francisco	$15	$5	$2.50	2018
Sunnyvale (a)	$8.25 - $16.50	$8.25	$8.25	2015

Source: City Ordinances and Fee Schedules; 21 Elements, 2019; Silicon Valley at Home, 2019; Strategic Economics, 2019

Notes:

(a) Fees vary based on project size in four cities: Burlingame, Mountain View, Santa Clara, and Sunnyvale. Hotel and retail projects under 25,000 sq. ft, and office projects under 10,000 sq. ft. in Mountain View are charged the lower fee; In Burlingame, Santa Clara and Sunnyvale, office projects under 50,000 sq. ft., 20,000 sq. ft. and 25,000 sq. ft. respectively pay the lower fee.

(b) San Francisco's fees for R&D are $19.04 per sq. ft., while its fees for office are $28.57 per sq ft. Small Enterprise Workspace and Production/Distribution/Repair fees are $22.46 per sq. ft.

IV. KEY TAKEAWAYS

Based on the economic feasibility analysis, Strategic Economics offers the following conclusions regarding the City Council's direction on the BMR Housing Program.

Is it financially feasible to increase the inclusionary requirements to 20% or 25%?

- **For ownership housing prototypes, it would be financially feasible to raise the inclusionary requirement from 15% to 20%.** The analysis indicates that the existing requirement of 15% and a higher requirement of 20% are economically feasible for single-family detached, small lot single-family/townhouse, and condominium developments.

- **Ownership housing prototypes can support a higher Housing Mitigation Fee per square foot.** The analysis shows that single-family detached, small lot single-family/townhouse, and condominium developments could support paying the maximum housing mitigation fee (in-lieu fee). The maximum nexus-based fees are $30.10-$30.60 per square foot for single-family detached; $35.60 per square foot for small lot single-family/townhouse development; and $35.10 per square foot for condominiums. The City's Housing Mitigation Fees cannot exceed the maximum housing impact fees justified by the 2015 Nexus Study (see Figure 43 below). Exceeding the amounts shown below would require conducting a new nexus study.

FIGURE 43: CURRENT AND MAXIMUM HOUSING MITIGATION FEES BASED ON NEXUS FOR OWNERSHIP PROTOTYPES

Prototype	Current Housing Mitigation Fee	Maximum Nexus-Based Fee	Return on Cost At Maximum Fee	Is Maximum Fee Feasible?
Single-Family Detached	$17.82	$30.10-$30.60	25.5%	Yes
Small Lot SF/ Townhouse	$19.60	$35.60	34.2%	Yes
Condominium	$23.76	$35.10	31.4%	Yes

Source: Keyser Marston Associates (2015). Residential Below Market Rate Housing Nexus Analysis

- **The rental apartment prototypes cannot feasibly support an inclusionary requirement under current rents and construction/land costs.** The higher density rental housing prototype can support payment of Housing Mitigation Fees of nearly $30 per square foot, but cannot feasibly provide inclusionary BMR units under today's rents, construction costs and land costs. However, with increases in rental revenues or decreases in construction costs and land costs, rental housing development could potentially support the current inclusionary requirement of 15%.

Can the inclusionary housing policy be amended to include units for extremely low income/ disabled persons?

The results from the feasibility analysis show that rental development in Cupertino cannot feasibly provide BMR units on-site under current market conditions. An increase in revenues or a decrease in construction and land costs could make it possible for lower density and higher density rental prototypes to provide 15% inclusionary BMR units for very low income and low income households. Under current market conditions, it is not financially feasible for the inclusionary housing policy to include units for extremely low-income households.

However, there are strategies that could allow the City to generate funding for the development of extremely low-income units, and for disabled persons. City staff from Sunnyvale and San Jose have indicated that they are providing funding to develop housing for extremely low-income households through the revenues they have collected from housing mitigation fees, in-lieu fees, and other housing funds. These local revenues are often combined with Santa Clara County Measure A funds – which are specifically targeted to extremely-low income households – as well as 9% and 4% Low Income Housing Tax Credits (LIHTC) and Section 8 vouchers from the Santa Clara County Housing Authority.

Can the inclusionary housing policy be amended to include median-income and moderate-income units in rental projects?

The results from the feasibility analysis show that rental housing development in Cupertino is not feasible with an inclusionary requirement of 15% under current conditions (see Figure 25 and Figure 26). However, a 15% increase in project revenues or a decrease in construction and land costs of 15% could make the low density rental prototype feasible with a 15% BMR requirement. The higher-density rental prototype can feasibly provide Housing Mitigation Fees at the current level. An increase in revenues of 10% or a decrease in construction and land costs of 5% can make the higher density rental prototype feasible with a 15% BMR requirement.

Adding a requirement for median-income and moderate-income units in addition to the existing inclusionary requirement of 15% would not be economically feasible for the rental prototypes. For this reason, it is not financially feasible for the inclusionary housing policy to be amended to also require units for median-income and moderate-income households.

Can the BMR requirements for non-residential development (linkage fees) be increased for office/R&D, hotel, and retail developments?

- **For office and R&D development, it would be possible to raise the Housing Mitigation Fees to a level between $25 to $30 per square foot.** As shown in Figure 39, the office/R&D prototype is feasible with a non-residential linkage fee of $25 per square foot. At $30 per square foot, the prototype achieves a yield on cost that is slightly under the threshold required for feasibility.

- **For hotel development, it may be possible to increase the Housing Mitigation Fees to between $12 and $15 per square foot.** At the current fee level of $11.88, a hotel project is feasible (Figure 37). With a fee of $15 per square foot, the project achieves a yield on cost that is slightly lower than the threshold for feasibility.

- **The financial feasibility analysis shows that retail developments are not financially feasible under current market conditions.** Even without a Housing Mitigation Fees, the retail project achieves a yield on cost that is lower than the threshold of 7.0% (see Figure 38). There may be cases in which a retail project could support the current Housing Mitigation Fee if it were combined with other land uses (residential or office) in a mixed-use project.

APPENDIX

The appendix includes additional information on:

- Recent single-family sales for new construction in Cupertino (Figure A-1)
- Recent townhome re-sales in Cupertino (Figure A-2)
- Recent condominium re-sales in Cupertino (Figure A-3)
- Recent rental project comparables in Cupertino and surrounding cities (Figure A-4)

FIGURE A-1: RECENTLY BUILT SINGLE FAMILY COMPARABLES

Address	City	Lot Size	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
21825 Lomita Ave	Cupertino	9,671	5	4.5	$3,380,000	3,891	$869	2016
21800 Almaden Ave	Cupertino	11,098	5	3.5	$3,220,000	3,555	$906	2017
10240 Lebanon Dr	Cupertino	9,048	5	4.5	$4,100,000	3,623	$1,132	2018
10257 Glencoe Dr	Cupertino	9,375	5	4.5	$3,593,800	3,727	$964	2016
7425 Heatherwood Dr	Cupertino	9,396	5	4	$3,650,000	3,763	$970	2017
805 Rose Blossom Dr	Cupertino	8,660	5	4.5	$2,980,000	3,339	$892	2017
10308 N Stelling Rd	Cupertino	9,612	5	4.5	$3,350,000	3,769	$889	2017
10381 Bret Ave	Cupertino	9,374	5	4.5	$3,270,000	3,727	$877	2016
20861 Dunbar Dr	Cupertino	9,750	5	3.5	$3,998,000	3,949	$1,012	2016
				Weighted Average	$3,512,995	3,705	$946	

Sources: Redfin, 2018; Strategic Economics, 2018.

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-2: RECENTLY BUILT TOWNHOME COMPARABLES

Address	City	Lot Size	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
10280 Park Green Ln #836	Cupertino	2,176	3	2.5	$1,760,000	1,670	$1,054	2006
10281 Torre Ave #817	Cupertino	2,176	3	2.5	$1,800,000	1,670	$1,078	2006
10700 Stevens Canyon Rd	Cupertino	1,570	3	2.5	$1,852,000	2,239	$827	2007
20652 Gardenside Cir	Cupertino	1,480	3	2.5	$1,680,000	1,704	$986	1990
20679 Gardenside Cir	Cupertino	1,440	3	2	$1,665,000	1,640	$1,015	1990
23020 Stonebridge St	Cupertino	3,348	3	2	$1,830,000	2,202	$831	1980
23030 Stonebridge	Cupertino	3,348	3	2	$1,698,000	2,202	$771	1980
22981 Stonebridge	Cupertino	3,348	3	2	$1,710,000	2,202	$777	1980
10910 Lucky Oak St	Cupertino	1,312	3	3.5	$1,780,000	2,082	$855	1980
10826 Northridge Sq	Cupertino	1,487	3	2	$1,455,000	1,389	$1,048	1978
10107 Lamplighter Sq	Cupertino	1,753	3	2.5	$1,740,000	1,727	$1,008	1975
10174 Potters Hatch Cmn	Cupertino	1,575	3	2.5	$1,816,000	1,785	$1,017	1974
10020 Mossy Oak Ct	Cupertino	1,662	3	2.5	$1,680,000	1,645	$1,021	1972
10142 Amador Oak Ct	Cupertino	1,854	3	2.5	$1,600,000	1,614	$991	1970
				Weighted Averages:				
				All years	$1,728,250	1,841	$934	
				Since 2000	$1,808,896	1,860	$970	

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-2: RECENT RE-SALES OF TOWNHOME COMPARABLES

Address	City	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
20488 Stevens Creek Blvd #2207	Cupertino	2	2	$1,338,000	1,171	$1,143	2003
20488 Stevens Creek Blvd #2309	Cupertino	2	2	$1,430,000	1,171	$1,221	2003
19999 Stevens Creek Blvd #209	Cupertino	2	2	$1,266,000	1,039	$1,218	2003
19999 Stevens Creek Blvd #101	Cupertino	2	2	$1,265,000	1,192	$1,061	2003
19503 Stevens Creek Blvd #317	Cupertino	2	2	$1,400,000	1,158	$1,209	2006
19503 Stevens Creek Blvd #251	Cupertino	2	2	$1,200,000	1,087	$1,104	2006
19503 Stevens Creek Blvd #139	Cupertino	2	2	$1,468,000	1,130	$1,299	2006
19503 Stevens Creek Blvd #261	Cupertino	2	2	$1,530,000	1,359	$1,126	2006
19503 Stevens Creek Blvd #331	Cupertino	3	2	$1,728,000	1,502	$1,150	2006
20488 Stevens Creek Blvd #1813	Cupertino	3	3	$1,930,000	1,766	$1,093	2003
20488 Stevens Creek Blvd #1401	Cupertino	3	2	$1,480,000	1,578	$938	2003
			Weighted Averages:				
			2-Bd	$1,367,604	1163	$1,171	
			3-Bd	$1,720,858	1615	$1,060	

Sources: Redfin, 2018; Strategic Economics, 2018.

FIGURE A-3: RECENT RE-SALES OF CONDOMINIUM COMPARABLES

Address	City	Beds	Baths	Price	Square Feet	Price/Sq. Ft.	Year Built
20488 Stevens Creek Blvd #2207	Cupertino	2	2	$1,338,000	1,171	$1,143	2003
20488 Stevens Creek Blvd #2309	Cupertino	2	2	$1,430,000	1,171	$1,221	2003
19999 Stevens Creek Blvd #209	Cupertino	2	2	$1,266,000	1,039	$1,218	2003
19999 Stevens Creek Blvd #101	Cupertino	2	2	$1,265,000	1,192	$1,061	2003
19503 Stevens Creek Blvd #317	Cupertino	2	2	$1,400,000	1,158	$1,209	2006
19503 Stevens Creek Blvd #251	Cupertino	2	2	$1,200,000	1,087	$1,104	2006
19503 Stevens Creek Blvd #139	Cupertino	2	2	$1,468,000	1,130	$1,299	2006
19503 Stevens Creek Blvd #261	Cupertino	2	2	$1,530,000	1,359	$1,126	2006
19503 Stevens Creek Blvd #331	Cupertino	3	2	$1,728,000	1,502	$1,150	2006
20488 Stevens Creek Blvd #1813	Cupertino	3	3	$1,930,000	1,766	$1,093	2003
20488 Stevens Creek Blvd #1401	Cupertino	3	2	$1,480,000	1,578	$938	2003
			Weighted Averages:				
			2-Bd	$1,367,604	1163	$1,171	
			3-Bd	$1,720,858	1615	$1,060	

Sources: Polaris Pacific, 2018; Redfin, 2018; Strategic Economics, 2018.

FIGURE A-4: RECENTLY BUILT RENTAL COMPARABLES

				Rent Per Unit				Unit Size				Rent Per Sq. Ft.			
Project Name	City	Year Built	Stories	Studios	1-BD	2-BD	3-BD	Studios	1-BD	2-BD	3-BD	Studios	1-BD	2-BD	3-BD
Nineteen 800	Cupertino	2014	6			$4,026	$5,477		0	1,339	1,562			$3.01	$3.51
Main Street Lofts	Cupertino	2018	4	$3,508	$3,995			916	1,044			$3.83	$3.83		
Verve	Mountain View	2017	3		$3,860	$5,071	$6,195		737	1,112	1,286		$5.24	$4.56	$4.82
Domus on the Boulevard	Mountain View	2015	4		$3,868	$4,876			788	1,061			$4.91	$4.60	
Elan Mountain View	Mountain View	2018	4		$3,860	$5,071	$6,195		737	1,112	1,286		$5.24	$4.56	$4.82
Montrose	Mountain View	2016	4		$3,816	$5,443			739	1,154			$5.16	$4.72	
Madera Apartments	Mountain View	2013	4		$4,113	$5,510			849	1,181			$4.84	$4.67	
Carmel the Village	Mountain View	2013	5	$3,282	$3,623	$5,866		573	797	1,258		$5.73	$4.55	$4.66	
6tenEAST	Sunnyvale	2017	4	$3,309	$3,515	$4,414	$5,185	701	808	1,136	1,406	$4.72	$4.35	$3.89	$3.69
Naya	Sunnyvale	2016	4		$3,250	$4,336			693	1,038		-	$4.69	$4.18	
481 On Mathilda	Sunnyvale	2016	4	$3,098	$3,251	$4,160		701	781	1,174		$4.42	$4.16	$3.54	
Encasa Apartments	Sunnyvale	2016	3	$2,854	$3,356	$4,235	$5,854	572	856	1,163	1,688	$4.99	$3.92	$3.64	$3.47
Anton 1101	Sunnyvale	2015	4	$3,145	$3,280	$4,490		569	704	1,069		$5.53	$4.66	$4.20	
2295-2305 Winchester Blvd	Sunnyvale	2014	3		$3,371	$4,248			662	1,005			$5.09	$4.23	
Ironworks	Sunnyvale	2017	7		$3,520	$4,036	$5,109	.	784	1,174	1,365		$4.49	$3.44	$3.74
Solstice	Sunnyvale	2013	6	$2,955	$3,329	$4,099		462	778	1,122		$6.40	$4.28	$3.65	
Orchard City Lofts	Campbell	2018	3		$2,946	$3,707	$4,817		607	924	1,237		$4.85	$4.01	$3.89
Revere Campbell	Campbell	2015	5		$3,662	$3,912	$5,219		1,015	1,198	1,233		$3.61	$3.27	$4.23
Monticello Village	Santa Clara	2016	6	$3,356	$3,244	$4,074		920	842	1,251		$3.65	$3.85	$3.26	
			Weighted Average	**$3,225**	**$3,568**	**$4,541**	**$5,516**	**677**	**790**	**1,137**	**1,383**	**$4.71**	**$4.49**	**$3.98**	**$3.98**

Sources: Costar, 2018; Strategic Economics, 2018.

MEMORANDUM

To: Kerri Heusler, City of Cupertino

From: Sujata Srivastava

Date: July 16, 2019

Project: Economic Feasibility Report of BMR Program

Subject: Response to Peer Review Questions

INTRODUCTION

Strategic Economics submitted a draft report summarizing the results of an economic feasibility analysis of the City of Cupertino's Below Market Rate (BMR) Housing program. The City of Cupertino then retained Lesar Development Consultants to peer review the draft report. Lesar Development Consultants identified a number of key questions to assist with the peer review. This memo report provides responses to those questions.

RESIDENTIAL ANALYSIS

1. It is hard to understand the step-by-step process that SE used for its methodology. The report lacks a clear narrative how it got from point A to point B to point C. It would be helpful to explain in simple language how the process works and why the particular data points are used.

Strategic Economics has edited the draft report to include a summary of the financial feasibility methodology and the data sources.

2. Most inclusionary feasibility studies we typically see are based on a residual land cost analysis, rather than on a return on cost (ROC) or yield on cost (YOC). Can SE provide more background as to why ROC and YOC analysis were used rather than a residual land cost analysis and if that difference would meaningfully change any of the reported results?

There is no single methodology used by economic consultants to measure the financial feasibility of inclusionary requirements. Last year, the Terner Center, Grounded Solutions Network, and the Lincoln Land Institute convened a group of stakeholders to identify "best" practices in feasibility analysis, bringing together economic consultants (including a participant from Strategic Economics), as well as academic researchers, nonprofits, and public agencies that commission these studies.[1] According to

[1] Grounded Solutions Network, UC Berkeley Terner Center, and Lincoln Land Institute, "Strengthening Inclusionary Housing Feasibility Studies Convening Report," December 2018. https://inclusionaryhousing.org/wp-content/uploads/2018/11/ih-feasibility-studies-convening-report.pdf

the summary report, return on cost and yield on cost were more commonly used to measure feasibility than residual land value; however, the “participants generally agreed that there was no one best measure in all cases and no reason to encourage every study to use the same metrics.”[2]

Strategic Economics chose to use the yield on cost metric because it is a commonly used approach that allows one to compare the return achieved from the development project to other real estate investments. This method is often more intuitive for stakeholders than the residual land value of a project. Nevertheless, because the key inputs (developer return and land prices) would be the same using either of these approaches, the outcome of the analysis would not change if we had solved for the residual land value instead.

3. The ROC analysis’s sources on page 10 reference “recent project proformas” and developer interviews. Can further documentation be provided on what recent proformas were analyzed, and what developers were interviewed?

Some of the pro formas reviewed are not public documents. Strategic Economics interviewed the following developers and brokers for this analysis:

- Alex Kang, single-family builder
- Suejane Han, single-family builder
- Christopher Huang, Marina Plaza (retail)
- Brandon Bain, Cushman & Wakefield (office)
- Edward Chan, Hyatt House (hotel)
- Michael Strahs, Kimco (hotel)
- Reed Moulds, Sand Hill (multi-family residential and office)
- Tim Steele, Sobrato (multi-family residential and office)

Strategic Economics also reached out to the following stakeholders, but did not receive a response:

- Mike Ducote, Prometheus
- Nandy Kumar, Main Street Apartments
- Greg DeLong and Mike Benevento, CBRE
- Phil Mahoney
- Alexandra Reynolds, Federal Realty
- Steve Horton, Cushman & Wakefield
- Jill Arias, Newmark Knight Frank
- Andy Poppink, Jones Lang Lasalle
- Mark Calvano, Calvano
- Curtis Leigh, Hunter Properties
- Gene Payne, Broadreach Capital Partners

4. I am curious about the use of Redfin for data in the analysis. There are a number of professional data aggregators that one typically sees, such as DataQuick, Costar, etc. which SE does use for some

[2] Ibid, page 6.

of the analysis. What was the thought behind using Redfin (which I personally experienced containing incorrect data in reporting sales)?

Costar only tracks rental apartments, and does not contain information on ownership residential data, so it cannot be used to determine the sales prices on ownership products. CoreLogic (formerly DataQuick) reports on transactions for ownership residential (single-family and condominiums/townhouses); However, CoreLogic data has a significant cost, and frequently the data shows many errors. It can also be very difficult to break out the multi-family ownership from the single-family ownership products using the CoreLogic dataset. For these reasons, Strategic Economics used Redfin for the analysis.

5. The report uses comps for townhomes and other housing types in Cupertino that are quite old. Typically, if the review of comps finds that no development is currently taking place, then adding an additional requirement would further constrain the development of housing. Is that the case here, or are there other market factors influencing the types of projects proposed and approved in Cupertino?

It is preferable to use new development projects as comparables for a feasibility analysis. However, in the case of Cupertino, there were no recent examples of newly built townhomes. Based on our understanding of the strong demand for housing of all types in Cupertino, Strategic Economics believes that the market for townhouse development is strong. There may be many other factors that have inhibited recent development of townhomes, including a scarcity of sites, competition from other types of land uses that can pay more for land (including multi-family residential and nonresidential uses), and the complexity of the approvals/entitlements process.

6. Figure A-3 in the appendix is titled "Recent Re-Sales of Condominium Comparables" when in fact the table shows rents. Figure A-4 repeats this information but calls the table "Recently Built Rental Comparables." Can SE update the table to include the dates when these comps were built?

This was an error. Strategic Economics has inserted the correct table under Figure A-3. Strategic Economics added a column in Figure A-4 showing the year that the project was built.

7. On page 11, the sales prices per unit are in some cases significantly different than what was shown in the KMA report just four years ago. For example, condominiums in the 2015 report were on the order of $800,000. What accounts for the more than 100% increase in four years? Is this the result of construction cost escalation, and can SE say more about the market's ability to sustain the higher current sale prices while absorbing additional affordability requirements?

Strategic Economics cannot comment on KMA's data sources and research from the 2015 nexus study. However, a review of data collected by the Santa Clara County Association of Realtors shows that the median price for existing condominiums increased from $895,500 in 2014 to $1.4 million in 2018.[3] This feasibility analysis assumes average price of $1,485,000 for a new two-bedroom condominium unit, and an average price of $1.6 million for a new three-bedroom unit . This is slightly higher than the median in 2018, because the assumption is that a newly built condominium unit would

[3] Santa Clara County Association of Realtors, 2014 and 2018.

https://www.sccaor.com/pdf/stats/2014.pdf

https://www.sccaor.com/pdf/stats/2018.pdf.

be priced higher than the median for all existing condos, which include older units. Using a lower sales price assumption would make it less likely that a new development project could feasibly provide inclusionary units.

The report has been amended to discuss general trends in sales prices and rents in the city and region.

8. In addition, rents shown on that page are also substantially higher than in KMA's study. Can SE provide some additional explanation about the market forces that are driving these increases?

Similar to the dynamics described above with condominium prices, rental rates in Santa Clara County have increased rapidly in the last five years. There is significant pent-up demand in Santa Clara County and the broader Bay Area region, as housing development has not kept up with employment growth. Between 2009 and 2015, Santa Clara County added over 170,000 new jobs between 2010 and 2015, but only 29,000 new housing units.[4] Apartment rents accelerated beginning in 2011, as the economy emerged from the Great Recession, and continued growing at an average annual rate of nearly eight percent until 2015. Since then rents have continued to grow at a slower pace of about four percent.

The report has been amended to discuss general trends in sales prices and rents in the city and region.

9. On page 13, should the income limits be updated to the 2019 counts? Would showing increased rents using the 2019 data result in higher affordability requirements being feasible?

Strategic Economics completed the technical modeling and analysis before the new limits were published for 2019. In 2019, the area median income (AMI) for Santa Clara County is $131,400. This is a slight increase from the AMI of $125,200 in 2018. Because the income change from 2018 to 2019 is relatively minor, Strategic Economics does not believe that updating the affordable rents to 2019 figures would create significant differences in the feasibility findings.

Non-Residential Analysis

1. KMA provided information on mitigation fees as a percentage of total development cost as one way to measure a fee's reasonableness. How does SE's methodology compare?

The pro forma model provides more information about the feasibility of a development by comparing the revenues and costs of a development, and determining whether it would be likely to attract development. Measuring the commercial linkage fees as a percentage of total development cost provides information about the extent to which proposed fees would increase overall development costs, but it does not allow one to draw conclusions about feasibility.

In order to provide some consistency between the 2015 nexus study and this report, Strategic Economics has added rows to the pro forma showing the commercial linkage fee levels tested in the pro forma analysis as a percentage of total development costs.

2. The pool of comparables used in the analysis is quite small. Would that impact the resulting outcomes?

Strategic Economics reviewed comparables – recently built nonresidential development projects and property transactions – to estimate land values, office rents, hotel room rates, and retail rents. The analysis of comparables was not the only source of data. It was supplemented with findings from

[4] SPUR, "Room for More: Housing Agenda for San José," August 2017.

stakeholder interviews, as well as data vendors like Costar and Smith Travel Research. Because we have used a mix of sources to inform our inputs, we feel comfortable that we used selected comparables that represent the market conditions in Cupertino.

CUPERTINO

DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, August 6, 2019

SPECIAL CITY COUNCIL MEETING

At 5:30 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

STUDY SESSION

1. Subject: Study session regarding policy options to prevent youth access to tobacco products, including flavored tobacco products, and to reduce the density of tobacco retailers.
Recommended Action: Provide direction on policy options to prevent youth access to tobacco products, including flavored tobacco products, and to reduce the density of tobacco retailers.

Written communications for this item included two presentations.

Assistant to the City Manager Katy Nomura introduced Consultant Leslie Zellers, JD from the Santa Clara County Department of Public Health who reviewed the presentation.

Tanya Payyappilly, Project Director for Breathe California Tobacco Prevention Program, gave a presentation regarding a public opinion survey about flavored tobacco products.

Mayor Scharf opened public comment and the following individuals spoke:

Carol Booker (Cupertino resident)
Rosalyn Moya on behalf of Bay Area Community Resources
Randy Wang on behalf of Breathe California

Mayor Scharf closed public comment.

Staff and consultant answered questions from Council.

Graham Clark and Polly Bove of the Fremont Union High School District (FUHSD) spoke.

Council comments included:

Willey: Was unaware of the extent of this; glad to be brought up to speed with study session; happy to be hearing from residents with real experiences; the samples explain what's out there; had no idea that things looked like candy and are behind counters for kids to see; have to act quick before it's too ingrained in the community; supports extensive outreach to gauge support verses non-support and the strength of the controls to put in place; include mailers, make visible at parks and City events, and ask people the degree of measures for addressing; need prohibiting ordinance in place to help parents to be more concerned and alert.

Paul: Supports staff going back and looking at possibility of banning list of products including e-cigarettes, menthol, little cigars, smokeless tobacco products, components and accessories, and products marketed as flavors; supports examining repercussions of the CVS ban on products and any staff recommendations to support that; phasing period is a good idea but let members of business community weigh-in; agrees with Councilmember Willey in reaching-out to the community to gauge community sentiment; look at various mechanisms of outreach like Nextdoor, OpenGov, WeChat, and WhatsApp.

Scharf: Interested in Sheriff's enforcement of the law now in relation to tobacco sales to minors and efforts to change State law with greater penalties for violations; and effect of a ban if people buy from adjacent cities without one; staff come back with some proposed ordinances and also look at what's being done in nearby cities; weak State laws; State legislatures are not being productive.

Chao: Look at adopting stronger violation penalties beyond the county's for annual license renewals, such as license suspension and then revocation; look at adoptions that make it easier for schools to enforce on school grounds; it's worth looking into doing outreach; look into going beyond the Santa Clara County policy dashboard requirements and what is required to get better scores in the American Lung Association and Healthy Cities programs; would like to have terminology for flavored cigarettes, tobacco, e-cigarettes, and etc. when it comes back to Council; bring back more information about current enforcement efforts in our high schools and middle schools.

Sinks: Appreciates former County Supervisor Ken Yaeger's efforts for a heathier county; we should take a lead from the County and do the outreach; seriously consider adopting the

County's program, including a local license to help collect funds for better enforcement and programming; the Sheriff can't do very much with the funds that we have; we should consider taking some action here with the epidemic going on; we have a serious problem; would be helpful to understand online sales when this comes back; bring back information on the degree to which restricting sales in local retailers will reduce access.

Council provided the following direction to staff on policy options to prevent youth access to tobacco products, including flavored tobacco products, and to reduce the density of tobacco retailers:

- Wanted outreach to the public on these measures.
- Want to look into the policy options recommended by the County.
- Look into local Tobacco Retailer License.

ADJOURNMENT

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Steven Scharf called the Regular City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks, and Jon Robert Willey. Absent: None.

CEREMONIAL MATTERS AND PRESENTATIONS

1. Subject: Presentation from the Cupertino Youth Climate Action Team regarding climate solutions
Recommended Action: Receive presentation from the Cupertino Youth Climate Action Team regarding climate solutions

Written communications for this item included two presentations and informational handouts.

Tara Sreekrishnan (introduced) and the Cupertino Youth Climate Action Team gave a presentation regarding climate solutions.

Mayor Scharf opened public comment and the following individuals spoke:

Janet Walworth, on behalf of Peninsula Interfaith Climate Alliance
Peri Plantenberg (Sunnyvale resident) on behalf of Sunrise Movement
Linda Sell (Sunnyvale resident) (provided written comments)
Dashiell Leeds on behalf of Sierra Club Loma Prieta Chapter
Don Weiden (Los Altos resident)
Gary Latshaw (Cupertino resident) on behalf of Youth Climate and Secure the Future 2100 (provided written comments)
Emily Fan (Cupertino resident)
John Zhao (Cupertino resident)
Shiv Shah on behalf of the Cupertino High School Environmental Club

Mayor Scharf closed public comment.

Staff answered questions from Council.

Council directed staff to agendize the following items:

- Ordinance consideration on banning gas powered lawn equipment (including leaf blowers) (Paul/Chao)
- Divestment of fossil fuels from City investments (Paul/Chao)

Council received the presentation.

2. Subject: Presentation of a new report on the status of seniors in Cupertino
Recommended Action: Receive presentation of a new report on the status of seniors in Cupertino

Written communications for this item included a presentation.

Richard Adler on behalf of Age-Friendly Cupertino gave a presentation regarding a new report on the status of seniors in Cupertino.

Mayor Scharf opened public comment and the following individuals spoke:

Jean Bedord (provided written comments)

Jennifer Griffin

Mayor Scharf closed public comment.

Council received the presentation.

POSTPONEMENTS

3. Subject: Continue Item No. 16 for consideration of Municipal Code Amendments to the Cupertino Municipal Code to clarify City standards for size of Accessory Dwelling Units (Chapter 19.112 -Accessory Dwelling Units), for clarifications, and consistency. Application No(s).: MCA-2018-04; Applicant(s): City of Cupertino; Location: citywide to a date to be determined. This item will be re-noticed.
Recommended Action: Continue Item No. 16 for consideration of Municipal Code Amendments to the Cupertino Municipal Code to clarify City standards for size of Accessory Dwelling Units (Chapter 19.112 -Accessory Dwelling Units), for clarifications, and consistency. Application No(s).: MCA-2018-04; Applicant(s): City of Cupertino; Location: citywide to a date to be determined. This item will be re-noticed.

Deputy City Clerk Kirsten Squarcia noted that staff requested Item No. 16 be continued to a date to be determined and that the item would be re-noticed.

Council concurred unanimously to continue Item No. 16 for consideration of Municipal Code Amendments to the Cupertino Municipal Code to clarify City standards for size of Accessory Dwelling Units (Chapter 19.112 -Accessory Dwelling Units), for clarifications, and consistency. Application No(s).: MCA-2018-04; Applicant(s): City of Cupertino; Location: citywide to a date to be determined. This item will be re-noticed.

ORAL COMMUNICATIONS

Richard Abdalah talked about comments made by Planning Commission Chair R. Wang and consideration of removing him from the Commission.

Michelle Chen, Rachel Chen (Cupertino resident), and Connie Liang talked about Lehigh Cement pollutants and Lehigh Quarry expansion, and a City letter to the County opposing expansion.

Danessa Techmanski (Cupertino resident) talked about a Mercury News article about the State threating a lawsuit against the City for not conforming to housing quotas at Vallco.

Brenda Boyle (Cupertino resident) talked about Regnart Creek Trail and an incident on the proposed path near her home, and the traffic flow from Creekside path onto Blaney.

Erik Lindskog (Cupertino resident) talked about Regnart Creek Trail; walking, biking, and running infrastructure; and public support, cost and safety of creek trails.

Gary Wong (Cupertino resident) on behalf of Campo De Lozano HOA talked about Regnart Creek Trail, addressed remarks about the HOA's designated trail property lines, and portable planters in the 65% design.

Jiong Hee Yee talked about Regnart Creek Trail, the proposed 65% design, construction cost escalation, and privacy and safety fencing costs.

Stella talked about Regnart Creek Trail, Wilson Park Baseball Field, water district services, path width, cost, and safety.

Jean Bedord (Cupertino resident) talked about removing Ray Wang from the Planning Commission, referenced article about a past sentence, comments on social media and at a recent commission meeting.

Eleanor Chan (Cupertino resident) talked about bullying and Planning Commission Chair's R. Ray Wang's behavior on social media and removal from the commission.

Jennifer Griffin talked about the Planning Commission and open discussions on SB 35 and housing legislation coming out of Sacramento.

Benaifer Dastoor (Cupertino resident) talked about the health and cleanliness of creeks and promoting a carbon-free society in environmental plans.

Kitty Moore (Cupertino resident) talked about broadening the scope of the Environmental Review Committee (ERC).

Council recessed from 8:40 p.m. to 8:46 p.m.

STUDY SESSION

4. Subject: Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35. (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action: That the City Council conduct the study session, receive this report and provide direction regarding the proposed Application and Review Procedures and draft Application Package for Projects Proposed Pursuant to Senate Bill 35.

Written communications for this item included a presentation and corrected redline of Supplemental Staff Report Attachment B - SB 35 Application Form

Caitlin Brown from Shute, Mihaly & Weinberger reviewed the presentation.

Mayor Scharf opened public comment and the following individuals spoke:

Jennifer Griffin
Lisa Warren ceded time to Kitty Moore
Kitty Moore (provided written comments)

Mayor Scharf closed public comment.

Staff answered questions from Council.

Council comments included:

Willey: Might need to be following some of the issues raised by Kitty Moore; duty not to take away from what the residents have a right to because of not checking or noticing correctly; make sure community is served; follow the laws but being ignorant is no excuse; surprised things have had to be brought up outside of the City review process; make sure CEQA aspects are intact otherwise the community is at risk; CEQA is meant to catch things like hazardous waste sites and need to make sure we don't inadvertently miss things when sending through a ministerial approval; include how to understand and implement this without inadvertently missing things and for things that could be confusing; important to have one or more examples so it's easier to understand how to calculate the 2/3; when staff needs to work quickly through a ministerial approval, have examples instead of trying to discern the textual description and avoid something that was not truly intended; protect the residents, follow the law, and make sure housing gets addressed and designated; projects can move forward but were inadvertently done incorrectly; want to make it so that 330 doesn't get by if it is truly meant for 300; will explain again when we come back to make sure correct how staff is to move forward.

Paul: 1) Regarding the checklist that we're operating under SB 35; put more thought in the checklist at the outset; maintain our discretion because discretion is curtailed to the maximum extent; too much flexibility due to nebulous procedure and abbreviated timetable; make checklist as solidified as possible instead of one that morphs in accordance with factors; 2) Regarding the language of resolution; has to do with treatment of overall BMR housing; troubled by what's happened legislatively; budget rider wasn't caught; wasn't specific to SB 35 or affordable housing and designed to get slipped in there; affected one project in California by toxicity and calculation of BMR units; if saying to simplify the calculation of BMR units when trying to promote the delivery of affordable housing then should say your residential square footage has to be calculated before applying density bonus; legislation with budget rider suddenly passed in the middle of this Cupertino process; very quickly authority from State legislation said to take the density bonus and add it to the square footage to help you get to the 2/3 number; you would not include that in the calculation if you really wanted to promote creation of BMR housing because would make it more residential proportionately; concerned doesn't deliver as many BMR units and BMR sq. ft. and at the systemic perspective; if particular project being targeted then can lobby and buy into legislation in right moment; concerned if going to make process inefficient and circumventing idea of going to a neutral arbiter; as a jurisdiction, go forward in our recitals with history of this legislation and our position on BMR housing; personally support BMR housing and need to encourage more; recent change in HCD guidance says you don't listen to HCD guidance when works to benefit developer which is what staff did; but when works to benefit developer and the law changes you can ignore the HCD guidance that was made midstream so fundamental inconsistencies; put in recitals to let future know what happened and we are a work in progress systemically; very inefficient now and put under guise of delivering more BMR housing/housing and pointing finger at us when in fact tremendous office and jobs but not enough housing; put history and support BMR housing in our recitals but no longer consider the pre-density bonus within the calculation of residential if legislation changes at any time; 3) Planning Chair Kitty Moore had good suggestions; have follow-up's on Section 9 regarding the appeal process and language related to toxic sites; have legal staff examine and determine feasibility of adding those suggestions; good job of identifying some of the process points; would generally adopt the staff recommendations and checklist, and Planning Commission recommendations.

Scharf: Echoed almost everything said by Councilmember Paul, except would be nice if intent of SB 35 and some of the housing bills were to increase amount of BMR housing but not the case as we see with trailer bills; intent is to build more market rate housing with as little BMR as possible and units as small as possible for BMR housing in Cupertino project case; unfortunately, have gut-and-amend and it's how we ended up with SB 592; these trailer bills are almost secretly modifying thing; didn't know about these changes; the only positive is that the hazardous waste thing is not retroactive to this project.

Chao: Having the public oversight meeting 5 days before the deadline is too late; wouldn't say SB 35 was so bad if had good objective standards in our plan and ordinances; this just gives developer a clear guideline to follow; what's wrong with the Vallco project is they submitted a project on the site without a specific plan; so no height limit or plan and that was a problem; so that wasn't real problem with SB 35; in future SB 35 projects we want to help developer give us a good project that's compliant, qualifies, and meets plan; want to let them know early if we disagree with their calculation; Berkeley sent applicant letter after one month with reasons why it didn't qualify; that gave applicant a chance to revise project and resubmit and correct; is good even if it restarts the clock; so have one hearing 1 month after with initial assessment and open discussion and then have a second hearing; of the two oversight hearings, the first would be mainly about qualification under SB 35 and with big parameters but the second would be about other objective standards in our plan so might take more time; can make at least one optional at discretion of staff; concerned about the developer/applicant submitting multiple active proposals and we're expected to respond to each one within the timeline, especially for streamlined project with specific timeline; if submitting a revised proposal then first application will be paused to focus on second one and not have to respond; because project is deemed approved under SB 35 if you don't respond; and multiple submitted versions would be confusing; this to have good governance with due process and to focus on one project at a time; BMR housing projects might need to propose multiple versions on different grant requirement so maybe have that requirement but with exceptions; be sure to have all of the information upfront with streamlined projects for staff to review; require them to provide justification for concessions at time of project proposal so we don't have to request later; ask them to provide all information upfront because don't liberty to go back later with streamline projects; in checklist, be more specific in what "sufficient information" means in determining 2/3 residential; provide upfront exactly what we need to determine the use and size of each area of the building so it's easier for staff to figure out and doesn't require guesswork; hope this is a requirement of all projects and requires project's specify the number of BMR units, size of BMR units, number of bedrooms, and total sq. ft. of all the BMR living space.

Sinks: 1) Appreciates that this is a workable process for planning staff to get their job done expeditiously and not burdensome and helpful in clarifying; planning staff are the professionals that make this happen; first time we went through this was unchartered water and now there is more known; 2) Good that this process won't affect interaction with HCD and the State; last time Council wasn't really involved; would hear reports about what was happening but had no public hearing; it is without Council making the determination but looking at the process and having staff clarify how they reached certain information but without being told by the Council how they must interpret; good that it's an opportunity for public to hear about; we want transparency; appreciative of this effort and generally supportive of it; seems like a great step forward.

Council received the report and gave the following direction to staff regarding the proposed Application and Review Procedures and draft Application Packet for Projects Proposed Pursuant to Senate Bill 35:

1. Staff will review Kitty Moore's proposed changes and advise on them.
2. Staff will also look at the BMR section to make sure it reflects the City's BMR program to the extent it can.
3. Add language that items will not be added to the checklist midstream when an application has been submitted.
4. Add to the recitals language that reflects the history and policy consequences of AB 101. And add some language that if in the future it becomes possible to calculate excluding density bonus additions (per HCD's November 2018 guidance), the City intends to do so.
5. Add sample calculations for how you calculate 2/3 residential use requirement.
6. Clarify that staff has the option to hold the oversight hearing earlier than 5 days before the consistency determination for larger projects if necessary.
7. There shall be at least one oversight hearing, and a second hearing earlier is optional at discretion of staff. If staff is able to do so earlier, they should hold a second hearing 10 days prior to consistency determination (or 45 days after application is submitted if possible) on the 2/3 residential use calculation.
8. The section that says the application "needs sufficient" detail/information to determine the 2/3 residential use determination, try to amend to have more specific language. Clarify what "sufficient" would be.
9. Require applicants to specify the size and number of bedrooms for BMR units (if the draft procedures don't do this already).

Council directed staff to add a future agenda item regarding an open letter to the Governor regarding the process on trailer bills (Chao/Scharf).

REPORTS BY COUNCIL AND STAFF (10 minutes)

5. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments
Councilmember Paul submitted written comments.

Councilmembers highlighted the activities of their committees and various community events.

CONSENT CALENDAR

Paul moved and Willey seconded to approve the items on the Consent Calendar as presented with the exception of item numbers 13 and 15 which were pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

6. Subject: Approve the July 8 City Council minutes
Recommended Action: Approve the July 8 City Council minutes

7. Subject: Approve the July 16 City Council minutes
Recommended Action: Approve the July 16 City Council minutes

8. Subject: Accept Accounts Payable for the period ending May 3, 2019
Recommended Action: Adopt Resolution No. 19-099 accepting Accounts Payable for the period ending May 3, 2019

9. Subject: Accept Accounts Payable for the period ending May 10, 2019
Recommended Action: Adopt Resolution No. 19-100 accepting Accounts Payable for the period ending May 10, 2019

10. Subject: Accept Accounts Payable for the period ending May 17, 2019
Recommended Action: Adopt Resolution No. 19-101 accepting Accounts Payable for the period ending May 17, 2019

11. Subject: Accept Accounts Payable for the period ending May 24, 2019
Recommended Action: Adopt Resolution No. 19-102 accepting Accounts Payable for the period ending May 24, 2019

12. Subject: Accept Accounts Payable for the period ending May 31, 2019
Recommended Action: Adopt Resolution No. 19-103 accepting Accounts Payable for the period ending May 31, 2019

13. Subject: Authorization of Resolution declaring interest for the participation by the City of Cupertino in the initial planning for potential future use of the Sunnyvale SMaRT Station
Recommended Action: Adopt Resolution No. 19-104 Declaring Interest for the Participation by the City of Cupertino in the Initial Planning for Potential Future Use of the Sunnyvale SMaRT Station

Director of Public Works Roger Lee reviewed the staff report and answered questions from Council.

Paul moved and Sinks seconded to approve items 13 and 15 on the Consent Calendar. The motion carried unanimously.

Council adopted Resolution No. 19-104 Declaring Interest for the Participation by the City of Cupertino in the Initial Planning for Potential Future Use of the Sunnyvale SMaRT Station.

14. Subject: Accept offer of dedication and waiver of future reimbursement at 10475 Byrne Avenue related to the Byrne Avenue Sidewalk Improvements Project
Recommended Action: Adopt Resolution No. 19-105 accepting the offer of dedication at 10475 Byrne Avenue and waiver of future reimbursement from the property owner for the construction of the Byrne Avenue Sidewalk Improvement Project

15. Subject: Authority to increase the construction contingency budget for the McClellan Road Separated Bikeways-Phase 1A Project
Recommended Action: Authorize an increase in the construction contingency budget from $182,183 (10% of construction amount) to $291,493 (16%) of construction amount) for the McClellan Road Separated Bikeways-Phase 1A Project

Director of Public Works Roger Lee reviewed the staff report and answered questions from Council.

Paul moved and Sinks seconded to approve items 13 and 15 on the Consent Calendar. The motion carried unanimously.

Council authorized an increase in the construction contingency budget from $182,183 (10% of construction amount) to $291,493 (16%) of construction amount) for the McClellan Road Separated Bikeways-Phase 1A Project.

SECOND READING OF ORDINANCES - None

PUBLIC HEARINGS

16. Subject: Municipal Code Amendments to the Cupertino Municipal Code to clarify City standards for size of Accessory Dwelling Units (Chapter 19.112 -Accessory Dwelling Units), for clarifications, and consistency. Application No(s).: MCA-2018-04; Applicant(s): City of

Cupertino; Location: citywide was continued to a date to be determined. This item will be re-noticed.

Recommended Action: Under Postponements, Municipal Code Amendments to the Cupertino Municipal Code to clarify City standards for size of Accessory Dwelling Units (Chapter 19.112 -Accessory Dwelling Units), for clarifications, and consistency. Application No(s).: MCA-2018-04; Applicant(s): City of Cupertino; Location: citywide was continued to a date to be determined. This item will be re-noticed.

Under Postponements, this item was continued to a date to be determined and will be re-noticed.

ORDINANCES AND ACTION ITEMS

17. Subject: Hearing to approve lien assessment and collection of fees on private parcels resulting from abatement of public nuisance (weeds and/or brush) for the annual Weed and Brush Abatement Programs.

Recommended Action: Conduct a hearing to consider objections from any property owners listed on the assessment report; and adopt Resolution No. 19-106 approving the lien assessment and collection of fees on private parcels for the annual Weed and Brush Abatement Programs to allow the County to recover the cost of abatement.

Deputy City Clerk Kirsten Squarcia reviewed the staff report.

Mayor Scharf opened the public hearing and the following individuals spoke:

Nageshwara Vempaty (11841 Upland Way)
Lance Chang (20592 and 20616 McClellan Road)
Sherwin de la Cruz (Cupertino resident)

Santa Clara County Weed Abatement Program Manager Moe Kumre and staff answered questions from Council.

Council recessed from 10:43 p.m. to 10:51 p.m.

Mayor Scharf closed the public hearing.

Paul moved and Sinks seconded to adopt Resolution No. 19-106 approving the lien assessment and collection of fees on private parcels for the annual Weed and Brush Abatement Programs to allow the County to recover the cost of abatement with the exception of the property at 11841 Upland Way which was removed from the list until next year. The motion carried unanimously.

18. Subject: Approve City-hosted Town Hall events and add Town Halls to the FY 2019-20 City Work Program.
Recommended Action: Approve City-hosted Town Hall events and add Town Halls to the FY 2019-20 City Work Program.

Mayor Scharf opened public comment and the following individuals spoke:

Jean Beadord
Jennifer Griffin
Lisa Warren

Mayor Scharf closed public comment.

Assistant to the City Manager Katy Nomura reviewed the staff report.

Paul moved and Sinks seconded to approve City-hosted Town Hall events and add Town Halls to the FY 2019-20 City Work Program. The motion carried unanimously.

19. Subject: Designate a voting delegate and up to two alternates in order to vote at the Annual Business Meeting (General Assembly) during the League of California Cities Annual Conference, October 16 - 18 in Long Beach.
Recommended Action: Designate a voting delegate and up to two alternates in order to vote at the Annual Business Meeting (General Assembly) during the League of California Cities Annual Conference, October 16 - 18 in Long Beach.

Mayor Scharf reviewed the staff report.

Scharf moved and Sinks seconded to designate Mayor Scharf as the voting delegate and Chao and Paul as the alternates to vote at the Annual Business Meeting (General Assembly) during the League of California Cities Annual Conference, October 16 - 18 in Long Beach. The motion carried unanimously.

20. Subject: Cancel the Tuesday, October 15, 2019 Regular City Council Meeting and call for a Special Meeting on Monday, October 14, 2019 instead, in order to accommodate those Councilmembers attending the League of California Cities Annual Conference in Long Beach, CA.

Recommended Action: Cancel the Tuesday, October 15, 2019 Regular City Council Meeting and call for a Special Meeting on Monday, October 14, 2019 instead, in order to accommodate those Councilmembers attending the League of California Cities Annual Conference in Long Beach, CA.

Mayor Scharf reviewed the staff report.

Council took no action on this item.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmember Paul submitted written comments.

Added a future agenda item to consider expanding the scope of the Environmental Review Committee (ERC) (Paul/Chao)

Added a study session to consider the Plan Bay Area 2050 regional growth forecast methodology, prior to the September 19 methodology comment period deadline (Chao/Scharf).

Added a future agenda item to discuss drafting a comment letter supporting the County Grand Jury's report on Valley Transportation Authority (VTA) management, before the comment deadline (Sinks/Scharf).

ADJOURNMENT

At 11:41 p.m., Mayor Scharf adjourned the meeting in memory of the gun violence victims in Gilroy, El Paso, and Dayton.

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Kirsten Squarcia, Deputy City Clerk

CUPERTINO

DRAFT MINUTES
CUPERTINO CITY COUNCIL
Tuesday, August 20, 2019

SPECIAL CITY COUNCIL MEETING

At 5:32 p.m. Mayor Steven Scharf called the Special City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks (5:33 p.m.), and Jon Robert Willey (5:34 p.m.). Absent: None.

STUDY SESSION

1. Subject: Study session to discuss how the 2016 Bicycle Transportation Plan and 2018 Pedestrian Transportation Plan Projects have been brought to Council for consideration, how currently funded projects are being scheduled for completion, and recommendation of project information and impacts staff is to consider and describe for future funding requests
Recommended Action: Receive presentation and provide input

Written communications for this item included emails to Council, amended Attachment D – Bike-Ped Project Schedules, and a presentation.

Director of Public Works Roger Lee and Capital Improvement Program (CIP) Manager Michael Zimmerman reviewed the presentation.

Business Systems Analyst Adam Araza demonstrated an online GIS CIP project viewer application.

Mayor Scharf opened public comment and the following individuals spoke:

Linda Wyckoff (Cupertino resident) talked about Regnart Creek Trail, and asked how bicycle boulevards would link to schools.

Jennifer Griffin talked about the experimental bollards, and trees on Stevens Creek Blvd. between Tantau and Wolfe.

Benaifer Dastoor (Cupertino resident) talked about Regnart Creek Trail, and bicycle collision maps noting stress areas.

Mayor Scharf closed public comment.

Council comments included:

Paul: Place greater scrutiny on projects outside annual CIP process; modify flow chart to include Planning Commission recommendation of conformance to the General Plan before goes to Council; Planning Commission agenda item #4 from 5-28-19 meeting includes text of General Plan conformance and Cupertino Municipal Code (CMC) that governs review of CIP; our CMC requires only annual review but Government Code could possibly include additional review; maybe amend CMC to cover certain projects and have City Attorney's Office look into this. (Chao support last item).

Chao: Make sure to include all attachments in agenda packet for Bike Ped Commission meetings; when the Bike & Ped Plan is updated next year, review scoring to be more objective when giving points to projects; include project initiation forms; for projects outside normal annual CIP process (such as donations) need to consider and explain delay to high priority projects and/or other projects added; schedule (attachment D) is nice; work with community more on Bike Plan update.

Willey: Have schedule (Attachment D – Bike-Ped Project Schedules) starting from 2016 when Bike Plan was approved.

Council direction to staff included:

- Modify the "Projects outside the Annual CIP" flowchart to include Planning Commission recommendation of conformance to the GP before returning to Council.
- When the Bike & Ped plan is updated, review scoring to be more objective when giving points to projects.
- Include more details about the project when considering approval, consider including the project initiation forms.
- Projects outside normal annual CIP process need to consider and explain impact to high priority projects. This also applies to other projects proposed annually.
- Expand the schedules in Attachment D – Bike-Ped Project Schedules to show prior years and out-years.

ADJOURNMENT

REGULAR CITY COUNCIL MEETING

PLEDGE OF ALLEGIANCE

At 6:45 p.m. Mayor Steven Scharf called the Regular City Council meeting to order in the Cupertino Community Hall Council Chambers, 10350 Torre Avenue and led the Pledge of Allegiance.

ROLL CALL

Present: Mayor Steven Scharf, Vice Mayor Liang Chao, and Councilmembers Darcy Paul, Rod Sinks (6:47 p.m.), and Jon Robert Willey. Absent: None.

Mayor Scharf reported out from the closed session held on August 19, 2019.

Before Council went into closed session, the following individual spoke in open session:

Sandra James (Cupertino resident)

1. Subject: Conference with Real Property Negotiators (Government Code Section 54956.8); Property: Cupertino Municipal Water System; Agency Negotiators: Roger Lee and Deborah Feng; Negotiating Parties: City of Cupertino and San Jose Water Company; Under Negotiation: Terms for City Leased Asset.

Council provided direction to its negotiators regarding potential terms for a renegotiated lease of the Cupertino Municipal Water system. No reportable action was taken.

2. Subject: Conference with Legal Counsel pursuant to Government Code section 54956.9(d)(1); Re: Pending Litigation; Friends of Better Cupertino, et al. v. City of Cupertino; Santa Clara County Superior Court, Case No. 18CV330190 (SB 35 Vallco Project).

The Council discussed with legal counsel this pending litigation for which discussion in open session would prejudice the City in the litigation. No reportable action was taken.

3. Subject: Conference with Legal Counsel - Anticipated Litigation. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2): One potential case.

No reportable action was taken.

4. Subject: Conference with Legal Counsel - Anticipated Litigation; Initiation of litigation pursuant to Government Code Section 54956.9(d)(4): Two potential cases.

No reportable action was taken on the first potential case. No reportable action was taken on the second potential case.

CEREMONIAL MATTERS AND PRESENTATIONS - None

POSTPONEMENTS - None

ORAL COMMUNICATIONS

Muni Madhdhipatla (Cupertino resident) talked about the Ride4Diabetes community event to be held in Memorial Park on 9/8/19 sponsored by Lions Club International (provided flyers).

Brooke Ezzat (Cupertino resident) talked about housing policy in Cupertino.

Sidhar M (Cupertino resident) talked about support for Regnart Creek Trail.

Larry Dean (Cupertino resident) on behalf of Walk-Bike Cupertino talked about support for Regnart Creek Trail.

Ignatius Y Ding (Cupertino resident) talked about removing David Fung from the Planning Commission (provided written comments).

Greg Schaffer (Cupertino resident) talked about outsider influence on the community.

Richard Mehlinger (Sunnyvale resident) talked about removing Ray Wang from the Planning Commission.

Dolly Sandoval (Cupertino resident) talked about the recent ribbon cutting at Veranda, and concern over Planning Commissioner Ray Wang's remarks.

Heather Dean (Cupertino resident) talked about concern over the recent Cupertino Town Hall Meeting being recorded by a member of the public.

J.R. Fruen (Cupertino resident) talked about concern over Planning Commissioner Ray Wang's remarks.

Rhoda Fry talked about Lehigh Cement Company and a Bay Area Air Quality Management District (BAAQMD) meeting (provided written comments).

Ed Hirshfield (Cupertino resident) talked about removing item #11 regarding Vallco from the agenda as it wasn't properly noticed.

Jeonghee Yi (Cupertino resident) talked about Bike/Ped priorities and Regnart Creek Trail, and to spend money on other projects rather than Regnart Creek Trail to address collision problem areas.

Goeff Paulsen (Cupertino resident) talked about transportation issues.

Danessa Techmanski (Cupertino resident) talked about disappointment over California housing bills.

James Moore (Cupertino resident) talked about unfair accusations against Planning Commissioner Ray Wang.

Lisa Warren talked about respecting the General Plan and Vallco decisions made in 2014 (provided written comments).

Tessa Parish (Cupertino resident) talked about unfair attacks on Planning Commissioner Ray Wang.

Cup Rez (Cupertino resident) talked about the California housing crisis and Cupertino having a good housing/jobs balance.

REPORTS BY COUNCIL AND STAFF (10 minutes)

1. Subject: Report on Committee assignments
Recommended Action: Report on Committee assignments

Councilmembers highlighted the activities of their committees and various community events.

CONSENT CALENDAR

Willey moved and Sinks seconded to approve the items on the Consent Calendar as presented except for item numbers 4 and 8 which were pulled for discussion. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

2. Subject: FY 2017-18 Comprehensive Annual Financial Report (CAFR) and related supplemental reports.
Recommended Action: Approve the FY 2017-18 Comprehensive Annual Financial Report (CAFR) and related supplemental reports.

3. Subject: Treasurer's Investment Report for period ending June 30, 2019
Recommended Action: Approve the Treasurer's Investment Report for period ending June 30, 2019.

4. Subject: Updated Joint Use Agreement between the City of Cupertino and Cupertino Union School District (CUSD) pertaining to maintenance and improvements of certain open space areas within specific school sites for reimbursement of authorized Clean Water and Storm Protection Fees
Recommended Action: 1. Authorize the City Manager to execute an updated Joint Use Agreement between the City of Cupertino and CUSD; and 2. Authorize expenditures in the amount of $8,705.80 from the Non-Point Source Fund to reimburse CUSD for Clean Water and Storm Protection Fees associated with certain open space areas within specific school sites

Written communications for this item included an email to Council.

Director of Public Works Roger Lee reviewed the item.

Mayor Scharf opened public comment and the following individuals spoke:

Peggy Griffin (Cupertino resident) said Sedgewick and Lawson should be on the list.

Lisa Warren agreed with Peggy Griffin and asked about meetings with CUSD regarding this topic and others.

Mayor Scharf closed public comment.

Paul moved and Sinks seconded to authorize the City Manager to execute an updated Joint Use Agreement between the City of Cupertino and CUSD; and 2. Authorize expenditures in the amount of $8,705.80 from the Non-Point Source Fund to reimburse CUSD for Clean Water and Storm Protection Fees associated with certain open space areas within specific school sites; and 3. Provide direction to staff and the CM to approach the CUSD administration and its Superintendent regarding the subsequent inclusion of both Lawson

Middle School and Sedgewick Elementary School properties in the Joint Use Agreement. The motion carried unanimously.

5. Subject: Adopt the City of Cupertino Annex to the Santa Clara County Community Wildfire Protection Plan as the City of Cupertino Community Wildfire Protection Plan.
Recommended Action: Adopt Resolution No. 19-107 which adopts the City of Cupertino Annex to the Santa Clara County Community Wildfire Protection Plan as the City of Cupertino's Community Wildfire Protection Plan.

6. Subject: Award Byrne Avenue Sidewalk Improvements, Project Number 2016-10
Recommended Action: Authorize the City Manager to award a contract to Granite Construction Company in the amount of $1,853,984 and approve a construction contingency of $185,398, for a total of $2,039,382 for the Byrne Avenue Sidewalk Improvements, Project Number 2016-10

7. Subject: Authorize the City Manager to execute a lease agreement with the Regents of the University of California for the Rolling Hills 4H Club for facilities at the McClellan Ranch Preserve
Recommended Action: Authorize the City Manager to execute a lease agreement with the Regents of the University of California for the Rolling Hills 4H Club for facilities at the McClellan Ranch Preserve for a period of five years, from September 1, 2019 through August 31, 2024

8. Subject: Agreement with Nomad Transit LLC (Via Transportation Inc.) for the 18-month On-Demand Community Shuttle Pilot Program
Recommended Action: Authorize the City Manager to execute an agreement with Nomad Transit LLC (Via Transportation Inc.) for the 18-month On-Demand Community Shuttle Pilot Program with a not-to-exceed cost of $1,750,000

City Attorney Heather Minner noted a CEQA statutory exemption requirement action that Council also needed to take.

Sinks moved and Paul seconded to find that the approval to execute the agreement with Nomad Transit LLC (Via Transportation Inc.) for the 18-month On-Demand Community Shuttle Pilot Program is statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(10), and direct staff to file a Notice of Exemption and further finding that the approval is exempt from CEQA pursuant to Title 14 of the California Code of Regulations Chapter 3, Article 5, Section 15061(b)(3) because it is certain that there is no possibility that this approval would have a significant effect on the environment; and Authorize the City Manager to execute an agreement with Nomad

Transit LLC (Via Transportation Inc.) for the 18-month On-Demand Community Shuttle Pilot Program with a not-to-exceed cost of $1,750,000. Councilmember Paul encouraged staff to make sure the program rolls out as quickly and efficiently as possible and to ensure there is a significant roll out not just with public relations but also outreach to the community to ensure everyone is aware of the availability. The motion carried unanimously.

9. Subject: Accept termination of Audit Committee member James (Jim) Luther and direct staff to fill the unscheduled vacancy in January 2020 concurrent with the annual recruitment for all commission and committee members' terms expiring in January, 2020.
Recommended Action: Accept termination of Audit Committee member James (Jim) Luther and direct staff to fill the unscheduled vacancy in January 2020 concurrent with the annual recruitment for all commission and committee members' terms expiring in January, 2020.

SECOND READING OF ORDINANCES

10. Subject: Second reading of Ordinance No. 19-2186, approving a development agreement between the City of Cupertino and Cupertino Village LP for the Cupertino Village Hotel project located at 10801 and 10805 North Wolfe Road; APN #316-45-017, 316-05-056
Recommended Action: Conduct the second reading of Ordinance No. 19-2186: "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a new 5-story, 185 room hotel with associated site and landscaping improvements located at 10801 and 10805 North Wolfe Road (APN: 316-45-017 and 316-05-056."

Mayor Scharf opened public comment and the following individual spoke:

Jennifer Griffin spoke in support for this item.

Mayor Scharf closed public comment.

City Clerk Grace Schmidt read the title Ordinance No. 19-2186: "An Ordinance of the City Council of the City of Cupertino Approving a Development Agreement for the Development of a new 5-story, 185 room hotel with associated site and landscaping improvements located at 10801 and 10805 North Wolfe Road (APN: 316-45-017 and 316-05-056."

Paul moved and Sinks seconded to read Ordinance No. 19-2186 by title only and that the City Clerk's reading would constitute the second reading thereof. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Paul moved and sinks seconded to enact Ordinance No. 19-2186. Ayes: Scharf, Chao, Paul, Sinks, and Willey. Noes: None. Abstain: None. Absent: None.

Scharf moved and Willey seconded to move item numbers 12 and 13 under Ordinances and Action Items before item number 11 under Public Hearings. The motion carried unanimously.

ORDINANCES AND ACTION ITEMS

12. Subject: Establish a Residential Clean Water Rebate Program offering various financial incentives to decrease storm water runoff and establish a 20% cost-share of Clean Water and Storm Protection Fees for extremely low and very low-income property owners
Recommended Action:
1. Authorize expenditures not to exceed $25,000 per year from the Environmental Management/Clean Creeks Fund to: A. fund the Santa Clara Valley Water District's Rainwater Capture Program to match rebates for rain barrels, cisterns, and rain garden construction for Cupertino residential property owners offered through the Santa Clara Valley Water District's new program, and
B. to fund a separate City program that would provide property owners up to $3.00 per square foot of impervious surface removed and replaced with pervious hardscape; and
2. Adopt Resolution No. 19-111 to approve a Budget Adjustment in the amount of $25,000 in the Non-Point Source Fund for the Santa Clara Valley Water District's Rainwater Capture Program, and the new impervious pavement conversion rebate pilot program (230-81-802); and
3. Authorize a 20% cost-share of Clean Water and Storm Protection Fees for extremely low and very low-income property owners; and
4. Authorize expenditures not to exceed $14,000 per year from the Non-Point Source Fund for a 20% cost-share of the 2019 Clean Water and Storm Protection fee for extremely low and very low-income property owners (230-81-802)

Written communications for this item included a presentation.

Director of Public Works Roger Lee reviewed the presentation.

Paul moved and Scharf seconded to:

1. Authorize expenditures not to exceed $25,000 per year from the Environmental Management/Clean Creeks Fund to:
   A. Fund the Santa Clara Valley Water District's Rainwater Capture Program to match rebates for rain barrels, cisterns, and rain garden construction for Cupertino residential property owners offered through the Santa Clara Valley Water District's new program; and
   B. Fund a separate City program that would provide property owners up to $3.00 per square foot of impervious surface removed and replaced with pervious hardscape; and
2. Adopt Resolution No. 19-111 to approve a Budget Adjustment in the amount of $25,000 in the Non-Point Source Fund for the Santa Clara Valley Water District's Rainwater Capture Program, and the new impervious pavement conversion rebate pilot program (230-81-802); and
3. Authorize a 20% cost-share of Clean Water and Storm Protection Fees for extremely low and very low-income property owners; and
4. Authorize expenditures not to exceed $14,000 per year from the Non-Point Source Fund for a 20% cost-share of the 2019 Clean Water and Storm Protection fee for extremely low and very low-income property owners (230-81-802)

Council also directed staff to keep track of administrative outreach required and report back to Council after the trial period. The motion carried unanimously.

13. Subject: Amendment to the FY 2019-2020 City Council Work Program to add a new Community Development Work Program Item related to increasing noticing for development projects.
Recommended Action: That the City Council decide whether to amend the 2019/2020 City Work Program as proposed and appropriate funds to complete the project.

Director of Community Development Ben Fu reviewed the presentation.

Mayor Scharf opened public comment and the following individual spoke:

Jennifer Griffin talked about lack of noticing regarding the Urban Villages in San Jose.

Mayor Scharf closed public comment.

Council comments included: Want commitment from staff if have extra hours to pick back up other items; add this item on wait list bucket; study and bring with fee schedule; bigger projects with Citywide impact; add to next year's work program because other items important; leave up to staff for this year; not intended for single family residence but for projects with significant impacts; rate noticing area depending on number of stories.

Council directed staff to place the item on next year's Work Program and as a policy, to start requiring/encouraging applicants of large and/or controversial projects to implement greater noticing radius and time period.

Council recessed from 8:50 p.m. to 8:55 p.m.

PUBLIC HEARINGS

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

Recommended Action: That the City Council: 1. Conduct the public hearing; and 2. Adopt: a. Resolution No. 19-108, a resolution adopting a Second Addendum to the Environmental Impact Report for the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project (Attachment 1) b. Resolution No. 19-109 (GPA-2019-01), a resolution amending the General Plan to remove Office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations (Attachment 2); c. Resolution No. 19-110 (GPA-2019-02), a resolution amending the General Plan and General Plan Land Use Map to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area and identifying a recommended location for future residential development on 13.1 acres of the Special Area (Attachment 3); 2. Introduce and conduct the first reading of: a. Ordinance No. 19-2187 (MCA-2019-01), "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))" (Attachment 4); and b. Ordinance No. 19-2188 (Z-2019-01), "An Ordinance of the City Council of the City of Cupertino amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)" (Attachment 5).

Vice Mayor Chao recused herself on this item.

Written communications for this item included emails and letters to Council, presentation, resolution and ordinance amendments, and Councilmember Paul's comments (which can be found under "written communications" on the agendas/minutes webpage for this meeting and also in Council agendas and packets under the "public records" link on the City's website.

Director of Community Development Ben Fu reviewed the presentation.

Mayor Scharf opened the public hearing and the following individuals spoke:

Jennifer Griffin – no support for SB35 and concern over loss of retail in Cupertino.
Muni Madhdhipatla (Cupertino resident) - misleading communications from property owner.
Edward Hirshfield (Cupertino resident) - support for Vallco development.
Kevin McClelland - no support for this item.
Lisa Warren - previous decision on GPA in 2014.
Charmaine Yu on behalf of the Vallco Property Owner - no support for the GP amendments and litigation risks to the City (provided written comments).
Richard Mehlinger (Sunnyvale resident) - need to build housing and no support for the GP amendments.
Peggy Griffin (Cupertino resident) - support for the GP amendments.
Connie Cunningham (Cupertino resident) - support for the Planning Commission resolution to move forward with more community outreach first; support for Vallco Specific Plan with communication with developer.
James Moore (Cupertino resident) - jobs/housing balance.
Jean Bedord (Cupertino resident) - no support for the GP amendments (provided written comments).
Ignatius Y. Ding (Cupertino resident) - support for the GP amendments.
Geoff Paulsen (Cupertino resident) - being compassionate regarding housing needs.
Ethan Lipman (Cupertino resident) - need for a diverse housing stock in Cupertino.
John McGuigan (Cupertino resident) - support for the GP amendments.
Al DiFrancesco (Cupertino resident) - support for the GP amendments.
Albert Liu (Cupertino resident) - no support for the GP amendments.
Rick Kitson on behalf of Cupertino Chamber of Commerce - need for mixed-use development for economic viability.
Sujatha Venkatraman on behalf of West Valley Community Services - need for affordable housing in Cupertino.
Vinod Balakrishnan (Cupertino resident) - support for the GP amendments.
Marie Liu on behalf of Cupertino for All - no support for the GP amendments and lack of notice.
Celia House (Cupertino resident) - support for Vallco development as soon as possible.
Qin Pan (Cupertino resident) - support for the GP amendments.

Yuva Athur (Cupertino resident) - support for the GP amendments.
Tessa Parish (Cupertino resident) - support for the GP amendments.
Naidu Bollineni (Cupertino resident) – concern over a Planning Commissioner influence on Vallco process.
Venkat Ranganathan (Cupertino resident) – need compromise on Vallco development.
Siva Gandikota (Cupertino resident) - support for the GP amendments.
Bill Kerr (Cupertino resident) - no support for the GP amendments.
Hung Wei (Cupertino resident) - no support for the GP amendments.
Joan Chin (Cupertino resident) - support for the GP amendments.
Rahul Vasanth (Cupertino resident) - support for the GP amendments.

Mayor Scharf closed the public hearing.

Council recessed from 10:40 p.m. to 10:45 p.m.

Council comments included:

Scharf: 13.1 acres most appropriate next to Rose Bowl; Scenario A includes housing at Vallco; Scenario B is no housing at Vallco and change numbers at Oaks and Hamptons; help solve regional jobs/housing balance; don't add so many jobs with office that will need more housing in the future due to RHNA; need community engagement process; maybe some office could go there with commensurate amount of housing; want City to work with property owner and community input to have a development that won't crowd local schools; City Manager authority to bring residents, Council, and property owner together to find a solution that will work for everyone; need to do 13.1 acres for RHNA needs; not 4000 due to school enrollment in area, maybe 2000 would be okay; could be some office but commiserate with housing.

Willey: Community input most important thing; must represent Cupertino residents first and foremost; make sure checks and balances are firmly in place for the community (GPA); next to houses on west side of Vallco make sure have slope, building plane and heights; cap at 60 feet, building plane 3 in and 1 up; want BMR for low and very low, individuals with disabilities, seniors; majority of residents gets his vote; redevelop Vallco ASAP; keep height at 60 rather than 75 as would grow with BMR requirement.

Paul: (provided written comments) Supports 1 to 1.5 building plane; okay to see 1:2 with future intent for staff to prepare GPA in future to allow for 1500 units and 400,000 square feet of retail to be added.

Sinks: Support Scharf to empower City Manager to negotiate on Council's behalf; support long on housing with BMR at all income levels; add housing and reduce office efforts; start with SB35 project, decrease office, increase housing and increase diversity in BMR; OR start with Specific Plan and reduce office from there and increase housing; concern about brining office to zero is negative contribution to a project whereas in mixed-use, homes help evening sales and office helps daytime sales for retail; can't support moving forward with no dialogue with property owner; must be economically feasible for property owner or nothing will get done; good faith negotiation with viable options; need more dialogue with the public; look at whole site and not just a piece of it; 3000-4000 housing units with all economic levels.

Council selected Location D: East of Wolfe Road and North of Vallco Parkway, as shown on Exhibit 10 of the Staff Report, as the location of approximately 13.1 acres on the site to be designated and zoned for residential use.

Paul moved and Willey seconded to adopt Resolution No. 19-108, a resolution adopting a Second Addendum to the Environmental Impact Report for the 2014 General Plan Amendment, Housing Element Update, and Associated Rezoning Project. The motion carried with Sinks voting no and Chao recusing.

Paul moved and Willey seconded to adopt Resolution No. 19-109 (GPA-2019-01), a resolution amending the General Plan to remove Office as a permitted use from the Vallco Shopping District Special Area and remove associated office allocations. The motion carried with Sinks voting no and Chao recusing.

Paul moved and Willey seconded to adopt Resolution No. 19-110 (GPA-2019-02), a resolution amending the General Plan and General Plan Land Use Map to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area and identifying a recommended location for future residential development on 13.1 acres of the Special Area based on location D as shown on Attachment 10 of the staff report, as amended to (1) reflect changes shown on dais materials provided to Council and made available on the City's website as written communications from staff; (2) add a required building plane adjoining the western side of the shopping district shopping area also known as the Portal neighborhood with a slope line of two feet of setback for every one foot of vertical building; (3) add of the following language to the resolution: "Now therefore be it further resolved that the City Council directs staff to initiate a Specific Planning process for the portion of the site designated "Regional Shopping" and consider as part of that process a plan that would include a maximum of 1,500 units of housing for the entirety of the Vallco Shopping District's special area inclusive of any and all housing and density bonuses, including added incentives for features such as housing for extremely low income households and housing for persons with disabilities including developmental disabilities, and reduce the amount of retail required to 400,000 square feet exclusive of the parcel known colloquially as the Simeon Property;" (4) set a 60-foot height limitation for the entirety of the Vallco Shopping District Special Area; and (5) designate 13.1 acres of the Vallco site as Regional Shopping/Residential in location D as shown on Attachment 10 of the staff report. The motion carried with Sinks voting no and Chao recusing.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2187 (MCA-2019-01): "An Ordinance of the City Council of the City of Cupertino eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG))"

Paul moved and Willey seconded to read Ordinance No. 19-2187 by title only and that the City Clerk's reading would constitute the first reading thereof as amended to reflect changes shown on dais materials provided to Council and made available on the City's website as written communications from staff. Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

City Clerk Grace Schmidt read the title of Ordinance No. 19-2188 (Z-2019-01), "An Ordinance of the City Council of the City of Cupertino amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG)"

Paul moved and Willey seconded to read Ordinance No. 19-2188 by title only and that the City Clerk's reading would constitute the first reading thereof. Ayes: Scharf, Paul, and Willey. Noes: Sinks. Abstain: None. Absent: None. Recuse: Chao.

Council also directed the City Manager to attempt to engage with the property owner to discuss potential alternatives.

ORAL COMMUNICATIONS - CONTINUED (As necessary) - None

COUNCIL AND STAFF COMMENTS AND FUTURE AGENDA ITEMS

Councilmembers highlighted the activities of their various community events.

City Manager Deborah Feng noted that the City received a Silicon Valley Business Journal Structures Award for The Veranda in the category of Best Affordable Residential Project and a ceremony will be held September 19.

ADJOURNMENT

At 12:10 a.m. on Wednesday, August 21, Mayor Scharf adjourned the meeting.

____
Grace Schmidt, City Clerk

CITY OF CUPERTINO

PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Resolution adopting the City of Cupertino's State-mandated Green Stormwater Infrastructure (GSI) Plan.

Recommended Action

Adopt Resolution No. 19-____ adopting the City of Cupertino's Green Stormwater Infrastructure (GSI) Plan which demonstrates the City's long-term commitment to implementation of green stormwater infrastructure as required by the City's Municipal Regional Stormwater Permit for the San Francisco Bay Region.

Discussion

The City of Cupertino is one of 76 municipalities (cities, towns, and counties) and flood control agencies that are subject to the requirements of the reissued Municipal Regional Stormwater NPDES Permit (MRP) for municipalities and agencies that discharge stormwater into San Francisco Bay (Order R2-2015-0049). The current MRP, which became effective on January 1, 2016, requires each permittee to adopt a long-term GSI Plan by September 30, 2019. This demonstrates a shift from traditional storm drainage infrastructure which is designed to rapidly convey stormwater and collected pollutants through impervious pipes directly to creeks with no opportunity for infiltration and pollutant removal. Conversely, GSI creates a more resilient and sustainable storm drain system that reduces the velocity of stormwater runoff, facilitates capture and infiltration of rainwater into soil, and provides treatment and filtering of urban stormwater runoff. Examples of GSI include:

- Landscape-based "biotreatment" areas that use soil and plants to treat stormwater
- Pervious paving systems (e.g., interlocking concrete pavers, porous asphalt, pervious concrete) which allows stormwater to soak into the ground
- Green roofs
- Rainwater harvesting systems (e.g., cisterns and rain barrels) which capture stormwater for non-potable uses, such as toilet flushing and landscape irrigation
- Other methods to capture, infiltrate and/or treat stormwater

GSI Plan Requirements

At a minimum, GSI plans must identify, prioritize, and map areas of opportunity for potential GSI projects over the next 20 years and, if applicable, identify planned or completed projects as noted in section 2.4 of the City's GSI Plan (Attachments A and B). As other municipal plans (such as the General Plan, Storm Drain Master Plan, Parks Master Plan, Climate Action Plan, etc.), are updated or developed, they are required to align with the City's adopted GSI Plan. The benefits of green infrastructure have been discussed with the Water Board for many years before the MRP mandated development of a plan. As a result, the City's environmental staff has worked closely with other City departments to ensure inclusion of GSI in all municipal plans (see GSI Plan section 3.1 *Integration with other Planning Documents*). The GSI Plan must also include potential funding mechanisms such as grant funding, new development and redevelopment cost sharing, etc.

The first step in formalizing a GSI plan, as required by the MRP, is for the City's Council to adopt a GSI Plan Framework by June 30, 2017, describing specific tasks and timeframes for development of the City's Green Infrastructure Plan. The GSI Plan Framework (Attachment C) was approved by City Council on April 18, 2017 and submitted to the San Francisco Bay Regional Water Quality Control Board (Water Board) as part of the City's Annual FY 16-17 Stormwater Report.

<u>GSI Plan Development</u>
The City retained a stormwater engineering consulting firm, EOA Inc. (EOA), to develop its Plan based on years of meetings with City staff and records from the City's annual stormwater reports. EOA provides assistance to public agencies in managing the impacts of stormwater and wastewater on local creeks, rivers and the Bay, and serves as the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) Management team. SCVURPPP is a collaborative of 15 government agencies in Santa Clara Valley, including the City of Cupertino, that work together to implement the MRP requirements cost efficiently and effectively.

<u>Public Education Outreach and Commission Review</u>
GSI Plan development and implementation includes a strong public education and outreach component. A GSI presentation was given to City Council by EOA on July 16, 2019 followed by comments and questions from Councilmembers and the public. Since the July 16th council meeting, EOA and City staff have presented to and asked for input from the Planning Commission (August 13, 2019) and the Sustainability Commission (August 15, 2019). Both commissions provided comments which have been included in the revised Plan brought to Council for adoption this evening. Both Commissions encouraged the City to expand GSI awareness and to look for more opportunities for incorporation into public projects.

The Planning Commission suggested looking at Wolfe Road as a future opportunity. The Sustainability Commission expressed interest in GSI demonstration gardens, similar to the one at City Hall, to be considered at all City parks to enhance public awareness and inspire private property owners to use GSI. Both Commissions asked for cost estimates. Though data is being gathered regionally to provide costs for implementation and maintenance, each potential GSI project, ranging in size from a few hundred square feet to a more than a hundred acres, will have unique site conditions, opportunities, and feasible designs. Therefore, cost and funding for each project will vary significantly depending on the site, features selected, and opportunities for cost-sharing partnerships (e.g., with schools, Caltrans, and adjacent jurisdictions).

Private Funding Option
The Planning Commission is interested in opportunities for private developers to contribute funding for GSI projects on City property. This concept is consistent with section C.3.e of the Permit, which allows a city to establish and implement alternative or in-lieu compliance options for private development projects that must meet low impact development (LID) requirements (regulated projects), but have limited space or opportunity on their site. A regulated project may provide alternative compliance by: 1) treating a portion of the amount of runoff with Low Impact Development (LID) measures onsite or at a joint stormwater treatment facility; and 2) pay equivalent in-lieu fees to treat the remaining portion of the runoff with LID treatment measures at a regional or municipal (stormwater treatment) project site that discharges into the same watershed as the regulated project. This allows the City to prioritize a public GSI project and collect money via in-lieu fees from private developers to help fund it.

Permit Requirements
During the current stormwater permit term (approximately 5 years), there are no specific requirements to implement GSI. The mandate is focused on ensuring that there are "no missed opportunities". Permittees must conduct an annual review of each project on their Capital Improvement Program (CIP) list and identify all those that have potential to incorporate GSI. In each subsequent annual report, the permittee must provide a reason for any project that did not incorporate GSI in its design phase. The City of Cupertino has a GSI workgroup of staff from Public Works Engineering, Transportation, Maintenance, Trees, Environmental Programs, Sustainability, Planning, Parks and Recreation, and Geographic Information Systems (GIS). The group meets once or twice annually to discuss the City's GSI opportunities, and the potential cost and feasibility of potential projects.

Council Action
The City's Plan has been prepared for adoption by City Council. Without being prescriptive or requiring any commitment to build a specific project or number of projects, it addresses all of the MRP requirements and incorporates comments from the Planning and Sustainability Commissions.

Sustainability Impact
The benefits of GSI as a replacement for impervious hardscape include improving water and air quality, water conservation, preserving and creating habitat and biodiversity, traffic calming, increasing pedestrian mobility, urban greening, and enhancing urban

forests. It is a forward-thinking approach to creating sustainable public streets, parking lots, and buildings.

CEQA Review

There is no environmental assessment required for the adoption of the GSI Plan. City staff has independently studied the GSI Plan and determined that it is exempt from environmental review pursuant to the exemption in Title 14-California Code of Regulations, §15061(b)(3), and §15378, in that it can be seen with certainty that there is no possibility that the approval of the GSI Plan will have a significant effect on the environment given that it does not involve approval of any specific project. Potential GSI projects will be evaluated for the application of CEQA to it and, as applicable, each project will conduct the appropriate level of environmental analysis before construction.

Fiscal Impact

The GSI Plan describes the City's goals, opportunities, and priorities for implementing GSI on approved capital improvement projects (CIP) over a 20-year time frame (2020 to 2040). The adoption of the GSI Plan will not result in an immediate fiscal impact; however, the City's CIP list must be evaluated annually to determine the feasibility of each project to include GSI. The total cost of GSI includes costs for planning, capital (design, engineering, construction) and on-going expenditures, including operations and maintenance, utility relocation, and future replacement. Specific explanation must be reported in the City's annual report to the Water Board for any CIP project that does not contain a GSI element.

Prepared by: Cheri Donnelly, Environmental Programs Manager
Alex Wykoff, Environmental Specialist
Reviewed by: Roger Lee, Director of Public Works
Approved for Submission by: Deborah Feng, City Manager
Attachments:
A - GSI Plan
B - GSI Plan Appendices
C - GSI Plan Framework
D - Resolution

City of Cupertino
Green Stormwater Infrastructure Plan

DRAFT

Approved on: September 3, 2019

Approved by: The City Council of the City of Cupertino

Submitted by:
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

In compliance with Provision C.3.j.i.(2) of Order R2-2015-0049

ACKNOWLEDGEMENTS

The City of Cupertino gratefully acknowledges the following individuals and organizations that contributed to this Green Stormwater Infrastructure Plan:

City of Cupertino

Public Works Department

- Roger Lee
- Chad Mosley, P.E.
- Cheri Donnelly
- Alex Wykoff
- Ursula Syrova

EOA, Inc.

- Jill Bicknell, P.E.
- Vishakha Atre
- Liesbeth Magna

The City would like to thank and acknowledge the City of Palo Alto and the City of San Jose for sharing text from their Green Stormwater Infrastructure Plans.

Table of Contents

TABLES

FIGURES

APPENDICES

LIST OF ACRONYMS

ABAG	Association of Bay Area Governments
BASMAA	Bay Area Stormwater Management Agencies Association
Caltrans	California Department of Transportation
CFD	Community Facilities District
CIP	Capital Improvement Program
DOF	Department of Finance
EPA	United States Environmental Protection Agency
FY	Fiscal Year
GI	Green Infrastructure
GIS	Geographic Information System
GSI	Green Stormwater Infrastructure
IRWMP	Integrated Regional Water Management Plan
LID	Low Impact Development
MRP	Municipal Regional Stormwater NPDES Permit
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NRCS	National Resource Conservation Service
O&M	Operation and Maintenance
PDA	Priority Development Area
PICP	Permeable Interlocking Concrete Pavers
PP	Permeable Pavers
SCVURPPP	Santa Clara Valley Urban Runoff Pollution Prevention Program
State Water Board	State Water Resource Control Board
STORMS	Strategy to Optimize Resource Management of Stormwater
SWRP	Storm Water Resource Plan
Valley Water	Santa Clara Valley Water District
Regional Water Board	San Francisco Bay Regional Water Quality Control Board

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EXECUTIVE SUMMARY

Development of this Green Stormwater Infrastructure (GSI) Plan is required by the City's Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit. Urban development has traditionally involved replacing natural landscapes with solid pavements and buildings, using underground metal-pipe storm drainage systems to carry increased amounts of stormwater runoff and pollutants directly into local creeks, which empty into San Francisco Bay. To reduce the impact of urban development on waterways, Bay Area municipalities are required to begin augmenting traditional stormwater drainage systems with Green Stormwater Infrastructure (GSI) treatments.

GSI features mimic nature, and use plants, soils, and/or pervious surfaces to collect stormwater, allowing it to soak into the ground and be filtered by the soil. This reduces the quantity of water and pollutants flowing directly into local creeks. The City began the process of incorporating GSI into public projects in 2014, with the completion of the 18-acre Stevens Creek Corridor Park and Restoration.

The City of Cupertino has prepared this GSI Plan, specifically in accordance with its MRP requirements, to guide the siting, implementation, tracking, and reporting of GSI projects on City-owned land, including the public right of way, over the next several decades (2020 – 2040).

Cupertino's GSI Plan describes the City's approach to identifying and prioritizing potential areas for implementing GSI, and estimating targets for the City's area that could be addressed by GSI through 2040. The Plan lays out the City's GSI implementation strategy and includes maps of the City's prioritized areas and potential project opportunities. Key elements of the strategy include: coordination with State-mandated GSI requirements for private development and opportunities in adjacent public rights-of-way; identification of GSI opportunities in capital projects; and aligning GSI goals and policies with other City planning documents to achieve multiple benefits and provide safer, sustainable, and attractive public streetscapes. The Plan contains guidance and standards for GSI project design and construction, and describes how the City will track and map constructed GSI projects and make the information available to the public. Lastly, it explains existing legal mechanisms to implement the GSI Plan, and identifies potential sources of funding for the design, construction, and maintenance of GSI projects.

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1. INTRODUCTION

Urban development has traditionally involved replacing natural landscapes with solid pavements and buildings, and using storm drain systems to carry increased amounts of stormwater runoff and pollutants directly into local streams. Green stormwater infrastructure (GSI), however, uses plants and soils to mimic natural watershed processes, capture stormwater and create healthier environments. Bay Area cities and counties are required by State and regional regulatory agencies to move from traditional (grey) stormwater conveyance systems to GSI systems over time. This GSI Plan serves as an implementation guide for the City of Cupertino (City) to incorporate GSI into storm drain infrastructure on public and private lands where feasible over the next several decades.

1.1 Purpose and Goals of the GSI Plan

The purpose of the City's GSI Plan is to demonstrate the City's commitment to gradually transform its traditional storm drainage infrastructure to green stormwater infrastructure. The GSI Plan will guide the identification, implementation, tracking, and reporting of green stormwater infrastructure projects within the City. The GSI Plan will be coordinated with other City plans, such as the General Plan, the Climate Action Plan, the Bicycle Transportation Plan, the Pedestrian Transportation Plan, and other specific and master plans, to achieve multiple potential benefits to the community, including improved water and air quality, reduced local flooding, increased water supply, traffic calming, safer pedestrian and bicycle facilities, climate resiliency, improved wildlife habitat, and a more pleasant urban environment.

Specific goals of the GSI Plan are to:

- Align the City's goals, policies and implementation strategies for GSI with the General Plan and other related planning documents;
- Identify and prioritize GSI opportunities throughout the City;
- Establish targets for the extent of City area to be addressed by GSI over certain timeframes;
- Provide a workplan and legal and funding mechanisms to implement prioritized projects; and
- Establish a process for tracking, mapping, and reporting completed projects

1.2 City Description

Incorporated in 1955, the City of Cupertino is located in Santa Clara County, on the western edge of Silicon Valley against the foothills of the Santa Cruz Mountains. It has a jurisdictional area of 7,235 acres (11.3 square miles).

1.2.1 Population Size and Growth

According to the General Plan, "Community Vision 2040", Cupertino's population grew from 3,664 in 1960 to over 50,500 in 2000. Most of the population growth was from tract development during the 1970s and 1980s and annexation of unincorporated County land. Between 2000 and 2010 the City of Cupertino's population increased by 15.3 percent, from 50,546 (18,204 households) to 58,302 persons (20,181 households), with a population density of 5,179 people per square mile and average household size of 2.87. A portion of this population growth can be attributed to the City's annexation of 168 acres of land between 2000 and 2008. As of 2019 according to the California Department of Finance (DOF)[1], the estimated population is 59,879. The City's population is projected to grow to 66,110 by 2040 (Plan Bay Area, 2013), which is approximately a 12% increase over 30 years.

1.2.2 City Characteristics

Cupertino's land use pattern was largely built on a conventional suburban model, with predominantly single-family residential subdivisions and distinct commercial and employment centers. This development pattern was also heavily influenced by the topography of the area, with more intensive growth located on the valley floor and lower design residential on the foothills. The western area by the foothills is semi-rural with steep terrain, larger residential lots and access to open space. The pattern becomes more suburban immediately west of Highway 85 where residential neighborhoods have a more uniform pattern with smaller lots and older commercial and industrial areas along Stevens Creek Boulevard and Bubb Road. The land use pattern becomes more urban east of Highway 85, with a relatively connected street grid and commercial development along major boulevards such as Stevens Creek, De Anza, Homestead, Stelling and Wolfe. This area also has significant amounts of multi-family development in and around the major boulevards.

The suburban pattern is also reflected in building locations, with most of the older buildings set back from the street with parking lots in the front. Streets have also been historically widened to accommodate larger volumes of traffic, often to the detriment of other forms of transportation such as walking, biking and transit. According to the 2015 General Plan Land Use Element, the City has made strides in the last 20 years towards improving walkability and bikeability by retrofitting existing streets to include bike lanes; creating sidewalks lined with trees along major boulevards; and encouraging development to provide a more pedestrian-oriented frontage with active uses, gathering places and entries lining the street.

1.2.3 Roadways

The City is defined by its four major roadways: Homestead Road, Wolfe Road, De Anza Boulevard and Stevens Creek Boulevard. These major mixed-use corridors have been the center of retail, commercial, office and multi-family housing in Cupertino for decades.

Common residential street widths range from 20 feet (for streets with no street parking) to 36 feet (for those with parking on both sides). Developers are typically required to install curb, gutters, and sidewalks. The City prefers detached sidewalks with a landscaped buffer in between the street and the pedestrian walk to enhance community aesthetics and improve pedestrian safety.

Two state highways traverse Cupertino. The City is linked to the cities of San Francisco and San José by Interstate Highway 280 which runs along most of the its northern border. State Route 85, which runs from Mountain View to South San José, cuts diagonally across the City at its northwest boundary to its southeast boundary. All state highways are owned and maintained by the California Department of Transportation (Caltrans).

[1] Source: State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2018 and 2011. Sacramento, California, May 2019. Online at http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-1/.

The City has approximately 1.5 miles of rural road in the residential hillside area.

1.2.4 Hillsides and Water Resources

Cupertino's hillsides are an irreplaceable resource shared by the entire Santa Clara Valley. They provide important habitat for plants and wildlife; watershed capacity to prevent flooding in downstream areas; a wide vegetative belt that cleanses the air of pollutants; and a natural environment that provides a contrast to the built environment. Significant water bodies and water sources within Cupertino are:

- Stevens Creek
- Permanente Creek
- Regnart Creek
- Heney Creek
- Calabazas Creek

1.3 Regulatory Context

1.3.1 Federal and State Regulations and Initiatives

The U.S. Environmental Protection Agency (EPA) has authority under the Clean Water Act to promulgate and enforce stormwater related regulations. For the State of California, EPA has delegated the regulatory authority to the State Water Resources Control Board (State Water Board), which in turn, has delegated authority to the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) to issue National Pollutant Discharge Elimination System (NPDES) permits in the San Francisco Bay Region. Stormwater NPDES permits allow stormwater discharges from municipal separate storm sewer systems (MS4s) to local creeks, San Francisco Bay, and other water bodies as long as they do not adversely affect the beneficial uses of or exceed any applicable water quality standards for those waters. Since the early 2000's, the EPA has recognized and promoted the benefits of using GSI in protecting drinking water supplies and public health, mitigating overflows from combined and separate storm sewers and reducing stormwater pollution, and it has encouraged the use of GSI by municipal agencies as a prominent component of their MS4 programs.

The State and Regional Water Boards have followed suit in recognizing not only the water quality benefits of GSI but the opportunity to augment local water supplies in response to the impacts of drought and climate change as well. The 2014 California Water Action Plan called for multiple benefit stormwater management solutions and more efficient permitting programs. This directive created the State Water Board's "Strategy to Optimize Resource Management of Stormwater" (STORMS). STORMS' stated mission is to "lead the evolution of storm water management in California by advancing the perspective that storm water is a valuable resource, supporting policies for collaborative watershed-level storm water management and pollution prevention, removing obstacles to funding, developing resources, and integrating regulatory and non-regulatory interests."

These Federal and State initiatives have influenced approaches in Bay Area municipal stormwater NPDES permits, as described in Section 1.3.2.

1.3.2 Municipal Regional Stormwater Permit

The City is subject to the requirements of the Municipal Regional Stormwater NPDES Permit (MRP) for Phase I municipalities and agencies in the San Francisco Bay area (Order R2-2015-0049), which became effective on January 1, 2016. The MRP applies to 76 municipalities and flood control agencies that discharge stormwater to San Francisco Bay, collectively referred to as permittees.

Over the last 13 years, under Provision C.3 of the MRP and previous permits, new development and redevelopment projects on private and public property that exceed certain size thresholds ("regulated projects") have been required to mitigate impacts on water quality by incorporating "Low Impact Development" (LID) measures, including site design, pollutant source control, stormwater treatment and flow control measures as appropriate. LID treatment measures, such as rainwater harvesting and use, infiltration, and biotreatment, have been required on most regulated projects since December 2011.

Provision C.3.j of the 2016 MRP requires the City to develop and implement a long-term GSI Plan[2] for the inclusion of LID measures into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other elements. The GSI Plan must be completed and submitted to the Regional Water Board by September 30, 2019.

While Provision C.3.j of the MRP contains the GSI program planning and analysis requirements, other provisions (C.11 and C.12) establish a linkage between public and private GSI features and required reductions of pollutants in stormwater discharges. Permittees in Santa Clara County (County), collectively, must implement GSI on public and private property to achieve specified pollutant load reduction goals by the years 2020, 2030, and 2040. These efforts will be integrated and coordinated countywide for the most effective and resource-efficient program. As an indication as to whether these load reductions will be met, Permittees must include in their GSI Plans estimated "targets" for the amounts of impervious surface to be "retrofitted" as part of public and private projects (i.e., redeveloped or changed such that runoff from those surfaces will be captured in a stormwater treatment system or GSI measure) over the same timeframes (2020, 2030, and 2040).

A key part of the GSI definition in the MRP is the inclusion of GSI systems at both private and public property locations. This has been done in order to plan, analyze, implement and credit GSI systems for pollutant load reductions on a watershed scale, as well as recognize all GSI accomplishments within a municipality. The focus of the GSI Plan is the integration of GSI systems into public buildings, parks, parking lots, and rights-of-way (e.g. road or bike path). However, the GSI Plan may also establish opportunities to include GSI facilities at private properties or in conjunction with private development, so they can contribute to meeting the target load reductions on a county-wide level as well as implement GSI on a larger scale.

1.4 GSI Plan Development Process

1.4.1 GSI Plan Development and Adoption

The GSI Plan development process began with the preparation of the City's GSI Plan Framework (Framework), a work plan describing the goals, approach, tasks, and schedule needed to complete the GSI Plan. Development of the Framework was a regulatory requirement (Provision C.3.j.i(1) of the MRP)

[2] Although the MRP uses the term green infrastructure (GI), the agencies within Santa Clara County, including the City of Cupertino, prefer to use the term green stormwater infrastructure (GSI). Therefore, the term GSI is used in this document.

to demonstrate the City's commitment to completing the GSI Plan by September 30, 2019. The City completed the Framework and City Council approved it on April 18, 2017.

The City established a GSI Work Group, consisting of staff from the City's Public Works and Planning Departments. The GSI Work Group worked with a consultant team to develop the GSI Plan. Staff attended the Sustainability Commission on March 16, 2017 where SFEI's (San Francisco Estuary Institute) Robin Grossinger gave a presentation on healthier landscapes for people in nature (GSI concepts). City staff followed with an overview of the GSI Framework that City staff was in the process of developing. More recently, an overview of the MRP requirements and summary of the proposed Plan was presented to City Council on July 16, 2019. GSI presentations for soliciting comments and feedback were given to the Planning Commission on August 13, 2019 and the Sustainability Commission on August 15, 2019. The final GSI Plan was adopted by the City Council on September 3, 2019.

1.4.2 Regional Collaboration

The City is a member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), an association of thirteen cities and towns in the Santa Clara Valley, the County of Santa Clara, and the Santa Clara Valley Water District (Valley Water) that collaborate on stormwater regulatory activities and compliance. The City's GSI Plan was developed in collaboration with SCVURPPP; SCVURPPP input included technical guidance, templates, and completion of certain GSI Plan elements at the countywide level. SCVURPPP guidance and products are discussed in more detail in relevant sections of the GSI Plan.

The City, via SCVURPPP, also coordinated with the Bay Area Stormwater Management Agencies Association (BASMAA) on regional GSI guidance and received feedback through BASMAA from MRP regulators on GSI expectations and approaches. BASMAA members include other countywide stormwater programs in Alameda, Contra Costa, and San Mateo Counties, and area-wide programs in the Vallejo and Fairfield-Suisun portions of Solano County, whose participating municipalities are permittees under the MRP.

1.4.3 Education and Outreach

One of the first and most important steps in the development of the GSI Plan is educating a municipality's department staff, managers, and elected officials about the purposes and goals of green infrastructure, the required elements of the GSI Plan, and steps needed to develop and implement the GSI Plan, and get their support and commitment to the Plan and this new approach to urban infrastructure. Another important first step is local community and stakeholder outreach to gain public support. The City of Cupertino began this process in FY 15-16 and FY 16-17 and completed the following tasks:

- Convened 3-4 interdepartmental meetings with Public Works, GIS, Capital Improvement Program (CIP), and Environmental staff and management to discuss GSI requirements and assigned tasks.
- Discussed with appropriate department staff the MRP requirements to analyze proposed capital projects for opportunities to incorporate GSI and completed the first list of planned and potential GSI projects.
- Provided training to department staff on GSI requirements and strategies via presentations and workshops.

- Invited elected officials to a SCVURPPP Green Infrastructure presentation to raise awareness of the goals and requirements in the MRP and the concepts, intent and multiple benefits of GSI.
- At the suggestion of the Vice Mayor, the Sustainability Commission invited guest speaker Robin Grossinger, a scientist from San Francisco Estuary Institute (SFEI), to give his presentation on the vision for a resilient Silicon Valley landscape[3].
- Public Works Environmental staff participated in the Green Infrastructure Leadership Conversation and the Regional Roundtable on Sustainable Streets

Public and stakeholder support is also essential for the successful implementation of the GSI Plan and future GSI projects. To this end, the City has coordinated with SCVURPPP and the Watershed Education and Outreach subgroup on a comprehensive outreach and education program. Key audiences include: the general public (countywide, and in the neighborhood or municipality where GSI projects are located); the development community (e.g., developers, engineers, landscape architects, and contractors); and elected officials. The GSI outreach and education program includes a GSI website[4], public presentations, and radio and online advertising to promote GSI features. The City of Cupertino will conduct or continue to conduct education and outreach activities as part of development of the GSI Plan and seek community input as specific projects are designed and constructed.

1.5 GSI Plan Structure and Required Elements

The remainder of the GSI Plan is structured as follows:

Chapter 2 describes the definition, purpose, and benefits of GSI, and describes the different types of GSI facilities.

Chapter 3 describes the relationship of the GSI Plan to other planning documents and how those planning documents have been updated or modified, if needed, to support and incorporate GSI requirements. For documents whose desired updates and modifications have not been accomplished by the completion of the GSI Plan, a work plan and schedule are laid out to complete them.

Chapter 4 outlines the materials being developed by SCVURPPP and the City to provide guidelines, typical details, specifications and standards for municipal staff and others in the design, construction, and operation and maintenance of GSI measures.

Chapter 5 presents information on the different types of GSI projects and the methodology and results for identifying and prioritizing areas for potential GSI projects.

Chapter 6 outlines the City's strategy for implementing potential GSI projects within the next ten years and through 2040, discusses the variety of mechanisms to be employed by the City in order to

[3] SFEI's recommendations for a more sustainable South Bay looks at what the City can do to integrate resilient landscape within the reality of new and re-development. From a practical perspective, the City of Cupertino can consider actions over the course of the next generations to improve the ecology of the area and how it can work with larger developments to incorporate these types of principles in its planning.
[4] http://www.mywatershedwatch.org/residents/green-streets/

implement the GSI Plan, and presents the estimated targets for the amounts of impervious surface to be "retrofitted" as part of public and private projects by 2020, 2030, and 2040.

The GSI Plan elements required by Provision C.3.j.i.(2) of the MRP and the section of the document in which each component can be found are summarized in Table 1-2 below.

Table 1-1 Summary of GSI Plan Elements required by Provision C.3.j.i of the MRP.

MRP Provision	GSI Plan Elements	GSI Plan Section
C.3.j.i.(2)(a)	Project Identification and Prioritization Mechanism	Chapter 5
C.3.j.i.(2)(b)	Prioritized Project Locations	Section 5.3
C.3.j.i.(2)(c)	Impervious Surface Targets	Section 6.6
C.3.j.i.(2)(d)	Completed Project Tracking System	Section 6.7
C.3.j.i.(2)(e,f)	Guidelines and Specifications	Chapter 4
C.3.j.i.(2)(g)	Alternative Sizing Requirements for Green Street Projects	Section 4.1
C.3.j.i.(2)(h,i)	Integration with Other Municipal Plans	Chapter 3
C.3.j.i.(2)(i)	Workplan for Integration of GSI Language into City Planning Documents	Section 3.1.8
C.3.j.i.(2)(j)	Workplan to Complete C.3.j. Early Implementation Projects	Section 6.3
C.3.j.i.(2)(k)	Evaluation of Funding Options	Section 6.5
C.3.j.i.(3)	Legal and Implementation Mechanisms	Section 6.4

2. WHAT IS GREEN STORMWATER INFRASTRUCTURE?

In natural landscapes, most of the rainwater soaks into the soil or is taken up by plants and trees. However, in urban areas, building footprints and paved surfaces such as driveways, sidewalks, and streets prevent rain from soaking into the ground. As rainwater flows over and runs off these impervious surfaces, this "urban runoff" or "stormwater runoff" can pick up pollutants such as motor oil, metals, pesticides, sediment, pet waste, and litter. It then carries these pollutants into the City's storm drains, which flow directly to local creeks and San Francisco Bay, without any cleaning or filtering to remove pollutants. Stormwater runoff is therefore a major contributor to water pollution in urban areas.

As urban areas develop, the increase in impervious surface also results in increases in peak flows and volumes of stormwater runoff from rain events. Traditional "gray" stormwater infrastructure, like most of the City's storm drain system, is designed to convey stormwater flows quickly away from urban areas. However, the increased peak flows and volumes can cause erosion, flooding, and habitat degradation in downstream creeks to which stormwater is discharged, damaging habitat, property, and infrastructure.

2.1 Green Stormwater Infrastructure

A new approach to managing stormwater is to implement green stormwater infrastructure. GSI uses vegetation, soils, and other elements and practices to capture, treat, infiltrate and slow urban runoff and thereby restore some of the natural processes required to manage water and create healthier urban environments. GSI facilities can also be designed to capture stormwater for uses such as irrigation and toilet flushing.

GSI integrates building and roadway design, complete streets, drainage infrastructure, urban forestry, soil conservation and sustainable landscaping practices to achieve multiple benefits. At the city or county scale, GSI is a patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the neighborhood or site scale, GSI comprises stormwater management systems that mimic nature and soak up and store water.[5]

2.2 Benefits of Green Stormwater Infrastructure

GSI can provide multiple benefits beyond just managing rainfall and runoff. These benefits include environmental, economic, and social improvements.

GSI measures can mitigate localized flooding and reduce erosive flows and quantities of pollutants being discharged to local creeks and the San Francisco Bay. Vegetated GSI systems can beautify public places and help improve air quality by filtering and removing airborne contaminants from vehicle and industrial sources. They can also reduce urban heat island effects by providing shade and absorbing heat better than paved surfaces, and provide habitat for birds, butterflies, bees, and other local species. When GSI facilities are integrated into traffic calming improvements such as curb extensions and bulb-outs at intersections, they can help increase pedestrian and bicycle safety and promote active transportation, which in turn can result in improved human health.

[5] https://www.epa.gov/green-infrastructure/what-green-infrastructure

GSI facilities designed with extra storage can capture stormwater for later use as irrigation water or non-potable uses such as toilet flushing and cooling tower supply, thus conserving potable water supplies.

Widespread implementation of GSI potentially offers significant economic benefits, such as deferring or eliminating the need for some gray infrastructure projects. By providing more storage within the watershed, GSI can help reduce the costs of conveyance and pumping of stormwater. When cost-benefit analyses are performed, GSI is often the preferred alternative due to the multiple benefits provided by GSI as compared to conventional infrastructure.

2.3 Types of Green Stormwater Infrastructure Facilities

Integrating GSI into public spaces typically involves construction of stormwater capture and treatment measures in public streets, parks, and parking lots or as part of public buildings. Types of GSI measures that can be constructed in public spaces include: (1) bioretention; (2) stormwater tree well filters; (3) pervious pavement, (4) infiltration facilities, (5) green roofs, and 6) rainwater harvesting and use facilities. A description of these facility types is provided below.

2.3.1 Biotreatment/Bioretention

Bioretention areas are depressed landscaped areas that consist of a ponding area, mulch layer, plants, and a special biotreatment soil media composed of sand and compost, underlain by drain rock and an underdrain, if required. Bioretention is designed to retain stormwater runoff, filter stormwater runoff through biotreatment soil media and plant roots, and either infiltrate stormwater runoff to underlying soils as allowed by site conditions, or release treated stormwater runoff to the storm drain system, or both. They can be of any shape and are adaptable for use on a building or parking lot site or in the street right-of-way.

Figure 2-1 Stormwater curb extension, Southgate Neighborhood, Palo Alto (Source: EOA)

Bioretention systems in the streetscape have specific names: stormwater planters, stormwater curb extensions (or bulb-outs), and stormwater tree well filters (described in the next section).

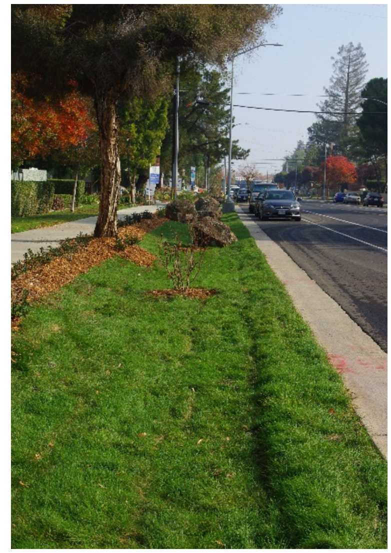


Figure 2-2 Stormwater planter, Hacienda Avenue, Campbell (Source: City of Campbell)

A stormwater curb extension (Figure 2-1) is a bioretention system that extends into the roadway and involves modification of the curb line and gutter. Stormwater curb extensions may be installed midblock or at an intersection. Curb bulb-outs and curb extensions installed for pedestrian safety, traffic calming, and other transportation benefits can also provide opportunities for siting bioretention facilities.

A stormwater planter is a linear bioretention facility in the public right-of-way along the edge of the street, often in the planter strip between the street and sidewalk. They are typically designed with vertical (concrete) sides. However, as shown in Figure 2-2, they can also have sloped sides depending on the amount of space that is available.

2.3.2 Stormwater Tree Well Filters and Suspended Pavement Systems

A stormwater tree well filter is a type of bioretention system consisting of an excavated pit or vault that is filled with biotreatment soil media, planted with a tree and other vegetation, and underlain with drain rock and an underdrain, if needed. Stormwater tree well filters can be constructed in series and linked via a subsurface trench or underdrain. A stormwater tree well filter can require less dedicated space than other types of bioretention areas.

Suspended pavement systems may be used to provide increased underground treatment area and soil volume for tree well filters. These are structural systems designed to provide support for pavement while preserving large volumes of uncompacted soil for tree roots. Suspended pavement systems may be any engineered system of structural supports or commercially available proprietary structural systems.

Stormwater tree well filters and suspended pavements systems are especially useful in settings between existing sidewalk elements where available space is at a premium. They can also be used in curb extensions or bulb-outs, medians, or parking lots if surrounding grades allow for drainage to those areas. The systems can be designed to receive runoff through curb cuts or catch basins or allow runoff to enter through pervious pavers on top of the structural support.

Figure 2-3 Stormwater tree well filter conceptual examples: modular suspended pavement system (left), column suspended pavement system (right). (Courtesy of Philadelphia Water Department)

2.3.3 Pervious Pavement

Pervious pavement is hardscape that allows water to pass through its surface into a storage area filled with gravel prior to infiltrating into underlying soils. Types of pervious pavement include permeable interlocking concrete pavers, pervious concrete, porous asphalt, and grid pavement. Pervious pavement is often used in parking areas or on streets where bioretention is not feasible due to space constraints or if there is a need to maintain parking. Pervious pavement does not require a dedicated surface area for treatment and allows a site to maintain its existing hardscape.

Figure 2-4 Permeable interlocking concrete pavers, Mayfield Playing Fields, Palo Alto (Source: EOA)

There are two types of pervious pavers: Permeable Interlocking Concrete Pavers (PICP) and Permeable Pavers (PP). PICP allows water to pass through the joint spacing between solid pavers, and PP allows water to pass through the paver itself and therefore can have tighter joints. Porous asphalt and pervious concrete are similar to traditional asphalt and concrete, but do not include fine aggregates in the mixture, allowing water to pass through the surface. All types are supported by several layers of different sizes of gravel to provide structural support and water storage.

2.3.4 Infiltration Facilities

Where soil conditions permit, infiltration facilities can be used to capture stormwater and infiltrate it into native soils. The two primary types are infiltration trenches and subsurface infiltration systems.

Figure 2-5 Infiltration trench, San Jose (Source: City of San Jose)

An infiltration trench is an excavated trench backfilled with a stone aggregate and lined with a filter fabric. Infiltration trenches collect and detain runoff, store it in the void spaces of the aggregate, and allow it to infiltrate into the underlying soil. Infiltration trenches can be used along roadways, alleyways, and the edges or medians of parking lots. An example of an infiltration trench is shown in Figure 2-5.

Figure 2-6 Subsurface infiltration system (Source: Conteches.com)

Subsurface infiltration systems are another type of GSI measure that may be used beneath parking lots or parks to infiltrate larger quantities of runoff. These systems, also known as infiltration galleries, are underground vaults or pipes that store and infiltrate stormwater while preserving the uses of the land surface above parking lots, parks and playing fields. An example is shown in Figure 2-6. Storage can take the form of large-diameter perforated metal or plastic pipe, or concrete arches, concrete vaults, plastic chambers or crates with open bottoms. Prefabricated, modular infiltration galleries are available in a variety of shapes, sizes, and material types that are strong enough for heavy vehicle loads.

2.3.5 Green Roofs

Green roofs are vegetated roof systems that filter, absorb, and retain or detain the rain that falls upon them. Green roof systems are comprised of a layer of planting media planted with vegetation, underlain by other structural components including waterproof membranes, synthetic insulation, geofabrics, and underdrains. A green roof can be either “extensive”, with 3 to 7 inches of lightweight planting media and low-profile, low-maintenance plants, or “intensive”, with a thicker (8 to 48 inches) of media, more varied plantings, and a more garden-like appearance. Green roofs can provide high rates of rainfall retention via plant uptake and evapotranspiration and can decrease peak flow rates in storm drain systems because of the storage that occurs in the planting media during rain events.

Figure 2-7 Green roof at Fourth Street Apartments, San José (Source: EOA)

2.3.6 Rainwater Harvesting and Use

Rainwater harvesting is the process of collecting rainwater from impervious surfaces and storing it for later use. Storage facilities that can be used to capture stormwater include rain barrels, above-ground or below-ground cisterns (Figure 2-8), open storage reservoirs (e.g., ponds), and various underground storage devices (tanks, vaults, pipes, and proprietary storage systems)(Figure 2-9). The captured water is then fed into irrigation systems or non-potable water plumbing systems, either by pumping or by gravity flow. Uses of captured water may include irrigation, vehicle washing, and indoor non-potable use such as toilet flushing, heating and cooling, or industrial processing.

Figure 2-8 Rainwater harvesting cistern, Environmental Innovation Center, San José (Source: City of San Jose)

The two most common applications of rainwater harvesting are 1) collection of roof runoff from buildings; and 2) collection of runoff from at-grade surfaces or diversion of water from storm drains into large underground storage facilities below parking lots or parks. Rooftop runoff usually contains lower quantities of pollutants than at-grade surface runoff and can be collected via gravity flow. Underground storage systems typically include pre-treatment facilities to remove pollutants from stormwater prior to storage and use.

Figure 2-9 Subsurface vault, under construction (Source: Conteches.com)

2.4 Existing GSI Facilities

The City of Cupertino completed an 18-acre Stevens Creek Corridor Park and Restoration project in July 2014. The City is also installing GSI measures at the McClellan Ranch Preserve as part of expansion and improvements at the site, with construction expected to be completed by September 1, 2019. GSI projects such as this, completed by the City prior to or during the current permit term (2016-2020), are also referred to in the permit as “Early Implementation” projects (see Section 5.1.1 of this GSI Plan). Both projects are described below. A description of the Apple Park project, which included GSI improvements in the public right-of-way, is also described below.

2.4.1 Stevens Creek Corridor and Creek Restoration project

The Stevens Creek Corridor and Creek Restoration project at Blackberry Farm in Cupertino consisted of two phases.

Phase 1 of the project restored a portion of Stevens Creek, enhanced natural hydrologic processes, and improved wildlife and habitat values. Impervious cover was reduced by 3.4 acres, including removal of an asphalt driveway and parking lot, and concrete surfaces in the creek corridor. The former parking lot, which drained directly into the creek, was replaced by a smaller green parking area, set back from the creek and made entirely of permeable material. Drive aisles are made of porous concrete that is colored to reduce heat gain. Parking bays were constructed using recycled plastic geocells to support vehicle weight filled with special soil and planted with turf grass (see Figure 2-10). During heavy rains, excess water flows to bioretention areas in a center median. Dozens of native trees were also planted. The design aimed to use all rain and storm flows to water native plantings. The project site is located within a flood plain. It was designed to accommodate being submerged during unusually high creek flows without damage to new infrastructure, water quality or wildlife and to retain stormwater onsite. The design enables the site's ability to attenuate flooding, and naturally filter and return rainfall and runoff from the site to groundwater.

Figure 2-10 Completed green parking bays (above left) and parking bays under construction, showing the recycled plastic geocells that support vehicle weight (above right).(Source: City of Cupertino)

Phase 2 of the Stevens Creek Corridor project included four new bioswales and an infiltration area installed on the adjacent golf course to capture and infiltrate runoff from the golf course, buildings, and the parking lot that previously flowed directly into the creek. Additionally, an all-weather trail was installed using pervious concrete (Figure 2-11). The trail material is compatible with floodplain standards and protects the fishery and wildlife.

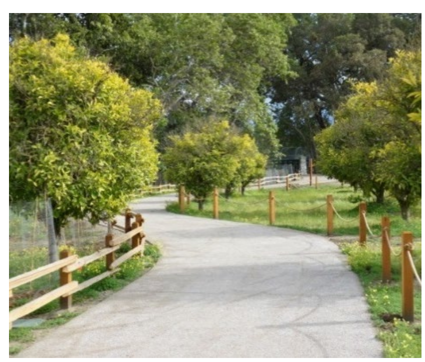


Figure 2-11 Pervious concrete bike path and walkway at Blackberry Farm. (Source: City of Cupertino)

2.4.2 McClellan West Parking Lot

McClellan Ranch Preserve overflow parking had historically been relegated to the 1.4 acre vacant unimproved parcel which lies west of the Preserve and adjacent to Stevens Creek. The site experienced poor drainage and contributed to track out of sediment during all seasons. With the construction of the Environmental Education Center and other improvements within the Preserve, expanded community and school use, there was need for additional parking during large events and for oversized vehicles such as school buses. To meet the parking demand and provide habitat restoration, the project was designed to create a “green” meadow-style parking area compatible with the existing riparian setting. Components of this improvement include 0.53 acres of parking surface paved with permeable concrete including a gravel overflow area, planting thirty-seven native species trees, and adding approximately 20,000 square feet of new native riparian plants which will enhance the existing native habitat along Stevens Creek. Construction is expected to be completed by September 1, 2019.

2.4.3 Apple Park

Apple Park lies on 152 acres of land that was formerly occupied by more traditional office space with expansive impervious parking lots and multiple office buildings. Putting parking underground and emphasizing California native landscaping, the Apple project reduced the impervious surface from 5,085,000 square feet (117 acres) to 2,615,000 square feet (60 acres). There was an emphasis on planting native trees, enlisting the expertise of Stanford arborist, David Muffly. The campus drains to flow-through planter bioretention treatment before entering the Calabazas watershed and features 9,000 trees, nearly double the 4,596 trees at the pre-project site. The project exceeded regulatory requirements by providing stormwater treatment in the public right-of-way.

3. INTEGRATION WITH OTHER PLANNING DOCUMENTS

To ensure the success of the GSI Plan and its implementation, its goals, policies and implementation strategies should align with the City's General Plan and other related planning documents. The MRP requires that municipal agencies review such documents and include in their GSI Plans a summary of any planning documents aligned with the GSI Plan or updated or modified to appropriately incorporate GSI requirements. The GSI Plan must also include a workplan identifying how GSI measures will be included in future plans.

3.1 City Planning Document Review

The City completed a review of its existing planning documents to determine the extent to which GSI-related language, concepts and policies have been incorporated. The plans that were reviewed are listed below, with the General Plan as guiding planning document first, followed by remaining plans in order of most recently prepared/adopted:

- General Plan – Community Vision 2040 (2015)
- Pedestrian Transportation Plan (2018)
- Storm Drain Master Plan (2018)
- Bicycle Transportation Plan (2016)
- Climate Action Plan (2015)
- Heart of the City Specific Plan (2014)
- Citywide Parks & Recreation System Master Plan (Draft)

The following sections provide a brief discussion of each plan and the extent to which it supports GSI implementation. A prioritized workplan for the integration of GSI language into existing and future City planning documents is provided in Section 3.1.8.

3.1.1 General Plan – Community Vision 2040

The City's Community Vision 2040 functions as the City of Cupertino's State-mandated General Plan and covers a time frame of 2015–2040. Community Vision 2040 provides a framework for integrating the aspirations of residents, businesses, property owners and public officials into a comprehensive strategy for guiding future development and managing change. It describes long-term goals and guides decision-making by the City Council and appointed commissions. The document was last amended in October 2015 and includes language that is very supportive of GSI. Examples of supportive language in the plan are summarized below. No updates related to GSI are recommended at this time.

> ***ES-3: Context, Urban Ecosystems (page ES-6):****…the City is committed to enhancing the urban ecosystem in the form of urban forestry management, integration of green infrastructure, treatment of parks and open space, landscape and building requirements.*
>
> ***Strategy ES-1.1.1: Climate Action Plan (Page ES-14):*** *Integrate multiple benefits of green infrastructure with climate resiliency and adaptation*
>
> ***Goal ES-2.1.5 Urban Forest (Page ES-16):*** *Encourage the inclusion of additional shade trees, vegetated stormwater treatment and landscaping to reduce the "heat island effect" in development projects.*

SE-5.1.1 Landscaping (page ES-21): *Ensure that the City's tree planting, landscaping and open space policies enhance the urban ecosystem by encouraging medians, pedestrian crossing and curb-extension planting that is native, drought-tolerant, treats stormwater and enhances urban plant, aquatic and animal resources in both, private and public development.*

ES-5.1.2: Built Environment (page ES-21): *Ensure that sustainable landscaping design is incorporated in the development of City facilities, parks and private projects with the inclusion of measures such as tree protection, stormwater treatment and planting of native, drought tolerant landscaping that is beneficial to the environment.*

Policy ES-7.1 Natural Water Bodies and Drainage Systems (page ES-24): *In public and private development, use Low Impact Development (LID) principles to manage stormwater by mimicking natural hydrology, minimizing grading and protecting or restoring natural drainage systems.*

Policy ES-7.2: Reduction of Impervious Surfaces (page ES-24): *Minimize stormwater runoff and erosion impacts resulting from development and use low impact development (LID) designs to treat stormwater or recharge groundwater*

Strategy ES-7.2.1: Lot Coverage (page ES-24): *Consider updating lot coverage requirements to include paved surfaces such as driveways and ongrade impervious patios to incentivize the construction of pervious surfaces.*

Strategy ES-7.2.2: Pervious Walkways and Driveways (page ES-24): *Encourage the use of pervious materials for walkways and driveways…*

Policy ES-7.2.3: Maximize Infiltration (page ES-25): *Minimize impervious surface areas, and maximize on-site filtration and the use of on-site retention facilities.*

Strategy ES-7.3.1: Development Review (Page ES-25): *Require LID designs such as vegetated stormwater treatment systems and green infrastructure to mitigate pollutant loads and flows.*

Strategy ES-7.4.1 Storm Drainage Master Plan (Page ES-25): *Develop and maintain a Storm Drainage Master Plan which identifies facilities needed to prevent "10-year" event street flooding and "100-year" event structure flooding and integrate green infrastructure to meet water quality protection needs in a cost effective manner.*

Strategy ES-7.11.5 On-site Recycled Water (Page ES-27): *Encourage on-site water recycling including rainwater harvesting and gray water use.*

Strategy ES-7.11.7 Green Business Certification and Water Conservation (Page ES-27): *Continue to support the City's Green Business Certification goals of long-term water conservation within City facilities, vegetated stormwater infiltration systems, parks and medians, including installation of low-flow toilets and showers, parks, installation of automatic shut-off valves in lavatories and sinks and water efficient outdoor irrigation.*

Strategy INF-4.1.1: Stormwater Management (page INF-14): *Reduce the demand on storm drain capacity through implementation of programs that meet and even exceed on-site drainage requirements*

3.1.2 Pedestrian Transportation Plan

Cupertino adopted its Pedestrian Transportation Plan (PTP) in 2002; an update was completed in February 2018. The purpose of the PTP is to establish a guiding framework for the development and maintenance of pedestrian facilities throughout Cupertino and recommend policies, programs, and messaging to support and promote walking. Existing language in the PTP to support GSI is summarized here:

> ***Curb Extension Benefits (Page 38):*** *Extended sidewalk space can be used for plantings, street furniture, or green stormwater infrastructure.*
>
> ***Choker/Pinch Point Benefits (Page 41)*** *Stormwater and greenspace elements can be combined to calm traffic while also making the street more attractive.*

3.1.3 Storm Drain Master Plan

The latest version of the City's Storm Drain Master Plan (SDMP) dated September 2018, was accepted by City Council Resolution on January 15, 2019. The objective of the SDMP is to provide an examination of the flood risks within the City limits and recommend actions necessary to accomplish defined levels of service for storm drain systems owned by the City so as to appropriately manage flood risks. The SDMP includes a discussion of the C.3 MRP Requirements and a discussion of GSI. Existing language to support GSI is summarized here:

> ***Section 2.2.2 Future Land Use:*** *The majority of future development will involve the redevelopment of sites, such as infill projects. Future development will need to comply with C.3 requirements of the Municipal Regional Permit (MRP) for the Bay Area. These requirements to treat storm water runoff may result in a reduction of impervious surface…*
>
> ***Section 5.7 Green Infrastructure:*** *The City should look for and evaluate opportunities to incorporate green infrastructure and LID facilities into the design of capital projects recommended in the master plan.*

3.1.4 Bicycle Transportation Plan

The City adopted a Bicycle Transportation Plan (BTP) in 2011 that describes long-term goals with respect to the creation of a safe, convenient, and comprehensive network of bicycle facilities throughout the City. The BTP was updated in 2016 to identify which priority projects have already been completed and which remain to be implemented, and to identify any new projects that should be included for prioritization. The BTP currently does not include language to support GSI. However, all bike lane projects will be CIP projects and therefore reviewed annually as part of the review of projects for potential GSI opportunities (See Section 6.2).

3.1.5 Climate Action Plan

The Climate Action Plan (CAP) defines Cupertino's path toward creating a healthy, livable, and vibrant place for its current and future residents to live, learn, work, and play. The CAP seeks to identify emissions reduction strategies that are informed by the goals, values, and priorities of the community. The document was completed in January 2015. The CAP emissions reduction measures are organized into five goals, one of which is "Expand Green Infrastructure". Existing language in support of GSI is summarized below.

GHG Overarching Goals (Pages ES-14 and 66): *Expand Green Infrastructure: enhance the City's existing urban forest and landscapes on public and private land.*

Measure C-W-2 Recycled Water Irrigation Program (Page 116): *As an alternative to recycled water use…small-scale, on-site rainwater catchment systems could be installed to better utilize natural precipitation for irrigation purposes, as opposed to use of scarce potable water resources. The City will develop a demonstration project on municipal property …*

Goal 5 – Expand Green Infrastructure (Page 127): *In Cupertino, green space includes the urban forest, parks, landscaped medians and parkways, and natural stormwater-absorbing landscapes. Healthy and robust green infrastructure systems can mitigate the urban heat island effect, lower building energy use, provide natural stormwater management and wildlife habitat, improve local air quality, and increase community pride.*

Measure C-G-1 Urban Forest Program (Page 128): *The City should incentivize Green roofs for their role in "protecting water resources adversely impacted by climate change by reducing electricity usage and improving air quality.*

Measure C-G-1 Action D (Page 130)*: Evaluate opportunities to expand current ordinances and codes to prioritize expansion of City's green and cool roofs, as well as pervious and cool pavement.*

Measure C-G-1 Action F (Page 130): *Expand community and school gardens, and evaluate opportunities to develop prevalent demonstration garden that incorporates water-sensitive design and advanced irrigation control technology (if irrigation system is necessary.*

Measure M-F-7 Action E. Install Graywater and Rainwater Catchment Systems in New Construction and Major Retrofit Projects (page 186): *In the absence of access to utility-supplied recycled water in our community, Cupertino will strive to lead by example by installing graywater and rainwater catchment systems in new municipal construction and major retrofit projects…These projects can also serve as models for community members and businesses seeking to achieve the same environmental and financial benefits, and should be showcased to reconnect Cupertino's suburban residents to their backyard gardens and the natural water cycle.*

3.1.6 Heart of the City Specific Plan

The Heart of the City Specific Plan provides specific development guidance for the most important commercial corridor in the City of Cupertino. The purpose of the specific plan is to guide the future development and redevelopment of the Stevens Creek Boulevard Corridor in a manner that creates a greater sense of place and community identity in Cupertino. The Streetscape Element implements community design goals contained in the 1993 General Plan, design concepts subsequently developed and revised in the 1993 "Heart of the City" Design Charette, and any new policies and concepts identified in the 2005 General Plan. The document was enacted by the City Council in December 2014 and does not include language to support GSI. However, consistent with the City's strategy to ensure no missed opportunities (Section 6), any development related to the Heart of the City will go through the CIP review for identifying and evaluating GSI opportunities.

3.1.7 Citywide Parks & Recreation System Master Plan (Draft)

The City is preparing a Citywide Parks & Recreation System Master Plan (Draft), which provides guidance to create a park system for the future aligned with the community's values and priorities. The Master Plan creates a vision through the year 2040 to guide future development, renovation, management and activation of City parks and recreation facilities. Elements of the Master Plan goals include conservation of trees and natural areas which support wildlife and ecological functions and establish sustainable practices in management of parks and recreation facilities. Existing language in support of GSI in the draft plan dated January 2019 is summarized here:

> ***Conservation Goal 1.D.v (Page 39):*** *Embrace storm water management, incorporating green infrastructure elements such as rain gardens, bioswales, permeable pavers and detention ponds to help reduce flooding, filter pollutants and replenish groundwater during storm events.*
>
> ***Sustainability Goal 7.C.ix (Page 73):*** *Train staff in maintenance and stewardship of natural areas, green infrastructure, and bioswales, so that these features thrive and the integrity of natural resources on City property is maintained. Involve expert professional services as needed to support informed and ongoing care for habitat areas.*
>
> ***Sustainability Goal 7.C.xi (Page 74):*** *Focus on storm water management and green infrastructure when designing or renovating City parks. For example, consider installing a 'storm water management garden' on City or public property to showcase green infrastructure techniques.*
>
> ***Enhancements to Existing Parks, Creekside Park and Connection to Regnart Creek Trail (page 84):*** *Consider adding trail amenities, enhancing and protecting the riparian corridor, and adding green infrastructure. Encourage connections between school, parks and trail.*
>
> ***Enhancements to Existing Parks, Saratoga Creek Trail (Page 84):*** *Consider adding trail amenities, enhancing and protecting the riparian corridor, and adding green infrastructure. Encourage connections northward to Stevens Creek Blvd. and to regional destinations.*
>
> ***Enhancements to Existing Parks, Stevens Creek Trail (Page 84):*** *Consider adding trail amenities and adding green infrastructure. Encourage pedestrian and bike connections between trail, City parks, County parks and nearby schools.*

3.1.8 Workplan for Integration of GSI Language into Existing and Future City Planning Documents

The General Plan, Climate Action Plan, Pedestrian Transportation Plan, Storm Drain Master Plan, and the draft Citywide Parks and Recreation System Master Plan all include adequate language to support the implementation of GSI in Cupertino. The Heart of the City Plan was last amended with the General Plan in 2014. Unless there are development triggers, the Heart of the City Plan will be updated with GSI language during future General Plan amendments. Consistent with the City's strategy (See Section 6.1), any progress on the Heart of the City will go through the CIP review and green stormwater infrastructure will be considered as part of that review.

When preparing new planning documents, the City will review GSI Plan requirements during the planning process to ensure that GSI requirements and policies are incorporated. Examples of GSI related language can be found in existing City plans, and in references such as SCVURPPP's Model Green Infrastructure Language for Incorporation into Municipal Plans (2016).

3.2 Regional Plans

The City is collaborating with SCVURPPP, Valley Water, and other agencies on several large-scale planning efforts including those described below.

3.2.1 Santa Clara Basin Stormwater Resource Plan

A collaboration between SCVURPPP and Valley Water during 2017 and 2018, the Santa Clara Basin Storm Water Resources Plan (SWRP) supports municipal GSI Plans by identifying and prioritizing potential multi-benefit GSI opportunities on public parcels and street rights-of-way throughout the Basin (i.e., Santa Clara Valley) and allows them to be eligible for State bond-funded implementation grants. The SWRP includes a list of prioritized GSI opportunity locations for each SCVURPPP agency, including Cupertino. As described in Section 5.2, the City's GSI Plan builds on the SWRP output to further identify, evaluate, and prioritize potential projects.

3.2.2 Santa Clara Valley Water District's One Water Plan

Valley Water's Watershed Division is leading an effort to develop an Integrated Water Resources Master Plan to identify, prioritize, and implement activities at a watershed scale to maximize established water supply, flood protection, and environmental stewardship goals and objectives. The "One Water Plan" establishes a framework for long-term management of Santa Clara County water resources, which eventually will be used to plan and prioritize projects that maximize multiple benefits. The One Water Plan incorporates knowledge from past planning efforts, builds on existing and current related planning efforts; and coordinates with relevant internal and external programs. The One Water Plan has five goals:

1. "Valued and Respected Rain" – Manage rainwater to improve flood protection, water supply, and ecosystem health.
2. "Healthful and Reliable Water" – Enhance the quantity and quality of water to support beneficial uses.
3. "Ecologically Sustainable Streams and Watersheds" – Protect, enhance and sustain healthy and resilient stream ecosystems.
4. "Resilient Baylands" – Protect, enhance and sustain healthy and resilient baylands ecosystems and infrastructure.
5. "Community Collaboration" – Work in partnership with an engaged community to champion wise decisions on water resources.

Tier 1 of the effort, for which a draft plan was completed in 2016[6], is a countywide overview of major resources and key issues along with identified goals and objectives. Tier 2 (2016 to 2020) will include greater detail on each of the County's major watersheds. The City's GSI Plan aligns with the goals of the

[6] Santa Clara Valley Water District. 2016. One Water Plan for Santa Clara County. An Integrated Approach to Water Resources Management. Preliminary Draft Report 2016.

One Water Plan and may be able to coordinate with specific projects yet to be identified in the West Valley area.

3.2.3 Bay Area Integrated Regional Water Management Plan

The Bay Area Integrated Regional Water Management Plan (IRWMP) is a comprehensive water resources plan for the Bay region that addresses four functional areas: 1) water supply and water quality; 2) wastewater and recycled water; 3) flood protection and stormwater management; and 4) watershed management and habitat protection and restoration. It provides a venue for regional collaboration and serves as a platform to secure state and federal funding. The IRWMP includes a list of over 300 project proposals, and a methodology for ranking those projects for the purpose of submitting a compilation of high priority projects for grant funding. The Santa Clara Basin SWRP was submitted to the Bay Area IRWMP Coordinating Committee and incorporated into the IRWMP as an addendum. As SWRP projects are proposed for grant funding, they will be added to the IRWMP list using established procedures.

4. GSI DESIGN GUIDELINES, DETAILS, AND SPECIFICATIONS

The MRP requires that the GSI Plan include general design and construction guidelines, standard specifications and details (or references to those documents) for incorporating GSI components into projects within the City. These guidelines and specifications should address the different street and project types within the City, as defined by its land use and transportation characteristics, and allow projects to provide a range of functions and benefits, such as stormwater management, bicycle and pedestrian mobility and safety, public green space, and urban forestry.

The City, along with other SCVURPPP agencies, helped fund and provided input to the development of countywide guidelines by SCVURPPP to address the MRP requirements and guide the implementation of GSI Plans. The resulting SCVURPPP GSI Handbook (Handbook)[7] is a comprehensive guide to planning and implementation of GSI projects in public streetscapes, parking lots and parks. The Handbook consists of two parts, the contents of which are described in the following sections. The City intends to use this Handbook as a reference when creating City-specific guidelines and specifications to meet the needs of the various departments.

4.1 Design Guidelines

Part 1 of the Handbook provides guidance on selection, integration, prioritization, sizing, construction, and maintenance of GSI facilities. It includes sections describing the various types of GSI, their benefits, and design considerations; how to incorporate GSI with other uses of the public right-of-way, such as bicycle and pedestrian infrastructure and parking; and guidelines on utility coordination and landscape design for GSI. In addition, the Handbook also provides guidance on post-construction maintenance practices and design of GSI to facilitate maintenance.

Part 1 also contains a section on proper sizing of GSI measures. Where possible, GSI measures should be designed to meet the same sizing requirements as Regulated Projects, which are specified in MRP Provision C.3.d. In general, the treatment measure design standard is capture and treatment of 80% of the annual runoff (i.e., capture and treatment of the small, frequent storm events). However, if a GSI measure cannot be designed to meet this design standard due to constraints in the public right-of-way or other factors, the City may still wish to construct the measure to provide some runoff reduction and water quality benefit and achieve other benefits. For these situations, the Handbook describes (in Section 4.2) regional guidance on alternative design approaches developed by the Bay Area Stormwater Management Agencies Association (BASMAA) for use by MRP permittees.

4.2 Details and Specifications

Part 2 of the Handbook contains typical details and specifications that have been compiled from various sources within California and the U.S. and modified for use in Santa Clara County. The Handbook includes details for pervious pavement, stormwater planters, stormwater curb extensions, bioretention in parking lots, infiltration measures, and stormwater tree wells, as well as associated components such as edge controls, inlets, outlets, and underdrains. It also provides typical design details for GSI facilities

[7] SCVURPPP (2019) Green Stormwater Infrastructure Handbook. February. Online at http://scvurppp.org/scvurppp_2018/swrp/resource-library/

in the public right-of-way that address utility protection measures and consideration of other infrastructure in that space.

4.3 Incorporation of SCVURPPP Details and Specifications into City Standards

The City plans to reference the SCVURPPP GSI Guidelines and Specifications for design of GSI projects. The City will review these for consistency with its own local standards, and revise existing guidelines, standard specifications, design details, and department procedures as needed. The City will also reference details and build on its experience from design and construction of the Stevens Creek Corridor and Creek Restoration Project (Section 2.4.1).

5. GSI PROJECT PRIORITIZATION AND IMPERVIOUS TARGETS

To meet the requirements of the MRP, the City's GSI Plan must contain a mechanism to prioritize and map areas for potential and planned projects, both public and private, for implementation over the 2020, 2030, and 2040 milestones. The mechanism must include the criteria for prioritization and outputs that can be incorporated into the City's long-term planning and capital improvement processes.

This chapter describes different GSI project categories considered within the City, followed by a description of the process employed by the City to identify public lands that offer opportunities to implement GSI and prioritize those opportunities, and the results of the process.

5.1 Project Types

GSI project types that have been or may be implemented in the City fall into the following categories: Early Implementation Projects, C3 Regulated Projects, Green Streets, LID Retrofits, and Regional Projects. Green Streets, LID Retrofits, and Regional Projects are types of GSI capital projects that the City may implement to meet the water quality goals in the MRP and multi-benefit objectives defined in the GSI Plan. GSI capital projects are typically not regulated projects (although they must conform to the sizing and design requirements contained in Provision C.3, except under certain circumstances) and they are primarily public projects under control of the City. These three project types are the focus of the prioritization process described in Section 5.2, but all five GSI project types are considered as part of the City wide GSI strategy presented in Chapter 6. Several factors, such as change in scope of work, funding, site conditions, etc. determine the ability of the City to implement GSI capital projects.

5.1.1 Early Implementation Projects

Early Implementation Projects are GSI projects that have already been implemented by the City or are already scheduled and funded for implementation during the permit term (i.e., through December 2020). The City has already implemented one GSI projects, as discussed in Section 2.4. The City has identified an additional Early Implementation project through a review of its Capital Improvement Program (CIP), as discussed in Section 5.2.2 below.

5.1.2 Regulated Projects

C3 Regulated Projects are those implemented as part of new and redevelopment within the City, both private and public, that must meet the post-construction stormwater treatment requirements per Provision C.3 of the MRP. Regulated projects include private development or redevelopment projects, such as multi-family residential buildings, commercial office buildings, or shopping plazas, as well as public projects, such as libraries, police stations, and parking lots, exceeding the impervious surface thresholds. The "Apple Park" project, a 176-acre site that replaced the former Hewlett Packard industrial campus and includes LID measures, is an example of a regulated project.

5.1.3 LID Projects

LID projects mitigate stormwater impacts by reducing runoff through capture and/or infiltration and treating stormwater on-site before it enters the storm drain system. LID projects may include bioretention facilities, infiltration trenches, detention and retention areas in landscaping, pervious pavement, green roofs, and systems for stormwater capture and use. For the purposes of the GSI Plan, LID projects are GSI facilities that treat runoff generated from a publicly-owned parcel on that parcel.

5.1.4 Regional Projects

Regional projects capture and treat stormwater runoff from on-site and off-site sources, including surface runoff and diversions from storm drains. Benefits of regional stormwater capture projects can include flood risk reduction, stormwater treatment and use, and groundwater recharge. These projects may take a variety of forms such as detention and retention basins and subsurface vaults and infiltration galleries. The site characteristics will determine what types of regional projects are feasible, e.g., whether a project is on-line or off-line from the storm drain network, whether it is desirable to change the functionality of the site, whether the project is above ground or underground, and the size of the project.

5.1.5 Green Street Projects

Green street projects are GSI opportunities in the public right-of-way that capture runoff from the street and adjacent areas that drain to the street. The technologies used for green streets are similar to those used in LID projects but are limited to designs that can be used in the right-of-way. Green street projects may include bioretention (e.g., stormwater planters, stormwater curb extensions or stormwater tree filters), pervious pavement, and/or infiltration trenches. Green street GSI features can be incorporated into other improvements in the right-of-way, including complete streets designs and improvements for pedestrian and cyclist safety.

5.2 Identification and Prioritization Process

The City of Cupertino GSI opportunity identification and prioritization process involved two steps. The first step was the screening and prioritization methodology used in the Santa Clara Basin SWRP (see Section 3.2.1) to identify and prioritize GSI opportunities on public parcels and street segments within the region. The second step in the process involved overlaying City-specific priorities, planning areas, and upcoming City projects onto the regional prioritization results to align the results of the SWRP prioritization process with the City's priorities. These steps are described in detail below.

City projects in areas associated with a project opportunity identified in the SWRP can qualify for State bonded-funded stormwater capture project implementation grants (e.g., Proposition 1). Opportunities for GSI implementation that arise in areas that are not adjacent to a prioritized project opportunity identified in the SWRP may be considered on a case by case basis for feasibility, cost effectiveness, and availability of funding.

5.2.1 Step 1: Stormwater Resource Plan Prioritization

Building on existing documents that describe the characteristics and water quality and quantity issues within the Santa Clara Basin (i.e., the portion of Santa Clara County that drains to San Francisco Bay), the SWRP identified and prioritized multi-benefit GSI opportunities throughout the Basin, using a metrics-based approach for quantifying project benefits such as volume of stormwater infiltrated and/or treated, and quantity of pollutants removed. The metrics-based analysis was conducted using hydrologic/ hydraulic and water quality models coupled with Geographic Information System (GIS) resources and other tools. The products of these analyses were a map of opportunity areas for GSI projects throughout the watershed, an initial prioritized list of potential project opportunities, and strategies for implementation of these and future projects.

The process began by identifying and screening public parcels and public rights-of-way[8] that can support GSI. Project opportunities were split into the three categories described above – LID, regional, and green streets projects -- because of fundamental differences in GSI measures used, project scale, and measures of treatment efficiency. Screening factors are presented in Table 5-1.

After the identification of feasible GSI opportunity locations, screened streets and parcels were prioritized to aid in the selection of project opportunities that would be the most effective and provide the greatest number of benefits. In addition to physical characteristics, several special considerations were included in the prioritization methodology to consider coordination with currently planned projects provided by agencies, as well as consideration of additional benefits that projects could provide. A discussion of the screening and prioritization process for each project category is presented in the subsequent sections. Figure 5-1 presents the results of the various steps.

LID and Regional Stormwater Capture Project Opportunities

The screening criteria for LID and regional projects were ownership (focusing only on public parcels), land use, and site slope. As shown in Table 5-1, parcel size was used to determine whether a location could support a regional or LID project.

Parcels that met the screening criteria were prioritized based on physical characteristics such as soil group, slope, and percent impervious area, proximity to storm drains, proximity to flood-prone creeks and areas, proximity to potential pollutant sources (e.g., PCBs[9]), whether they were in a priority development area (PDA), whether they were within a defined proximity to a planned project, and whether the project was expected to have other benefits such as augmenting water supply, providing water quality source control, re-establishing natural hydrology, creating or enhancing habitat, and enhancing the community. Prioritization metrics for LID project scoring and regional project scoring are shown in separate tables in Appendix A. The result of the parcel prioritization was a list and map of potential project locations based on the above criteria. This subset of projects from the SWRP was carried over into Step 2 City-Specific Prioritization (Section 5.2.2).

[8] Public parcels can include those not owned by the City, such as public school grounds, County, State, and Federal properties, and property owned by the Water District.

[9] Polychlorinated biphenyls – manmade chemicals which resist extreme temps, and were used in electrical equipment such as transformers and capacitors; and building materials such as caulking, adhesives, mastics etc. primarily from 1950s through 1981. PCBs pose developmental or neurological risks to fetuses, babies, and children, and have been shown to cause cancer in animals and evidence supports cancer causing effect in PCB workers.

Table 5-1 Screening factors for parcel-based and right-of-way project opportunities

Screening Factor	Characteristic	Criteria	Reason
Parcel-based			
Public Parcels	Ownership	County, City, Town, Valley Water, State, Open Space Agencies	Identify all public parcels for regional stormwater capture projects or onsite LID retrofits
	Land Use	Park, School, Other (e.g., Golf Course)	
Suitability	Parcel Size	≥ 0.25 acres	Opportunity for regional stormwater capture project
		< 0.25 acres	Opportunity for on-site LID project
	Site Slope	< 10 %	Steeper grades present additional design challenges
Right-of-Way			
Selection	Ownership	Public	Potential projects are focused on public right-of-way opportunities
Suitability	Surface	Paved	Only roads with paved surfaces are considered suitable. Dirt roads were not considered.
	Slope	< 5%	Steep grades present additional design challenges; reduced capture opportunity due to increased runoff velocity
	Speed	≤ 45mph	Excludes higher speed roads such as major arterials and highways

Green Street Project Opportunities

The screening criteria for green streets projects in the public right-of-way were ownership, surface material, slope, and speed limit (Table 5-1). The screened public right-of-way street segments were then prioritized based on physical characteristics, proximity to storm drains, proximity to flood-prone creeks and areas, proximity to potential pollutant sources (e.g., PCBs[10]), whether they were in a priority development area, whether they were in proximity to a planned project, and whether the project was

[10] Polychlorinated biphenyls – manmade chemicals which resist extreme temps, and were used in electrical equipment such as transformers and capacitors; and building materials such as caulking, adhesives, mastics etc. primarily from 1950s through 1981. PCBs pose developmental or neurological risks to fetuses, babies, and children, and have been shown to cause cancer in animals and evidence supports cancer causing effect in PCB workers.

expected to have other benefits (similar to LID and regional projects). Prioritization metrics for green streets projects are shown in Appendix A.

The initial prioritization process resulted in a large number of potential green streets project opportunities within the Santa Clara Basin. In order to identify the optimal locations for green street projects, the street segments in each municipality's jurisdiction with scores in the top 10 percent of ranked green street opportunities were identified and mapped.

5.2.2 Step 2: City-Specific Prioritization

The City reviewed the results from the SWRP prioritization (Section 5.2.1) and refined the list of parcels and street segments based on current knowledge of City plans and project opportunities. The resulting parcel-based and green street opportunities for the City of Cupertino are presented in Figure 5-1. The City's list of parcel-based and green street opportunities is provided in tabular format in Appendix B.

Next, as discussed in the remainder of this section, the City-specific prioritization incorporated local priorities for GSI project implementation, which include: 1) opportunities to implement GSI projects in conjunction with anticipated areas of private development and 2) upcoming capital improvement projects that can potentially be combined with GSI projects.

Priority Development Areas

Priority Development Areas, commonly known as PDAs, are areas within existing communities that local city or county governments have identified and approved for future growth. These areas typically are accessible by one or more transit services; and they are often located near established job centers, shopping districts and other services. PDAs are expected to accommodate 78% of new housing production (over 500,000 units) and 62% of employment growth (almost 700,000 jobs) in the Bay Area through the year 2040[11]. As PDAs are developed, they offer good opportunities to construct GSI facilities.

Cupertino's PDA area includes properties within a quarter mile of Stevens Creek Boulevard from Highway 85 to its eastern border and a portion of North and South De Anza Boulevards. The boundary of the PDA is shown in Figure 5-2.

[11] From Table 4.2 and Table 4.3 of the Association of Bay Area Governments and Metropolitan Transportation Commission "Plan Bay Area 2040" Report, adopted July 26, 2017.

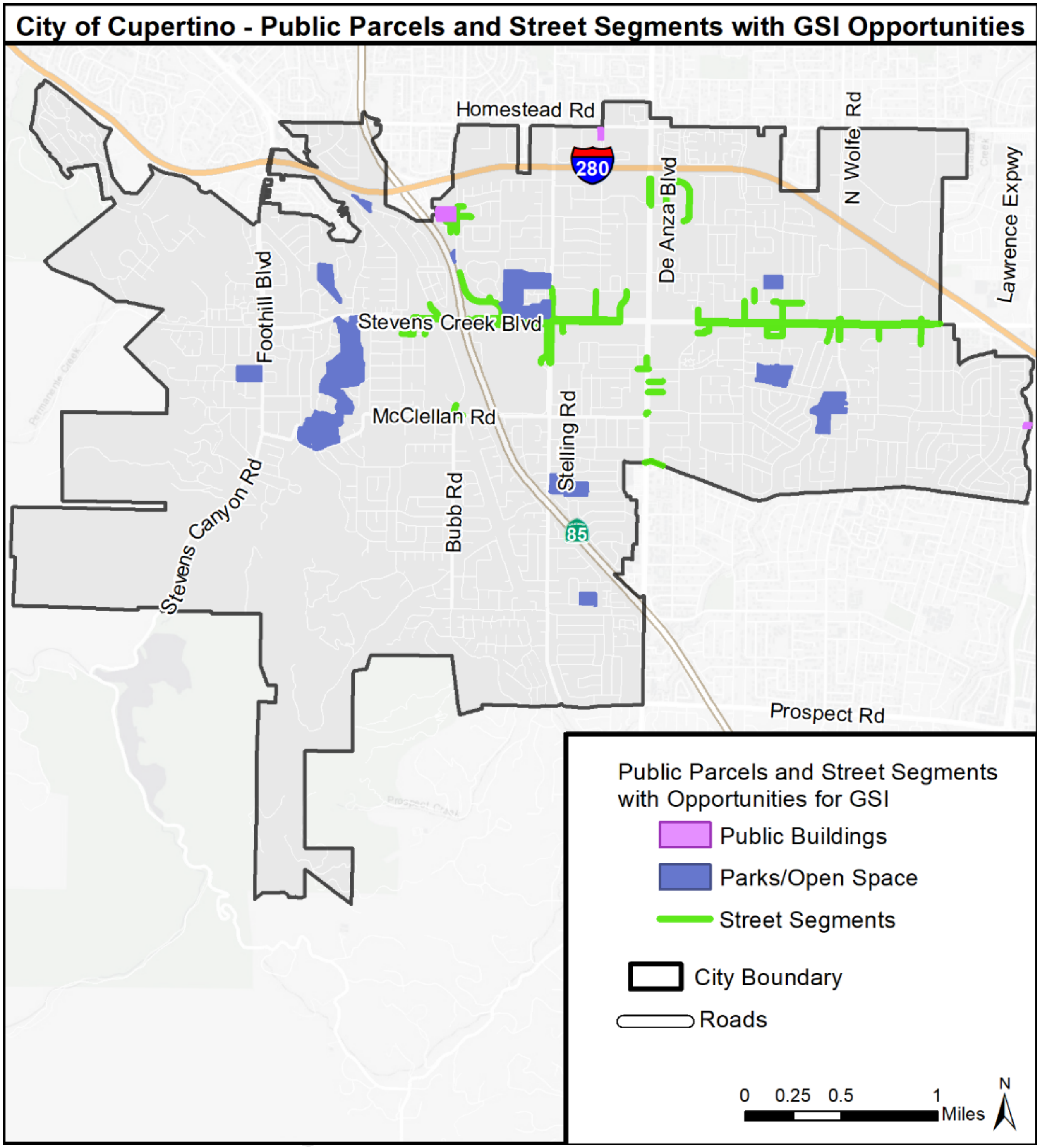


Figure 5-1 City of Cupertino Public Parcels and Street Segments with Opportunities for GSI (Source: EOA, and Santa Clara Basin Stormwater Resource Plan, 2018).

Special Areas

The City's General Plan identifies nine Special Areas within Cupertino:

- Heart of the City
- Vallco Shopping District
- North Vallco Park
- South De Anza
- North De Anza
- Homestead
- Bubb Road
- Monta Vista Village
- Other Non-Residential/ Mixed-Use Special Areas

Each Special Area is located along one of the four major mixed-use corridors in the city, which represent key areas within Cupertino where future development and reinvestment will be focused. Goals for these areas include more bicycle- and pedestrian-friendly streets and improved walkable, bikeable connectivity to adjacent areas and services. Because these Special Areas are where the most development is expected to occur, they will likely have the best opportunities to construct GSI facilities. The GSI projects could be part of private redevelopment projects or public improvement projects.

The location of the Special Areas are shown on Figure 2-2, with the exception of the Other Non-Residential/ Mixed-Use Special Areas. These Other Non- Residential/Mixed-Use Special Areas are located throughout Cupertino and include the following: west side of Stevens Canyon Road across from McClellan Road; intersection of Foothill Boulevard and Stevens Creek Boulevard; Homestead Road near Foothill Boulevard; northwest corner of Bollinger Road and Blaney Avenue; and all other non-residential properties not referenced in an identified commercial area.

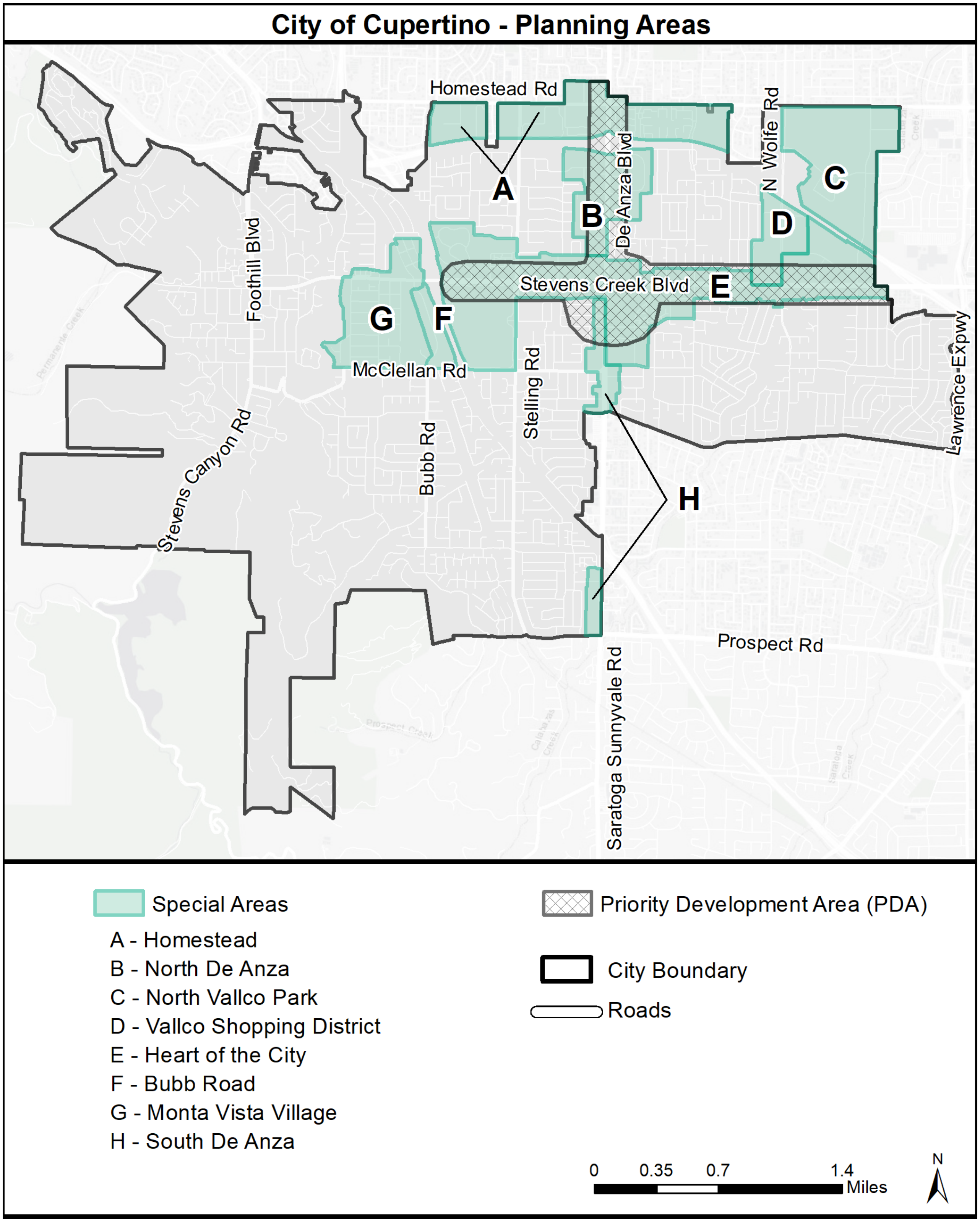


Figure 5-2. City of Cupertino Special Project Areas and Priority Development Area (Source: City of Cupertino General Plan)

Capital Improvement Projects

As required by the MRP, the City reviews its CIP project list annually to identify opportunities for GSI. Based on this review, the City prepares and maintains a list of any public GSI projects that are planned for implementation during the permit term and a list of public projects that have potential for GSI measures.

As discussed in Section 2.4.2, the City has completed one public GSI project (Stevens Creek Corridor and Creek Restoration Project). The second public GSI project (McClellan Ranch West Parking Lot Improvement) is under construction and expected to be completed in September 2019. The project locations are shown on the map in Figure 5-4.

In addition, through its CIP project review, the City identified the following projects as having potential to include GSI:

- **South Foothill Blvd and N. Foothill Blvd. Green Street:** Reconstruct the medians to reduce runoff and better infiltrate stormwater, and consider bioretention areas along the outer edges of the boulevard
- **Union Pacific Railroad Trail Feasibility Study:** Incorporate bioretention areas and pervious trails, if the study results in a project. Currently this is just a study.
- **Mary Avenue Greenbelt and Trail Project:** Create a wide bioretention-enhanced green belt on the west side of Mary Avenue. Include a pervious multi-use pathway to accommodate bicyclists, pedestrians, strollers, and joggers. Install bioretention tree wells at optimal intervals on the east side of the street to treat stormwater, and on the west side of the street where feasible to create a future tree canopy over Mary Ave.
- **Junipero Serra Trail Extension**: Incorporate bioretention areas and pervious trails where feasible.
- **Memorial Park Renovation:** Look for an opportunity to construct an infiltration basin at the park to treat runoff from Stevens Creek Blvd.
- **Regnart Creek Trail:** Incorporate bioretention areas and pervious trails where feasible.
- **Lawrence Mitty Park:** Pending the City acquiring the land, look for opportunities to incorporate GSI features to treat runoff from the adjacent expressway.
- **Stelling Road Potential Future Storm Drain and Street Upgrades:** Incorporate bioretention areas to treat street runoff where feasible.
- **Rainbow Drive Storm Drain Pipeline Rehabilitation:** Incorporate bioretention areas to treat street runoff where feasible.
- **Wolfe Road Widening**: Incorporate bioretention areas where feasible
- **Bike Boulevard Projects:** Cupertino is planning a network of bicycle-friendly routes along residential streets throughout the City in order to encourage bicycling. Traffic circles and bulb outs will be considered and designed, where feasible, to include GSI features.
- **Citywide Parks and Recreation Master Plan:** Install GSI at Linda Vista, Memorial, Monte Vista, Wilson, Portal, Creekside and other parks where feasible, which could include enhanced educational signage explaining the function and purpose of the GSI improvements.

These potential CIP project locations are shown on the map in Figure 5-3. A GSI concept for the Mary Avenue Greenbelt and Trail Project was completed for the SWRP. The project is currently unfunded, and the concept design is intended to assist with the grant application process should the City decide to pursue funding via Proposition 1 or other State bond-funded grant program.

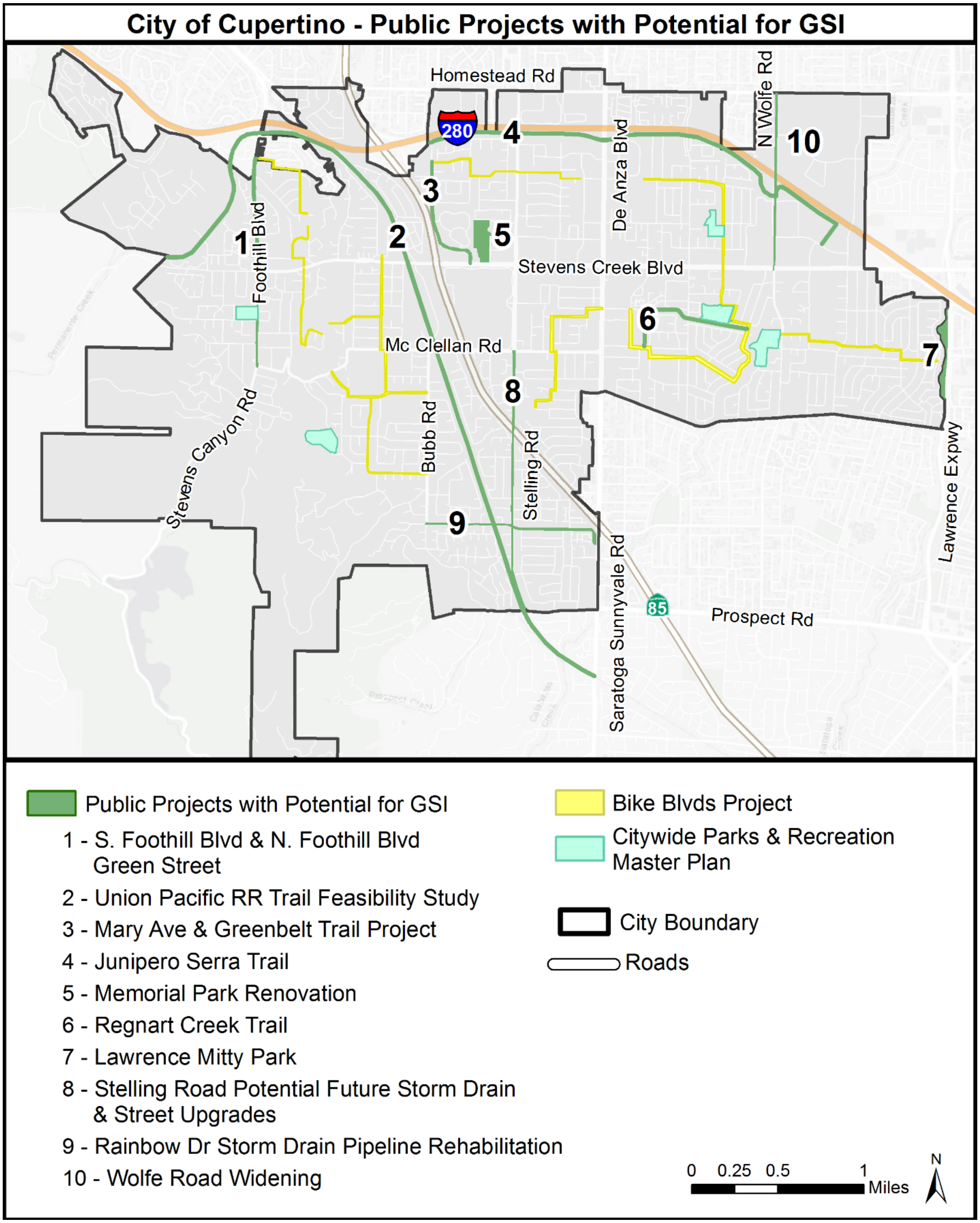


Figure 5-3. City of Cupertino Public Projects with Potential for GSI (Source: City of Cupertino FY 17-18 Annual Report, and 2018 Santa Clara Basin Stormwater Resource Plan)

5.3 Prioritization Output

The map in Figure 5-4 presents a compilation of the factors used to identify and prioritize the City's opportunities for GSI projects: the City's list of parcel-based and green street project opportunities, overlaid with the City's PDA, Special Areas, and CIP projects that may have potential to include GSI. The locations of the City's completed GSI projects, including the McClellan Ranch West Parking Lot project which is under construction and expected to be completed by September 2019, are also shown. As shown in Figure 5-4, a large number of the green street opportunities identified in the SWRP are located within the City's PDA and Special Areas. This indicates a strong correlation between the areas identified as having potential for GSI and the City's construction and redevelopment plans.

The City's list of parcel-based and green street opportunities is provided in tabular format in Appendix B. The list includes additional information for each parcel and green street opportunity, including general information such as APN, landowner and land use or street name, the SWRP prioritization score for each project opportunity, and co-location with a City criteria for prioritization (CIP project, PDA or Special Area).

An implementation plan is described in Section 6 to guide the development, design, and construction of GSI projects.

City of Cupertino - GSI Overview

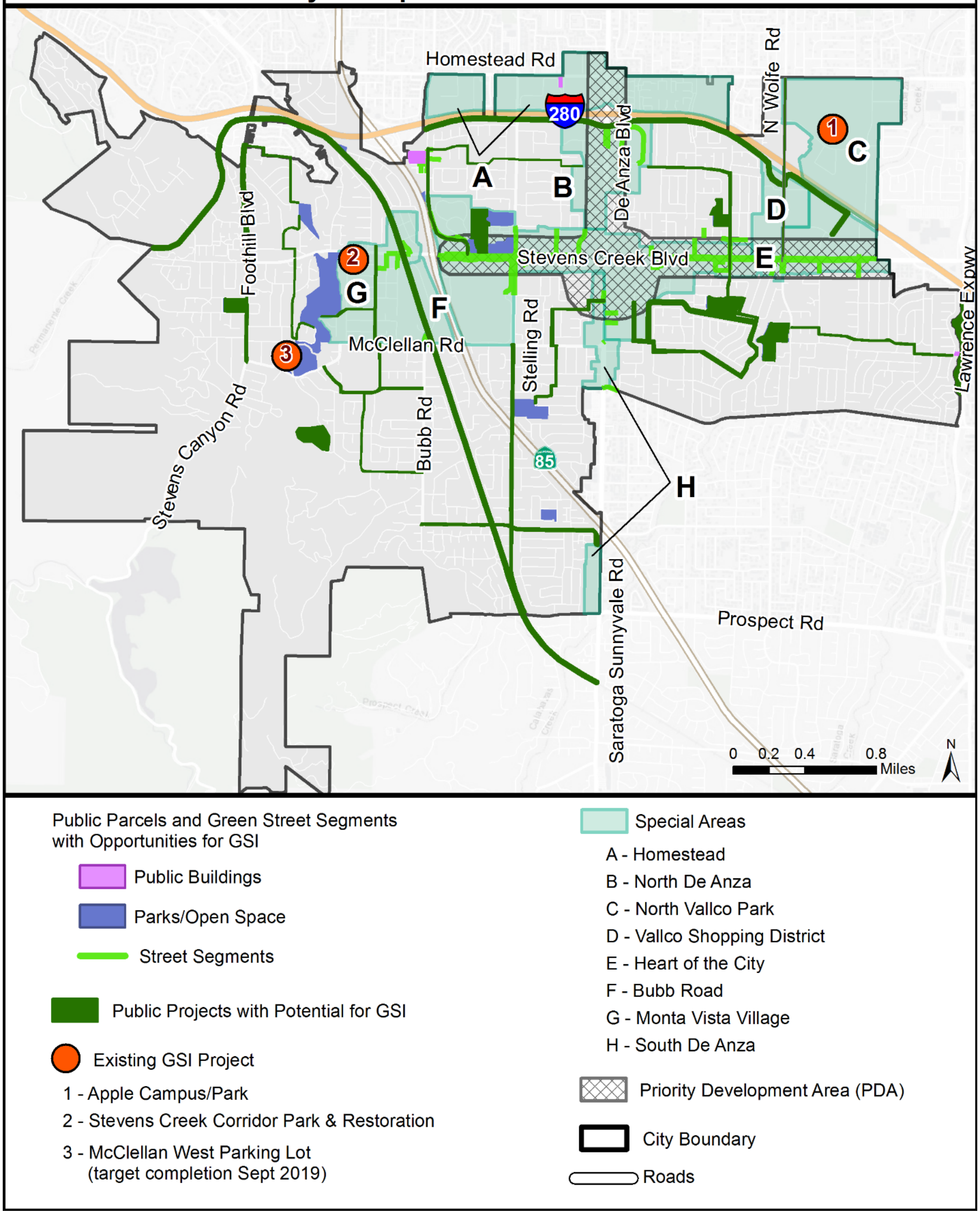


Figure 5-4 City of Cupertino GSI Overview

6. GSI Implementation Plan

This chapter provides an overall strategy and steps for implementing GSI within the City of Cupertino over the long term. The implementation plan has the following components: (1) the Citywide GSI strategy; (2) a process for identifying and evaluating GSI opportunities, (3) a workplan to complete Early Implementation Projects, (4) the legal and funding mechanisms that enable implementation, (5) estimated targets for the amounts of impervious surface to be "retrofitted" (i.e., redeveloped with GSI facilities to treat runoff from impervious surfaces), and (5) the technical tools that ensure the tracking of implemented projects.

6.1 City-wide GSI Strategy

The City of Cupertino's approach to GSI planning will be consistent with the City's Community Vision 2040 (See Section 3.1.1), which has as guiding principle to:

> *"Preserve Cupertino's environment by enhancing or restoring creeks and hillsides to their natural state, limiting urban uses to existing urbanized areas, encouraging environmental protection, promoting sustainable design concepts, improving sustainable municipal operations, adapting to climate change, conserving energy resources and minimizing waste."*

The City's approach will also be guided by various other existing plans that support the implementation of GSI, such as the Climate Action Plan, and the Storm Drain Master Plan. Cupertino has already completed one project, the Stevens Creek Corridor and Restoration Project (Section 2.1.4), which incorporated GSI and preserved an 18-acre site and restored creek habitat in the City to maintain biodiversity and ecological integrity of local natural systems. As the City seeks to achieve sustainability and community health objectives, future growth and retrofitting of existing infrastructure will create mixed-use, commercial, employment and neighborhood centers; pedestrian-oriented and walkable spaces for the community to gather; and distinct and connected neighborhoods with easy walkable and bikeable access to services, including schools, parks and shopping.

The City of Cupertino's GSI implementation strategy consists of the following:

- Priority Development Areas - The City will focus future change within the Special Areas that are located on Cupertino's major mixed-use corridors. These areas already have a mix of commercial, office, hotel and residential uses, and are located along roadways that will be enhanced with "Complete Streets" features, improved landscaping and expanded public spaces (e.g., parks and plazas). Complete Streets can be enhanced with GSI features to become green "Sustainable Streets".
- Evaluation of CIP Projects for Opportunities – The City will continue to review its CIP list annually for opportunities to incorporate GSI into CIP projects and evaluate the feasibility of such projects. The City has established a process for CIP review to avoid missing GSI opportunities (see Section 6.2).
- Evaluation of Opportunities Identified in the Stormwater Resource Plan – The public parcels and street segments identified in the SWRP (See Section 5.1 of this report) are opportunity areas for GSI projects. The City will use the SWRP list to help identify potential project locations for GSI implementation, as described in Section 6.2.

- Evaluation of Non-CIP Project Opportunities - As awareness of GSI increases, municipal staff or local community members may also identify and recommend GSI projects opportunities. These projects will be considered using the methodology described in Section 6.2.
- Coordination with Private Development – The City of Cupertino will explore working with private property developers to install green infrastructure facilities in public rights-of-way near the properties they are developing, such as along street frontages.
- Community Outreach and Engagement – The City will provide outreach to the Sustainability Commission, the Bike and Pedestrian Commission, the local community, and other stakeholders to get input and support for the implementation of the GSI Plan. The City will also continue to engage with San Francisco Estuary Institute (SFEI) and/or other potential partners that offer a regional perspective for enhancing sustainable natural landscaping with multi-faceted benefits.

The City will also continue to require future development projects to comply with C.3 requirements of the Municipal Regional Permit (MRP), and include site design, source control, treatment control, and hydromodification management measures as applicable.

6.2 Process for Identifying and Evaluating GSI Project Opportunities

The City will use the various mechanisms described in its strategy (Section 6.1) to identify GSI opportunities in public projects.

The City will use the guidance developed by BASMAA[12] (see Appendix D) and the SWRP prioritization criteria to evaluate public projects to determine the potential for the inclusion of GSI measures at the project planning level. The evaluation may include site reconnaissance, drainage area delineation, and cost analysis. If not already on the CIP list, projects identified through this process will be added to the CIP list when it is updated. Projects with a GSI component may be included in the CIP as funded or unfunded projects. An unfunded project's inclusion in the CIP demonstrates that it is a City priority pending adequate funding. The City prepares the CIP Budget biennially. The next Biennial CIP Budget will be prepared in 2020 covering FY 2020-21 and FY 2021-22.

The City will map all potential GSI project opportunities to determine their proximity to green street or parcel-based project opportunities identified in the SWRP (Section 5.2.1). Potential GSI projects that are adjacent to SWRP opportunity areas may be eligible for state bond funding. Projects with opportunities for GSI measures may be submitted to the SWRP during the SWRP update process if they are not already included in the SWRP. This will allow those projects to be eligible for future state bond funding. The SWRP will likely be updated in the 2022-2023 timeframe. At this time, SCVURPPP will reach out to all member agencies to provide their project lists for prioritization and inclusion in the updated SWRP.

6.3 Workplan to Complete Early Implementation Projects

As discussed in Section 5.2.2 of this GSI Plan, Provision C.3.j. of the MRP requires that the City identify, prepare, and maintain a list of GSI projects that are planned for implementation during the permit term (i.e., through December 2020), and infrastructure projects that have potential for GSI measures. The list

[12] BASMAA Development Committee (2016) Guidance for Identifying Green Infrastructure Potential in Municipal Capital Improvement Program Projects. May.

is submitted with each Annual Report to the Regional Water Board. Projects with GSI that are scheduled and funded for implementation during the permit term are considered "Early Implementation Projects". The City has already identified and completed one early implementation project (Stevens Creek Corridor and Creek Restoration Project), with a second project (McClellan West Parking Lot) currently under construction and expected to be completed by September, 2019(see Section 2.4).

The City will continue to review its CIP list annually, using the SWRP prioritization and the guidance developed by BASMAA for identifying opportunities to incorporate GSI into CIP projects. A copy of the BASMAA Guidance is provided in Appendix D.

6.4 Legal Mechanisms for GSI Implementation

Provision C.3.j.i.(3) of the MRP requires permittees to "Adopt policies, ordinances, and/or other appropriate legal mechanisms to ensure implementation of the Green Infrastructure Plan in accordance with the requirements of this provision."

As described in Section 1.3.2, the City of Cupertino and other municipalities subject to Provision C.3 of the MRP must require post-construction stormwater control measures on regulated development projects. Post-construction stormwater controls reduce pollutants from flowing to streams, creeks, and the Bay and reduce the risk of flooding by managing peak flows. Section 9.18.100 (Permanent Stormwater Measures Required for Development and Redevelopment Projects) of the City's Municipal Code provides legal authority for the City to require regulated private development projects to comply with MRP requirements.

GSI projects are typically not regulated projects (although they must conform to the sizing and design requirements contained in Provision C.3 except under certain circumstances) and they are primarily public projects under control of the City. As part of the GSI Plan process, the City reviewed its existing policies, ordinances, and other legal mechanisms related to the implementation of stormwater NPDES permit requirements and found that it has sufficient legal authority to implement the GSI Plan. Adoption of the GSI Plan by the City Council will further strengthen the authority.

6.5 Evaluation of Funding Options

The GSI Plan prioritizes specific projects for near-term integration into CIPs and long-term integration into City planning efforts. Implementation of these projects is contingent upon the City identifying funding sources for GSI planning, design, construction, and maintenance.

The total cost of GSI includes costs for planning, capital (design, engineering, construction) and ongoing expenditures, including operations and maintenance (O&M), utility relocation, and feature replacement. It is likely that no single source of revenue will be adequate to fund implementation of GSI, and a portfolio of funding sources will be needed. There are a variety of approaches available to help fund up-front and long-term investments. This section discusses the City's current stormwater management funding sources and then describes additional funding strategies available to implement GSI that are being considered by the City for future funding.

6.5.1 Current Funding Sources for GSI Program Elements

The City of Cupertino currently uses a combination the City's General Fund and Federal, State, and other applicable grants to fund construction of projects in its capital improvement program (CIP) and other projects. The General Fund, and when applicable, CalRecycle grants, are used for public street, parking lot and building maintenance; maintenance of stormwater control measures installed at public projects; and maintenance of other landscaped areas (e.g., parks, medians, public plazas, etc.)

6.5.2 Potential Future Funding Options

As required by the MRP, the City analyzed possible funding options to raise additional revenue for design, construction, and long-term operation and maintenance (O&M) of GSI projects. The City used the guidance on stormwater funding options developed by SCVURPPP (2018) as a reference for conducting its analysis. Table 6-1 summarizes the funding options that will be considered by the City as the Plan is implemented. For each type of funding mechanism, the table provides a brief overview and specifics related to GSI, pros and cons, and applicability to funding planning, capital, and/or long-term O&M costs.

6.6 Impervious Area Targets

As mentioned in Section 1.3.2, the focus of the GSI Plan is the integration of GSI systems into public rights-of-way. However, the MRP (Provisions C.11 and C.12) establishes a linkage between public and private GSI features and required reductions of pollutants in stormwater discharges. To help estimate the pollutant load reductions that can be achieved by GSI during the 2020, 2030, and 2040 timeframes, the MRP requires that Permittees include in their GSI Plans estimated targets for the amounts of impervious surface to be “retrofitted” (i.e. redeveloped with GSI facilities to treat runoff from impervious surfaces) as part of public and private projects during the same timeframes.

The City worked with SCVURPPP staff to develop a methodology to predict the extent and location of privately- and publicly-owned land areas that will be redeveloped in their jurisdictions and whose stormwater runoff will be addressed via GSI facilities, and to derive impervious surface targets for GSI retrofits associated with these redevelopment projects. The methodology and results are described in Sections 6.6.1 and 6.6.2 below.

6.6.1 Methodology

The first step in the process used historic development trends and City staff’s knowledge of planned/projected redevelopment in the City to estimate the acres of redevelopment that will occur in the City by 2020, 2030, and 2040 via redevelopment of privately- and publicly-owned parcels that would trigger C.3 requirements under the current MRP (i.e. C.3 regulated projects). Stormwater runoff associated with these parcels will be addressed via GSI facilities, as required by the permit.

The second step was to estimate the acres of impervious surface associated with future redevelopment of these private and public parcels. To do this, it was necessary to predict the likely locations and types of land areas that are anticipated to be addressed by GSI in the future. Growth patterns and time horizons for development, along with algorithms to identify which parcels are likely to redevelop, resulted in preliminary estimates of the land area that is predicted to be addressed by GSI facilities in the City of Cupertino by 2020, 2030, and 2040. Using the current land uses of the predicted locations of GSI implementation and associated impervious surface coefficients for each land use type, estimates of the amount of impervious surface that would be retrofitted with GSI on privately-owned parcels were developed.

The methodology focused on parcel-based redevelopment as the location and timing of projects in the public right-of-way is uncertain and the contribution of these projects to overall impervious surface area treated by GSI expected to be minor relative to the acreage projected to be treated by C.3 projects.

Table 6-1 Potential GSI Funding Options

Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Parcel Taxes: revenue stream through taxing property or other system.	Can be used to set up, fund and maintain a stormwater program and MRP compliance.	• Well understood tax • Stable revenue stream over many years • Legally reliable • Can also be done by mail.	• High political threshold • Vulnerable to competition with other measures on the ballot. • Considerable effort and resources required with uncertain odds of success.	• Planning • Capital • O&M
Property-related Fees: fees on real property.	• Fee on property contributing stormwater runoff to MS4. • Can be used to set up, fund and maintain a stormwater program and MRP compliance.	• Most-commonly used mechanism for funding stormwater programs. • Easier to pass with 50% threshold and mailing process.	• Property-based fees must use a standardized methodology for calculating the fee. • Considerable effort and resources required with uncertain odds of success. • Approval process is more time consuming and expensive for staff. • Schools may have large fees and public schools may be exempt from fees depending on the agency's specific ordinance.	• Planning • Capital • O&M
General Obligation Bonds	• Tax on property owners through debt obligation taken on by municipality. • Long term payback period typically 10-30 years.	• Typically a lower interest rate than what is available from commercial banks. • Allows funds to be used in the near term and paid back over the long term.	• Interest rate variable depending on financial markets • Some risk to general fund for municipality if payments cannot be made. • Can only be used for capital costs – not O&M	• Planning • Capital

Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Development Impact Fees: paid by an applicant seeking approval of a development project.	Could potentially be used to fund retrofits of adjacent public right-of-way areas with GSI as part of development or redevelopment projects.	Cost for retrofitting streets can be leveraged through development activities.	If a fee is found to not relate to the impact created by the development project, or to exceed the reasonable cost of providing the public service, then the fee may be declared a "special tax" subject to approval by a two-thirds majority of voters.	• Planning • Capital
Grants: one time funds that require an application from a funding agency.	Could be used to plan, design and/or build GSI.	Can fund programs or systems that would otherwise take up significant general fund revenues.	• Usually a one-time source of funding only. • May need to create new programs and systems for each grant. • Usually have strings attached for matching funds and other requirements. • Little control over timing of applications and payment can lead to difficulties in coordination with other programs and grants. • Can be very competitive and resource intensive to apply. • No guarantee of success. • Post-project O&M costs must be borne by the agency.	• Planning • Capital
Benefit Assessment and Community Facility Districts	Typically used to build and/or maintain facilities such as GSI improvements and/or services.	Can be used to fund maintenance and operations.	Requires property owners and/or businesses to agree that the need is present and that they should be (at least partially) responsible for funding it.	• Capital • O&M

Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Business Improvement Districts	Businesses and property owners tax themselves and manage the funds to build or maintain GSI assets.	Can provide sense of ownership and pride in the neighborhood when results are visible.	Can burden businesses, property owners and others to the extent that they are unwilling to approve other funding measures.	• Planning • Capital • O&M
Infrastructure Financing Districts	Captures increase in ad valorum tax increases (similar to redevelopment agencies) for infrastructure improvements such as GSI	Can be jointly done with multiple cities.	Cannot capture any of the local school district's portion of tax increment.	• Planning • Capital • O&M
Motor Vehicle License Fees: fees on each motor vehicle that is registered.	Could be used to plan, design and/or build GSI.	Can be flexible in purpose and can supply a long-term stable revenue source.	• If the total number of new annual motor vehicle registrations decline over time (as may happen with car-sharing, transit increases, biking and walking and the rollout of automated vehicles) revenues will decline. • Difficult to achieve the 2/3 majority needed to pass due to Prop 26. • Only for activities that are deemed to help mitigate impacts from motor vehicles.	• Planning • Capital

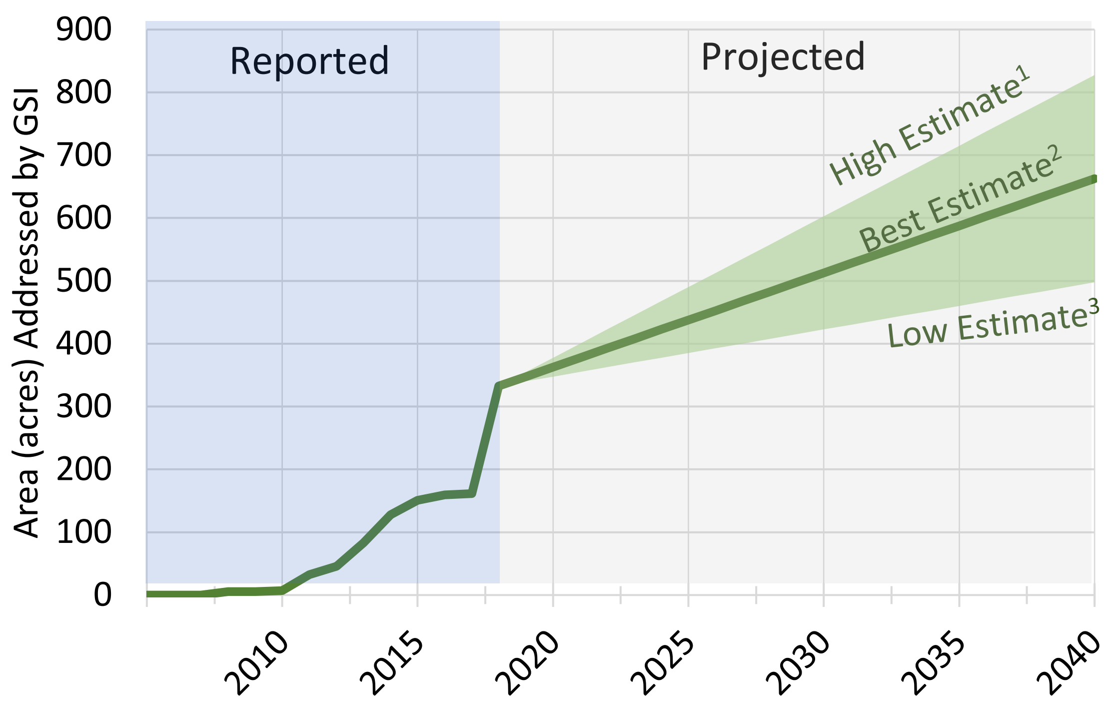
Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Realignment of Municipal Services: municipalities shift costs to programs where revenue can be increased such as sewer, water and trash.	Could be used to plan, design, build and/or maintain GSI where there is a nexus between the two programs.	A means of leveraging existing or new resources funded by non-balloted fee structures.	• Bureaucratic issues can be difficult to overcome. • Sewer, trash and water may be controlled by different agencies that may not be able to coordinate or share resources. • There may be political restrictions to significant increases in rates.	• Planning • Capital • O&M
Integration with Transportation Projects: transportation funding is leveraged to cost-effectively include stormwater quality elements.	Installation and maintenance of GSI facilities as part of integrated roadway programs.	• Roadway projects have more funding than stormwater programs and are generally more popular with the public. • Complete and green streets may be more popular with the public than traditional car-focused streets. • Green streets may be less expensive than traditional streets based on a life cycle cost analysis.	• Roadways have been designed in certain ways with expectations of costs and purposes for decades. • Many roadways are in poor condition and there is not enough funding to fix them all. • GSI is perceived as an "added" cost which, could reduce the number of roadways that can be maintained. • Transportation funding is often restricted to certain roadway construction elements.	• Planning • Capital

Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Alternative Compliance: Allows developers the flexibility to build, or fund through payment of an in-lieu fee, off-site stormwater treatment systems for regulated projects or set up credit trading programs.	Leveraging development activities to build and maintain GSI systems. In lieu fees can be used by developers who would rather make a lump sum payment and quickly complete their compliance requirements. Credit trading programs can incentivize non-regulated properties to retrofit impervious surfaces.	• Gives flexibility to site GI systems in locations that optimize pollutant loading reduction and other benefits to the community. • Allows for off-site stormwater treatment when stormwater management requirements can't be met within a regulated project site. • An in-lieu fee and/or credit trading system can be used to achieve additional retrofits and installation of GSI.	• Can be difficult to come up with viable alternative locations for GSI installations. • Can be difficult to quantify how much a developer should pay upfront for long-term maintenance costs that the municipality will bear. • May require agencies to modify the stormwater sections of their municipal codes to allow for the creation and/or use of the desired options/programs.	• Planning • Capital • O&M
Existing Permittee Resources: Utilize general funds for GSI.	Could be used to plan, design, build and/or maintain GSI.	Voter approval or new revenue sources not required.	• GSI must compete with many other municipal priorities and essential services. • Normally not a viable option for substantial GI implementation.	• Planning • Capital • O&M
Long Term Debt: borrow money up-front against a dedicated stream of revenue projected over the life of the program.	Can borrow money from future revenues to construct GSI systems in the present.	• Well understood process of raising funds. • Allows acceleration of improvements to compliance deadlines	• Need a dedicated stream of revenue to pay off debt. • If the general fund is used, can put the general fund at risk if jurisdiction cannot make the payments, credit rating will be downgraded jeopardizing other programs.	• Planning • Capital

Section/Overview	GSI Specifics	Pros	Cons	Type of Funding
Public-Private Partnerships (P3s): agreements or contracts between a municipality and a private company to perform specific tasks.	Can provide for the design, construction and maintenance of GSI systems over a long period.	• Leverages public funds while minimizing impacts to a municipality's debt capacity. • Access to advanced technologies. • Improved asset management. • Draws on private sector expertise and financing. • Benefits local economic development and "green jobs." • Relieves pressure on internal local government resources.	• Stormwater fee or other source of stable revenue over the life of the P3 contract is required. • Contracts out to the private sector the construction and maintenance of GSI systems, possibly removing some municipal control.	• Planning • Capital • O&M
Volunteer Programs: provide community-based volunteer labor for specific tasks.	Use volunteer programs to help build or maintain GSI facilities.	• A low-cost source of labor. • Educational program for community. • Can build support for a stormwater fee or other funding source.	• Can be time intensive for staff to set up and administer. • May not be dependable in the long run • May result in loss of municipal control depending on program specifics.	• Planning • Capital • O&M

6.6.2 Results

Using the methodology described above, a predicted redevelopment rate of 15 acres per year was calculated for the City of Cupertino. “Best” estimates of the magnitude of land areas that is predicted to be addressed by future GSI facilities by the 2020, 2030, and 2040 milestones were calculated using the rate. “High” (i.e., 50% > “best”) and “Low” (i.e., 50% < “best”) estimates of future GSI implementation were also calculated to provide a range of potential redevelopment levels and account for uncertainty in the “Best” estimate. Figure 6-1 and Table 6-2 present the outputs of the analysis and represent the total acreage known to be addressed by GSI in Cupertino through 2018, and the best estimate of the cumulative land area that will be addressed in 2020 (363 acres), 2030 (513 acres), and 2040 (663 acres) by GSI on privately- and publicly-owned parcels in the City of Cupertino.



[1]High estimate – projected from 150% of “Best Estimate; [2]Best estimate – rate of redevelopment based on 10-year average (2008-2017); and [3]Low estimate – projected from 50% of “Best Estimate”. The large increase in GSI in 2017-2018 was due to the completion of the Apple Park Campus and surrounding buildings.

Figure 6-1 Existing and projected cumulative land area (acres) anticipated to be addressed via Green Stormwater Infrastructure facilities installed via private redevelopment in the City of Cupertino by 2020, 2030, and 2040.

Table 6-2 Projected cumulative land area (acres) anticipated to be addressed via Green Stormwater Infrastructure facilities via private redevelopment in the City of Cupertino by 2020, 2030, and 2040.

Year	Low[1]	Best[2]	High[3]
Existing GSI[4]	-	333	-
2020	348	363	378
2030	423	513	603
2040	498	663	828

[1]Low estimate – projected from 50% of "Best Estimate"; [2]Best estimate – rate of redevelopment based on 10-year average (2009-2018); and [3]High estimate – projected from 150% of "Best Estimate"; [4]Total area addressed by parcel-based redevelopment projects with GSI completed through 2018 (excludes non-jurisdictional and green street and regional projects).

Table 6-3 lists the impervious surface percentage for each land use class, based on impervious surface coefficients typically utilized, and the estimated impervious surfaces that are predicted to be retrofitted by 2020, 2030, and 2040 in the City via GSI implementation on private and public parcels: 275 acres by 2020, 431 acres by 2030 and 557 acres by 2040. Note that these predictions do not include impervious surface that may be addressed by projects in the public right-of-way, and that these predictions have a high level of uncertainty because future redevelopment rates may increase or decrease relative to the historic development trends and staff knowledge that the rate for Cupertino was based on. Therefore, actual impervious surface addressed by GSI by the various milestones may increase or decrease relative to what is presented in Table 6-3.

Table 6-3 Actual (2002-2018) and predicted (2019-2040) extent of impervious surface retrofits via GSI implementation on privately- and publicly-owned parcels in the City of Cupertino by 2020, 2030, and 2040.

Previous Land Use	**% of Area Impervious [a]**	**Retrofits via GSI Implementation**									
		2002-2018		2019-2020		2021-2030		2031-2040		Total (2002-2040)	
		Total Area (acres)	Impervious Area (acres)	Total Area (acres)[c]	Impervious Area (acres)	Total Area (acres)	Impervious Area (acres)	Total Area (acres)	Impervious Area (acres)	Total Area (acres)	Impervious Area (acres)
Commercial	83%	26	22	1	0	45	37	99	83	171	142
Industrial	91%	189	172	0	0	25	23	4	4	219	199
Residential - High Density	82%	26	21	0	0	24	20	16	13	66	54
Residential - Low Density	47%	4	2	0	0	0	0	0	0	4	2
Retail	96%	58	55	3	2	78	75	27	26	166	159
Urban Parks	20%	0	0	0	0	0	0	3	1	3	1
Open Space[b]	1%	30	0	1	0	3	0	0	0	34	0
	Totals	333	272	4	3	176	155	150	126	662	557
	Cumulative [d]	333	272	337	275	512	431	662	557		

[a] Source: Existing Land Use in 2005: Data for Bay Area Counties, Association of Bay Area Governments (ABAG), January 2006

[b] Development totals from 2002-2018 may include new development of open space and vacant properties.

[c] The total area for 2019-2020 is based on facilities that are currently under construction or planned to occur prior to 2020 and not the Phase I redevelopment rate and may therefore deviate from the "Best" acres presented for 2020 in Table 6-2.

[d] Totals in this table differ slightly from predictions presented in Table 6-2 due to the inclusion of entire parcels in this table, as opposed to more generic "land areas" projections presented in Table 6-2.

6.7 Project Tracking System

A required component of the GSI Plan is to develop a process for tracking and mapping completed public and private GSI projects and making the information available to the public. The City will continue to implement existing internal tracking procedures for processing public and private projects with GSI, meeting MRP reporting requirements, and managing inspections of stormwater treatment facilities. In addition, the City will provide data to SCVURPPP for countywide tracking of completed public and private GSI projects. This countywide tracking tool can be used to document a project's pollutant reduction performance as well as overall total progress toward city or county-level stormwater goals

6.7.1 City Project Tracking System (Regulated and GSI)

The City currently utilizes an internal tracking system to manage information about installed stormwater treatment measures (including GSI), operation and maintenance (O&M) of public facilities, O&M verification program inspections, and enforcement actions. The tracking system consists of a site specific GIS layer for installed stormwater treatment measures, an internal database (CityWorks) for O&M of public facilities, and a spreadsheet for installed LID O&M and enforcement actions on private property.

6.7.2 SCVURPPP Project Tracking System

SCVURPPP has developed a centralized, web-based data management system, with a connection to GIS platforms, for tracking and mapping all GSI projects in the Santa Clara Valley. The GSI Database provides a centralized, accessible platform for municipal staff to efficiently and securely collect, upload, and store GSI project data, and enhances SCVURPPP's ability to efficiently and accurately calculate and report water quality benefits associated with GSI projects. It also allows portions of the GSI project information to be made publicly available.

City staff will collect and manage information on GSI projects locally using the data management systems described above. City staff will directly enter project data into the SCVURPPP GSI Database on an annual basis through a web-based data entry portal for individual projects or upload data for multiple projects in batch using standardized formats.

Appendix A

Prioritization Metrics for Scoring GSI Project Opportunities

Table A-1. Prioritization Metrics for LID Project Opportunities

Metric	Points						Weighting Factor
	0	1	2	3	4	5	
Parcel Land Use			Schools/ Golf Courses	Park / Open Space	Public Buildings	Parking Lots	
Impervious Area (%)	X < 40	40 ≤ X < 50	50 ≤ X < 60	60 ≤ X < 70	70 ≤ X < 80	80 ≤ X < 100	2
Hydrologic Soil Group		C/D		B		A	
Slope (%)		10 > X > 5	5 ≥ X > 3	3 ≥ X > 2	2 ≥ X > 1	1 ≥ X	
Within flood-prone storm drain catchments	No					Yes	
Contains PCB Interest Areas	None			Moderate		High	2
Within Priority Development Area	No					Yes	
Co-located with another agency project	No					Yes	
Augments water supply	No	Opportunity for capture and use				Above groundwater recharge area and not above groundwater contamination area	2
Water quality source control	No	Yes					
Reestablishes natural hydrology	No	Yes					
Creates or enhances habitat	No	Yes					
Community enhancement	No	Opportunities for other enhancements				Within DAC or MTC Community of Concern	

Table A-2. Prioritization Metrics for Regional Stormwater Capture Project Opportunities

Metric	Points						Weighting Factor
	0	1	2	3	4	5	
Parcel Land Use			Schools/Golf Courses	Public Buildings	Parking Lot	Park / Open Space	
Impervious Area (%)	X < 40	40 ≤ X < 50	50 ≤ X < 60	60 ≤ X < 70	70 ≤ X < 80	80 ≤ X < 100	2
Parcel Size (acres)	0.25 ≤ X < 0.5	0.5 ≤ X < 1	1 ≤ X < 2	2 ≤ X < 3	3 ≤ X < 4	4 ≤ X	
Hydrologic Soil Group		C/D		B		A	
Slope (%)		10 > X > 5	5 ≥ X > 3	3 ≥ X > 2	2 ≥ X > 1	1 ≥ X	
Proximity to Storm Drain (feet)	X > 1,000	1,000 ≥ X > 500		500 ≥ X > 200		200 ≥ X	
Within flood-prone storm drain catchments	No					Yes	
Contains PCB Interest Areas	None			Moderate		High	2
Within Priority Development Area	No					Yes	
Co-located with another agency project	No					Yes	
Augments water supply	No	Opportunity for capture and use				Above groundwater recharge area and not above groundwater contamination area	2
Water quality source control	No	Yes					
Reestablishes natural hydrology	No	Yes					
Creates or enhances habitat	No	Yes					
Community enhancement	No	Opportunities for other enhancements				Within DAC or MTC Community of Concern	

Table A-3. Prioritization Metrics for Green Street Project Opportunities

Metric	Points						Weighting Factor
	0	1	2	3	4	5	
Imperviousness (%)	X < 40	40 ≤ X < 50	50 ≤ X < 60	60 ≤ X < 70	70 ≤ X < 80	80 ≤ X < 100	2
Hydrologic Soil Group		C/D		B		A	
Slope (%)		5 > X > 4	4 ≥ X > 3	3 ≥ X > 2	2 ≥ X > 1	1 ≥ X > 0	
Within flood-prone storm drain catchments	No					Yes	
Contains PCB Interest Areas	None			Moderate		High	2
Within Priority Development Area	No					Yes	
Co-located with another agency project	No					Yes	
Augments water supply	No	Opportunity for capture and use				Above groundwater recharge area and not above groundwater contamination area	2
Water quality source control	No	Yes					
Reestablishes natural hydrology	No	Yes					
Creates or enhances habitat	No	Yes					
Community enhancement	No	Opportunities for other enhancements				Within DAC or MTC Community of Concern	

Appendix B

City of Cupertino Street Segments and Parcels with Opportunities for GSI

City of Cupertino
Potential Parcel-based GSI Opportunities

Parcel Information			City Prioritization Criteria		SWRP Project Scoring[1]													
APN	Owner	Land Use	Co-location with Special Area	Co-location with Public project	Land Use Score	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	PDA Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Re-established Natural Habitat Score	Enhances Habitat Score	Community Score	TOTAL SCORE
36230098	City of Cupertino	Park/Open Space			3	0	1	2	0	0	0	0	10	1	1	0	1	19
35706018	City of Cupertino	Park/Open Space			3	0	5	2	0	0	0	0	10	1	1	0	1	23
36915002	City of Cupertino	Park/Open Space			3	0	1	2	0	0	0	0	10	1	1	0	1	19
32614005	City of Cupertino	Park/Open Space			3	0	1	1	0	0	0	0	10	1	1	0	1	18
32609071	City of Cupertino	Public Buildings	Homestead		4	6	1	4	0	0	0	0	10	1	1	0	1	28
32649036	City of Cupertino	Park/Open Space			3	0	1	2	0	10	0	0	10	1	1	0	1	29
31631041	City of Cupertino	Park/Open Space		Citywide Parks and Recreation System Master Plan - Portal Park; Bike Boulevard Project	3	0	1	2	0	0	0	5	10	1	1	0	1	24
36904044	City of Cupertino	Park/Open Space		Citywide Parks and Recreation System Master Plan - Wilson Park	3	0	1	4	0	0	0	5	10	1	1	0	1	26
35925024	City of Cupertino	Park/Open Space		Jollyman Park pathway installation	3	0	1	3	0	0	0	5	10	1	1	0	1	25
37523047	City of Cupertino	Public Buildings		Lawrence Mitty Park	4	0	1	2	0	0	0	5	10	1	1	0	1	25
32627030	City of Cupertino	Park/Open Space		Mary Avenue Rennovation and Park	3	8	1	2	0	0	0	5	10	1	1	0	1	32

City of Cupertino
Potential Parcel-based GSI Opportunities

32606052	City of Cupertino	Public Buildings		Mary Avenue Rennovation and Park	4	8	1	2	0	10	0	5	10	1	1	0	1	43
32629022	City of Cupertino	Park/Open Space	Heart of the City	Memorial Park Renovation; Stevens Creek Blvd protected bike lanes (separated bike	4	6	1	3	0	0	5	5	10	1	1	0	1	37
32629006	City of Cupertino	Park/Open Space	Heart of the City	Memorial Park Renovation; Stevens Creek Blvd protected bike lanes (separated bike	3	0	1	3	0	0	5	5	10	1	1	0	1	30
34215038	City of Cupertino	Park/Open Space		S Foothill Blvd and N Foothill Blvd Green Street; Citywide Parks and Recreation Master Plan	3	0	1	3	0	0	0	5	10	1	1	0	1	25
35710008	City of Cupertino	Park/Open Space		Blackberry Farm Retreat Center; Orange and Byrne Avenue sidewalk improvements	3	0	5	1	0	0	0	5	10	1	1	0	1	27

[1]SWRP = Stormwater Resources Plan (SCVURPPP, 2018). See Appendix A for prioritization metrics and scoring of GSI opportunities.

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]												
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60501447	WHEATON DR	CUPERTINO	Bike Boulevard Project		6	1	5	0	0	5	5	10	1	1	1	1	36
60501446	WHEATON DR	CUPERTINO	Bike Boulevard Project		6	1	5	0	0	5	5	10	1	1	1	1	36
60501557	WHEATON DR	CUPERTINO	Citywide Parks and Recreation System Master Plan; Bike Boulevard Project		4	1	5	0	0	5	5	10	1	1	1	1	34
60500926	BILICH PL	CUPERTINO	Bike Boulevard Project		4	1	5	0	0	5	5	10	1	1	1	1	34
60500612	S DE ANZA BLVD	CUPERTINO	Bike Boulevard Project	South De Anza	10	1	5	0	0	5	5	10	1	1	1	1	40
60501621	BOLLINGER RD	CUPERTINO	Bike Boulevard Project		10	1	4	0	0	0	5	10	1	1	1	1	34
1000715919	CIVIK PARK LN	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	1	0	0	5	5	10	1	1	1	1	34
60501804	RODRIGUES AVE	CUPERTINO	Bike Boulevard Project	South De Anza	10	1	4	0	0	5	5	10	1	1	1	1	39
1000715916	TOWN CENTER LN	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501620	BOLLINGER RD	CUPERTINO	Bike Boulevard Project		10	1	4	0	0	0	5	10	1	1	1	1	34
60502513	RODRIGUES AVE	CUPERTINO	Bike Boulevard Project	South De Anza	10	1	4	0	0	5	5	10	1	1	1	1	39
60502170	N DE ANZA BLVD	CUPERTINO	Bike Boulevard Project	North De Anza	6	1	5	0	0	5	5	10	1	1	1	1	36
60500883	INFINITE LOOP	CUPERTINO	Bike Boulevard Project	North De Anza	6	1	3	0	0	5	5	10	1	1	1	1	34
60502172	N DE ANZA BLVD	CUPERTINO	Bike Boulevard Project	North De Anza	6	1	3	0	0	5	5	10	1	1	1	1	34
60500901	MARY AVE	CUPERTINO	Bike Boulevard Project		8	1	4	0	10	0	5	10	1	1	1	1	42
60500368	DORADO	CUPERTINO	Bike Boulevard Project		4	1	2	0	10	0	5	10	1	1	1	1	36
60502363	MARY AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60500370	MARY AVE	CUPERTINO	Bike Boulevard Project		6	1	4	0	10	0	5	10	1	1	1	1	40
60500369	MARY AVE	CUPERTINO	Bike Boulevard Project		6	1	4	0	10	0	5	10	1	1	1	1	40

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]												
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60500362	SEGOVIA	CUPERTINO	Bike Boulevard Project		6	1	4	0	10	0	5	10	1	1	1	1	40
60500367	DORADO	CUPERTINO	Bike Boulevard Project		6	1	3	0	10	0	5	10	1	1	1	1	39
60500902	METEOR DR	CUPERTINO	Bike Boulevard Project		8	1	4	0	10	0	5	10	1	1	1	1	42
60502362	PARKWOOD DR	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60502218	MILLARD LN	CUPERTINO	Bike Boulevard Project		6	1	5	0	10	0	5	10	1	1	1	1	41
60502720	PACIFICA RD	CUPERTINO	Bike Boulevard Project	South De Anza	10	1	4	0	0	0	5	10	1	1	1	1	34
60500741	MARY AVE	CUPERTINO	Memorial Park Renovation; Stevens Creek Blvd protected bike lanes (separated bike lanes)	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60500568	GRANADA AVE	CUPERTINO	Bike Boulevard Project	Monta Vista Village	4	1	4	0	6	0	5	10	1	1	1	1	34
60501097	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60501095	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60501156	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	4	1	5	0	0	5	5	10	1	1	1	1	34
60501496	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	5	0	0	5	5	10	1	1	1	1	36
60501501	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60500619	S STELLING RD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60500096	N WOLFE RD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60500913	SAICH WAY	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]													
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60500623	S STELLING RD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	5	0	0	5	5	10	1	1	1	1	36
60501267	CAMPUS DR	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60501940	PENINSULA AVE	CUPERTINO	Bike Boulevard Project	Monta Vista Village	8	1	4	0	10	0	5	10	1	1	1	1	42
60502506	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60502021	S PORTAL AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60500628	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60502508	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501977	IMPERIAL AVE	CUPERTINO	Bike Boulevard Project	Monta Vista Village	8	1	4	0	10	0	5	10	1	1	1	1	42
60500744	FINCH AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60500443	N TANTAU AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	3	0	0	5	5	10	1	1	1	1	36
60501096	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	3	0	0	5	5	10	1	1	1	1	36
60501556	N PORTAL AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501525	N WOLFE RD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60501507	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60501508	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60501509	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60500889	SAICH WAY	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]													
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60501502	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	5	0	0	5	5	10	1	1	1	1	36
60501503	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	4	1	5	0	0	5	5	10	1	1	1	1	34
60502679	TORRE AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60501494	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	5	0	0	5	5	10	1	1	1	1	36
60500105	E ESTATES DR	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60500206	PASADENA AVE	CUPERTINO	Bike Boulevard Project	Monta Vista Village	8	1	4	0	10	0	5	10	1	1	1	1	42
60500097	N WOLFE RD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60502335	TANTAU AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60501500	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501571	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60502035	BIANCHI WAY	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60502507	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60502493	N BLANEY AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	3	0	0	5	5	10	1	1	1	1	36
60501217	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Monta Vista Village	8	1	3	0	10	0	5	10	1	1	1	1	41
60501524	MILLER AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60500104	E ESTATES DR	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60500095	MILLER AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]													
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60502505	PORTAL PLZ	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60502197	S TANTAU AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60502331	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	5	0	0	5	5	10	1	1	1	1	40
60502367	VISTA DR	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60502180	CAMPUS DR	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60500666	BANDLEY DR	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	3	0	0	5	5	10	1	1	1	1	36
60501504	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	4	1	5	0	0	5	5	10	1	1	1	1	34
60502755	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60500745	FINCH AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60500449	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Monta Vista Village	10	1	4	0	10	0	5	10	1	1	1	1	44
60502650	BANDLEY DR	CUPERTINO	Bike Boulevard Project	North De Anza	6	1	3	0	0	5	5	10	1	1	1	1	34
60502179	CAMPUS DR	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60502756	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60501523	N WOLFE RD	CUPERTINO	Bike Boulevard Project		8	1	4	0	0	5	5	10	1	1	1	1	37
60502753	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501499	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60501497	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]													
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60502425	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Monta Vista Village	10	1	4	0	0	0	5	10	1	1	1	1	34
60500624	S STELLING RD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60501506	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project		8	1	3	0	0	5	5	10	1	1	1	1	36
60501495	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	5	0	0	5	5	10	1	1	1	1	36
60501505	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project		8	1	5	0	0	5	5	10	1	1	1	1	38
60500740	MARY AVE	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	3	0	0	5	5	10	1	1	1	1	34
60501093	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	2	0	0	5	5	10	1	1	1	1	35
60500618	S STELLING RD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	4	0	0	5	5	10	1	1	1	1	37
60502509	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60501094	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	6	1	4	0	0	5	5	10	1	1	1	1	35
60502328	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	5	0	0	5	5	10	1	1	1	1	40
60501252	N STELLING RD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60502326	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	4	0	0	5	5	10	1	1	1	1	39
60501572	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	8	1	5	0	0	5	5	10	1	1	1	1	38
60500155	STEVENS CREEK BLVD	CUPERTINO	Bike Boulevard Project	Heart of the City	10	1	3	0	0	5	5	10	1	1	1	1	38
60500451	MC CLELLAN RD	CUPERTINO	Union Pacific RR Trail Feasibility Study; McClellan Road Bike Corridor (separated bike lanes)	Monta Vista Village	8	1	1	0	10	0	5	10	1	1	1	1	39

City of Cupertino
Potential Green Street Project Opportunities

Street Information			City Prioritization Criteria		SWRP Project Scoring[1]													
SWRP Project ID	Street Name	Jurisdiction	Co-location with Public project	Co-location with Special Area	Impervious Score	Soil Group Score	Slope Score	Flood-prone Catchment Score	PCB Area Score	Priority Development Area Score	Co-located Project Score	Augments Water Supply Score	WQ Source Control Score	Reestablishes Natural Hydrology Score	Enhances Habitat Score	Community Enhancement Score	TOTAL SCORE
60501944	BUBB RD	CUPERTINO	Citywide Parks and Recreation System Master Plan; Bike Boulevard Project	Monta Vista Village	6	1	4	0	10	0	5	10	1	1	1	1	40

[1] SWRP = Stormwater Resources Plan (SCVURPPP, 2018). See Appendix A for prioritization metrics and scoring of GSI opportunities.

Appendix C

GSI concept for the Mary Avenue Greenbelt and Trail Project

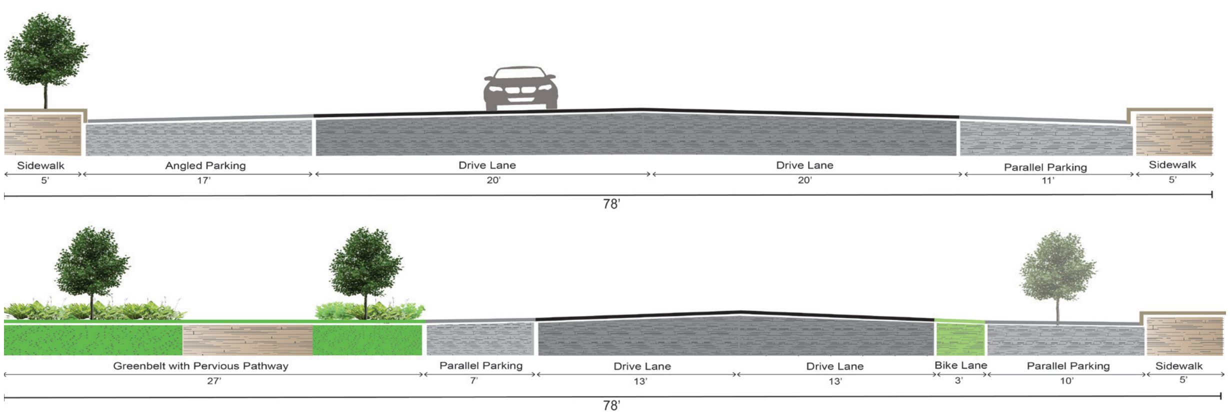
Mary Avenue Green Street

Cupertino

Concept Description

Mary Avenue is an important connector road in the City of Cupertino that is at the hub of many important destinations: Homestead High School, Dan Burnett bicycle-pedestrian bridge over I-280, Mary Avenue Dog Park, City of Cupertino Service Center, The Oaks shopping center, Cupertino Senior Citizen Center, De Anza College, Memorial Park, and the commercial corridor on Stevens Creek Blvd. The road has an 80-ft wide right-of-way with a variety of abutting land uses running 0.72 miles from Stevens Creek Blvd to I-280. It presents a tremendous opportunity for a "complete street" retrofit integrating stormwater management with multiple community and environmental benefits. The City has been considering a complete street concept on Mary Avenue for several years, with a vision of transforming the existing inefficient roadway into a multi-functional corridor.

Surveys have identified "trails and pathways" and "access to nature" as the top two most sought after community benefits among Cupertino residents. Stormwater, habitat, and community benefits will be realized by creating a wide bioretention-enhanced green belt on the west side of the street containing a pervious multi-use pathway to accommodate bicyclists, pedestrians, strollers, and joggers. Tree wells will be installed every 100 feet on the east side of the street to treat stormwater and, along with new trees in the green beltway, eventually form an arbor archway of green canopy over Mary Avenue. To create space for the proposed improvements, the City plans to remove the center turn lane, convert 20'-wide angled parking on the west side to 7'-wide parallel parking, and incorporate the existing bike lane on the west side into the green belt . A typical cross-section has been developed to show how the roadway could be reconfigured. Pervious pavement will be employed in the roadway closer to the Stevens Creek Blvd intersection where space is in higher demand. Bioretention has a 5% sizing ratio (based on available space and to achieve better performance), and the pervious pavement has a 20% sizing ratio (4 parts run-on area to 1 part pervious pavement).



Pre-construction (top) & Post-construction (bottom) Street Section

Concept Metrics

WATERSHED CHARACTERISTICS

Watershed
SUNNYVALE EAST CHANNEL

Drainage Management Area
12.1 AC

% Impervious of DMA
90

Total Runoff Volume
6.6 AC-FT/YR

FACILITY INFORMATION

Bioretention

Total Facility Area
23,958 SF

Number of Facilities
40

Maximum Surface Ponding
0.5 FT

Storage Volume
0.7 AC-FT

Pervious Pavement

Total Facility Area
9,583 SF
LOCATED IN PARKING LANE

Storage Volume
0.2 AC-FT

DESIGN CRITERIA

Total Storage
0.9 AC-FT

Infiltration Rate
0.2 IN/HR

Total Runoff Captured
6.6 AC-FT/YR (100%)

Concept Basemap

LEGEND

- Catch Basins
- Storm Drain Network
- Flow Direction
- Drainage Management Area
- Greenway with Integrated Stormwater Treatment
- Pervious Pavement
- Tree Wells
- A See Precedent Image on Next Page

0 250 500 ft

PARADIGM ENVIRONMENTAL
Lotus Water

Preliminary concept for discussion purposes only

MARY AVENUE GREEN STREET

Example of Integration of Bioretention with Bike and Pedestrian Crossings in Lyon, France

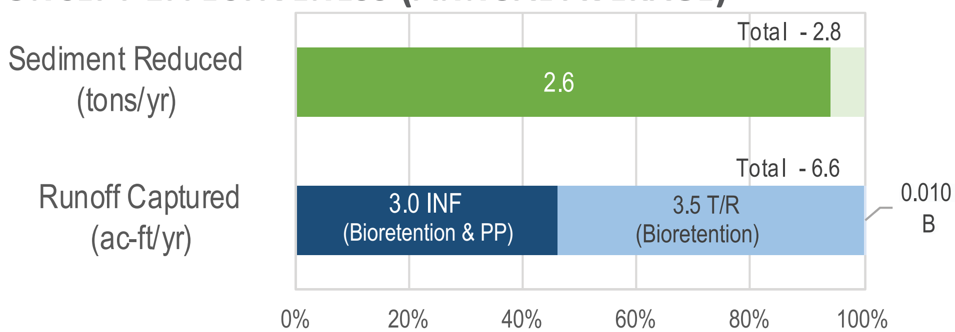
Example of Stormwater and Multi-modal Transportation Options in Lyon, France

Budget-Level Cost Estimates

DESCRIPTION	UNIT COST	UNIT	QUANTITY	SUBTOTAL
Utilities Protection/Relocation	$90,000	LS	1	$90,000
Demo, Excavation & Offhaul	$10	SF	33,541	$335,400
Curb and 36" Sidewalls	$185	LF	9,073	$1,678,600
Bio-soil Media	$250	CY	1,331	$332,800
Pervious pavement	$15	SF	9,583	$143,700
Underdrains	$5	SF	33,541	$167,700
Drain Rock Subbase	$150	CY	1,242	$186,300
Plantings & Mulch	$22	SF	23,958	$527,100
Catch Basin Relocation	$7,500	EA	11	$82,500
Storm Drain Connections	$5,000	EA	20	$100,000
			CONSTRUCTION SUBTOTAL	**$3,644,000**
Mobilization (10% Construction)				$364,000
Contingency (30% Construction)				$1,093,000
Design (15% Total)				$765,000
			TOTAL PROJECT COST (DESIGN + CONSTRUCTION)	**$5,866,000**

- These are planning-level cost estimates ($2018) for design and construction. Soft costs for City administration and project management and post-construction operations and maintenance are not included. Other factors that may affect the cost of future construction include escalation and market conditions.
- This cost estimate only includes stormwater management components appropriately sized to treat runoff from the project area. The City of Cupertino will procure additional funding for non-stormwater related components of the complete street retrofit.

Concept Effectiveness (Annual Average)



INF - Infiltration   T/R - Treat & Release   B - Bypass

- Effectiveness is defined as the modeled ability of the proposed project to capture stormwater runoff from the management area, remove the identified constituents from that stormwater, and infiltrate or reuse the captured water.
- For planning purposes, recharge is approximated as being equivalent to infiltration if the project is located in the groundwater recharge zone.
- Modeling and performance estimates are based on an historical rainfall time series from water year 2007 through water year 2015.

Additional Potential Benefits

- **Within Priority Development Area**
- **Augments Water Supply**
- **Groundwater Recharge**
- **Community Enhancement**
- **Reestablishes Natural Hydrology**

Mary Avenue Green Street

Additional Considerations

This project concept is planning-level and subject to revision as additional information related to geotechnical, environmental, and stakeholder considerations becomes available. Factors to be considered include but are not limited to the following:

» Infiltration Potential. The project is in a designated recharge area. The map of Depth to First Groundwater for the Santa Clara Basin in Appendix A of the SCVURPPP C.3 Stormwater Handbook shows depth to groundwater as approximately 50 feet; therefore, no conflicts with groundwater are anticipated. The NRCS SSURGO database lists soils in the projects area as having an infiltration capacity of 0.20-0.57 in/hr; facilities are assumed to require installation of an underdrained. Undrained facilities are not lined and, therefore, a portion of the stormwater entering the facility will infiltrate into underlying soil. Site-specific infiltration tests should be performed during early design so that facilities are adequately sized and drained.

» Parking Analysis. Mary Avenue is currently used for all-day parking by visitors, particularly DeAnza College students. Instituting metering or parking permits would encourage students to park at the college, which appears to have capacity but is not free of charge.

» Utility Coordination. Additional spatial data showing all utility mains along the roadway corridor should be collected and evaluated for potential conflicts; proposed facility locations should be adjusted as necessary to avoid any identified conflicts.

» Historical Lead Contamination. There is historical lead contamination in the landscape between Mary Avenue and Hwy 85. Lead was detected above background levels and impacted soil offhauled for proper disposal during construction of the Mary Avenue Dog Park.

» Stakeholder Coordination. Outreach should be conducted to area residents and others that may be affected by roadway configuration changes and less on-street parking.

» The Oaks shopping center at the intersection of Stevens Creek Blvd is likely to be redeveloped in the coming years, and retrofit of its parking lot area may provide an additional synergy opportunity.

» Maintaining traffic flow and adequate parking while improving pedestrian and bicycle safety will transform Mary Avenue into a critical link in Cupertino's Safe Routes to School network.

Appendix C

Guidance for Identifying Green Infrastructure Potential in Municipal Capital Improvement Program Projects

BASMAA Development Committee

Guidance for Identifying Green Infrastructure Potential
in Municipal Capital Improvement Program Projects
May 6, 2016

Background

In the recently reissued Municipal Regional Stormwater Permit ("MRP 2.0"), Provision C.3.j. requires Permittees to develop and implement Green Infrastructure Plans to reduce the adverse water quality impacts of urbanization on receiving waters over the long term. Provisions C.11 and C.12 require the Permittees to reduce discharges of Mercury and PCBs, and portion of these load reductions must be achieved by implementing Green Infrastructure. Specifically, Permittees collectively must implement Green Infrastructure to reduce mercury loading by 48 grams/year and PCB loading by 120 grams/year by 2020, and plan for substantially larger reductions in the following decades. Green Infrastructure on both public and private land will help to meet these load reduction requirements, improve water quality, and provide multiple other benefits as well. Implementation on private land is achieved by implementing stormwater requirements for new development and redevelopment (Provision C.3.a. through Provision C.3.i.). These requirements were carried forward, largely unchanged, from MRP 1.0.

MRP 2.0 defines Green Infrastructure as:

> Infrastructure that uses vegetation, soils, and natural processes to manage water and create healthier urban environments. At the scale of a city or county, green infrastructure refers to the patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the scale of a neighborhood or site, green infrastructure refers to stormwater management systems that mimic nature by soaking up and storing water.

In practical terms, most green infrastructure will take the form of diverting runoff from existing streets, roofs, and parking lots to one of two stormwater management strategies:

1. Dispersal to vegetated areas, where sufficient landscaped area is available and slopes are not too steep.
2. LID (bioretention and infiltration) facilities, built according to criteria similar to those currently required for regulated private development and redevelopment projects under Provision C.3.

In some cases, the use of tree-box-type biofilters may be appropriate[1]. In other cases, where conditions are appropriate, existing impervious pavements may be removed and replaced with pervious pavements.

In MRP 2.0, Provision C.3.j. includes requirements for Green Infrastructure planning and implementation. Provision C.3.j. has two main elements to be implemented by municipalities:

1. Preparation of a Green Infrastructure Plan for the inclusion of LID drainage design into storm drain infrastructure on public and private land, including streets, roads, storm drains, etc.
2. Early implementation of green infrastructure projects ("no missed opportunities"),

This guidance addresses the second of these requirements. The intent of the "no missed opportunities" requirement is to ensure that no major infrastructure project is built without assessing the opportunity for incorporation of green infrastructure features.

Provision C.3.j.ii. requires that each Permittee prepare and maintain a list of green infrastructure projects, public and private, that are already planned for implementation during the permit term (not including C.3-regulated projects), and infrastructure projects planned for

[1] Standard proprietary tree-box-type biofilters are considered to be non-LID treatment and will only be allowed under certain circumstances. Guidance on use and sizing of these facilities will be provided in a separate document.

implementation during the permit term that have potential for green infrastructure measures. The list must be submitted with each Annual Report, including:

> "… a summary of how each public infrastructure project with green infrastructure potential will include green infrastructure measures to the maximum extent practical during the permit term. For any public infrastructure project where implementation of green infrastructure measures is not practicable, submit a brief description for the project and the reasons green infrastructure measures were impracticable to implement".

This requirement has no specified start date; "during the permit term" means beginning January 1, 2016 and before December 31, 2020. The first Annual Report submittal date will be September 30, 2016.

Note that this guidance primarily addresses the review of proposed or planned public projects for green infrastructure opportunities. The Permittee may also be aware of proposed or planned private projects, not subject to LID treatment requirements, that may have the opportunity to incorporate green infrastructure. These should be addressed in the same way as planned public projects, as described below.

Procedure for Review of Planned Public Projects and Annual Reporting

The municipality's Capital Improvement Program (CIP) project list provides a good starting point for review of proposed public infrastructure projects. Review of other lists of public infrastructure projects, such as those proposed within separately funded special districts (e.g., lighting and landscape districts, maintenance districts, and community facilities districts), may also be appropriate. This section describes a two-part procedure for conducting the review.

Part 1 – Initial Screening

The first step in reviewing a CIP or other public project list is to screen out certain types of projects from further consideration. For example, some projects (e.g., interior remodels, traffic signal replacement) can be readily identified as having no green infrastructure potential. Other projects may appear on the list with only a title, and it may be too early to identify whether green infrastructure could be included. Still others have already progressed past the point where the design can reasonably be changed (this will vary from project to project, depending on available budget and schedule).

Some "projects" listed in a CIP may provide budget for multiple maintenance or minor construction projects throughout the jurisdiction or a portion of the jurisdiction, such as a tree planting program, curb and sidewalk repair/upgrade, or ADA curb/ramp compliance. It is recommended that these types of projects not be included in the review process described herein. The priority for incorporating green infrastructure into these types of projects needs to be assessed as part of the Permittees' development of Green Infrastructure Plans, and standard details and specifications need to be developed and adopted. During this permit term, Permittees will evaluate select projects, project types, and/or groups of projects as case studies and develop an approach as part of Green Infrastructure planning.

The projects removed through the initial screening process do not need to be reported to the Water Board in the Permittee's Annual Report. However, the process should be documented and records kept as to the reason the project was removed from further consideration. Note that projects that were determined to be too early to assess will need to be reassessed during the next fiscal year's review.

The following categories of projects may be screened out of the review process in a given fiscal year:

1. **Projects with No Potential -** The project is identified in initial screening as having no green infrastructure potential based on the type of project. For example, the project does not include any exterior work. Attachment 1 provides a suggested list of such projects that Permittees may use as a model for their own internal process.

2. **Projects Too Early to Assess –** There is not yet enough information to assess the project for green infrastructure potential, or the project is not scheduled to begin design within the permit term (January 2016 – December 2020). If the project is scheduled to begin within the permit term, an assessment will be conducted if and when the project moves forward to conceptual design.
3. **Projects Too Late to Change –** The project is under construction or has moved to a stage of design in which changes cannot be made. The stage of design at which it is too late to incorporate green infrastructure measures varies with each project, so a "percent-complete" threshold has not been defined. Some projects may have funding tied to a particular conceptual design and changes cannot be made even early in the design process, while others may have adequate budget and time within the construction schedule to make changes late in the design process. Agencies will need to make judgments on a case-by-case basis.
4. **Projects Consisting of Maintenance or Minor Construction Work Orders –** The "project" includes budgets for multiple maintenance or minor construction work orders throughout the jurisdiction or a portion of the jurisdiction. These types of projects will not be individually reviewed for green infrastructure opportunity but will be considered as part of a municipality's Green Infrastructure Plan.

Part 2 – Assessment of Green Infrastructure Potential

After the initial screening, the remaining projects either already include green infrastructure or will need to go through an assessment process to determine whether or not there is potential to incorporate green infrastructure. A recommended process for conducting the assessment is provided later in this guidance. As a result of the assessment, the project will fall into one of the following categories with associated annual reporting requirements. Attachment 2 provides the relevant pages of the FY 15-16 Annual Report template for reference.

- **Project is a C.3-regulated project and will include LID treatment.**

  Reporting: Follow current C.3 guidance and report the project in Table C.3.b.iv.(2) of the Annual Report for the fiscal year in which the project is approved.

- **Project already includes green infrastructure and is funded**.

  Reporting: List the project in "Table B-Planned Green Infrastructure Projects" in the Annual Report, indicate the planning or implementation status, and describe the green infrastructure measures to be included.

- **Project may have green infrastructure potential** pending further assessment of feasibility, incremental cost, and availability of funding.

  Reporting: If the feasibility assessment is not complete and/or funding has not been identified, list the project in "Table A-Public Projects Reviewed for Green Infrastructure" in the Annual Report. In the "GI Included?" column, state either "TBD" (to be determined) if the assessment is not complete, or "Yes" if it has been determined that green infrastructure is feasible. In the rightmost column, describe the green infrastructure measures considered and/or proposed, and note the funding and other contingencies for inclusion of green infrastructure in the project. Once funding for the project has been identified, the project should be moved to "Table B-Planned Green Infrastructure Projects" in future Annual Reports.

- **Project does not have green infrastructure potential.** A project-specific assessment has been completed, and Green Infrastructure is impracticable.

  Reporting: In the Annual Report, list the project in "Table A-Public Projects Reviewed for Green Infrastructure". In the "GI Included?" column, state "No." Briefly state the reasons for the determination in the rightmost column. Prepare more detailed documentation of the reasons for the determination and keep it in the project files.

Process for Assessing Green Infrastructure Potential of a Public Infrastructure Project

Initial Assessment of Green Infrastructure Potential

Consider opportunities that may be associated with:

- Alterations to roof drainage from existing buildings
- New or replaced pavement or drainage structures (including gutters, inlets, or pipes)
- Concrete work
- Landscaping, including tree planting
- Streetscape improvements and intersection improvements (other than signals)

Step 1: Information Collection/Reconnaissance

For projects that include alterations to building drainage, identify the locations of roof leaders and downspouts, and where they discharge or where they are connected to storm drains.

For street and landscape projects:

- Evaluate potential opportunities to substitute pervious pavements for impervious pavements.
- Identify and locate drainage structures, including storm drain inlets or catch basins.
- Identify and locate drainage pathways, including curb and gutter.

Identify landscaped areas and paved areas that are adjacent to, or down gradient from, roofs or pavement. These are potential facility locations. *If there are any such locations, continue to the next step.* Note that the project area boundaries may be, but are not required to be, expanded to include potential green infrastructure facilities.

Step 2: Preliminary Sizing and Drainage Analysis

Beginning with the potential LID facility locations that seem most feasible, identify possible pathways to direct drainage from roofs and/or pavement to potential LID facility locations—by sheet flow, valley gutters, trench drains, or (where gradients are steeper) via pipes, based on existing grades and drainage patterns. Where existing grades constrain natural drainage to potential facilities, the use of pumps may be considered (as a less preferable option).

Delineate (roughly) the drainage area tributary to each potential LID facility location. Typically, this requires site reconnaissance, which may or may not include the use of a level to measure relative elevations.

Use the following preliminary sizing factor (facility area/tributary area) for the potential facility location and determine which of the following could be constructed within the existing right-of-way or adjacent vacant land. Note that these sizing factors are guidelines (not strict rules, but targets):

- Sizing factor ≥ 0.5 for dispersal to landscape or pervious pavement[2] (i.e., a maximum 2:1 ratio of impervious area to pervious area)
- Sizing factor ≥ 0.04 for bioretention
- Sizing factor ≥ 0.004 (or less) for tree-box-type biofilters

For bioretention facilities requiring underdrains and tree-box-type biofilters, note if there are potential connections from the underdrain to the storm drain system (typically 2.0 feet below soil surface for bioretention facilities, and 3.5 feet below surface for tree-box-type biofilters).

[2] Note that pervious pavement systems are typically designed to infiltrate only the rain falling on the pervious pavement itself, with the allowance for small quantities of runoff from adjacent impervious areas. If significant runoff from adjacent areas is anticipated, preliminary sizing considerations should include evaluation of the depth of drain rock layer needed based on permeability of site soils.

If, in this step, you have confirmed there may be feasible potential facility locations, *continue to the next step*.

Step 3: Barriers and Conflicts

Note that barriers and conflicts do not necessarily mean implementation is infeasible; however, they need to be identified and taken into account in future decision-making, as they may affect cost or public acceptance of the project.

Note issues such as:

- Confirmed or potential conflicts with subsurface utilities
- Known or unknown issues with property ownership, or need for acquisition or easements
- Availability of water supply for irrigation, or lack thereof
- Extent to which green infrastructure is an “add on” vs. integrated with the rest of the project

Step 4: Project Budget and Schedule

Consider sources of funding that may be available for green infrastructure. It is recognized that lack of budget may be a serious constraint for the addition of green infrastructure in public projects. For example, acquisition of additional right-of-way or easements for roadway projects is not always possible. Short and long term maintenance costs also need to be considered, and jurisdictions may not have a funding source for landscape maintenance, especially along roadways. The objective of this process is to identify opportunities for green infrastructure, so that if and when funding becomes available, implementation may be possible.

Note any constraints on the project schedule, such as a regulatory mandate to complete the project by a specific date, grant requirements, etc., that could complicate aligning a separate funding stream for the green infrastructure element. Consider whether cost savings could be achieved by integrating the project with other planned projects, such as pedestrian or bicycle safety improvement projects, street beautification, etc., if the schedule allows.

Step 5: Assessment—Does the Project Have Green Infrastructure Potential?

Consider the ancillary benefits of green infrastructure, including opportunities for improving the quality of public spaces, providing parks and play areas, providing habitat, urban forestry, mitigating heat island effects, aesthetics, and other valuable enhancements to quality of life.

Based on the information above, would it make sense to include green infrastructure into this project—*if funding were available for the potential incremental costs of including green infrastructure in the project?* Identify any additional conditions that would have to be met for green infrastructure elements to be constructed consequent with the project.

Attachment 1

Examples of Projects with No Potential for Green Infrastructure

- ☐ Projects with no exterior work (e.g., interior remodels)
- ☐ Projects involving exterior building upgrades or equipment (e.g., HVAC, solar panels, window replacement, roof repairs and maintenance)
- ☐ Projects related to development and/or continued funding of municipal programs or related organizations
- ☐ Projects related to technical studies, mapping, aerial photography, surveying, database development/upgrades, monitoring, training, or update of standard specs and details
- ☐ Construction of new streetlights, traffic signals or communication facilities
- ☐ Minor bridge and culvert repairs/replacement
- ☐ Non-stormwater utility projects (e.g., sewer or water main repairs/replacement, utility undergrounding, treatment plant upgrades)
- ☐ Equipment purchase or maintenance (including vehicles, street or park furniture, equipment for sports fields and golf courses, etc.)
- ☐ Irrigation system installation, upgrades or repairs

Attachment 2

Excerpts from the C.3 Section of the FY 15-16 Annual Report Template: Tables for Reporting C.3-Regulated Projects and Green Infrastructure Projects

C.3.b.iv.(2) ►Regulated Projects Reporting Table (part 1) – Projects Approved During the Fiscal Year Reporting Period

Project Name Project No.	Project Location[9], Street Address	Name of Developer	Project Phase No.[10]	Project Type & Description[11]	Project Watershed[12]	Total Site Area (Acres)	Total Area of Land Disturbed (Acres)	Total New Impervious Surface Area (ft^2)[13]	Total Replaced Impervious Surface Area (ft^2)[14]	Total Pre-Project Impervious Surface Area[15](ft^2)	Total Post-Project Impervious Surface Area[16](ft^2)
Private Projects											
Public Projects											

Comments:

Guidance: If necessary, provide any additional details or clarifications needed about listed projects in this box. Do not leave any cells blank.

[9]Include cross streets
[10]If a project is being constructed in phases, indicate the phase number and use a separate row entry for each phase. If not, enter "NA".
[11]Project Type is the type of development (i.e., new and/or redevelopment). Example descriptions of development are: 5-story office building, residential with 160 single-family homes with five 4-story buildings to contain 200 condominiums, 100 unit 2-story shopping mall, mixed use retail and residential development (apartments), industrial warehouse.
[12]State the watershed(s) in which the Regulated Project is located. Downstream watershed(s) may be included, but this is optional.
[13]All impervious surfaces added to any area of the site that was previously existing pervious surface.
[14]All impervious surfaces added to any area of the site that was previously existing impervious surface.
[15]For redevelopment projects, state the pre-project impervious surface area.
[16]For redevelopment projects, state the post-project impervious surface area.

C.3.b.iv.(2) ►Regulated Projects Reporting Table (part 2) – Projects Approved During the Fiscal Year Reporting Period (public projects)										
Project Name Project No.	Approval Date[29]	Date Construction Scheduled to Begin	Source Control Measures[30]	Site Design Measures[31]	Treatment Systems Approved[32]	Operation & Maintenance Responsibility Mechanism[33]	Hydraulic Sizing Criteria[34]	Alternative Compliance Measures[35/36]	Alternative Certification[37]	HM Controls[38/39]
Public Projects										

Comments:

Guidance: If necessary, provide any additional details or clarifications needed about listed projects in this box. Note that MRP Provision C.3.c. contains specific requirements for LID site design and source control measures, as well as treatment measures, for all Regulated Projects. Entries in these columns should not be "None" or "NA". Do not leave any cells blank.

[29]For public projects, enter the plans and specifications approval date.
[30]List source control measures approved for the project. Examples include: properly designed trash storage areas; storm drain stenciling or signage; efficient landscape irrigation systems; etc.
[31]List site design measures approved for the project. Examples include: minimize impervious surfaces; conserve natural areas, including existing trees or other vegetation, and soils; construct sidewalks, walkways, and/or patios with permeable surfaces, etc.
[32]List all approved stormwater treatment system(s) to be installed onsite or at a joint stormwater treatment facility (e.g., flow through planter, bioretention facility, infiltration basin, etc.).
[33]List the legal mechanism(s) (e.g., maintenance plan for O&M by public entity, etc…) that have been or will be used to assign responsibility for the maintenance of the post-construction stormwater treatment systems.
[34]See Provision C.3.d.i. "Numeric Sizing Criteria for Stormwater Treatment Systems" for list of hydraulic sizing design criteria. Enter the corresponding provision number of the appropriate criterion (i.e., 1.a., 1.b., 2.a., 2.b., 2.c., or 3).
[35]For Alternative Compliance at an offsite location in accordance with Provision C.3.e.i.(1), on a separate page, give a discussion of the alternative compliance site including the information specified in Provision C.3.b.v.(1)(m)(i) for the offsite project.
[36]For Alternative Compliance by paying in-lieu fees in accordance with Provision C.3.e.i.(2), on a separate page, provide the information specified in Provision C.3.b.v.(1)(m)(ii) for the Regional Project.
[37]Note whether a third party was used to certify the project design complies with Provision C.3.d.
[38]If HM control is not required, state why not.
[39]If HM control is required, state control method used (e.g., method to design and size device(s) or method(s) used to meet the HM Standard, and description of device(s) or method(s) used, such as detention basin(s), biodetention unit(s), regional detention basin, or in-stream control).

C.3.j.ii.(2) ► Table A - Public Projects Reviewed for Green Infrastructure

Project Name and Location[43]	Project Description	Status[44]	GI Included?[45]	Description of GI Measures Considered and/or Proposed or Why GI is Impracticable to Implement[46]
EXAMPLE: Storm drain retrofit, Stockton and Taylor	Installation of new storm drain to accommodate the 10-yr storm event	Beginning planning and design phase	TBD	Bioretention cells (i.e., linear bulb-outs) will be considered when street modification designs are incorporated

C.3.j.ii.(2) ► Table B - Planned Green Infrastructure Projects

Project Name and Location[47]	Project Description	Planning or Implementation Status	Green Infrastructure Measures Included
EXAMPLE: Martha Gardens Green Alleys Project	Retrofit of degraded pavement in urban alleyways lacking good drainage	Construction completed October 17, 2015	The project drains replaced concrete pavement and existing adjacent structures to a center strip of pervious pavement and underlying infiltration trench.

[43] List each public project that is going through your agency's process for identifying projects with green infrastructure potential.
[44] Indicate status of project, such as: beginning design, under design (or X% design), projected completion date, completed final design date, etc.
[45] Enter "Yes" if project will include GI measures, "No" if GI measures are impracticable to implement, or "TBD" if this has not yet been determined.
[46] Provide a summary of how each public infrastructure project with green infrastructure potential will include green infrastructure measures to the maximum extent practicable during the permit term. If review of the project indicates that implementation of green infrastructure measures is not practicable, provide the reasons why green infrastructure measures are impracticable to implement.
[47] List each planned (and expected to be funded) public and private green infrastructure project that is not also a Regulated Project as defined in Provision C.3.b.ii. Note that funding for green infrastructure components may be anticipated but is not guaranteed to be available or sufficient.

City of Cupertino
Green Infrastructure Plan Framework

Approved on: April 18, 2017

Approved by: City of Cupertino City Council

Submitted by:

CUPERTINO

PUBLIC WORKS DEPARTMENT
Environmental Programs
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In compliance with Provision C.3.j.i.(1) of Order R2-2015-0049

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TABLE OF CONTENTS

LIST OF TABLES

LIST APPENDICES

ABBREVIATIONS

BASMAA	Bay Area Stormwater Management Agencies Association
Caltrans	California Department of Transportation
CASQA	California Stormwater Quality Association
CEQA	California Environmental Quality Act
CIP	Capital Improvement Program
COA	Condition of Approval
EPA	Environmental Protection Agency
FY	Fiscal Year
GI	Green Infrastructure
GIS	Geographic Information System
GSI	Green Stormwater Infrastructure
Hg	Mercury
LID	Low Impact Development
LUS	Watershed Management Initiative Land Use Subgroup
MC	Management Committee
MEP	Maximum Extent Practicable
MRP	Municipal Regional Stormwater NPDES Permit
MS4	Municipal Separate Storm Sewer System
NGO	Non-Governmental Organization
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and Maintenance
PCBs	Polychlorinated Biphenyls
PIP	Public Information and Participation
POC	Pollutant of Concern
Program	Santa Clara Valley Urban Runoff Pollution Prevention Program
RFP	Request for Proposal
ROW	Right of Way
RWQCB	San Francisco Bay Regional Water Quality Control Board
SCBWMI	Santa Clara Basin Watershed Management Initiative
SCVURPPP	Santa Clara Valley Urban Runoff Pollution Prevention Program
SCVWD	Santa Clara Valley Water District
SFEI	San Francisco Estuary Institute
SFEP	San Francisco Estuary Partnership
State Board	State Water Resource Control Board
SWRP	Storm Water Resource Plan
SWRCB	State Water Resource Control Board
TMDL	Total Maximum Daily Load
Water Board	San Francisco Bay Regional Water Quality Control Board
Water District	Santa Clara Valley Water District
WDR	Waste Discharge Requirements
WMI	Watershed Management Initiative

PREFACE

This Green Infrastructure Framework (workplan) is a commitment by the City of Cupertino's decision makers to direct staff in several departments to develop and submit Cupertino's Green Infrastructure Plan by Sept 30, 2019 in compliance with Provision C.3.j.i.(2) of Order R2-2015-0049 (the MRP). The dates and specific activities are intended to guide the preparation of a complete and effective Plan over the next two years. The Framework is intended to be flexible regarding details and timeframes which may change as the Plan's development process evolves.

1.0 INTRODUCTION

1.1 What is Green Infrastructure?

"Green Infrastructure" (GI), also known as "Green Stormwater Infrastructure" (GSI), is infrastructure that uses vegetation, soils, and natural processes to manage water and create healthier urban environments. At the scale of a city or county, green infrastructure refers to the patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the scale of a neighborhood or project site, green infrastructure refers to stormwater management systems that mimic nature by soaking up and storing water.

Examples of GI include resilient, sustainable systems that slow, filter, harvest, infiltrate and/or evapotranspirate runoff such as: landscape-based stormwater "biotreatment" using soil and plants ranging in size from grasses to trees; pervious paving systems (e.g., interlocking concrete pavers, porous asphalt, and pervious concrete); rainwater harvesting systems (e.g., cisterns and rain barrels); and other methods to capture and treat stormwater. These practices are also known as Low Impact Development (LID) site design and treatment measures.

GI roadway projects are typically called "Green Streets". Another term of art related to street design is "Complete Streets". This term comes from the transportation field and deals with the designing of streets that incorporate all modes of travel equally - in particular to increase safety and access for cyclists and pedestrians. The integration of the goals of both Complete Streets and Green Streets has coined several new terms such as "Living Streets", "Better Streets" and "Sustainable Streets". This movement recognizes that environmentally and holistically designed streets achieve many benefits: increased multi-modal travel and safety; clean water and air; climate change resilience and mitigation; placemaking and community cohesion; habitat and energy savings; and higher property values.

1.2 Stormwater Quality Regulatory Requirements

The City of Cupertino is subject to the requirements of the recently reissued Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit for Phase I municipalities and agencies in the San Francisco Bay area (Order R2-2015-0049), also known as the Municipal Regional Permit (MRP), which became effective on January 1, 2016. The MRP applies to 76 large, medium and small municipalities (cities, towns and counties) and flood control agencies that discharge stormwater to San Francisco Bay, collectively referred to as Permittees.

Over the last 13 years, under the MRP and previous permits, new development and redevelopment projects on private and public property that exceed certain size thresholds ("Regulated Projects") have been required to mitigate impacts on water quality by incorporating site design, pollutant source control, stormwater treatment and flow control measures as appropriate. LID treatment measures, such as rainwater harvesting and use, infiltration, and biotreatment, have been required on most

Regulated Projects since December 2011. Construction of new roads is covered by these requirements, but projects related to existing roads and adjoining sidewalks and bike lanes are not regulated unless they include creation of an additional travel lane.

A new section of the MRP requires Permittees to develop and implement long-term Green Infrastructure (GI) Plans for the inclusion of LID measures in storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other elements. The GI Plan must be completed by September 30, 2019. As part of the GI planning process, the MRP requires Permittees to adopt a *Green Infrastructure Plan Framework* (Framework) by June 30, 2017 and submit it to the Regional Water Quality Control Board (Water Board) by September 30, 2017. The Framework, a work plan for completing the GI Plan, must at a minimum include a statement of purpose, tasks and timeframes to complete the required elements of the GI Plan.

Other sections of the MRP include requirements for municipalities to control pollutants of concern to water quality in stormwater discharges, including polychlorinated biphenyls (PCBs), mercury, trash and pesticides. LID measures incorporated into green infrastructure can help remove these pollutants from stormwater runoff. For this reason, the MRP establishes a new linkage between public infrastructure retrofits and required reductions in discharges of certain pollutants, specifically PCBs and mercury. Over the next few decades, Permittees must reduce the loads of PCBs and mercury in stormwater discharges through various means, with a portion of these load reductions achieved through the installation of GI systems. Permittees in Santa Clara County, collectively, must implement GI on public and private property to reduce mercury loading by 16 grams/year and PCB loading by 37 grams/year by 2020. The load reductions will continue in future permits. Therefore, these efforts will be integrated and coordinated countywide for the most effective program. Other pollutants, including trash and pesticides, should also be coordinated with the GI program since, when properly designed, constructed and maintained, biotreatment systems may also be credited towards trash and pesticide reduction goals.

A key part of the GI definition in the MRP is the inclusion of both private and public property locations for GI systems. This has been done in order to plan, analyze, implement and credit GI systems for pollutant load reductions on a watershed scale, as well as recognize all GI accomplishments within a municipality. However, the focus of the GI Plan and Framework is the integration of GI systems into <u>public</u> rights-of-way. The GI Plan is not intended to impose retrofit requirements on private property, outside the standard development application review process for projects already regulated by the MRP, but may provide incentives or opportunities for private property owners to add or contribute towards GI elements if desired.

1.3 Purpose of Green Infrastructure Plan and Framework

The purpose of the City of Cupertino's GI Plan is to describe how the City will gradually transform its urban landscape and storm drainage systems from "gray" to "green"; that is, shift from traditional storm drain infrastructure, where stormwater runoff flows directly from impervious surfaces into storm drains and receiving waters, to a more resilient, sustainable system that reduces and slows runoff by dispersing it to vegetated areas, promotes infiltration and evapotranspiration, collects runoff for nonpotable uses, and treats runoff using biotreatment and other green infrastructure practices. The GI Plan will also be used to demonstrate the City's long-term commitment to implementation of green infrastructure to help reduce loads of pollutants of concern, particularly mercury and PCBs, discharged in stormwater to local waterways. The GI Plan will be coordinated with other City plans, such as the General Plan, the Climate Action Plan, the Bicycle Transportation Plan, the Pedestrian Transporation Plan, and specific master plans, to achieve multiple potential benefits to the community, including improved water and air quality, reduced flooding, increased water supply, traffic calming, safer pedestrian and bicycle facilities, climate resiliency, improved wildlife habitat, and a more pleasant urban environment.

The purposes of this Framework are to:

1. Provide some background on the MRP requirements for GI Planning;
2. Describe the purpose, goals, and tasks to develop the City's *GI Plan*; and,
3. Outline the time frames for the creation of the City's GI Plan and other GI tasks required in the MRP.

This Framework was reviewed and approved for submittal to the Water Board by the City Council of the City of Cupertino. The City's Staff Report is attached as Appendix A.

This Framework is submitted by the City in compliance with MRP Provision C.3.j.i.(1).

1.4 City of Cupertino Description and Background

Incorporated in 1955, the City of Cupertino is located in Santa Clara County, and has a jurisdictional area of 7,206.4 acres. (11.26 square miles) According to the 2010 Census, the City had a population of 58,302, with a population density of 5,179 people per square mile and average household size of 2.87.

According to the General Plan, "Community Vision 2040", Cupertino's population grew from 3,664 in 1960 to over 50,500 in 2000. Most of the population growth was from tract development during the 1970s and 1980s and annexation of unincorporated County land. Between 2000 and 2010 the City of Cupertino's population increased by 15.3 percent, from 50,546 (18,204 households) to 58,302 persons (20,181 households). A portion of this population growth can be attributed to the City's annexation of 168 acres of land between 2000 and 2008. The Census Bureau estimated that Cupertino's population would be 60,572 by July 1, 2015, approximately a 3.7% increase from 2010. Cupertino's population was 58,302 at the time of the April 1, 2010 Census. The City's population is projected to grow to 66,110 by 2040 (Plan Bay Area, 2013), approximately a 12% increase over 30 years.

The City of Cupertino is best known as the home of Apple's corporate headquarters and the site of its new 176-acre campus, officially called Apple Park. The first employees will begin occupying their new offices in April 2017. Apple announced that it will take more than six months to move 12,000 employees, and some construction will continue over the summer as employees move in. Upon completion, it is estimated that more than 23,400 Apple employees will be based in Cupertino.

Other companies located in Cupertino include Seagate Technology, Panasonic, Amazon Lab126, SugarCRM (customer resource management), A Carrot Inc. (computer systems and software). Though Cupertino is associated with technology companies, very little manufacturing takes place in the City. Cupertino's office parks are primarily dedicated to management and design functions.

Two quarries within the city's sphere of influence, Stevens Creek and Permanente (Lehigh Cement), are located in the unincorporated area outside city limits, and therefore, Santa Clara County has regulatory jurisdiction. There are no industrial sites or facilities within the jurisdictional boundaries of the City of Cupertino that are subject to the State's Industrial General Permit for discharges associated with industrial activities or any other individual industrial National Pollutant Discharge Elimination System (NPDES) permit.

A description of the the City of Cupertino's characteristics is provided below:

- Cupertino's land use pattern was largely built on a conventional suburban model, with predominantly single-family residential subdivisions and distinct commercial and employment centers.
- Percentages of the City of Cupertino's jurisdictional area within the seven (7) land use classes identified by ABAG (2005) are shown in the table below.

Table 1. Cupertino's Land Use Percentages

Land Use Category	Jurisdictional Area (Acres)	% of Jurisdictional Area
Residential	3,938.2	57.2%
Commercial and Services	483.2	7.0%
Retail	303.6	4.4%
Industrial	278.1	4.0%
K-12 Schools	243.7	3.6%
Urban Parks	101.9	1.5%
Other[1]	1,531.8	22.3%
Total	6,880.50	100%

- With the Completion of Apple's new headquarters, 176 acres of the City's industrial area (in the table above) will have been redeveloped, incorporating green infrastructure and LID features, such as reduction of impervious surfaces,

[1] "Other" includes open space and vacant land

underground parking with green roof style, landscape covering. The site is designed to be ~ 80% green space with 7,000 trees.

- Cupertino is defined by its four major roadways: Homestead Road, Wolfe Road, De Anza Boulevard and Stevens Creek Boulevard. These major mixed-use corridors have been the center of retail, commercial, office and multi-family housing in Cupertino for decades. In order to support local and regional commercial, office and housing needs, each of these corridors must be improved. They should be enhanced with more pedestrian, bicycle and transit facilities in order to meet the current and future needs of the community.
- There are nine Special Areas within Cupertino. Each Special Area is located along one of the four major mixed-use corridors in the city, which represent key areas within Cupertino where future development and reinvestment will be focused. Goals for these areas include more bicycle and pedestrian friendly streets and improved walkable, bikable connectivity to adjacent areas and services.
- Cupertino has approximately 400 acres of streets and roads.
- Common residential street widths range from 20 feet (for streets with no street parking) to 36 feet (for those with parking on both sides). Developers are typically required to install curb, gutters, and sidewalks. The City prefers detached sidewalks with a landscaped buffer in between the street and the pedestrian walk to enhance community aesthetics and improve pedestrian safety.
- The City has approximately 1.5 miles of rural road in the residential hillside area of Regnart Road.
- Cupertino's hillside provide important habitat for plants and wildlife; watershed capacity to prevent flooding in downstream areas; a wide vegetative belt that cleanses the air of pollutants; and a natural environment that provides a contrast to the built environment.
- The City is currently updating its Storm Drainage Master Plan. While efforts in early years focused on expanding storm drain capacity and wastewater treatment, the approach today is to reduce and filter runoff through project design and management. Cupertino's storm drain system currently operates adequately, with some targeted upgrades or improvements likely over the next 25 years.
- Two state highways traverse Cupertino. The City is linked to the cities of San Francisco and San José by Interstate Freeway 280 which runs along most of the its northern border. State Route 85, which runs from Mountain View to South San José, cuts diagonally across the City at its northwest boundary to its southeast boundary. All state highways (and freeways) are owned and maintained by the California Department of Transportation (Caltrans). Cupertino is defined by its four major roadways: Homestead Road, Wolfe Road, De Anza Boulevard and Stevens Creek Boulevard. These major mixed-use corridors have acted as the "spines" of the community for decades.

- Significant water bodies and water sources are;
  - Stevens Creek
  - Permanente Creek
  - Regnart Creek
  - Heney Creek
  - Calabazas Creek
- The McDonald-Dorsa quarry, which used to operate south of the Deep Cliff Golf Course and Linda Vista Park, was closed in the 1970s and is not a current source of minerals. The site has since been designated as residential, while the portion that is now Linda Vista Park is designated for parks and open space. However, since it was closed prior to the Surface Mining and Reclamatin Act of 1975 (SMARA), redevelopment in the area should address soils stabilization and reclamation issues.
- Two expansive projects within the City, occurred between 2009 and 2017, incorporating green infrastructure design concepts and benefits that the City will consider applying toward its pollutant load reduction credit. The first was the 18-acre Stevens Creek Corridor Park and Restoration CIP project, phase 1 (completed in 2009) and phase 2 (completed in July 2014). The second green infrastructure project, which is expected to be complete in 2017, is owned by Apple. The project redeveloped 176 acres of private old industrial land which, according to Apple VP of Environmental Initiatives, Lisa Jackson, will be 80 percent green space. Green infrastructure amenities incorporated in these projects are described below.

<u>Planned or Completed GI projects in Cupertino from 2009 - 2017</u>
Phase 1 of the Stevens Creek Corridor and Creek Restoration project at Blackberry Farm in Cupertino restored a portion of Stevens Creek, enhanced natural hydrologic processes, and improved wildlife and habitat values. Impervious cover was reduced by 3.4 acres, including an asphalt driveway and parking lot, and concrete surfaces in the creek corridor. The former parking lot, which drained directly into the creek, was replaced by a smaller green parking area, set back from the creek and made entirely of permeable material. Drive aisles are made of porous concrete that is colored to reduce heat gain. Vegetated parking bays were planted with turf rings to support vehicle weight and dozens of native trees were planted. The design aimed to use all rain and storm flows to water native plantings. The project site is located within a flood plain. It was designed to accommodate being submerged during unusually high creek flows without damage to new infrastructure, water quality or wildlife and to retain stormwater onsite. The design enables the site's ability to attenuate flooding, and naturally filter and return rainfall and runoff from the site to groundwater.

Phase 2 of the Stevens Creek Corridor project included four new bioswales and an infiltration area installed on the adjacent golf course to capture and infiltrate runoff from the golf course, buildings, and the parking lot that previously flowed directly into the creek. Additionally, an all-weather trail was installed using pervious concrete. The trail material is compatible with floodplain standards & protects the fishery & wildlife.

“Apple Park”, the 176-acre site that replaced the former Hewlett Packard industrial campus, now includes several green infrastructure features, such as LID measures that will retain stormwater onsite, underground parking, the removal of a section of Pruneridge Avenue, the addition of orchards (a total of 7,000 trees), and sustainable landscaping. The former HP campus was previously covered in buildings, concrete parking lots and non-indigenous decorative trees ill-suited to the specific Pacific climate. The strongest of the trees are being replanted and augmented with sturdy species that will flourish to create large open expanses of greenery. The car park (with 14,200 spaces) is completely buried below the landscape. Due to its underground location, this will triple the amount of green area in the new Apple campus. One thousand bikes will be kept on the site and available to staff to get around the campus. The new campus will reportedly use recycled water and will use 13,300 feet of pipeline to share the supply between it and Cupertino.

1.5 City of Cupertino Goals and Overall Approach

The following principles, goals, strategies and visions are from the City of Cupertino’s General Plan, Community Vision 2040.

Cupertino Guiding Principle #10 - Preserve Cupertino’s environment by enhancing or restoring creeks and hillsides to their natural state, limiting urban uses to existing urbanized areas, encouraging environmental protection, promoting sustainable design concepts, improving sustainable municipal operations, adapting to climate change, conserving energy resources and minimizing waste.

General Plan Environmental Resources and Sustainability Element:
Strategy ES-2.1.5: Urban Forest. Encourage the inclusion of additional shade trees, vegetated stormwater treatment and landscaping to reduce the “heat island effect” in development projects. Page ES-17; Goal ES-2: Promote Conservation of Energy Resources, Policy ES-2.1: Conservation and Efficient Use of Energy Resources

Strategy ES-5.1.1: Urban Forest. Ensure that the City’s tree planting, landscaping and open space policies enhance the urban ecosystem by encouraging medians, pedestrian crossing and curb-extensions planting that is native, drought tolerant, treats stormwater and enhances urban plant, aquatic and animal resources. Page ES-22; Goal ES-5: Protect the City’s Urban and Rural Ecosystems, Policy ES-5.1: Urban Ecosystem

Strategy ES-5.1.2: Built Environment. Ensure that sustainable landscaping design is incorporated in the development of City facilities, parks and private projects with the inclusion of measures such as tree protection, stormwater treatment and planting of native, drought tolerant landscaping that is beneficial to the environment. Page ES-

22; Goal ES-5: Protect the City's Urban and Rural Ecosystems, Policy ES-5.1: Urban Ecosystem

Strategy ES-7.2.1: Lot Coverage. Consider updating lot coverage requirements to include paved surfaces such as driveways and on-grade impervious patios to incentivize the construction of pervious surfaces. Page ES-25; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.2: Reduction of Impervious Surfaces

Strategy ES-7.2.2: Pervious Walkways and Driveways. Encourage the use of pervious materials for walkways and driveways. If used on public or quasi-public property, mobility and access for the disabled should take precedence. Page ES-25; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.2: Reduction of Impervious Surfaces

Strategy ES-7.2.3: Maximize Infiltration. Minimize impervious surface areas, and maximize on-site filtration and the use of on-site retention facilities. Page ES-25; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.2: Reduction of Impervious Surfaces

Strategy ES-7.3.1: Development Review. Require LID designs such as vegetated stormwater treatment systems and **green infrastructure** to mitigate pollutant loads and flows. Page ES-26; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.3: Pollution and Flow Impacts

Strategy ES-7.4.1: Storm Drainage Master Plan. Develop and maintain a Storm Drainage Master Plan which identifies facilities needed to prevent "10-year" event street flooding and "100-year" event structure flooding and integrate **green infrastructure** to meet water quality protection needs in a cost effective manner. Page ES-26; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.4: Watershed Based Planning

Strategy ES-7.11.7: Green Business Certification and Water Conservation. Continue to support the City's Green Business Certification goals of long-term water conservation within City facilities, vegetated stormwater infiltration systems, parks and medians, including installation of low-flow toilets and showers, parks, installation of automatic shut-off valves in lavatories and sinks and water efficient outdoor irrigation. Page ES-26; Goal ES-7: Ensure Protection and Efficient Use of Water Resources, Policy ES-7.4: Watershed Based Planning.

In the last 20 years, the City has made strides towards improving walkability and bikeability by retrofitting existing streets to include bike lanes; creating sidewalks lined with trees along major boulevards; and encouraging development to provide a more pedestrian-oriented frontage with active uses, gathering places and entries lining the street.

Cupertino has already preserved an 18-acre site and restored creek habitat (Stevens Creek Corridor and Restoration Project) in the City to maintain biodiversity and ecological integrity of local natural systems. The City is now looking at opportunities in the built and natural environment to sustain and enhance biodiversity.

As the City seeks to implement sustainability and community health objectives, future growth and retrofitting of existing infrastructure will create mixed-use, commercial, employment and neighborhood centers; pedestrian-oriented and walkable spaces for the community to gather; and distinct and connected neighborhoods with easy walkable and bikeable access to services, including schools, parks and shopping.

The City will look towards focusing future change within Special Areas that are located on Cupertino's major mixed-use corridors. These areas already have a mix of commercial, office, hotel and residential uses, and are located along roadways that will be enhanced with "Complete Streets" features, improved landscaping and expanded public spaces (e.g., parks and plazas).

Cupertino has an abundance of natural resources, including hillsides, creek corridors, and sensitive animal and plant habitats along the foothills. Much of this land is preserved in low-intensity residential and agricultural uses or open space. As redevelopment occurs, the City will strive to preserve these natural areas through land use and building design decisions.

2.0 GREEN INFRASTRUCTURE PLAN ELEMENTS & APPROACH

2.1 Summary of Required Elements

To meet MRP requirements, the City of Cupertino's Green Infrastructure (GI) Plan will need to contain certain mandatory elements:

- **Project Identification and Prioritization Mechanism**: The GI Plan must describe the mechanism by which the City of Cupertino will identify, prioritize and map potential and planned projects that incorporate green infrastructure components in different drainage areas within the City of Cupertino. These include public and private projects that may be implemented over the long term, with milestones for implementation by 2020, 2030, and 2040. The mechanism must include the criteria for prioritization and outputs that can be incorporated into the City of Cupertino's long-term planning and capital improvement processes.
- **Prioritized Project Locations and Timeframes**: The GI Plan must contain the outputs resulting from the identification and prioritization mechanism described above, such as lists and maps of prioritized projects and timeframes for implementation. The outputs must also include "targets" or estimates of how much impervious surface within the City of Cupertino will be converted or "retrofit" to drain to a green infrastructure feature, such as a vegetated area or stormwater capture or treatment facility, by the 2020, 2030, and 2040 milestones.
- **Completed Project Tracking System**: The GI Plan must describe the City of Cupertino's process for tracking and mapping completed public and private projects and making the information available to the public.
- **Guidelines and Specifications**: The GI Plan must include general design and construction guidelines, standard specifications and details (or references to those documents) for incorporating green infrastructure components into projects within the City of Cupertino. These guidelines and specifications should address the different street and project types within the City of Cupertino as defined by its land use and transportation characteristics, and allow projects to provide a range of functions and benefits, such as stormwater management, bicycle and pedestrian mobility and safety, public green space, urban forestry, etc.
- **Integration with Other Plans**: The GI Plan must describe its relationship to other planning documents and efforts within the City of Cupertino and how those planning documents have been updated or modified, if needed, to support and incorporate the green infrastructure requirements. If any necessary updates or

modifications have not been accomplished by the completion of the GI Plan, the GI Plan must include a work plan and schedule to complete them.

- **Evaluation of Funding Options**: The GI Plan must include an evaluation of funding options for design, construction, and long-term maintenance of prioritized green infrastructure projects, considering local, state and federal funding sources.

In addition, the City of Cupertino must adopt **policies, ordinances, and/or other appropriate legal mechanisms** to allow implementation of the GI Plan. The City must also **conduct outreach and education** to elected officials, department managers and staffs, developers and design professionals, and the general public as part of development and implementation of the GI Plan and implementation of specific projects within the GI Plan.

2.2 Approach to Completion of Required Elements

The City of Cupertino is committed to working within its Public Works, Community Development, Sustainability, GIS, and Recreation & Community Services departments, and with the Santa Clara Valley Water District and SCVURPPP to complete the required GI Plan elements described in Section 2.1. This section describes the City of Cupertino's approach to each required element.

2.2.1 Outreach and Education

One of the first and most important steps in the development of the GI Plan is educating a municipality's department staff, managers, and elected officials about the purposes and goals of green infrastructure, the required elements of the GI Plan, and steps needed to develop and implement the GI Plan, and get their support and commitment to the Plan and this new approach to urban infrastructure. Another important first step is local community and stakeholder outreach to gain public support. The City of Cupertino began this process in FY 15-16 and FY 16-17 by completing the following tasks:

- Convened 3-4 interdepartmental meetings in 2016 with with Public Works, GIS, CIP and Environmental staff and management to discuss GI requirements and assigned tasks.
- Discussed with appropriate department staff the MRP requirements to analyze proposed capital projects for opportunities to incorporate GI, and completed the first list of planned and potential GI projects.
- Provided training to department staff on GI requirements and strategies with presentations by SCVURPPP's Assistant Program Manager on February 27th and March 6th 2017 at City Hall. Invited staff to attend SCVURPP;s Green Infrastructure workshop on April 19. 2017. Six (6) planning and public works staff participated in SCVURPPP's 2016 Green Infrastructure workshop.

- Invited elected officials to a Green Infrastructure presentation given by the SCVURPPP's Assitant Manager on March 6, 2017 in Community Hall to raise awareness of the goals and requirements in the MRP and the concepts, intent and multiple benefits of GI.
- At the suggestion of the Vice Mayor, on March 16, 2017, the Sustainability Commission invited guest speaker, Robin Grossinger, a scientist from San Francisco Estuary Institute (SFEI), to give his presentation on the vision for a resilient Silicon Valley landscape. SFEI's recommendations for a more sustainable South Bay looks at what we can be doing to integrate resilient landscape within the reality of new and re-development. From a practical perspective, we can consider what we can be doing over the course of next generations to improve the ecology of the area and how we can work with larger developments to incorporate these types of principles in our planning. Cupertino has a couple of opportunities that have been discussed in the last couple of years that could potentially integrate these types of principals.
- Coordinated with SCVURPPP and the Watershed Education and Outreach (WEO) subgroup on a comprehensive outreach and education program. Key audiences include: the general public (countywide, and in the neighborhood or municipality where GI projects are located); the development community (e.g., developers, engineers, landscape architects, and contractors); and elected officials.
- Public Works Environmental staff participated in the Green Infrastructure Leadership Conversation in Oakland on December 9 2016 and the Regional Roundtable on Sustainable Streets held in Oakland on March 28 2017.

The City of Cupertino will conduct or continue to conduct the following education and outreach activities as part of development of the GI Plan:

- Continue to hold inter-department meetings to collect input for the GI Plan.
- Continue to conduct internal training as needed, and encourage staff to attend SCVURPPP GI trainings.
- Continue to provide outreach to the general public and developers in coordination with SCVURPPP.
- Continue to keep elected officials updated on GI Plan development and schedule for adoption.
- Schedule a Council Study Session in 2019, prior to City Council's consideration of the final Plan at a regularly scheduled meeting to inform Council and the public of the features in the draft GI Plan.
- Provide outreach to Sustainability Commission, the Bike and Pedestrian Commission, the local community, and other stakeholders to get input and support for the GI Plan.

- Continue to engage with San Francisco Estuary Institute (SFEI) and/or other potential partners that offer a regional perspective for enhancing sustainable natural landscaping with multi-faceted benefits.

2.2.2 Project Identification and Prioritization

The City of Cupertino will use the following approaches to identify, prioritize and map potential and planned projects that incorporate green infrastructure components in different drainage areas within the City.

a. **Coordination with the Santa Clara Basin Stormwater Resource Plan (SWRP)**: The Santa Clara Valley Water District (District) and SCVURPPP obtained a Proposition 1 Stormwater Grant Program planning grant to develop a Stormwater Resource Plan (SWRP) for the Santa Clara Basin. The SWRP will support the development and implementation of GI Plans within the Basin (including the City of Cupertino's GI Plan) through identification of local and regional opportunities for GI projects and development of modeling tools for estimating pollutant load reductions over future timeframes (2020, 2030 and 2040). The resulting maps and tools will be available for local use by participating municipalities.

   The Stormwater Resource Plan will also produce a list of prioritized GI projects eligible for future State implementation grant funds. Building on existing documents that describe the characteristics and water quality and quantity issues within the Santa Clara Basin, the SWRP will identify and prioritize multi-benefit GI projects throughout the Basin, using a metrics-based approach for quantifying project benefits such as volume of stormwater infiltrated and/or treated and quantity of pollutants removed. The metrics-based analysis will be conducted using hydrologic/hydraulic and water quality models coupled with GIS resources and other tools. The products of these analyses will be a map of opportunity areas for GI projects throughout the watershed, an initial prioritized list of potential projects and strategies for implementation of these and future projects. The list of potential projects within the City of Cupertino will then be incorporated into the City's list for its GI Plan.

   The draft SWRP will be completed by May 2018, and the final SWRP (after public input) completed by December 2018. Earlier stages of the process will provide input to GI Plan development, such as the identification of projects in fall 2017 and quantification of project benefits in early 2018.

b. **Review of Capital Improvement Program Projects for Green Infrastructure Opportunities**: As required by the MRP, the the City of Cupertino has begun and maintains a list of public and private GI projects that are planned for implementation during the permit term (2015-2020), and public projects that have potential for GI measures. The first such list was submitted with the FY 15-16

Annual Report. These lists will be used to provide potential projects for inclusion in the SWRP development and incorporation into the GI Plan.

The GI Plan will also describe the tools and approaches used, the criteria for prioritization, and the outputs that can be incorporated into the Cupertino's long-term planning and capital improvement processes.

2.2.3 Prioritized Project Locations and Timeframes

The GI Plan will include the prioritized list of projects and map of locations within the the City's jurisdiction resulting from Task 2.2.2 above, as well as timeframes for implementation. The outputs will also include "targets" or estimates of how much impervious surface within the City of Cupertino will be converted or "retrofit" to drain to a green infrastructure feature, such as a vegetated area or stormwater treatment facility, or converted to pervious surfaces, by the 2020, 2030, and 2040 milestones.

2.2.4 Completed Project Tracking System

This section of the GI Plan must describe the the City of Cupertino's process for tracking and mapping completed public and private projects and making the information available to the public. The City will work with SCVURPPP to develop a consistent countywide approach to tracking and mapping completed projects and estimating expected PCB and mercury load reductions resulting from these projects.

2.2.5 Guidelines and Specifications

The City of Cupertino will support and participate in the SCVURPPP process to develop and adopt GI Design Guidelines and Specifications for streetscapes and other public infrastructure. A set of model Guidelines and Specifications will be developed at the countywide level which will be used as a reference by the City. The City of Cupertino will evaluate the model Guidelines and Specifications for consistency with its own local standards, and revise existing guidelines, standard specifications, design details, and department procedures as needed.

The Guidelines and Specifications will also include the results of the regional analysis of alternative approaches to sizing GI facilties where project constraints (e.g., limited space in public right-of-way, utility conflicts, etc.) preclude fully meeting the permit-required sizing criteria for such facilities.

2.2.6 Integration with Other Municipal Plans

The City of Cupertino has reviewed its existing municipal planning documents and Identified which documents need to be updated or modified to support and/or be consistent with the GI Plan, and the timing for those updates or modifications. A summary of the results of the municipal plan review and the schedule for updates or modifications is presented in Table 2 below. If any necessary updates or modifications have not been accomplished by the completion of the GI Plan, the GI Plan will include a work plan and schedule to complete them.

Table 2. Schedule for Municipal Plan Updates for GI

Name of Plan	Last Updated	Next Projected Update	Includes Language to Support GI?	If No, Date to Complete GI Update
General Plan – Element 6	2015	2040	Yes	N/A
Climate Action Plan	2015		Yes	N/A
Pedestrian Transportation Plan	2002	2017	Yes, will include GI	Sep 2019
Bicycle Transportation Plan	2016	2021	TBD	Sep 2019
Storm Drain Master Plan	1992	2018	Yes, will include GI	Sep 2019
Urban Forestry Plan (Included in GP)	2015	2023	Yes	N/A
Citywide Parks & Recreation System Master Plan	N/A	2018	Yes, will include GI	N/A

2.2.7 Evaluation of Funding Options

The City of Cupertino currently uses a combination the City's General Fund and federal, State, and other applicable grants to fund construction of projects in its capital improvement program (CIP) and other projects. The General Fund, and when applicable, CalRecycle grants, are used for public street, parking lot and building maintenance; maintenance of stormwater control measures installed at public projects; and maintenance of other landscaped areas (e.g., parks, medians, public plazas, etc.)

The City of Cupertino will analyze possible funding options to raise additional revenue for the projects that will eventually be included in the City's GI Plan, including capital and operation and maintenance (O&M) costs of these projects. Options for capital project funding include the State Proposition 1 Stormwater Grant Program implementation grants, Prop 1 IRWMP grants, and California Urban Rivers Grants.

Additional funding options that will be explored by Cupertino include:

- **Treatment at an Offsite Location** – An alternative compliance option in which a private Regulated Project (one required to treat runoff from created and replaced impervious surface on the project) would instead treat runoff from an equivalent amount of impervious surface offsite, potentially in the public right-of-way, in LID treatment facilities it would pay to construct (and/or maintain). That is, the private developer would fund and oversee construction of a potential green infrastructure project identified by the City of Cupertino.
- **Payment of In-Lieu Fees** – An alternative compliance option in which the developer of a private Regulated Project, in lieu of constructing LID treatment facilities on-site, would pay equivalent in-lieu fees for construction and maintenance of a regional or municipal stormwater treatment (green infrastructure) facility.
- **Public-Private Partnerships** – An option in which green infrastructure facilities are jointly funded by the municipality and a private organization or land owner for the benefit of both parties.

2.2.8 Adoption of Policies, Ordinances, and Other Legal Mechanisms

The City of Cupertino will review its existing policies, ordinances, and other legal mechanisms related to current planning procedures and implementation of stormwater NPDES permit requirements to Identify which documents may need to be updated or modified to help implement the GI Plan. A summary of the results of the policy, ordinance, and legal mechanisms review and the schedule for actions is presented in Table 3 below. All needed updates, modifications, or new mechanism(s) will be completed and adopted (if necessary) by September 30, 2019.

Table 3. Schedule for Municipal Policy and Ordinance Updates

Policy/Ordinance/Legal Mechanism	Description	Update Needed?	Update Schedule
Municipal Code Chapter 9.18 Stormwater Pollution & Watershed Protection	Municipal Code: remove outdated language; add requirements for GI in private development	TBD	Sept 2019
Environmental Programs/Public Works Conditions of Approval for Private Development Projects	If needed, update to require consideration of G.I. whenever feasible	TBD	Sept 2019

In the 2019 Annual Report or earlier annual reports, the City of Cupertino will describe any updates to ordinances, policies, plans or programs that were needed to implement the GI Plan and associated programs, or state that existing mechanisms are sufficient to implement the GI Plan.

2.2.9 Completion and Adoption of the GI Plan

The City of Cupertino will draft its GI Plan to contain all of the elements described above, obtain reviews and approvals by various departments, governing bodies, and the public as needed, and submit the GI Plan to the Water Board by September 30, 2019. Internal deadlines to complete and adopt the GI Plan are presented in Table 4 below.

Table 4. Schedule for Completion and Adoption of GI Plan

Task	Department/Group	Deadline
Prepare draft GI Plan Determine if a GI workgroup of municipal staff or a consultant is needed to develop the City's Plan. *(Input from SCVURPPP's developing Stormwater Resources Plan (SWRP) on the identification of projects and quantification of project benefits, will be available in fall 2017 and early 2018, respectively).	Public Works Environmental Prgs Mgr, Assistant Dirctor, Engineer, and CIP Manager, with input from Assistant Comm. Dev Director, Sr. Planner, and mapping support from GIS Manager	Dec 2017 – Apr 2018
Review draft GI Plan *(SCVURPPP's draft SWRP to be developed by May 2018)	Community Development; Public Works; Sustainability, Parks and Community Services;	May - Jun 2018
Public input on draft GI Plan	Sustainability Commission, Bike/Ped Commission, (possibly Planning Commission)	July - Aug 2018
Update draft GI Plan	Public Works	Aug – Sept 2018
Approve draft GI Plan * The final SCVURPPP Santa Clara Basin SWRP (after public input) will be completed by December 2018.	City Manager, Public Works Director, Assistant City Manager, Assist PW Dir, Assist Comm Dev Director and City Engineer	Sept – Dec 2018

Review/consider draft GI Plan * The final SCVURPPP Santa Clara Basin SWRP (after public input) will be completed by December 2018.	Council Study Session/ Public Input	Jan-Mar 2019
Incorporate Study Session comments	Public Works/City Manager	Mar-Apr 2019
Approve final GI Plan	City Council	May-Aug 2019

3.0 GREEN INFRASTRUCTURE PLAN DEVELOPMENT SCHEDULE

This section describes the time frames for completion of the tasks presented in Section 2 to develop and adopt the City of Cupertino's GI Plan.

Table 5. Green Infrastructure Plan Development Schedule

Task No.	Green Infrastructure Plan Development Task	Responsible Organization(s)/ Department(s)	Estimated Completion Date
2.1	Required Elements: All required elements of the Plan will be completed by September 2019.	Public Works Environmental Programs	Sept 2019
2.2	Approach to Completion of Required Elements	Public Works Environmental Programs	
2.2.1	Outreach and Education; As development of the GI Plan evolves identify opportunities for public input. Provide draft plan to Sustainability Commission, Bike and Pedestrian Commission and Planning Commission.	Public Works, Environmental, and Sustainability	Aug 2019
2.2.2	Project Identification and Prioritization: Working with SCVURPPP, identify projects using outputs from prioritization tools, the City's planned CIP list, the Storm Drainage Master Plan and the Santa Clara Basin SWRP. Map and prioritize projects on a drainage-area-specific basis for implementation by 2020, 2030, and 2040 with targets for the amount of impervious surface to be retrofitted for those years. Identify projects that may be candidates for grant funding under Round 2 of the Prop 1 Stormwater Grant Program.	Public Works, Environmental, Engineering and Traffic, with support from GIS for mapping	Apr 2018
2.2.3	Prioritized Project Locations and Timeframes; Add list of prioritized projects identified from the findings in step 2.2.2. to GI Plan.	Public Works and Community Development	Mar 2019
2.2.4	Completed Project Tracking System: The City will work with SCVURPPP to develop a consistent countywide approach to tracking and mapping completed public and private projects and estimating expected PCB and mercury load reductions resulting from these projects. (integrate w/ inspections)	Public Works Environmental and Engineering	Sept 2019

2.2.5	The Guidelines and Specifications: Will be developed collaboratively at the Countywide level through participation in SCVURPPP and fine tuned by City staff to align with City policies	Public Works Environmnental Programs & Engineering	April 2018
2.2.6	Integration with Other Municipal Plans: The City's General Plan, Vision 2040 and its Climate Action Plan already support the expansion of green infrastructure. The City's 2016 Bicycle Transportation Plan, 2017 Pedestrian Transportation Plan, and 2018 Storm Drainage Master Plan. There are potential opportunities for integrating green infrastructure into new bike lanes, pedestrian routes and stormdrain repairs or upgrades. Staff will review these plans to verify compatibility with the City's 2019 Green Infrastructure Plan.	Public Works; Community Development; Recreations & Community Services	July 2018
2.2.7	Evaluation of Funding Options: Resources to develop the Green Infrastructure Plan will include additional staff time for meetings to discuss feasibility and prioritization of projects within the Plan. Plan develoopment may require a municipal GI Plan work group. If additional funding is needed for Plan development it will be requested for the FY 18-19 budget. Costs to implement the City's GI Plan (2020 – 2040) cannot be estimated prior to identifying locations and scopes of potential green infrastructure projects. SCVURPPP will prepare guidance for completing the analysis of funding options during FY 16-17. The City will pursue recommended funding options for GI projects and complete its initial funding analysis prior to the City's FY 19-20 budget approval process, and for each budget process thereafter through FY 2039-2040.	Public Works and City Manager's Office	First evaluation by February 2019
2.2.8	Adoption of Policies or Ordinances, and Other Legal Mechanisms: The Watershed Protection Ordinance (Ch. 9.18) and PW Engineering/Environmental COAs support GI practices. Fine tuning might be needed after the final Plan has been adopted and the City begins to implement the Plan.	Public Works	By Sept 2019

2.2.9	Completion and Adoption of the GI Plan: Put on City Council agenda for approval by August 2019.	City Council/ presentation by Public Works	By Aug 2019

RESOLUTION NO. ________

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
FOR ADOPTING A GREEN STORMWATER INFRASTRUCTURE PLAN IN ACCORDANCE WITH PROVISION C.3.J OF THE MUNICIPAL REGIONAL PERMIT

WHEREAS, the City of Cupertino is a permittee under the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Permit (MRP) that regulates stormwater discharges from municipal storm drain systems throughout Santa Clara Valley; and

WHEREAS, the City of Cupertino is a member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), and implements the MRP in collaboration with other members of the SCVURPPP; and

WHEREAS, Provision C.3.j of the MRP requires each permittee to develop a Green Stormwater Infrastructure Plan that demonstrates how permittees will gradually shift from traditional "gray" storm drain infrastructure to a more resilient and sustainable storm drain system comprised of "green" infrastructure, which captures, stores and treats stormwater using natural processes; and

WHEREAS, all permittees under the MRP are required to submit by September 30, 2019 a Green Stormwater Infrastructure Plan to the Regional Water Quality Control Board; and

WHEREAS, the Cupertino Green Stormwater Infrastructure Plan guides the identification, implementation, tracking, and reporting of green stormwater infrastructure projects within the City of Cupertino over the long term; and

WHEREAS, the City of Cupertino is committed to complying with requirements of the MRP and implementing sustainable approaches and practices within the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby adopt and intends to support implementation of the City of Cupertino Green Stormwater Infrastructure Plan to achieve a more sustainable stormwater management system that provides multiple benefits to the community.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970, together with related State

CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Plan is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the adoption of a Green Stormwater Infrastructure Plan would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 3rd day of September, 2019, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED: _________________________ Steven Scharf, Mayor City of Cupertino	_________________________ Date
ATTEST: _________________________ Grace Schmidt, City Clerk	_________________________ Date

CITY OF CUPERTINO

PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

2019 Speed Table Installation Project No. 2019-112 contract award

Recommended Action

Authorize the City Manager to award a contract to G. Bortolotto & Company, Inc. in the amount of $246,100 and approve a construction contingency of $24,000 for a total of $270,000.

Discussion

On August 20, 2019, the City received bids for the 2019 Speed Table Installation Project. This project provides a total of twelve speed tables on N Portal Avenue, Merritt Drive, Meteor Drive, and Greenleaf Drive. Included in this project are striping enhancements originally included in the Bike Boulevards Phase 1 Project (which were rejected due to bids exceeding the project estimate). Speed tables will be installed shortly after paving of Portal Avenue in September 2019. Bike Boulevard Phase 1 and 2 interim improvements will follow in October.

A total of five bids were received. The following is a summary of bids deemed complete:

Bidder	Bid Amount
Engineer's Estimate	**$240,000**
G. Bortolotto & Co., Inc.	$246,100
O'Grady Paving, Inc.	$306,000
Redgewick Construction	$329,460
Lewis & Tibbitts, Inc.	$368,760
Alaniz Construction	$425,290

The engineer's estimate for this project was based upon the competitively bid unit costs of a similar project completed and current market trends.

Sustainability Impact

Installation of new speed tables and shared road markings will reduce vehicle travel speeds, thereby increasing safety for pedestrians and bicyclists. This may also reduce the number of vehicle trips within the neighborhoods.

Fiscal Impact

Award of the project will result in a fiscal impact of up to $270,000. Sufficient funds were budgeted and are available from account #420-99-036-900-905 STO30.

Prepared by: Jo Anne Johnson, Public Works Project Manager
Reviewed by: Roger Lee, Director of Public Works
Approved for Submission by: Deborah Feng, City Manager
Attachments:
A – Contract Documents

Contract

This public works contract (“Contract”) is entered into by and between the City of Cupertino (“City”), a municipal corporation, and G. Bortolotto & Company, Inc. (“Contractor”), for work on the **2019 Speed Table Installation Project** (“Project”).

The parties agree as follows:

1. **Award of Contract**. In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal and accompanying Bid Schedule, a copy of which is attached for convenience as Exhibit A, to perform the Work to construct the Project. On September 3, 2019, City authorized award of this Contract to Contractor for the amount set forth in Section 4 below.

2. **Contract Documents**. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract:

2.1 Notice Inviting Bids;
2.2 Instructions to Bidders;
2.3 Addenda, if any;
2.4 Bid Proposal and attachments thereto;
2.5 Contract;
2.6 Payment Bond, and Performance Bond;
2.7 General Conditions;
2.8 Special Conditions;
2.9 Project Plans and Specifications;
2.10 Change Orders, if any;
2.11 Notice of Award;
2.12 Notice to Proceed;
2.13 City of Cupertino Standard Details; and
2.14 The following: Location Map

3. **Contractor’s Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor’s timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor $___________________ (“Contract Price”) for all of Contractor’s direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.

5. **Time for Completion.** Contractor will fully complete the Work for the Project within 30 calendar or working <Chose one> days from the commencement date given in the Notice to Proceed (“Contract Time”). By signing below, Contractor expressly waives any claim for delayed early completion.

6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of $ 500 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

7. **Labor Code Compliance.**

   7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

   7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at http://www.dir.ca.gov/DLSR.

   7.3 **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code section 1725.5, subject to limited legal exceptions.

8. **Workers' Compensation Certification.** Pursuant to Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement or in violation of any California law, including Government Code section 1090 et seq., or the Political Reform Act, as set forth in Government Code section 81000 et seq. and its accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined under the Political Reform Act (Government Code section 81000, et seq., and regulations promulgated thereunder); or under Government Code section 1090, et seq.; or in violation of any City ordinance or requirement while serving as a City Representative or for one year thereafter. Any violation of this Section constitutes a material breach of the Contract.

10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery.. Notice for each party must be given as follows:

City:

Name: City of Cupertino
Address: 10300 Torre Avenue
City/State/Zip: Cupertino, CA 95014
Phone: 408-777-3354
Attn: Jo Anne Johnson
Email: joannej@cupertino.org
Copy to: pwinvoices@cupertino.org

Contractor:

Name:_______________________________________
Address:_____________________________________
City/State/Zip:_______________________________
Phone:_______________________________________
Attn:____
Email:____
Copy to:_____________________________________

12. General Provisions.

12.1 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

12.2 Third Party Beneficiaries. There are no intended third party beneficiaries to this Contract.

12.3 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedures Section 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside Santa Clara County, California.

12.4 Amendment. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

12.5 Integration. This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.

12.6 Severability. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

12.7 **Iran Contracting Act.** If the Contract Price exceeds $1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

12.8 **Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CONTRACTOR

______________________________	**CITY OF CUPERTINO**
<insert full name of Contractor above>	A Municipal Corporation
By___________________________	By___________________________
Name_______________________	Roger Lee
Title________________________	Director of Public Works
Date_______________________	Date ________________________
By	
Name_______________________	
Title	
Date_______________________	

APPROVED AS TO FORM:

By ____________________________
Name__________________________
City Attorney
Date___________________________

ATTEST:

____
Grace Schmidt
City Clerk
Date____________________________

Contract Amount: $246,100
P.O. No. ________________________
Account No. 420-99-036-900-905 STO30

END OF CONTRACT

CITY OF CUPERTINO

PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

2018-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority"

Recommended Actions

Approval of response to the 2018-2019 Civil Grand Jury of Santa Clara County Report Entitled, "Inquiry into Governance of the Valley Transportation Authority".

Background

On June 19, 2019 the Civil Grand Jury of Santa Clara County released a report on the operation and governance of the Santa Clara County Valley Transportation Authority (VTA) as part of VTA's responsibility to assure the public interest of the people of Santa Clara County. Pursuant to Penal Code Sections 933 and 933.05, the Grand Jury requested a response from the City of Cupertino and all governing bodies represented by VTA by September 16, 2019. Specifically, the City of Cupertino and 14 other governing bodies were asked to respond to finding #1 of the report and report recommendations 1c, 1d & 1e. VTA was asked to respond to report recommendations 1a, 1f, 1g, 2, 3a, 3b, 5a & 5b and the County of Santa Clara was asked to respond to 1b, 1d & 1e. The report is included as Exhibit A.

Discussion

The Grand Jury's report includes three findings and ten recommendations. Finding #1 is most relevant to the City of Cupertino, specifically 1a and those recommendations requested by the Grand Jury (1c, 1d and 1e). Staff is recommending a response to Recommendation 1a due to a conflict with VTA commissioning a study to evaluate their own governance. Finding #1 and associated recommendations from the Grand Jury report are described below. Attachment A, pages 43 through 46, includes all findings and recommendations.

Finding #1: The VTA Board, currently exclusively made up of elected officials from the Santa Clara County Board of Supervisors, the City of San José and the other cities in the County, suffers from:

- A lack of experience, continuity and leadership

- Inadequate time for the Directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions
- A lack of engagement on the part of some Directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization
- Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José
- Frequent tension between the Directors' fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other

Recommendation 1a: VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on elements such as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Recommendation 1b: As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

Recommendation 1c: As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Recommendation 1d: Within six months following completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation. This legislation should include appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the Directors' term of service, the addition of term limitations and the inclusion of appointed Directors who are not currently serving elected officials).

Recommendation 1e: In order to provide increased continuity in the leadership of the VTA Board, within six months following completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

A draft response letter for the City Council to consider is attached as Exhibit B.

Sustainability Impact

None

Fiscal Impact

None

Prepared by: David Stillman, Transportation Manager
Reviewed by: Roger Lee, Director of Public Works
Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Civil Grand Jury of Santa Clara County Report entitled, "Inquiry into Governance of the Valley Transportation Authority"

B – Response letter to Civil Grand Jury of Santa Clara County

INQUIRY INTO GOVERNANCE OF THE VALLEY TRANSPORTATION AUTHORITY

2018-2019 Civil Grand Jury
of Santa Clara County

June 18, 2019

Table of Contents

GLOSSARY AND ABBREVIATIONS

AC Transit	Alameda County Transit. A peer transit agency to VTA.
APTA	American Public Transit Association. A national association of which VTA is a member.
BART	Bay Area Rapid Transit. A peer transit agency.
County	County of Santa Clara
CPC	Capital Program Committee. A standing committee of the VTA Board of Directors.
DOT	US Department of Transportation. A national transportation agency.
EBRC	Eastridge-BART Regional Connector. Current nomenclature for the Eastridge light rail extension (Phase 2).
Farebox recovery ratio	Fares collected from passengers divided by operating expenses.
FTA	Federal Transit Administration. A federal agency providing transit data (see NTD) and services.
HMTA	Houston Metro Transit Agency
HOV	High Occupancy Vehicle
LRT	Light rail transit [system]
MTC	Metropolitan Transportation Commission. A Bay Area regional transportation coordination and planning agency.
Next Network	VTA's Next Network is a redesign of the transit network and is one component of an agency-wide effort to make public transit faster, more frequent and more useful for Santa Clara County travelers.
NTD	National Transportation Database. Database of statistics and metrics maintained by FTA.
PUC	California Public Utilities Code
SCCTD	Santa Clara County Transit District
SCVWD	Santa Clara Valley Water District

VTA	Santa Clara Valley Transportation Authority
VRH	Vehicle Revenue Hours

SUMMARY

The Santa Clara Valley Transportation Authority (VTA) is an independent special district created by the California legislature in 1972. Initially, the Santa Clara County (County) Board of Supervisors provided direct oversight of VTA and acted as its Board of Directors. Effective January 1, 1995, pursuant to further legislation, VTA began operating under a separate Board of Directors (VTA Board) composed of elected officials from throughout the County appointed to serve by the County Board of Supervisors and the governing authorities of VTA's constituent municipalities, with the allocation of VTA Board representation generally based on population.

For many years, VTA has been plagued by declining operating performance and recurring budget gaps between projected revenues and expenses (referred to as structural financial deficits) – notwithstanding significant population growth and, in recent years, increased employment levels throughout much of Silicon Valley.

The 2003-2004 Santa Clara County Civil Grand Jury conducted an "Inquiry into the Board Structure and Financial Management of the Valley Transportation Authority"[1] which found, among other things, that:

- The operating performance of VTA compared unfavorably to its peer organizations;
- The VTA Board had not effectively managed the finances of VTA, resulting in a substantial structural financial deficit that was projected to increase in the following year; and
- A root cause of VTA's poor performance was the governance structure of the VTA Board, which was "too large, too political, too dependent on staff, too inexperienced in some cases, and too removed from the financial and operational performance of VTA."

To address these issues and attempt to make the VTA Board more responsive, the 2003-2004 Grand Jury proposed various changes to the Board's structure. Although responses filed by seven of VTA's constituent municipalities were supportive of some or all the recommended changes, VTA's response defended the status quo, and most of the other municipalities adopted VTA's position. Accordingly, the recommended changes were not made.

The 2008-2009 Grand Jury again examined the governance of VTA and reiterated some of the same concerns noted in the earlier report, although the focus of the 2008-2009 report was primarily on the role and functioning of the VTA Board's appointed advisory committees.

[1] http://www.scscourt.org/court_divisions/civil/cgj/2004/BoardStructureFinancialMgmtVTA.pdf

The 2018-2019 Civil Grand Jury (Grand Jury) revisited the subject of VTA's governance and the work of the earlier grand juries and found that:

- VTA's operating performance has continued to deteriorate over the last 10 years, relative to both its own historical performance and the performance of its peers, across a wide variety of metrics;
- The VTA Board has consistently failed to adequately monitor VTA's financial performance and has taken action, albeit less than fully effective action, only in the face of imminent financial crises; and
- Despite the serious ongoing structural financial deficit, the VTA Board has been unwilling to review and reconsider decisions made years or even decades ago regarding large capital projects (and their attendant operating costs) that are no longer technologically sound or financially viable, based on their costs and projected ridership.

The Grand Jury concluded that today, more so than in 2004 or 2009, the VTA Board is in need of structural change to enable it to better protect the interests of the County's taxpayers and address the many complex challenges presented by emerging trends in transportation, rapidly evolving technology and the changing needs of Silicon Valley residents. The Grand Jury recommends several changes to the governance structure and operations of the VTA Board which will improve the Board's ability to effectively perform its important oversight and strategic decision-making functions. The Grand Jury further recommends that the VTA Board consider deferral of Phase 2 of the Eastridge light rail extension project pending a full review of the future role of light rail in VTA's transit system. Such a review should study alternative ways to meet the needs of the residents of East San Jose for modern, efficient public transportation without extending a costly and outdated light rail system and worsening VTA's already precarious financial condition.

In January 2019, the incoming Chairperson of the VTA Board issued a summary of her "2019 Perspectives and Priorities"[2] for VTA (see Board of Director's Meeting, January 7, 2019, section 8.2). Among the goals articulated by the Chairperson was improved board governance. The Chairperson announced that she would "convene a board working group to look at a range of board governance practices," with a view to improving "board engagement and effectiveness." The Grand Jury commends the Chairperson for focusing on the important subject of governance. This report may aid the Chairperson and the rest of the Board in that endeavor.

[2] http://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True

METHODOLOGY

The 2018-2019 Civil Grand Jury began this investigation of VTA on August 15, 2018 and concluded its work on May 29, 2019**.** The investigation primarily followed from issues highlighted in the report of the 2003-2004 Grand Jury and focused on the structure of the VTA Board of Directors, the effectiveness of its oversight of VTA's operating and financial performance, its handling of the agency's persistent structural financial deficit and its ability to address the many complex challenges facing VTA as it confronts the future of transportation in Silicon Valley. The Grand Jury employed a broad range of data gathering and investigative methods, including:

- **Site visits** were made to VTA headquarters, one of the VTA bus yards, VTA's downtown customer service center, and bus and light rail stops and stations.

- **The transit system** was used, including the purchase of Clipper Cards, riding buses and light rail trains during peak and off-peak hours, stops at and transit through Diridon Station, Eastridge, downtown and North County rail and bus facilities, and assessing access to transit stops by walking to stations and stops and using VTA parking sites.

- **Interviews** were conducted with 37 individuals (some more than once) over more than 50 hours. Interviewees included a substantial number of individuals who served as members of the VTA Board and its committees during 2018 and 2019, senior and mid-level VTA staff personnel, city and county government officials, and representatives of various community stakeholder groups.

- **Governing documents** were reviewed, including: (i) provisions of the California Public Utilities Code (PUC), which established VTA, particularly PUC Sections 100060 through 100063, which set forth the governance structure of the VTA Board; (ii) provisions of the VTA Administrative Code, adopted by the VTA Board to supplement the provisions of the PUC; and (iii) agreements among members of city groups who share representation on the VTA Board regarding the process for rotating their representation on the Board and collectively choosing their appointees. In addition, data regarding attendance records for VTA Board and committee meetings, directors' terms in office and voting records were examined.

- **Reports specific to VTA** were reviewed, including: (i) the 2003-2004 and 2008-2009 Civil Grand Jury reports and the responses thereto; (ii) a 2007 report entitled "Santa Clara Valley Transportation Authority Organizational and Financial Assessment," by the Hay Group (Hay Report); (iii) a 2008 report on VTA by the California State Auditor; (iv) a 2010 thesis entitled "Assessing Transit Performance: Recommended Performance Standards for the

Santa Clara Valley Transit Authority," authored by a San Jose State University master degree candidate; (v) a 2016 report entitled "Transit Choices Report," prepared for VTA by the consulting firm Jarrett Walker +Associates; and (vi) numerous public documents published by VTA and/or available on its website. These and other documents referred to in this report are listed in the Reference Section.

- **Comparisons** were made of VTA's performance in various operating and financial categories to the performance of other transit organizations utilizing data compiled by the American Public Transportation Association (APTA), the United States Department of Transportation (DOT), The Business Insider, the Federal Transit Administration (FTA) published in the National Transit Database (NTD), the Public Transit Factbook and other federal and industry indices and metrics. Industry and "think tank" reports and articles discussing and comparing transit agency performance, including, among others, the Cato Institute, the Heritage Foundation and the Hudson Institute, were also reviewed. For purposes of comparison, operating data from peer agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco, Sacramento and San Diego were reviewed. In connection with a comparison of governance structures, other agencies, including those serving Los Angeles, Seattle, Vancouver B.C., Austin, Chicago, New York, the District of Columbia and Phoenix, were considered.

- **Attendance** at regularly scheduled meetings of the VTA Board and its committees, including the Administration and Finance Committee, Capital Program Committee (CPC), Governance and Audit Committee, and Ad Hoc Financial Stability Committee between October 2018 and May 2019, as well as Board workshops on the Future of Transportation in Silicon Valley and the proposed biennial budget for fiscal years 2020 and 2021. Audio and video recordings of some of the meetings noted above, as well as other meetings of the VTA Board and certain committees conducted from January 2018 forward were reviewed.

DISCUSSION

A Brief History of the VTA

Santa Clara County Transit District (SCCTD) was created by the County's voters in June 1972 and took over operations of three financially strapped private bus companies. SCCTD was initially managed by the County's Department of Public Works, but in 1974 became a separate agency governed directly by the County Board of Supervisors.

SCCTD initially focused on upgrading and replacing its inherited fleet of buses. Assisted by federal funding and a voter approved half-cent sales tax in 1976, SCCTD began to acquire diesel buses and build repair facilities.

In the 1980s, SCCTD embarked upon the construction of its light rail transit system, utilizing funding received from the federal government and the proceeds of additional voter-approved sales taxes. The first segment of the light rail system opened for service in late 1987, and the entire initial 21-mile system was completed in 1991. Four extensions of the system were completed by 2005, and additional extensions are currently in the planning stages.

SCCTD completed a two-part reorganization, in early 1995. SCCTD was designated the Congestion Management Agency for the County under a joint powers agreement among the County and its 15 cities. At the same time, legislation reconstituting the Board of Directors from five directors, all of whom were County Supervisors, to 12 consisting of two County Supervisors, five San José City Council members and five city council members representing the remaining 14 cities, selected on a rotating basis by the governing authorities of those cities. The name of the agency was changed to the Santa Clara Valley Transportation Authority in 1996, from which the acronym VTA was adopted.

Today, VTA is a complex, multi-billion-dollar enterprise that provides bus, light rail and paratransit services within Santa Clara County. In addition, VTA participates in funding other agencies that provide regional rail service, including Caltrain, the commuter rail line serving the San Francisco Peninsula, the Capitol Corridor operating between Silicon Valley and the Sacramento area, and the Altamont Corridor Express, connecting Stockton and San José. VTA also is responsible for county-wide transportation planning, including congestion management, the design and construction of highway, pedestrian and bicycle improvement projects, and the promotion of transit-oriented development.

Structure of the VTA Board

The present structure of the VTA Board was authorized by legislation effective January 1, 1995. In the legislation proposed by the County Board of Supervisors, the VTA Board was to have been composed of five directly elected members (corresponding to the five county supervisorial districts) and 11 appointed members of various elected bodies in the county. As ultimately adopted, the enabling legislation eliminated the directly elected directors. Instead, PUC Section 100060 provided for a Board consisting of 12 voting members and alternates, all of whom are elected public officials, with the allocation of Board representation generally based on population.

Under the formula outlined in PUC Section 100060, and further spelled out in Section 2-13 of the VTA Administrative Code, the VTA Board is composed of:

- Two voting members and one alternate who are members of the Santa Clara County Board of Supervisors;
- Five voting members and one alternate representing the City of San José;
- One voting member and one alternate representing the cities of Los Altos, Los Altos Hills, Mountain View and Palo Alto;
- One voting member and one alternate representing the cities of Campbell, Cupertino, Los Gatos, Monte Sereno and Saratoga;
- One voting member and one alternate representing the cities of Gilroy and Morgan Hill; and
- Two voting members and one alternate representing the cities of Milpitas, Santa Clara and Sunnyvale.

All the voting members and alternates, other than the County supervisors, must be currently serving as mayors or city council members of the city they represent. Each of the four groups of smaller cities may collectively determine their representative, and each group has adopted an agreement specifying, in varying degrees of detail, the manner in which the group's appointed representatives will rotate among the member cities and how individual representatives are to be selected.

PUC Section 100060(c) provides, importantly, that "[t]o the extent possible, the appointing powers shall appoint individuals to the VTA Board who have expertise, experience, or knowledge relative to transportation issues." The VTA Administrative Code and the inter-city agreements contain similar directives.

In 2015, the Governance and Audit Committee of the VTA Board adopted a set of Guidelines for Member Agency Appointments to the VTA Board of Directors (Guidelines). The Guidelines contain several recommendations emphasizing, among other things, the value of a candidate's expertise and prior experience on the VTA Board or its Policy Advisory Committee. The Guidelines also express the expectation that VTA Board members "[h]ave a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction," and "should be able to attend Board and standing committee meetings regularly." A full copy of the Guidelines is attached as Appendix A.

In addition to the voting members and alternates, the VTA Administrative Code provides that members of the Metropolitan Transportation Commission (MTC) who reside in Santa Clara County, and who are not voting members or alternates, shall be invited to serve as ex-officio, non-voting members of the Board[3]. The VTA Board currently has one such ex-officio member.

VTA Board members serve for a term of two years[4]. The VTA Administrative Code "strongly encourages" appointing authorities to reappoint representatives to successive terms, and some members do serve multiple terms[5]. One director who recently left the VTA Board had served as a director or alternate representing San José and the County for a total of 13 years, but missed eight Board meetings in his last two years of service. The two voting directors currently representing the County have served as directors or alternates for a total of 14.5 and 12.5 years. The current Mayor of San José has served as a director for 11.5 years. However, many directors who serve on a rotating basis as representatives of the smaller city groups do not serve successive terms, and directors' two-year terms are frequently cut short when they are not re-elected, term out or otherwise cease to serve in their elected position.

PUC Section 100061 requires the VTA Board to elect its Chairperson and Vice Chairperson annually. Both officers serve for terms of one calendar year, straddling two fiscal years of the VTA (July 1 to June 30). By informal convention, the Vice Chairperson one year becomes Chairperson the following year.

[3] VTA Administrative Code Section 2-15
[4] PUC Section 100060.2
[5] VTA Administrative Code Section 2-14

The VTA Board in Action

As noted above, the VTA Board consists of a rotating group of elected public officials appointed by the County Board of Supervisors, the City of San José and the four groups of smaller cities. Although the PUC, the VTA Administrative Code and the Guidelines all admonish the appointing authorities to appoint VTA Board members who have appropriate expertise, experience and knowledge, as a practical matter, appointments are often made based more on political considerations than on the candidate's qualifications. From the candidate's point of view, appointment to the VTA Board, one of the largest agencies in the County, is generally considered a plus for his or her political advancement. Candidates often express an interest in serving on the VTA Board largely because they see service on the Board as a "resume builder." As a result, appointees to the VTA Board often have no previous experience with transportation, finance or leadership of a commercial enterprise, let alone one with annual revenues of over a half billion dollars and assets of $5 billion. New directors often know little about VTA's operations or finances, or the organization and functioning of the Board. In our interviews, the Grand Jury learned that one director was unclear about how directors were chosen or even how many directors there are. Another, representing one of the smaller city groups, was unfamiliar with the provisions of the inter-city agreement governing appointments to the Board and considers appointments as simply the political prerogative of the mayor of the city whose turn it is to make the appointment.

Because new directors often have little or no experience with transportation agency operations or transit policy, they face a steep learning curve to even begin to become effective Board members. There is no "boot camp" for new directors. The orientation program provided by the VTA staff is brief and presents only a high-level overview of VTA and basic information regarding Board procedures. When speaking with the Grand Jury, some directors couldn't recall going through any orientation at all.

Workshops are conducted by the VTA staff, generally about twice a year, to provide background information to the directors, often focusing on a specific issue. These workshops are relatively short, sometimes poorly attended and often cancelled. For example, both director workshops scheduled to be held in 2018 were cancelled. A workshop held on February 22, 2019, ambitiously addressed the important and complex topic of "The Future of Transportation in Silicon Valley." The workshop was attended by eight of the 12 voting members of the VTA Board, three of the six alternates and the ex officio member and lasted a little over three hours. Needless to say, the workshop merely scratched the surface of the topic. A few Board members have attended transportation-related, third party-sponsored programs and seminars on their own initiative to enhance their knowledge on issues of transportation management and policy. There is no formal policy requiring or encouraging attendance at external training programs or conferences or other forms of continuing education.

Influence on the VTA Board

The City of San José dominates the VTA Board with the ability to appoint five of the 12 directors, which should not be unexpected given San José's share of the County's population. Although the San José directors technically are appointed by the San José City Council, the Mayor recommends those appointments. Thus, the Mayor effectively controls the initial selection of the San José directors as well as their tenure on the Board and, therefore, has the ability to exercise considerable influence over a substantial portion of the VTA Board. Since some members of the County Board of Supervisors who have served on the VTA Board previously served on the San José City Council or represented supervisorial districts within San José, these relationships may further enhance San José's dominance on the VTA Board.

Given that representatives of the City of San José and the County Board of Supervisors are often able to serve multiple terms on the VTA Board, they gain experience and the ability to add value. However, representatives of the smaller city groups are subject to the rotational provisions of their inter-city agreements, limiting their ability to serve consecutive terms. Accordingly, the San José and County representatives often dominate the Board in terms of experience and influence as well as numbers. Current voting members of the VTA Board representing San José and the County have served an average of 4.3 years and 10.5 years, respectively, including non-concurrent terms but excluding service by some of them as alternates. However, the current voting members representing the smaller cities have served an average of only 1.9 years.

Board Member Preparation

All of the members of the VTA Board are primarily focused on their other duties as local elected officials; their position on the VTA Board is clearly of secondary importance to most, if not all, directors and, as noted above, viewed by some principally as a "resume builder" and a one day a month job. Directors confront their other duties as elected officials and, in the case of smaller city directors, private employment or business interests, which themselves may be demanding and time-consuming.

Directors often find it difficult to digest the massive amounts of information provided to them by the VTA staff to help them fulfill their responsibilities and prepare for meaningful participation in Board meetings. For example, meeting materials for VTA Board meetings typically run more than 300 pages, and committee meeting packages can be as voluminous. Here too the representatives of the smaller city groups are at a disadvantage. While members of the County Board of Supervisors and the San José City Council have dedicated staffs that can help them review and distill VTA-supplied materials and analyze issues, the representatives of the smaller city groups have little or no staff support. Although members of the VTA staff make themselves available to meet with directors to discuss VTA business, particularly in advance of monthly meetings, the Grand Jury learned that some directors take little or no advantage of these opportunities.

VTA Committees

Like many complex organizations — both governmental and private — the VTA Board maintains a system of standing committees. These include the Administration and Finance Committee, the CPC, and the Governance and Audit Committee, among others. The Board also has a number of advisory committees and occasionally appoints ad hoc committees to deal with specific matters. For example, the Ad Hoc Financial Stability Committee (which will be discussed further in this report) was formed in January 2018 and was active throughout 2018.

The Board's committee structure is both a benefit and a detriment. Because Board members have other public and private commitments, it is challenging to deal with all the complex issues affecting VTA; thus, delegation of certain responsibilities is necessary.

On the other hand, the committee structure tends to create a certain level of disengagement. Board members are assigned by the Chairperson to serve on standing committees. Several interviewees expressed the opinion that committee assignments are often made with little or no input from the affected Board members, and some committee members only learn of their appointment when they see their name on a list. Because of their various time commitments, Board members often are unfamiliar with or just defer to and trust the staff and their fellow directors regarding issues passed upon initially by committees of which they are not members. When those issues come before the full Board, often by way of its consent calendar, there is little or no discussion or debate. In some cases, matters of some significance are also placed on the consent calendar at the committee level, with the result that only the staff conducts any significant review of the matter. This system works well for some topics, like the approval of construction contracts, but can leave many directors uninformed about important topics to which the full Board should be attentive. Topics like monitoring VTA's financial affairs and structural financial deficit (which is principally left to the Administration and Finance Committee) and major ongoing capital programs, which are monitored by the CPC demand full engagement by all directors. At the October 2018 Board meeting, in reference to a report on the consent calendar, one of the directors stated, "Instead of going to committee, this type of report should go to the full Board…We should have [Board] workshops on several of these reports."

Alternate VTA Board Members

Like the use of committees, the system of alternate Board members has both advantages and disadvantages. Alternate members cannot vote at meetings except when they are attending in place of a voting member. Accordingly, alternate members often do not attend Board or committee meetings. If they attend meetings at all, they typically sit in the audience and do not participate. The existence of alternate Board members is useful in securing a quorum at Board and committee meetings when a voting member is absent. However, the availability of an alternate can serve as justification for voting members to make meetings a lower priority. Additionally, because alternate members frequently are called upon at the last minute, they may be even less prepared than voting members with the agenda and meeting materials. The alternate faces the decision to vote on matters in accordance with his or her own beliefs and opinions, or to vote the way he or she believes the voting member being replaced would have voted. This type of voting "by proxy" is inconsistent with good governance practices and would not be permitted by members of a corporate board of directors.

VTA Board Meetings

The VTA Board meets once a month in the evening. Board committees meet between three and 11 times a year. Attendance at Board and committee meetings varies greatly. Data compiled by the Grand Jury show that during 2017, 2018 and the first four months of 2019, attendance by voting members at Board meetings and workshops averaged approximately 87%. Individual attendance ranged from 61 to 92%. During the same period, attendance by voting members at committee meetings averaged approximately 86%. Often, directors arrive at meetings late, step away from the meeting, or leave early, but their partial participation is not always reflected in the attendance records. The conduct of Board meetings observed by the Grand Jury is characterized by limited debate and discussion, typically with active participation by only a few directors and some directors not participating at all.

The Board does very little on an ongoing basis to monitor and assess directors' performance. The Grand Jury learned from our interviews that guidelines were developed to aid the Board in measuring its effectiveness, but no action has been taken to implement these guidelines. Board members receive a self-assessment questionnaire at the end of the year, but, according to several interviewees, many are not completed or returned, and no action is taken to follow up or seek feedback.

VTA Board Effectiveness

In short, the VTA Board suffers from:

- a lack of experience and continuity by many directors;
- dominance, in terms of numbers, seniority and influence, by representatives of San José and the County;
- inadequate time for the directors to devote to the Board's oversight and policy-making functions;
- a lack of engagement by some of the directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization; and
- conflicts of interest, which are often irresolvable, between the directors' fiduciary duty to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

In assessing the effectiveness of VTA, several preliminary observations are in order.

First, nothing in this report is meant to suggest that the members of the VTA Board are not honorable and hard-working public servants who are doing their best to perform the duties of a very difficult position under extremely difficult circumstances.

Similarly, the Grand Jury has found that the VTA senior management staff is a competent team of professionals doing their best to run a very complex organization within the policy guidance provided by the VTA Board. As one member of the Board stated at the February directors' workshop, "the staff is like a racehorse that we are keeping in the starting gate." For their part, members of the senior staff are sometimes reluctant to draw the Board's attention to matters of concern where they realize there is political resistance on the part of some directors and feel that raising an issue would be a waste of time. Some senior staff members are frustrated by what they perceive as an unwillingness of the Board to support needed action or make important changes at the policy level. Several staff members pointed to other transit districts, such as those in Portland, Austin and San Diego, as agencies whose policymakers are prepared to make tough decisions and take risks to improve public transit. According to some staff members and directors, this frustration, in part, has resulted in a general decline in morale at the senior staff level. The process used in the recent reorganization of senior staff responsibilities has contributed to additional morale problems. Some key members of senior management have recently announced that they will be leaving VTA.

The Grand Jury also recognizes that many of the problems facing VTA are not unique to it as a transit organization or to the specific geographic or demographic characteristics of the Silicon Valley. Like many other transit organizations, VTA must deal with nationwide transportation trends, including increasing congestion and competition from ride-hailing companies and corporate-run employee bus services, as well as looming challenges posed by autonomous, driverless vehicles. Moreover, operating a transit system in a largely suburban region presents greater challenges than are typically faced in more densely populated urban areas, having concentrated downtown business centers. It is because of the complex and evolving nature of the problems facing VTA that active and enlightened Board oversight and strategic vision are more essential than ever to the organization's future success.

Having those observations in mind, the Grand Jury has noted that VTA and the VTA Board have been subject to criticism over the years from various quarters. As described above, the 2003-2004 and 2008-2009 Grand Juries were critical of the Board and its governance structure. However, criticism of the management and Board of VTA has not been limited to the Civil Grand Jury. A number of investigations, studies and articles, including the Hay Report which was commissioned by VTA itself, have criticized VTA's operational and financial performance and the effectiveness of VTA governance. In 2007, one writer referred to VTA as possibly "the nation's worst managed transit agency, at least among those serving big cities."[6] Even members of the VTA Board have questioned the Board's effectiveness. For example, at a meeting of the VTA Board in October 2018, one director made the comment, "we have to break the mold of 'same ole, same ole'…Board, we have to step up and change things." Upon assuming her position in January 2019, the current Chairperson of the VTA Board announced that she would "convene a board working group [later designated the Ad Hoc Board Enhancement Committee] to look at a range of board governance practices" with a view to improving "board engagement and effectiveness."[7] At the Board workshop in February 2019, the participating directors, by a unanimous show of hands, agreed that VTA needs to make "radical changes" to address its many challenges. As one director put it, "We just had a workshop where we had a long conversation and we pretty much had a consensus where we have to do things differently and think outside the box." The Ad Hoc Board Enhancement Committee held its first meeting on May 29, 2019.

A complete review and assessment of the operations and management of VTA is far beyond the means of the Grand Jury or the scope of this report. Accordingly, the Grand Jury has chosen to focus its attention on the consideration of the effectiveness of the VTA Board's oversight and policymaking, as exemplified by three areas of concern:

- VTA's poor and continually deteriorating operating performance;

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[6] "The Nation's Worst Transit Agency", The Antiplanner, March 26, 2007
[7] http://santaclaravta.iqm2.com/Citizens/FileOpen.aspx?Type=12&ID=2133&Inline=True . See section 8.2 of Minutes for the January 9, 2019 Board of Directors meeting.

- the VTA Board's inadequate oversight of the agency's financial performance and its structural financial deficit; and

- the VTA Board's unwillingness, to date, to reconsider the merits of significant pending capital projects that may be indicative of its general ability to guide the organization strategically.

VTA's Operating Performance

VTA Operating Trends

The 2003-2004 Grand Jury reviewed VTA's operations and found that its operating performance compared unfavorably to its own benchmarks as well as the performance of peer agencies. Among other things, its report noted that:

- VTA's operating costs had risen substantially faster than the rate of inflation; and
- Fares collected from VTA's passengers divided by VTA's operating expenses (referred to as the farebox recovery ratio) for the previous two years had been 11.6% and 12%, compared to the national average of more than 20%, meaning that the taxpayers of Santa Clara County were providing a much greater than average subsidy of transit operations.

The 2018-2019 Grand Jury again examined VTA's operating statistics and found that VTA's performance has continued to deteriorate over the past 10 years, relative to both its historical performance and the performance of its peers, across a wide variety of metrics, including continuing increases in operating costs and further reductions in farebox recovery.

Since the 2008-2009 recession, the population of Santa Clara County has increased by approximately 10.6%. During that 10-year period, bus and light rail vehicle revenue hours (VRH) ,which measures the amount of service VTA offers, increased by 6.4% while operations employee headcount (i.e., operators and maintenance personnel) grew by 8.9%. Total operations expense rose by 63.2% between 2009 and 2018, including a one-year increase of 17.1% between 2017 and 2018 alone. As operations expense increased, overall farebox recovery declined from 13.5% in 2009 to 9.3% in 2017 – substantially worse than the ratios that the 2003-2004 Grand Jury cited as unacceptably low back in 2004.

Meanwhile, despite increases in employment and income levels in Silicon Valley, the public's actual *use* of VTA's services (as measured by passenger trips on buses and light rail) dropped by 19.2% between 2009 and 2018 and by 14.8% in the last two years alone. According to U.S. Census Bureau data, in 2017 (the last year for which such data is available), public transit was used as a means of transportation to work by only 4.8% of Santa Clara County's commuters, little more than the combined percentage of those who walked or biked to work and fewer than the 5.3% who worked at home. Despite the declining use of transit during the last ten years, VTA continued to increase its employee headcount (both operations employees and administrative staff) and add to its fleet of buses and train cars, further increasing operating expense.

As a result of the dramatic increases in operations expense and the concurrent decline in ridership, VTA's cost per passenger trip for buses and light rail combined increased from $5.61 in 2009 to $9.30 in 2017, 90.5% of which was covered by taxpayer subsidies.

Detailed data regarding VTA's operations are shown in Appendix B, and the trends discussed above are depicted in Figure 1 below.

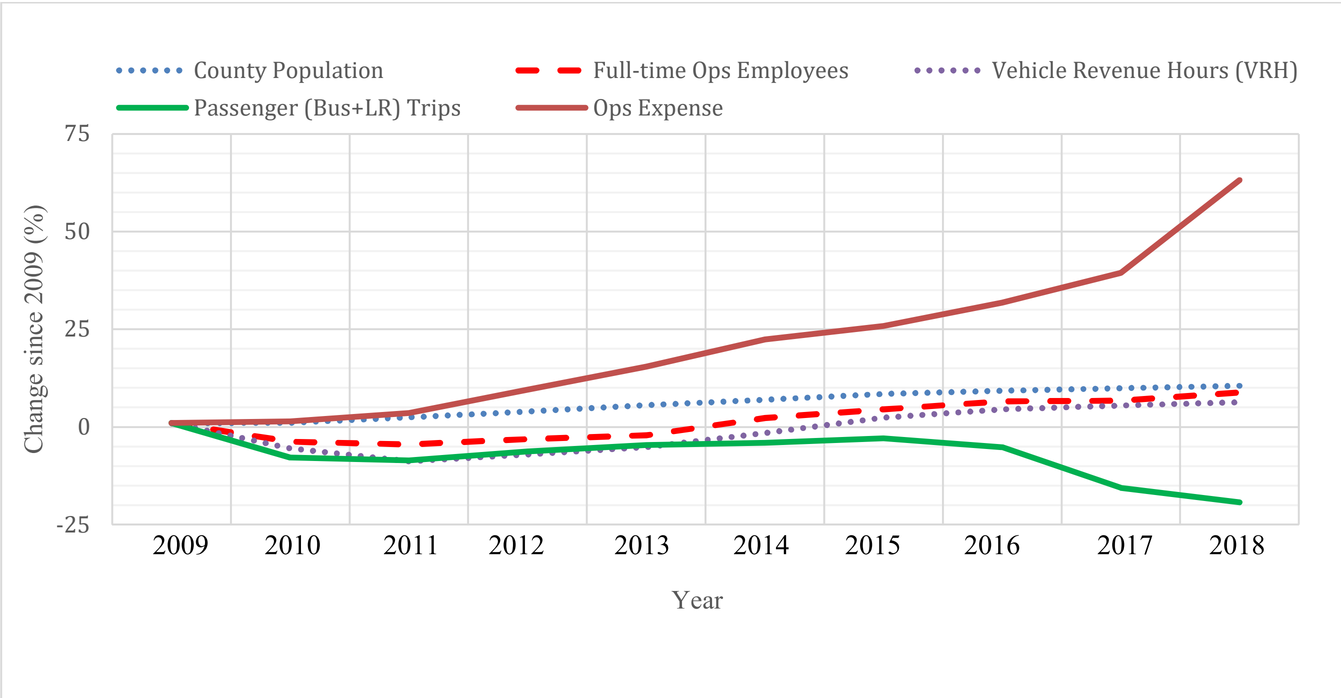

Figure 1 - VTA Operations Trends since 2009

Peer Agency Comparison

The FTA issues an annual NTD report summarizing nationwide data and trends for transit agencies throughout the United States. In its most recent survey, for 2017, the FTA reported that for transit agencies serving populations of more than one million people:

- Operating cost per passenger trip for buses and light rail ranged from a low of $3.27 to a high of $9.31 with VTA's cost per trip of $9.28 nearly the highest in the nation;

- Operating expense per revenue hour ranged from a low of $84.82 to a median of $123.20 and a high of $249.83 with VTA's operating expense per revenue hour of $199.79 at about the top 10th percentile in the nation; and

- Farebox recovery for light rail systems (combined bus and light rail data was not available) ranged from 7.6% to 47.2% with VTA's light rail system farebox recovery of 7.6%, the lowest in the nation, requiring taxpayers to subsidize 92.4% of the cost of light rail service.

Since the FTA surveys contain data for more than 800 transit agencies, including many with operating environments that differ significantly from VTA's, the Grand Jury selected a cohort of ten peer agencies for further review using the following guidelines:

- Only agencies operating both buses and light rail systems were included;

- Only agencies serving urbanized communities with population and service areas generally comparable to VTA's were included; and

- Agencies identified as VTA's peers by interviewees or transit experts were also considered for inclusion.

Based on these guidelines, public transit agencies serving the metropolitan areas of Portland, Minneapolis, Houston, Dallas, Salt Lake City, Denver, San Francisco (SF), Sacramento and San Diego were chosen for comparison.

Comparisons of FTA operating data for the 10 peer agencies from 2009 through 2017 are shown in Appendix C. In summary, comparative data for three key metrics show the following:

- **Operating Cost per Trip:** VTA's operating cost per trip was the highest of all 10 peer agencies in each of the nine years. In addition, VTA's cost per trip increased by 65% over the period, second only to Sacramento's increase of 86%.

- **Passenger Trips per Revenue Hour:** The effectiveness of VTA's service, as measured by the number of passenger trips per revenue hour, was consistently among the lowest of the peer group, and second lowest in 2017 and 2018. San Diego, with a lower population density than VTA's, achieved almost twice the ridership per hour as VTA in the last five years. Not surprisingly, San Francisco, with its significantly greater population density, consistently recorded the highest number of trips per hour.

- **Farebox Recovery:** VTA had the lowest farebox recovery in the peer group for its total operations since 2012.

Table 1 below summarizes VTA's operating performance in 2017 relative to the peer group.

Table 1 - VTA Operating Performance Versus Peer Group in 2017

Performance Measure		10-Peer Average	Best	Worst	VTA Rating
Service Effectiveness	Passenger Trips per Revenue Hour	34.0	63.8 (SF Muni)	23.4 (Dallas)	24.3 (2nd to last)
Service Efficiency	Operating Cost per Passenger Trip	$5.30	$3.00 (San Diego)	$9.30 (VTA)	$9.30 (Last)
	Farebox Recovery Ratio	21.5%	34.7% (San Diego)	9.3% (VTA)	9.3% (Last)

In short, while all VTA's peer agencies suffered declines in ridership over the last decade, all but one of the other agencies were more successful than VTA at controlling increases in costs.

It is important to note that, despite the continuing decline in key operating metrics, between 2016 and 2019, VTA's operations management has successfully improved performance in a number of significant areas, including: a 20% improvement in miles between major mechanical schedule loss; a 24% reduction in passenger concerns (complaints); a 3% improvement in light rail miles between chargeable accidents; and a 7% improvement in light rail on-time performance. In addition, the Grand Jury had direct experience utilizing VTA transportation services during our investigation and observed vehicles that were clean, performance that was generally on-time, and operators who were friendly and resourceful.

VTA's Financial Management

VTA is highly dependent on sales tax for its operating revenue. Currently, sales tax receipts provide approximately 80% of VTA's revenue, while farebox revenue provides about 7%. Remarkably, in an environment of robust population and economic growth, VTA's farebox receipts have decreased from $36.2 million in 2009 to $34.5 million in 2018, a decline of 5%. Over that same period, operating expenses have increased by a staggering 51%. Adding further pressure to VTA's revenue stream is the steadily decreasing contribution of federal operating grants, which peaked at $59 million in 2010 and fell to $3.8 million in 2018.

To address its revenue shortfall, VTA has begun to tap Measure A and Measure B sales tax receipts, originally earmarked for capital improvements, to help fund transit operations. For 2018 and 2019, the VTA Board approved the transfer of $44 million and $14 million, respectively, of these funds to supplement VTA's operating revenue. To further address the shortfall, VTA has drawn down its reserves to help fund operating deficits.

Given its history of low fare collections, declining ridership and uncertain governmental assistance, the answer would seem to be increased attention to cost management, with an emphasis on labor costs, by far the largest component of VTA's operating expense. However, VTA's combined operations and administrative headcount continues to rise each year despite the decline in ridership. The Grand Jury found the VTA Board has not vigorously addressed these issues through its budget process by embracing the type of comprehensive cost management strategy that is called for by the environment of limited resources in which VTA is currently operating.

The 2018-2019 Budget Process

VTA operates on a biennial budget cycle with a budget for the following two fiscal years adopted in June of each odd-numbered year. The proposed budget is reviewed by the Administration and Finance Committee and forwarded to the full VTA Board with the Committee's recommendation.

The proposed 2018-2019 budget, as recommended by a three-to-one vote of the Administration and Finance Committee in May 2017, showed projected operating deficits of $20 million and $26 million for fiscal years 2018 and 2019, respectively, and similar deficits for subsequent years. Taking into account the annual need for local funds on the order of $30 million to support VTA's capital programs, the total gap between projected revenues and expenses (referred to as a structural financial deficit) contemplated by the budget was between $50 and $60 million. Compounding the widening budget gap was the fact that, over the preceding six years, operating expenses had grown twice as fast as revenues, and VTA had consistently failed to meet its ridership and farebox recovery projections. For example, in fiscal years 2016 and 2017, VTA's farebox recovery had fallen short of budget projections by 7.3% and 18.9%, respectively.

Nevertheless, rather than undertaking a thorough review of the proposed budget and making hard decisions regarding meaningful reductions in operating and capital expenses, or even sending the budget back to the Committee for further study, the VTA Board adopted the budget on June 1, 2017, by a vote of eleven to one, thereby assuring operating deficits for the following two years.

To no one's surprise, the projected operating deficits materialized and were largely funded by drawing down VTA's reserves. Capital reserves, which had stood at $49.5 million at June 30, 2017, had been depleted to $5 million by the middle of the following year.

Ad Hoc Financial Stability Committee

In January 2018, the incoming Chairperson of the VTA Board recognized that some action had to be taken to address the structural deficit problem, which had become critical. Rather than engaging the full Board, for example by convening an all-day workshop, to address the problem that the Board and the Administration and Finance Committee should have been actively monitoring all along, the Chairperson chose to create an Ad Hoc Financial Stability Committee. The Committee was chaired by an ex officio member of the Board and included only two actual voting directors. The Committee then invited a group of approximately 12 "stakeholders" to participate. Stakeholders included employees, representatives of organized labor and several individuals from community organizations – each with their own agenda, but none with the fiduciary duty to make tough policy decisions solely in the best interests of VTA and County taxpayers. As the 2003-2004 Grand Jury report noted, "[i]t is the fiduciary responsibility of the Board, not a committee, a business lobbying group, or business community leaders, to provide oversight and direction" regarding VTA's operations and financial management.

The use of an ad hoc committee was hardly a new concept for the VTA Board. The Board had historically followed a pattern of waiting for a financial crisis to arise and then appointing an ad hoc committee. That committee would attempt to deal with the crisis and come up with a fix. In most cases, the fix would last a few years, relying primarily on new sources of revenue that would hopefully emerge. However, in any event, the composition of the Board — and responsibility for dealing with the problem — would have changed. The Board would then realize that another financial crisis was taking place, and the process would be repeated. Most recently, Ad Hoc Financial Stability Committees had been formed to deal with financial crises in 2001 and 2010.

The Ad Hoc Financial Stability Committee met sporadically between March and December 2018 to discuss the structural deficit, its implications and potential cost-saving measures. Three of the nine scheduled meetings were cancelled. At a meeting of the Committee in August 2018, in response to a question, VTA's Chief Financial Officer underscored the urgency of VTA's financial situation by stating that VTA could continue its operations for no more than 18 to 24 months before going "off a cliff." On June 20, 2018, the Committee held a three-hour workshop to discuss strategies and solutions to address the budget and structural deficit. During the workshop, the stakeholders broke out into working groups to consider possible solutions. Although no consensus was reached, a wide variety of suggestions were made, which were reviewed by the VTA staff and discussed at subsequent meetings. These recommendations included, among other things, substantial fare increases, implementation of wage cuts, a hiring freeze, a reduction of fleet size, and a delay of further capital expenditures on light rail expansion.

At its final meeting in December 2018, the Ad Hoc Financial Stability Committee concluded that the defeat in November of a ballot measure to repeal fuel taxes and vehicle fees (California Proposition 6) and the collection of sales tax on out-of-state sales beginning at some unspecified point in the future (later determined to be April 2019) would infuse additional revenues into the budget. The fuel and vehicle monies would result in an additional $23 to $27 million per year in annual revenues. The sales tax would, when implemented, increase revenues by $5.5 million per year. After these painless fixes, the Committee then addressed the annual structural deficit of approximately $25 million that still remained by proposing three initiatives:

- reducing the proposed increase in bus and rail service hours – not from their actual fiscal 2018 levels, but from the even higher levels originally budgeted for fiscal year 2019 as a part of VTA's Next Network program – saving approximately $15 million annually;

- a fare increase indexed to inflation, saving approximately $2 million annually (which was subsequently deferred until 2021); and

- a voluntary early-retirement program projected to save another $1 million annually.

After six meetings over a nine-month period (including the three-hour workshop) involving three directors and a dozen stakeholders, as well as untold hours of VTA staff support time, the Ad Hoc Financial Stability Committee recommended a total of only $18 million in projected cost savings to address the remaining $25 million deficit target, leaving a $7 million gap unaddressed. Several serious cost-cutting measures brought forward at the workshop were not actively considered. At its meeting, on December 6, 2018, the VTA Board unanimously accepted the recommendations of the Committee, and the Committee stood down.

By any measure, the VTA Board's oversight of the agency's financial affairs, as exemplified by its adoption of the 2018-2019 budget and the handling of the built-in structural financial deficit, has been weak and ineffective. The inability of the VTA Board to meaningfully address the deficit can be attributed, in part, to the lack of financial expertise on the Board, a lack of preparation and engagement on the part of some directors — exacerbated by the delegation of the problem to the Ad Hoc Financial Stability Committee — and the VTA Board's inability or unwillingness to deal with controversial and politically-charged topics such as labor costs and expensive capital programs.

The 2020-2021 Budget Process

The VTA Board will consider VTA's proposed biennial budget for fiscal years 2020 and 2021 at its meeting on June 6, 2019. The proposed budget shows net surpluses of approximately $2 million in 2020 and $4 million in 2021. However, the proposed budget does not take into account the outcome of pending labor negotiations with the Amalgamated Transit Union (ATU) that have been ongoing since August 2018. VTA has reported that its current proposal to the ATU, if accepted, would result in a total additional cost of $30.9 million over the next three years. Since the VTA's proposal is the best possible outcome of the negotiations, the budget understates expenses and virtually assures continuing deficits. Other risks acknowledged in the budget could further increase these deficits.

The Extension of Light Rail Service to Eastridge

Light Rail in the United States

Light rail transports people using electric motive power and light-weight rails (hence the name). Light rail transit (LRT) systems, originally called trams or trolleys, evolved in the early 1900s to move employees to businesses and industries located in downtown or central business districts. They were less expensive to build than traditional heavy railway systems, and the cars were likewise less expensive to build and operate.

In the late 1960s, private transportation companies, including those that operated LRT systems, began to struggle financially and subsequently were transitioned to public ownership with the expectation that better public transport could be achieved using a mix of city, state and federal funding.

LRT systems in the United States have not met the original expectations of transit planners or the public. Coupled with the downward trend of public transit ridership and expanding infrastructure regulations, LRT systems have experienced ever-increasing installation and operations costs. Due in part to its high costs and fixed routes, light rail is now viewed by many industry experts as a technology whose time has passed. In October 2017, Randal O'Toole, a senior fellow with the Cato Institute and a recognized expert in light rail policy analysis, recommended the following: [8]

> "First, transit agencies should stop building rail transit. Buses made most rail transit obsolete nearly 90 years ago. Buses can move more people faster, more safely, and for far less money than light rail, meaning light rail was obsolete even before San Diego built the nation's first modern light-rail line in 1981." …
>
> "Second, as existing rail lines wear out, transit agencies should replace them with buses. The costs of rehabilitating lines that have suffered from years of deferred maintenance is nearly as great as (if not greater than) the cost of building them in the first place."

Cities whose densities and post-automobile development sprawl aren't particularly suitable for efficient light rail service have begun to reexamine the viability of constructing, operating and maintaining expensive light rail systems. For example, in March of this year, the Phoenix City Council voted to delay and likely kill an ambitious expansion of its existing light rail system. Calling it a "train to nowhere," city leaders determined that the reallocation of capital funds from light rail to an expansion of a flexible bus system and the repair of a deteriorating road system would be a better use of the taxpayers' money and have a more positive impact on transit

[8] "The Coming Transit Apocalypse", Randal O'Toole, Cato Institute, October 2017

effectiveness.[9] A Phoenix Arizona initiative measure that will be on the ballot in August 2019 proposes to halt six additional light rail extension projects that were previously approved by the Phoenix voters in 2015 and forbid the city from funding any other future light rail extensions.[10]

VTA's Light Rail System

Santa Clara County's LRT system, first proposed in the early 1980s, was conceived as a loop connecting to a future integration of Bay Area Rapid Transit (BART) and the San José Airport with transfer points throughout the County with feeder lines to support access to and from the loop to business and residential areas. The intent was to transport large numbers of residents quickly — at upwards of 55 mph — and cost-efficiently to and from jobs, entertainment and shopping, and to link San José and Santa Clara County with the entire BART system. As funding issues arose and interest group views emerged, the loop concept was abandoned in favor of direct spoke-like connections between downtown centers (e.g., San José) and various residential and business areas.

VTA's LRT began service in December 1987 with a 6.8-mile corridor between Santa Clara and downtown San José. An additional 14.3 miles were added by 1991 in 5 separate extensions (under the auspices of the SCCTD). VTA then followed with 4 more extensions: into Mountain View (1999), Milpitas (2001), East San José (2004) and the last corridor, Diridon to Winchester, completed in October 2005. The ultimate construction cost of this system was almost $2 billion. Today, VTA operates a 3-line LRT system consisting of 42 route miles, 61 stations and 21 park-n-ride lots. Due to unprecedented declines in revenues beginning in 2008, the implementation plan for further light rail expansion was modified to provide for construction of additional extensions in phases. Two significant extensions, to Eastridge and Vasona Junction, remain under consideration by VTA.

Overly optimistic ridership projections justified the construction of the $2 billion light rail system in an environment that did not have the trip densities necessary to support this mode of transit. The federal government had its own doubts and initially did not approve funding, thereby creating the necessity of funding the project, in part, with local tax measures.

As suggested above, the design and layout of the VTA LRT system deviated from the initial concepts, largely driven by political and financial considerations rather than strategic decisions. Despite the high capital costs of the system, the airport remains inaccessible directly via light rail, there is uneven access to jobs, entertainment and shopping, and operating speeds are far below

[9] "Phoenix Votes to Delay, Likely Kill, West Phoenix Light-Rail Line", Jessica Boehm, Arizona Republic, March 21, 2019

[10] "Phoenix Voters Could Kill Light Rail to These 6 Neighborhoods", Jessica Boehm, Arizona Republic, April 15, 2019

those expected or technically feasible. VTA LRT has been in operation for over 30 years but continues to underperform in effectiveness and ridership.

VTA LRT Operational and Financial Challenges

Since its inception, VTA's light rail system has struggled with operational and financial inefficiencies caused by low ridership and high operating costs. Despite a vibrant local economy with burgeoning job growth and population expansion, the public's interest in and utilization of light rail has deteriorated. Over the past ten years, light rail ridership has declined by 21% and, currently, fewer than 1% of Santa Clara County residents regularly utilize light rail. During the same period, the farebox recovery ratio for light rail has declined 36%. In just the past *five* years, light rail ridership has declined 15% while operating expenses have increased 54%. Meanwhile, VTA has continued to increase capacity without a corresponding demand for its product, resulting in higher operating costs of which less than 8% is covered by fare revenue. Put more bluntly, the taxpayers pay for more than 92% of the LRT system's operating costs. VTA has failed to accurately estimate the ongoing operating and capital costs of maintaining the light rail system, a fact that has led, in part, to its recurring financial deficits.

Table 2 below outlines metrics comparing operations of VTA's light rail system versus its peers (using 2017 NTD data) that reveal its poor performance, including:

- Cost per Passenger: Highest among peers ($11.61)
- Subsidy per Passenger Trip: Highest among peers ($10.73)
- Operating Cost per Hour: Highest among peers ($487.58)
- Farebox Recovery Ratio: Lowest among peers (7.6%)
- Passenger Trips: Lowest among peers (9.1 million miles)
- Passengers Boarded per Hour: Second lowest among peers (42)

Table 2 - VTA Light Rail Peer Statistics (2017)

Peer Agency Name	Service Area Population	Route Miles	Fare Revenue Earned ($Ms)	Total Operating Costs ($Ms)	Farebox Recovery Ratio	Operating Cost per Hour	Boardings per Hour	Passenger Trips (Ms)	Cost per Passenger	Revenue per Passenger	Subsidy per Passenger
Santa Clara VTA	1,664,496	42.2	$8.06	$106.0	**7.6%**	**$487.58**	**42**	**9.1**	**$11.61**	$0.88	**$10.73**
Sacramento Regional Transit District	1,723,634	42.9	$14.80	$67.8	21.8%	$272.55	46	11.4	$5.93	$1.29	$3.64
Dallas Area Rapid Transit	5,121,892	93	$27.71	$175.2	15.8%	$356.20	61	29.9	$5.84	$0.92	$4.92
Denver Regional Transportation District	2,374,203	58.5	$38.16	$115.2	33.1%	$145.09	31	24.6	$4.67	$1.55	$3.12
San Francisco Municipal Railway	3,281,212	36.8	$39.22	$213.8	18.4%	$368.95	88	50.9	$4.19	$0.77	$3.42
Houston Metropolitan Transit Authority	4,944,332	22.7	$5.97	$65.2	9.2%	$227.04	63	18.3	$3.56	$0.33	$3.23
Portland Tri-County Metropolitan Transportation District	1,849,898	60	$49.38	$138.8	35.6%	$222.51	63	39.7	$3.49	$1.24	$2.25
Salt Lake City Utah Transit Authority	1,021,243	44.8	$17.97	$64.7	27.8%	$180.35	52	18.8	$3.44	$0.95	$2.49
Minneapolis Metro Transit	2,650,890	23	$24.14	$70.9	34.0%	$166.23	55	23.8	$2.98	$1.01	$1.97
San Diego Metropolitan Transit System	2,956,746	53.5	$38.97	$82.5	47.3%	$168.24	76	37.6	$2.19	$1.04	$1.15

Legend: Ms = value in millions
Worst in peer group
2nd worst in peer group

In light of the VTA LRT system's intrinsic design issues, unacceptably slow speeds in portions of its routes, extremely high operating costs and the lack of ridership and revenue to support those costs, a case can be made for dismantling or phasing out the light rail system altogether. At a meeting of the CPC on March 28, 2019, a member of the VTA staff responded to a question from a Board member by confirming that operating costs could be cut in half and farebox recovery doubled if a bus-only system were deployed. In fact, light rail operating expenses are closer to three times the cost of bus operations, but the point remains that a large reduction in the taxpayer subsidy of VTA operations could be achieved by focusing future investment in transit solutions other than light rail, as Phoenix has decided to do. One director noted at the March 28, 2019 CPC meeting, "We have to really broaden our thought process with regard to light rail. The worst position that VTA can get into is being the last transit agency to be deploying an old technology."

The Eastridge LRT Extension

Although operating statistics demonstrate the high cost and inefficiency of light rail as a mode of transportation, the VTA Board has continued to consider construction of two additional light rail extensions that would require additional capital outlays in the hundreds of millions of dollars.

These two extension projects, to Vasona Junction and the Eastridge Transit Center, have been in the planning stage for years, have been the subject of countless VTA staff studies and reports and have been considered by the Board and its committees, particularly the CPC, at numerous meetings. Finally, at its meeting on March 28, 2019, the CPC approved placing the Vasona project on an indefinite hold, based on its capital costs, high operating costs and projected ridership that failed to meet VTA's minimum criteria for a new project. However, the Eastridge project remains alive.

The proposed Eastridge light rail extension is part of a two-phase project. Phase 1 of the project, which included conceptual design, pedestrian and bus improvements, and improvements of the Eastridge Transit Center, has been completed. Phase 2, which is now referred to as the Eastridge-BART Regional Connection, or EBRC, would add a 2.4-mile rail line and related infrastructure connecting the Alum Rock Station and the Eastridge Transit Center. In the original design, most of the rail extension was to have been constructed at street level on Capitol Expressway. The design was subsequently changed to an elevated track above the roadway for the entire 2.4 miles at an estimated additional cost of $75 million, which would enable the trains to run at higher speeds. The total cost of the project, which was originally estimated at $377 million, is now projected to be $599 million, of which $146 million has been spent on Phase 1, and $453 million would be spent on Phase 2 ($13 million has been spent to date on design and other preparatory work). If Phase 2 is continued, work is currently estimated to be completed in 2025.

Table 3 below outlines the cost and status of the Eastridge project*:

Table 3 - Eastridge (EBRC) Phases, Costs and Status

Project	Cost	Sub-total Cost	Status	Notes
Concept	$11M		Completed	
Original Construction	$56M		Completed	
Phase 1 – pedestrian improvements	$19M		Completed	
Phase 1 – bus improvements	$60M		Completed	Eastridge Transit Center
Phase 1 sub-total	-	$146M		
Phase 2 – EBRC various studies/design	$13M		Initial design work completed	
Phase 2 – EBRC completion (2023-25)	$440M		Under review	Does not meet minimum operations criteria until well after 2025
Phase 2 sub-total	-	$453M		Plus $2-3M per year in new operational costs
Project total	-	$599M		Costs almost $250 million/mile

*Data from VTA CPC Agenda Packet item #7, pages 36 and 37, dated March 28, 2019 and updates presented in the Board of Directors meeting on April 4, 2019.

The VTA Board has considered various aspects of the Eastridge project more than 20 times since 2000. Each time, the Board has made a decision that allowed work on the project to continue, often kicking the ultimate decision on the fate of the project down the road by noting that its current decision was not the final word on the project and that there would be opportunity for further consideration of the project and final approval at a future date.

For example, at its meeting on May 3, 2018, the Board considered the viability of the light rail extension to Eastridge. After a lengthy discussion, the Board approved a funding strategy for proceeding with the project, but the Chairperson noted that there would be still more decision points at which the project could again be considered by both the CPC and the full Board. At the same time, the Board approved a resolution authorizing a staff study of alternatives to light rail for the Eastridge extension. VTA staff has confirmed that, a year later, this study still has not been completed.

At the March 28, 2019 meeting of the CPC (at which the Committee agreed that the Vasona Junction extension should be put on hold), Phase 2 of the Eastridge project was again considered. At the meeting, the Mayor of San José, serving as Chairperson of the Committee, asked the following question, "Is the current light rail system one we want to continue to invest in? Our ridership is challenged. Our cost-effectiveness system-wide is 10% on farebox return [it is actually less than 10%]. That 10% is already among the very lowest in the nation in terms of farebox return, and light rail actually hurts us. The question is: what does the process look like for us to be re-evaluating the entire system to see if we want to start thinking differently about the entire light rail system? *I hate to think we are doubling down on a failed system*." Another committee member echoed that sentiment, noting, "We have to choose our transportation modes in a cost-effective and efficient manner. *I support to do additional evaluation of what is needed for that corridor. The train has not left the station on Eastridge."* Yet, after a lengthy discussion about an overall re-evaluation of light rail before proceeding with the Eastridge extension, no concrete action was taken in that direction, and both of these directors joined with a third to support a motion to move forward with the project and kick the ultimate decision down the road yet again. The vote was three to two in favor of the motion, but it failed for lack of the required four aye votes needed to pass.

The fate of the Eastridge extension project is now once again in the hands of the VTA Board, and its final resolution will be a test of the Board's leadership. The issue will be considered by the Board again at its meeting on June 6, 2019. Although the subject of the extension was not on the agenda at the Board's May meeting, the Mayor of San José signaled his intentions. Despite the comments he made at the March CPC meeting, the Mayor stated, "I will vote to proceed immediately with the construction of the Eastridge transit project when it comes before the VTA Board in June. I expect we will move forward without delay." The investigation of the Grand Jury report was completed on May 29, 2019, and this report does not reflect any actions taken at the June 6, 2019 meeting.

As pointed out above, the remaining capital cost to complete the 2.4-mile extension is currently estimated at $453 million, or almost $189 million per mile. According to most recent staff projections included in the May 2019 EBRC Supplemental Environmental Impact Report (SEIR), the new light rail extension would attract approximately 611[11] new riders (net of a reduction in bus ridership on the existing bus lines that run parallel to the proposed rail extension) by 2025. Therefore, the additional capital cost would be equal to approximately $720,000 for each new rider in the first year of service. Once completed, the Eastridge extension would become part of an outmoded light rail system that is one of the most expensive and heavily subsidized LRT systems in the country, with declining ridership and operating costs more than double the cost of bus operations. The extension, upon completion, is projected to have a miniscule impact on transit usage in the East San José/Milpitas corridor over the next 24 years (i.e., an increase of only 0.07% by 2043 and just over half that when service begins).[12] Moreover, the current design permanently *removes* two existing high occupancy vehicle (HOV) lanes from the Capitol Expressway, without any foreseeable commensurate reduction in automobile traffic, a fact that may not be widely

[11] EBRC SEIR, May 2019, page 71, Table 5.1-11. http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/EBRC_Vol1_FSEIR-2%20(1).pdf
[12] EBRC SEIR, May 2019, page 72

understood in the East San José community. As noted in the SEIR, "[t]he proposed removal of the HOV lanes would result in higher average automobile delays and higher automobile travel times on Capitol Expressway."[13] Further, despite claims that the Eastridge Transit Center is among the busiest in the VTA system, there is an average of only seven riders per bus trip into and out of that center.

Based on our interviews, the Grand Jury has found virtually no support for the project among the VTA staff, although they continue to move the project forward in compliance with incremental policy decisions made by the VTA Board.

The argument supporting the Eastridge extension is essentially political. The extension was one of 13 transportation improvement projects envisioned by Measure A and passed by the voters in 2000. For various reasons, most related to budget challenges brought about by the dot com "bubble" in the early 2000s and the later economic recession, the implementation of the Eastridge project has been delayed, along with some of the other Measure A projects. In the interim, the once-promising LRT system has become technically outmoded and increasingly expensive.

Yet, proponents of the extension, including powerful political forces, contend that the periodic, incremental approvals of the project by the VTA Board that have kept the project alive over the years have reinforced a "promise" to complete it, even though the VTA Board has both the right and the duty to re-evaluate capital projects when they are no longer viable. Proponents also contend that completion of the project is a matter of "economic equity," balancing the needs of a relatively low-income, transit-dependent area of Santa Clara County with the type of transit services provided elsewhere in the County (although, as noted above, the Vasona Junction project that was to have served the Los Gatos area was recently put on hold).

The challenge to the VTA Board, in the exercise of its fiduciary duties to the taxpayers and transit users of the County, is to address such questions as:

- Can *any* further investment in VTA's present LRT system be justified, much less one that will cost $720,000 for each prospective new rider?
- Does the proposed Eastridge extension meet VTA's standards for new transit projects, including minimum projected ridership criteria?
- Before proceeding with the project, should the Board undertake a thorough review of the light rail system and its future as a mode of transportation in Silicon Valley, as suggested by members of the CPC?

[13] Ibid, page 72

- Can the recognized needs of the residents of East San José for modern, efficient public transportation be better served by an alternative to the proposed Eastridge light rail extension?

VTA should aspire to take an industry-leading role in the future of public transportation, commensurate with the role of Silicon Valley as a worldwide leader in technology and innovation. Whether the VTA Board is able to put aside local political considerations and answer these questions based on the interests of all the taxpayers and residents of Silicon Valley will say much about its effectiveness as a policy-making body and whether VTA will be able to achieve such leadership aspirations.

Designing a More Effective Structure for the VTA

There are countless variations in models for governing a regional transit agency, and there is no perfect structure that fits all situations. Even when transit agencies set out to reorganize their own governance structure in response to acknowledged defects, they realize they must choose among alternative structures having both advantages and disadvantages.

Virtually all the individuals interviewed by the Grand Jury, including directors and senior staff, agreed that VTA could benefit from a more knowledgeable and engaged Board of Directors that is more sharply focused on VTA's role as a regional transit agency and less on local political interests. However, there is less consensus on how best to achieve that goal. Nevertheless, it is useful to examine some of the variable features of alternative governance structures, how they have been implemented by other transit agencies and how changes to the structure of VTA's governance might result in a more effective Board.

Number of Directors

The VTA Board has 12 voting members. As pointed out in the 2003-2004 Grand Jury's report, the VTA Board is larger than the boards of many regional transit agencies. Alameda County Transit (AC Transit) and BART, for example, have boards of seven and nine members, respectively, while two other transit agencies in California have five-person boards. However, transit agency boards across the country range widely in size, from as few as five to more than 20. The agency serving Dallas/Fort Worth, for example, has a 15-person board, while the Phoenix and Salt Lake City transit agencies each has a 16-member board. The 2003-2004 Grand Jury Report concluded that a smaller Board, of five to seven members, "would be more involved in and accountable for the financial and operational management of VTA." Some current members of the VTA Board agree that a smaller Board would be preferable, although others disagree. While the current Grand Jury agrees that reducing the size of the Board might result in more focused decision-making, a reduction in Board size, in and of itself, would not address fundamental issues of lack of experience, inadequate continuity, competing time commitments and conflicts of interest between VTA and local priorities. Accordingly, a reduction in the size of the VTA Board should only be considered in conjunction with other structural changes that directly address these key issues.

Term of Service

VTA directors serve for terms of two years. Although some directors serve more than one term (often consecutive), directors whose positions rotate among groups of smaller cities generally do not serve consecutive terms. Furthermore, a director's term can be cut short if the director ceases to serve in his or her elected position.

The term of service for directors of regional transit agencies in California and other larger metropolitan areas generally ranges between two and four years, with three and four-year terms being common. In California, for example, directors of BART, AC Transit and transit agencies serving Santa Barbara, Stockton and Bakersfield serve four-year terms. Directors of agencies serving Austin and Vancouver, B.C. serve for three years. In an independent review of the agency serving Vancouver, a Governance Review Panel concluded that "longer-term decision-making requires a minimum of three-year terms," although the panel also recommended that members not be allowed to serve more than six consecutive years in order to vary the "mix of management, finance, legal and other skills to match [the agency's] changing needs over time."[14]

Among the individuals interviewed, there was substantial support for longer terms to provide additional time for directors to become knowledgeable about VTA's operations and transit issues, to participate in more than one budget cycle and to participate more effectively in the Board's long-term planning function. In addition, lengthening the term of service would mitigate the advantage currently enjoyed by representatives of San José and Santa Clara County, who typically serve substantially longer terms than the representatives of the smaller city groups and dominate the Board, in part, as a result of their greater experience. Not all interviewees agreed, however. One made the point that, if a director is unqualified in the first place, a four-year term would just mean that the Board would be burdened with an unqualified member for twice as long. Additionally, since under the current structure a director's term ends when he or she leaves elected office, a four-year term is more likely than a two-year term to be cut short, lessening to some degree the impact of a change to a longer term. Nevertheless, extending the term of VTA directors to four years would increase the average term of Board service and, accordingly, would provide some valuable experience and continuity to the Board and enhance the influence of the smaller cities. Likewise, establishing term limits or limits on total years of service would mitigate the dominance of San José and the County and allow the Board to evolve over time to meet its changing needs.

As described above, the PUC specifies the annual election of the Board's Chairperson and Vice Chairperson. The VTA Administrative Code provides that the election of the two officers shall be conducted at the last meeting of the calendar year, when practical, and that they shall serve for the ensuing calendar year.[15] The Administrative Code also specifies that the two positions shall be rotated annually, according to a fixed schedule, among representatives of San José, Santa Clara County and the smaller city groups[16].

There was considerable support among the persons interviewed for extending the Chairperson's term from one to two years. As pointed out above, because VTA operates on a June 30 fiscal year,

[14] "TransLink Governance Review", TransLinK Governance Review Panel, January 26, 2007, page 22
[15] VTA Administrative Code Section 2-26
[16] Ibid

the Chairperson's calendar year term of service straddles two fiscal years, disconnecting the Chairperson from the budget process and accountability for operating and financial results. He or she inherits one annual budget in mid-stream and serves only halfway through another. Lengthening the Chairperson's term would help address this problem by allowing the Chairperson to oversee VTA's financial performance for at least one full fiscal year. Coordinating the term of the Chairperson with the agency's June 30 fiscal year would further connect the Chairperson with VTA's budget process and the oversight of its financial performance. Similarly, reviewing the VTA General Manager's performance on a fiscal year rather than a calendar year basis would also improve direct accountability for the organization's performance to budget.

Direct Election of Directors

Under the current governance structure, members of the VTA Board are appointed to serve by the jurisdictions they represent, either through direct appointment by a mayor or city council or, in the case of the groups of smaller cities, by arrangement among the cities. As pointed out above, as originally proposed by the County Board of Supervisors, the VTA Board would have been composed of a combination of five directly elected members and 11 appointed members.

Although the direct election of directors of transit agencies is not common in California, there are exceptions, including BART and AC Transit, both of which have directly elected directors serving four-year terms. Other regional public bodies use a direct election model for some or all their directors. The Santa Clara Valley Water District (SCVWD), for example, has a board of seven directors, directly elected by supervisorial district.

Benefits of an elected board include direct accountability to the public and the directors' increased focus on the affairs of the agency as their primary, rather than secondary, public service responsibility. Direct election would also eliminate the possibility of directors' terms being shortened when they cease to serve in their elected position. In theory at least, candidates who serve on an elected board also would be more likely to have an interest in and commitment to public transportation issues than would appointed directors. On the other hand, directly elected VTA Board members, like other elected officials, may tend to have a parochial view if they are elected to represent specific districts or municipalities, so the goal of encouraging a regional view of strategic planning responsibilities might not be fully realized.

Some interviewees supported changing to a direct election model for the VTA Board, based on the potential benefits noted above. Others, however, did not favor such a change. Several pointed out what they perceived to be a lack of effectiveness of the BART Board of Directors as evidence that the change would not be worthwhile. Others noted that moving to a direct election model would be complicated, politically difficult and costly – again, not justifying the change. One interviewee observed that, at the end of the day, voters pay very little attention to the direct election of directors of governmental agencies, noting that many voters do not even know that an agency like SCVWD, for example, even exists, much less who its directors are.

Appointed Directors Who Are Not Elected Officials

Like VTA, many regional transit districts have boards consisting exclusively of elected officials representing the constituent communities making up the district. In at least three California transit agencies (those serving Santa Barbara, San Francisco and Stockton), the appointed boards of directors include interested citizens who are not currently serving as elected officials, and the enabling legislation of another transit district, serving the Bakersfield area, specifically provides that elected officials are *not* eligible for appointment as members of the Board. Transit agencies whose directors are not current elected officials are not uncommon in other parts of the country. Examples of transit agencies with appointed boards that do not include elected public officials are those serving Houston, Austin, Vancouver, B.C. and Toronto.

The flexibility to appoint non-politicians to serve on the board of a transit agency allows the appointing authority to select directors having a wide range of business, financial and transportation-related experience with a mandate to serve non-politically and make evidence-driven policy decisions based on demonstrated need and financial feasibility. The Houston Metropolitan Transit Authority (HMTA), for example, has a board of nine members, five of whom are appointed by the Mayor of Houston, two by the Harris County Commissioners Court and two by the mayors of other cities in its service area. The Board of the HMTA currently includes a retired lawyer, a certified public accountant, a banker, executives of large companies and experts on infrastructure, construction and budget management.

Partially offsetting the benefits of removing elected public officials from a transit agency's governance structure are concerns of accountability. The level of commitment of non-elected directors to their local communities' views on transit policy and priorities, including land use and development, is uncertain. However, some senior VTA staff and directors feel that the staff gets little support from VTA Board members in connection with VTA's dealings with city governments on these issues.

Some transit districts have chosen to balance the benefits of a predominantly non-political governing board with some participation by elected officials. For example, the board structure of the transit agency serving the Austin area was revised in 2011 from 100% elected officials to a mix of two elected officials and five non-politicians, with the City of Austin, the largest participant and underwriter of the system, having a predominant say in the appointments. The enabling legislation went a step further and specified that one appointed member of the board must have at least 10 years of experience as a financial or accounting professional and another must have at least 10 years of experience in an executive-level position in a public or private organization.[17] As one commentator noted at the time the legislation was proposed, "What the board would lose in elected officials, it would presumably gain in knowledge."[18]

In 2011, the Legislative Auditor of the State of Minnesota issued an evaluation report that analyzed various governance structures for the agency principally responsible for the Twin Cities' transit system, as potential alternatives to the existing structure under which all members of the governing council are appointed by the governor. After analyzing and comparing various structures, including the existing appointment system and the direct election of council members, the Auditor concluded that the optimal model would be a combination of appointed and elected officials that "would provide the Council with an effective mix of regional and local perspectives."[19]

Silicon Valley offers an unparalleled pool of talented individuals, including entrepreneurs who have introduced cutting-edge technologies, products and services, as well as countless experts with leadership experience in finance and executive management of large organizations. Current and retired leaders of Silicon Valley companies and organizations have made numerous contributions in support of a wide range of community activities, including the arts, healthcare, education and other civic and charitable endeavors. Surely, appointing authorities could identify qualified public sector leaders who would be willing to serve on the VTA Board, and VTA would benefit from their knowledge and experience.

[17] Texas Transportation Code Section 451.5021(b)
[18] "What's Wrong With Cap Metro...and What's Right", Lee Nichols, Austin Chronicle, April 24, 2009
[19] "Governance of Transit in the Twin Cities Region", Office of the Legislative Auditor, January 2011, page 44

CONCLUSIONS

VTA is a complex, multi-billion-dollar enterprise. In addition to operating a large transit system, VTA has responsibility for county-wide transportation planning, including congestion management, the design and development of highway, pedestrian and bicycle improvement projects and the promotion of transit-oriented development.

VTA is governed by a part-time Board of Directors composed solely of elected public officials, each of whom is burdened by the obligations of his or her office and subject to local political interests. A few of the directors have served for many years, but others have served for less than two. Appointees to the VTA Board often have little or no previous experience with transportation, finance or leadership of a large organization, let alone one the size of VTA.

Today, VTA faces a series of challenges which, taken together, can be fairly characterized as a crisis. The following challenges, among others, must be addressed by the VTA Board:

- Year after year, VTA operates one of the most expensive and least efficient transit systems in the country. Empty or near-empty buses and light rail trains clog the County's streets but are used regularly by fewer than 5% of the County's commuters. Operating costs increase continuously, and taxpayers subsidize 90% of these costs, to the tune of about $5.50 per rider for each bus trip and $10.75 per rider for each light rail trip.

- VTA veers from one financial crisis to another. In June 2017, the VTA Board adopted the 2018-2019 biennial budget and consciously approved a built-in structural financial deficit of $50 to $60 million per year. In January 2018, an ad hoc committee of the VTA Board was formed to deal with the crisis caused by the budget deficit. In August 2018, VTA's Chief Financial Officer advised the committee that the agency was 18 to 24 months away from going "off a cliff." At the end of 2018, the ad hoc committee made weak and only partially effective recommendations to address VTA's structural financial deficit and didn't seriously consider such important but politically sensitive topics as reductions in employee headcount or the scrapping or deferral of large capital projects.

- Light rail ridership is declining steadily throughout the country. Experts have pronounced the early twentieth century concept of light rail transit obsolete, and other regional transit agencies are contemplating abandoning light rail system extensions. VTA, however, continues to move forward with an extension of its light rail system — one that currently has among the highest operating costs and lowest ridership in the country. The remaining capital cost of the proposed 2.4-mile Eastridge extension project is currently estimated at $440 million, representing approximately *$720,000 for each new rider* that the staff estimates will actually use the extension during the first year of its operation. The project makes no financial sense and survives only because powerful political forces continue to support it. VTA needs to carefully consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be met without "doubling down on a failed system," as one director put it, and worsening VTA's precarious financial condition.

- Although a detailed review of the long-pending BART to Silicon Valley project was beyond the scope of the Grand Jury's inquiry, a number of our interviewees, including senior VTA staff and members of the VTA Board, noted its importance to the future of VTA. VTA's proposed fiscal years 2020-2021 capital budget calls for a staggering $713.5 million in Measure A and Measure B tax funds for the BART Phase 2 project. The operating agreement between VTA and BART remains in negotiation, and several of our interviewees expressed concern that important issues regarding the sharing of system-wide capital and operating costs remain unresolved and that such costs could fall disproportionately on VTA. One director expressed the opinion that BART-related cost control issues are more significant for VTA than those related to the Eastridge light rail extension. A senior staff member stated unequivocally that "BART is going to bankrupt VTA." An interested stakeholder similarly predicted that BART "will be the demise of VTA." Whether or not these assessments are accurate, it is clear that the financial health of VTA is dependent on the success of BART in the South Bay Area. That success is dependent, in turn, on VTA effectively implementing BART Phase 2 and meeting its ridership and revenue goals.

VTA's operating territory is the Silicon Valley – the world's leading center of innovation and cutting-edge technology. Several of VTA's key staff members have noted that they had joined VTA in the hope that VTA would take an industry-leading role in the future of transportation, commensurate with the role that companies and other institutions in the Silicon Valley have taken in the introduction of all manner of new products, technologies and services. Yet, little such innovation has been evident at VTA in recent years. In fact, as noted above, VTA seems to be "doubling down" on old technology. At the Board's recent workshop on "The Future of Transportation in Silicon Valley," the directors present (two-thirds of the voting members and half of the alternates) seemed to recognize this problem and unanimously agreed that VTA needs to make "radical changes" in the way it provides its services.

If VTA is going to meet the many challenges it faces, the VTA Board will have to make good on its commitment to radical change. So, the question becomes, is the Board capable of making the policy decisions and providing the strategic oversight necessary to accomplish such change? The Grand Jury has concluded that, as presently structured and operated, that level of capability does not appear to be present. Accordingly, the Grand Jury recommends a number of changes in the structure of the VTA Board and in the way directors are selected, trained and evaluated that it believes will assist VTA in addressing its many challenges and achieving its aspiration of becoming a leader in the transportation industry.

FINDINGS AND RECOMMENDATIONS

Finding 1

The VTA Board, currently made up exclusively of elected officials from the Santa Clara County, Board of Supervisors, the City of San José and the other smaller cities in the County, suffers from:

- A lack of experience, continuity and leadership;
- Inadequate time for the directors to devote to their duties to the VTA Board due to their primary focus on the demands of their elected positions;
- A lack of engagement on the part of some directors, fostered in part by the committee system, resulting in VTA functioning largely as a staff-driven organization;
- Domination, in terms of numbers, seniority and influence, by representatives of the Santa Clara County Board of Supervisors and the City of San José; and
- Frequent tension between the director's fiduciary duties to VTA and its regional role, on the one hand, and the political demands of their local elected positions, on the other.

Recommendation 1a

VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Recommendation 1b

As the appointing entity with an interest in the transit needs of all County residents, the County of Santa Clara should commission its own study of transportation agency governance structures, focusing on the elements listed in Recommendation 1a. This study should be commissioned prior to December 31, 2019.

Recommendation 1c

As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Recommendation 1d

Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Recommendation 1e

In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Recommendation 1f

Prior to December 31, 2019 and pending changes contemplated by Recommendation 1e, VTA should adopt a policy of routinely reappointing an incumbent Chairperson for a second one-year term at the end of his or her initial term, absent unusual circumstances.

Recommendation 1g

In order to better connect the Chairperson with the budget process and accountability for operating and financial results, prior to December 31, 2019, VTA should amend Section 2-26 of the VTA Administrative Code to provide that the Chairperson and Vice Chairperson shall serve terms coinciding with VTA's fiscal year ending June 30, rather than the calendar year.

Finding 2

The California Public Utilities Code, the VTA Administrative Code and the Guidelines for Member Agency Appointments to the VTA Board of Directors adopted by the Governance and Audit Committee of the Board (Guidelines) all contain provisions requiring that, to the extent possible, the appointing agencies shall appoint individuals to the VTA Board who have expertise, experience or knowledge relative to transportation issues. Nevertheless, appointees to the VTA Board often lack a basic understanding of VTA's operations and transportation issues, generally.

Recommendation 2

In order to help assure that individuals appointed to serve on the VTA Board have the appropriate qualifications, prior to December 31, 2019, VTA should take vigorous action to enforce compliance by appointing agencies with the qualification and suitability requirements of: (i) Section 100060(c) of the California Public Utilities Code; (ii) Section 2-14 of the VTA Administrative Code; and (iii) the Guidelines.

Finding 3

The VTA Board lacks effective policies designed to assure productive participation by members of the VTA Board.

Recommendation 3a

In order to help make directors become and remain productive members of the VTA Board, prior to December 31,2019, VTA should: (i) implement and enforce attendance at an intensive, multi-session onboarding bootcamp for incoming directors that would provide detailed information regarding VTA's operations, financial affairs and currently pending large-scale projects as well as the organization and operations of the Board and directors' duties and obligations; (ii) prepare and provide to each director a detailed handbook of directors' duties, similar to the "Transit Board Member Handbook" published by the American Public Transportation Association; (iii) enforce attendance at Board and committee meetings by providing Board attendance records to appointing agencies and removing directors from committees for repeated non-attendance; and (iv) implement a robust director evaluation process, with the participation of an experienced board consultant, that would include mandatory completion by each director of an annual self- evaluation questionnaire and Board review of a composite report summarizing the questionnaire responses.

Recommendation 3b

In order to further enhance the effectiveness of the directors, prior to December 31,2019, VTA should develop a program to encourage continuing education of the Board members by: (i) scheduling and enforcing attendance at more frequent and intensive Board workshops on important issues regarding transit policy, developments in transportation technology, major capital projects and VTA's financial management; and (ii) requiring directors to attend, at VTA's expense, third-party sponsored industry conferences and educational seminars.

Finding 4

The Grand Jury commends the Chairperson of the VTA Board for recognizing the need to improve Board engagement and effectiveness by convening the Ad Hoc Board Enhancement Committee to review the Board's governance structure and practices.

Recommendation 4

None.

Finding 5

VTA continues to consider an extension of VTA's light rail system to the Eastridge Transit Center, at an additional capital cost of over $450 million, although VTA's light rail system is one of the most expensive, heavily subsidized and least used light rail systems in the country, many transit experts consider light rail obsolete, and VTA is suffering from chronic structural deficits that would be exacerbated by the continuation of the project as currently defined.

Recommendation 5a

VTA should consider following recommendations made by several directors that it undertake a thorough review of VTA's light rail system and its future role as a mode of transportation in Silicon Valley before proceeding with the Eastridge extension project. This review, as it pertains specifically to the analysis of the viability of the Eastridge extension, should be undertaken with the participation of an independent consultant and should consider such issues as projected ridership estimates, project cost estimates including future operating and capital costs, and the projected impact on traffic congestion on Capitol Expressway with the removal of two HOV lanes.

Recommendation 5b

VTA should consider whether the recognized needs of the residents of East San José for modern, efficient public transportation can be better served by an alternative to the proposed light rail extension.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Gury requests responses as follows:

From the following governing bodies:

Responding Agency	Finding	Recommendation
Santa Clara Valley Transportation Authority	1, 2, 3, 4 and 5	1a, 1f, 1g, 2, 3a, 3b, 5a and 5b
County of Santa Clara	1	1b, 1d and 1e
City of Campbell	1	1c, 1d and 1e
City of Cupertino	1	1c, 1d and 1e
City of Gilroy	1	1c, 1d and 1e
City of Los Altos	1	1c, 1d and 1e
City of Milpitas	1	1c, 1d and 1e
City of Monte Sereno	1	1c, 1d and 1e
City of Morgan Hill	1	1c, 1d and 1e
City of Mountain View	1	1c, 1d and 1e
City of Palo Alto	1	1c, 1d and 1e
City of Santa Clara	1	1c, 1d and 1e
City of San José	1	1c, 1d and 1e
City of Saratoga	1	1c, 1d and 1e
City of Sunnyvale	1	1c, 1d and 1e
Town of Los Altos Hills	1	1c, 1d and 1e
Town of Los Gatos	1	1c, 1d and 1e

APPENDIX A – The Guidelines for Member Agency Appointments to the VTA Board of Directors

7.a

Santa Clara Valley Transportation Authority (VTA)

Guidelines for Member Agency
Appointments to the VTA Board of Directors

The following information and suggestions are provided to assist local jurisdictions with appointing qualified, engaged and capable representatives to the VTA Board of Directors.

Overview of VTA

VTA is an independent special district responsible for bus, light rail and paratransit operations; congestion management; specific highway improvement projects; countywide transportation planning; and voter-approved local sales tax programs, including the 2000 Measure A Transit Improvement Program. As such, VTA is both an accessible transit provider and multi-modal transportation planning and implementing organization involved with transit, highways and roadways, bikeways, and pedestrian facilities.

VTA is governed by its own Board of Directors representing all jurisdictions within Santa Clara County. Eligible Board members are elected city councilmembers or county supervisors who may serve during their term of office.

The VTA Board of Directors consists of 12 voting members, 6 alternates, and 3 ex-officio members, and membership attempts to balance regional representation and population. Board members are appointed as follows:

- **GROUP 1: (San José)** – 5 voting members and 1 alternate
  City of San José
- **GROUP 2: (Northwest)** – 1 voting member and 1 alternate
  City of Los Altos; Town of Los Altos Hills; City of Mountain View; City of Palo Alto
- **GROUP 3: (West Valley)** – 1 voting member and 1 alternate
  City of Campbell; City of Cupertino; Town of Los Gatos; City of Monte Sereno; City of Saratoga
- **GROUP 4 (South County)** – 1 voting member and 1 alternate
  City of Gilroy; City of Morgan Hill
- **GROUP 5 (Northeast)** – 2 voting members and 1 alternate
  City of Milpitas; City of Santa Clara ; City of Sunnyvale
- **GROUP 6 (Count of Santa Clara)** – 2 voting members and 1 alternate
  County of Santa Clara
- **Ex-Officio** - Santa Clara County's three Metropolitan Transportation Commission members

It is important to note that other than the Ex-Officio members, the above groups are responsible to appoint their representative(s) in a manner they themselves determine.

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Key information about the Board of Directors

- Generally meets the first Thursday of each month (July meeting is normally cancelled) at the County of Santa Clara Government Center (70 W. Hedding Street, San Jose)
- Meetings begin at 5:30 PM and normally last one to three hours, depending on the agenda.
- A small number of Board workshops or study sessions are typically held during the year. These are normally scheduled for a time other than the regular Board meeting.
- Directors serve on one or more Board standing committees. Most standing committees meet monthly, while others meet bi-monthly or quarterly. Standing committees meet at varying times during the normal work day, and most standing committee meetings are conducted at VTA's River Oaks Administrative Complex.
- Appointments are for two years, commencing on January 1 and ending on December 31 of the following year. Members and alternates may be appointed to successive terms.
- Members of the VTA Board of Directors are not eligible to concurrently serve on VTA's Policy Advisory Committee (PAC), although Board alternates may be appointed to the PAC.
- It is the responsibility of each member jurisdiction to seek agreement with the other members on any proposed appointment of an individual to represent that city/county group on the VTA Board of Directors.

Expectations

Board members:

- Should be able to devote, on average, 5 - 10 hours per month, which includes Board and standing committee meetings as well as time to review agenda materials.
- Represent the interests of their city/county group while endeavoring to achieve regional consensus.
- Have a fiduciary responsibility to vote for the best interests of the region, not those of their city/county group or appointing jurisdiction.
- Should be able to work cooperatively in a multi-jurisdictional setting.
- Should be able to attend Board and standing committee meetings consistently.
- Are responsible for keeping their respective jurisdictions informed of key issues, facilitating communication between those entities and VTA, and helping build consensus.

Suggested Guidelines for Board of Director Appointments

The following is offered for Member Agency consideration when appointing representatives to the VTA Board of Directors. They are suggestions only, not requirements. It is each appointing jurisdiction's prerogative to appoint its representative of choice, provided that individual meets VTA's pre-established membership requirements for the position.

When evaluating prospective appointees to the Board of Directors, you are strongly encouraged to give consideration to the following factors and attributes in determining your appointee:

- Consideration should be given to appointing a member based on the value and expertise they can provide to improving transportation and mobility within the county.
- Individual should have experience or interest in transportation.
- Consideration should be given to appointing a member who has sufficient remaining time in their term to allow full completion of their term on the VTA Board of Directors.
- Consideration should be given to reappointing members to consecutive terms.
- Prior service on the VTA Board of Directors or Policy Advisory Committee is advantageous.
- Previous service on a planning or land use commission is beneficial.
- Due to the institutional learning curve and the complexity and long-term regional effects of the policy decisions, consideration should be given to appointing members who demonstrate strength in these areas.
- It is important that appointees have sufficient available time to appropriately discharge their VTA Board of Directors duties and responsibilities.
- Individuals should be able to facilitate communication by appropriately representing the positions and concerns of their governing body while keeping that same body apprised of key VTA initiatives and issues.

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APPENDIX B – VTA Operating Statistics and 2017 National Trends

This appendix presents operational metrics comparing VTA against national trends using an FTA annual summary.

Table B1 VTA Operating Statistics 2009 - 2018

Year	County Population[1] (millions)	Bus Ridership[1]	Light Rail Ridership[1]	VTA Operations Full-Time Employees[1]	Fleet Size[1& 2]	VTA Operations Expense ($)[1]	Vehicle Revenue Hours[3&4]	Total Unlinked Passenger Trips[3&4]
2009	1.77	34,510,273	10,754,161	1649	547	254,285,943	1,487,469	45,264,434
2010	1.79	31,983,494	9,749,882	1588	523	257,953,581	1,406,463	41,733,376
2011	1.814	31,395,126	10,014,504	1576	593	263,322,297	1,357,169	41,409,630
2012	1.841	32,053,755	10,373,042	1599	544	278,532,013	1,383,007	42,426,797
2013	1.87	32,432,354	10,742,292	1614	542	293,447,169	1,411,180	43,174,646
2014	1.894	32,475,527	10,952,965	1687	542	311,287,342	1,464,798	43,428,492
2015	1.92	32,623,599	11,320,497	1724	639	319,978,046	1,524,011	43,944,096
2016	1.934	32,195,504	10,722,932	1758	599	335,140,300	1,555,226	42,918,436
2017	1.946	29,057,047	9,132,084	1761	559	354,494,193	1,569,744	38,189,131
2018	1.957	28,048,405	8,507,095	1795	571	414,975,000	1,582,146	36,555,500

Notes:

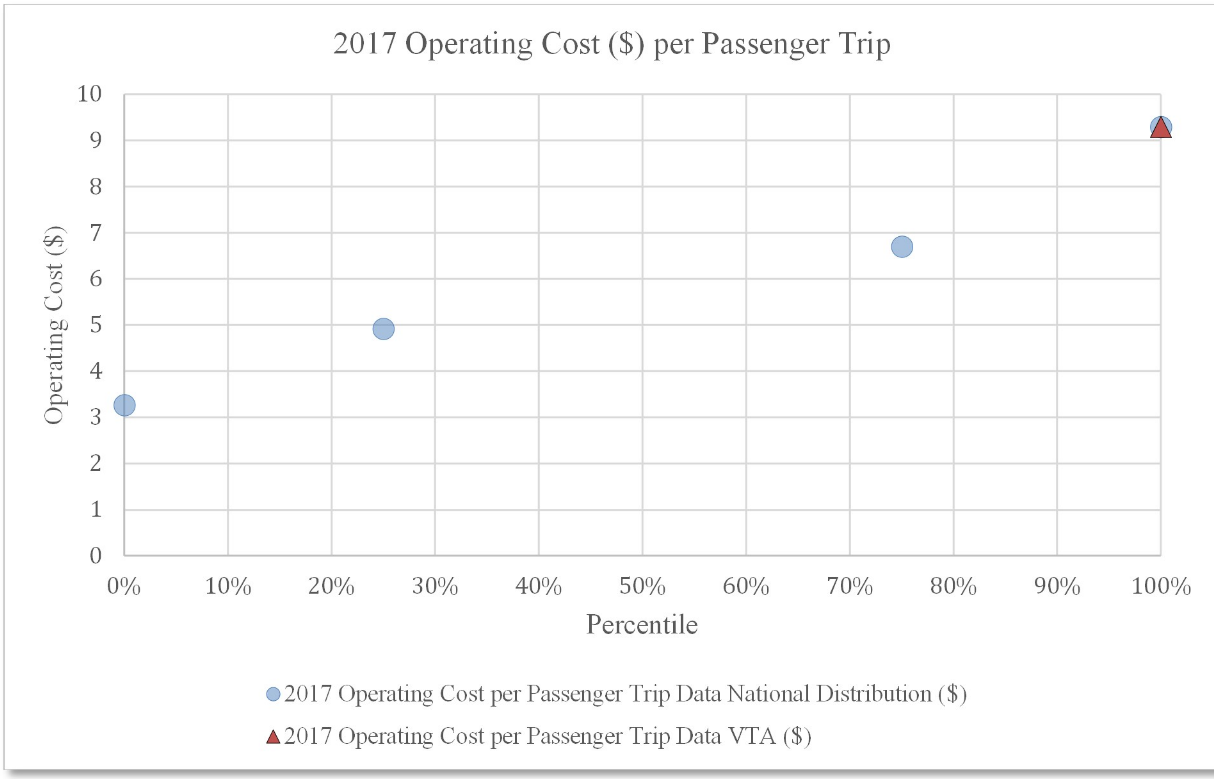
1. From VTA report "Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018" listed in References, item number 15, and State Department of Finance
http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/documents/PressReleaseJul2018.pdf

2. Fleet size includes the total number of buses and light rail cars

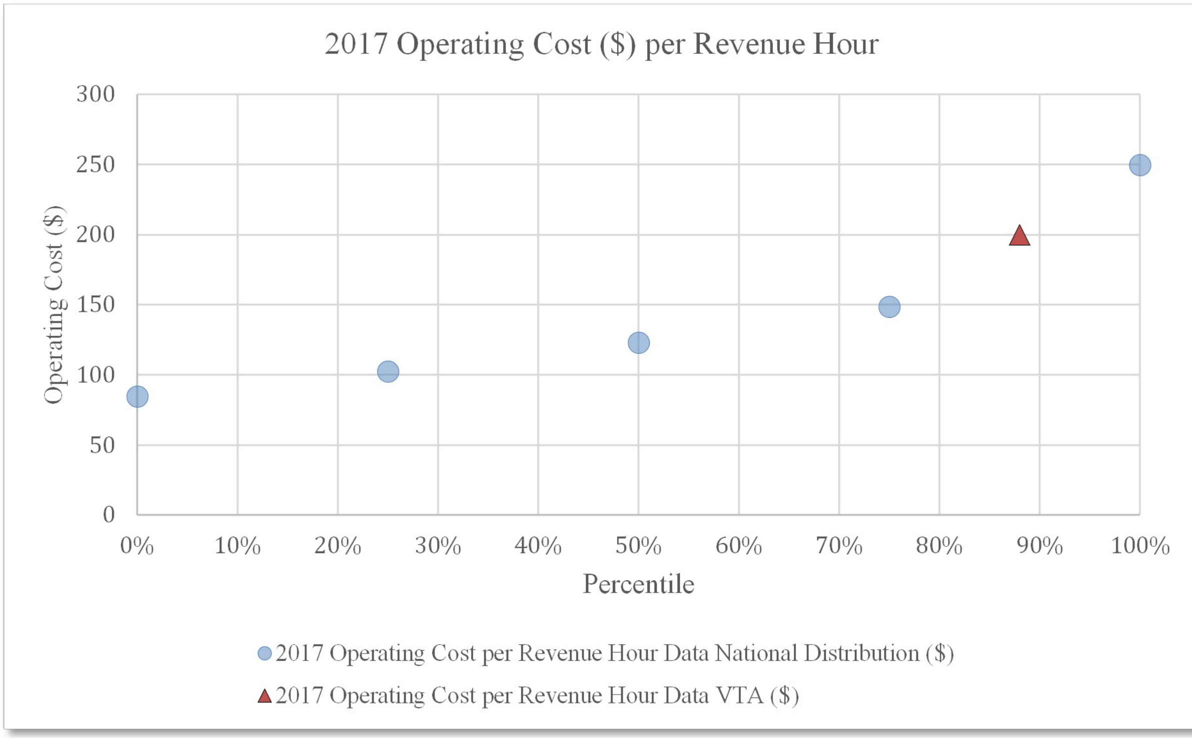
3. Vehicle Revenue Hours (VHR) and Unlinked Passenger Trips (UPT) data from FTA NTD
https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0

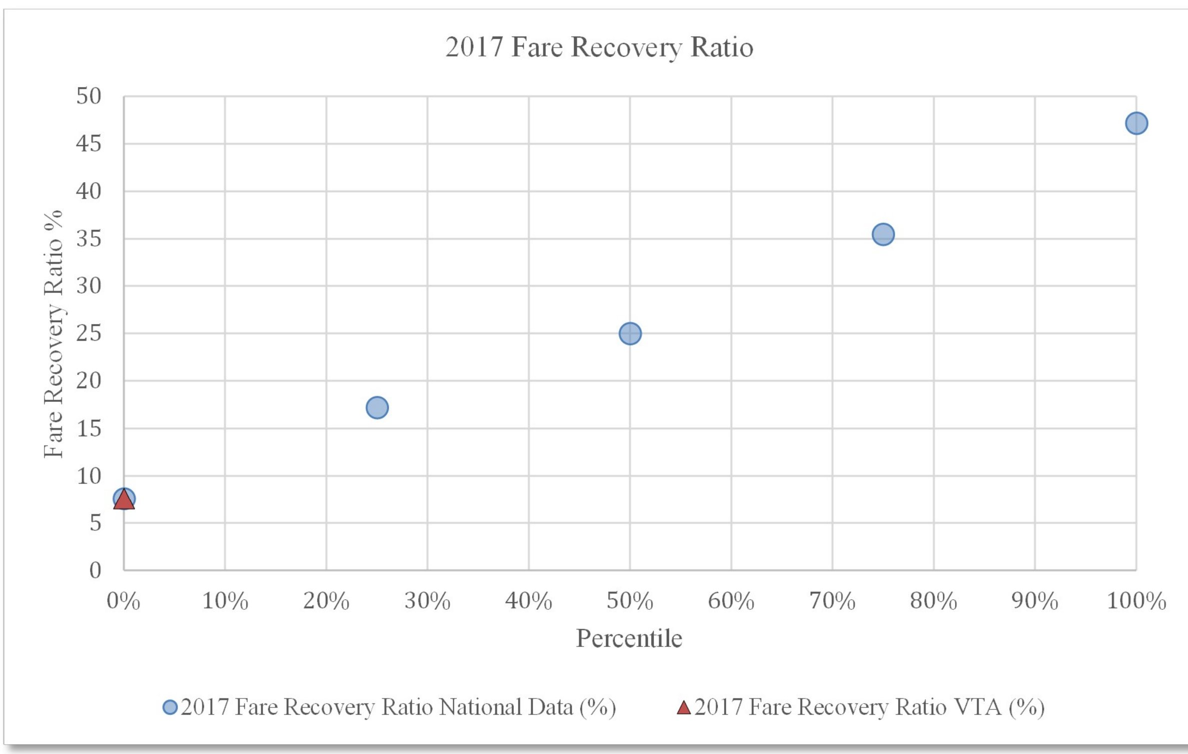
4. Operating expense, UPTs and VHRs include only directly operated bus and light rail vehicles

For the charts below, the Grand Jury used data from the 'National Transit Summaries & Trends 2017"[20], "Santa Clara Valley Transit Authority Annual Agency Profile 2017"[21], and "Service Data and Operating Expenses Time-Series by System"[22] to examine VTA's operations and performance in the national arena.



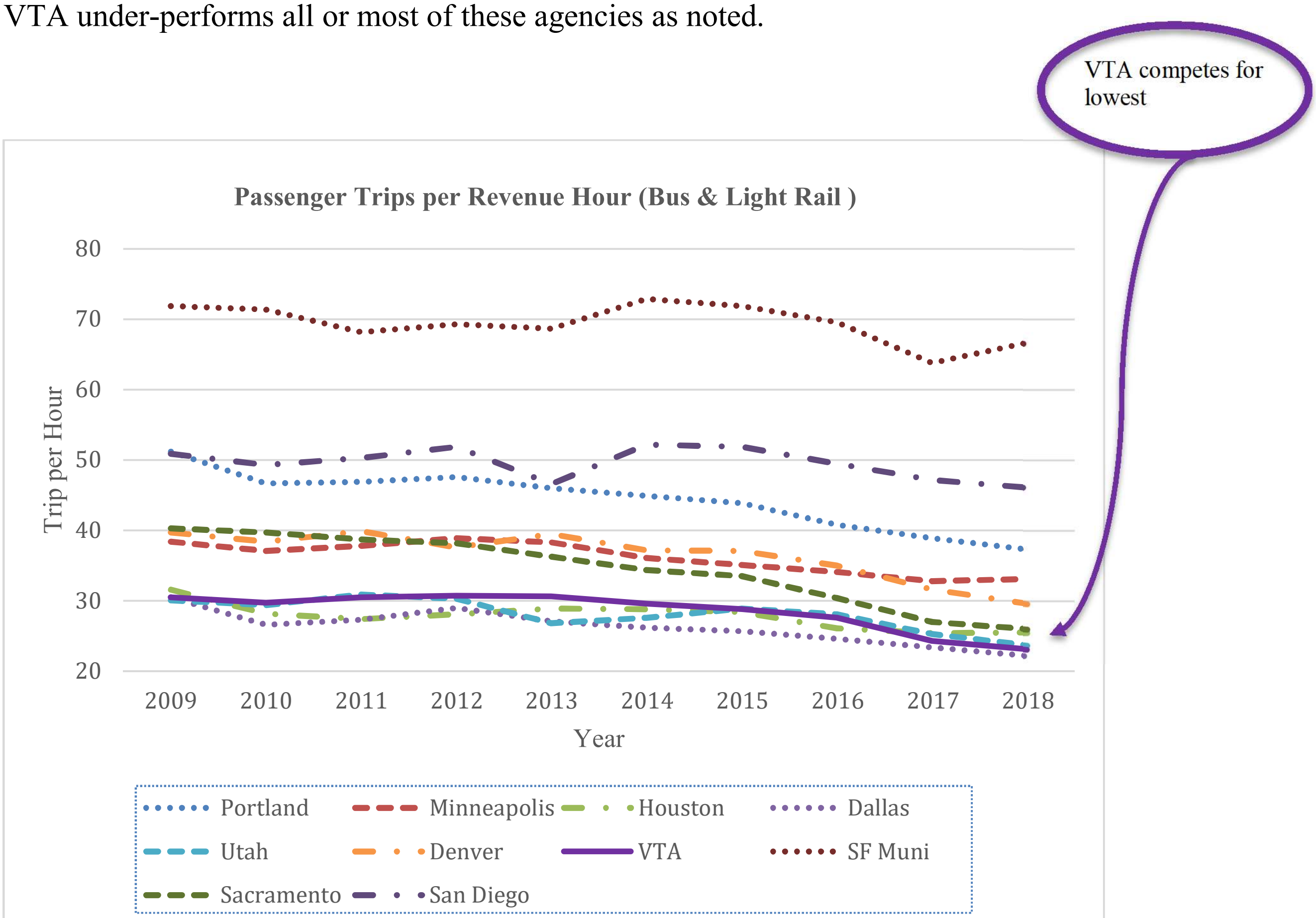
[20] 2017 National Transit Summaries and Trends
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/ntd/130636/2017-national-transit-summaries-and-trends.pdf
[21] Santa Clara Valley Transit Authority Annual Agency Profile 2017
https://www.transit.dot.gov/ntd/transit-agency-profiles/santa-clara-valley-transportation-authority
[22] Service Data and Operating Expenses Time-Series by System
https://www.transit.dot.gov/ntd/data-product/ts22-service-data-and-operating-expenses-time-series-system-0


2017 Operating Cost ($) per Revenue Hour
Operating Cost ($)
300
250
200
150
100
50
0
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Percentile
2017 Operating Cost per Revenue Hour Data National Distribution ($)
2017 Operating Cost per Revenue Hour Data VTA ($)

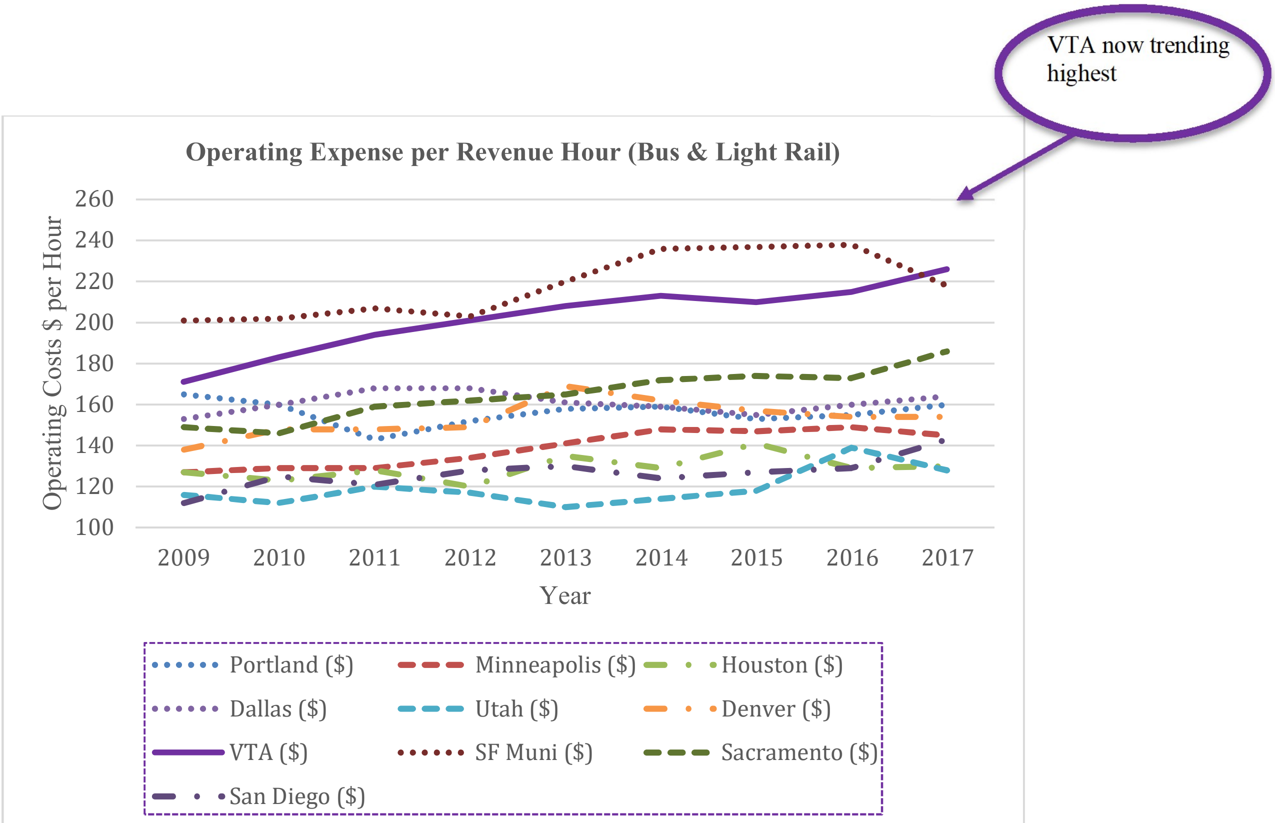

2017 Fare Recovery Ratio
Fare Recovery Ratio %
50
45
40
35
30
25
20
15
10
5
0
0%
10%
20%
30%
40%
50%
60%
70%
80%
90%
100%
Percentile
2017 Fare Recovery Ratio National Data (%)
2017 Fare Recovery Ratio VTA (%)

APPENDIX C – Peer Agency Comparisons

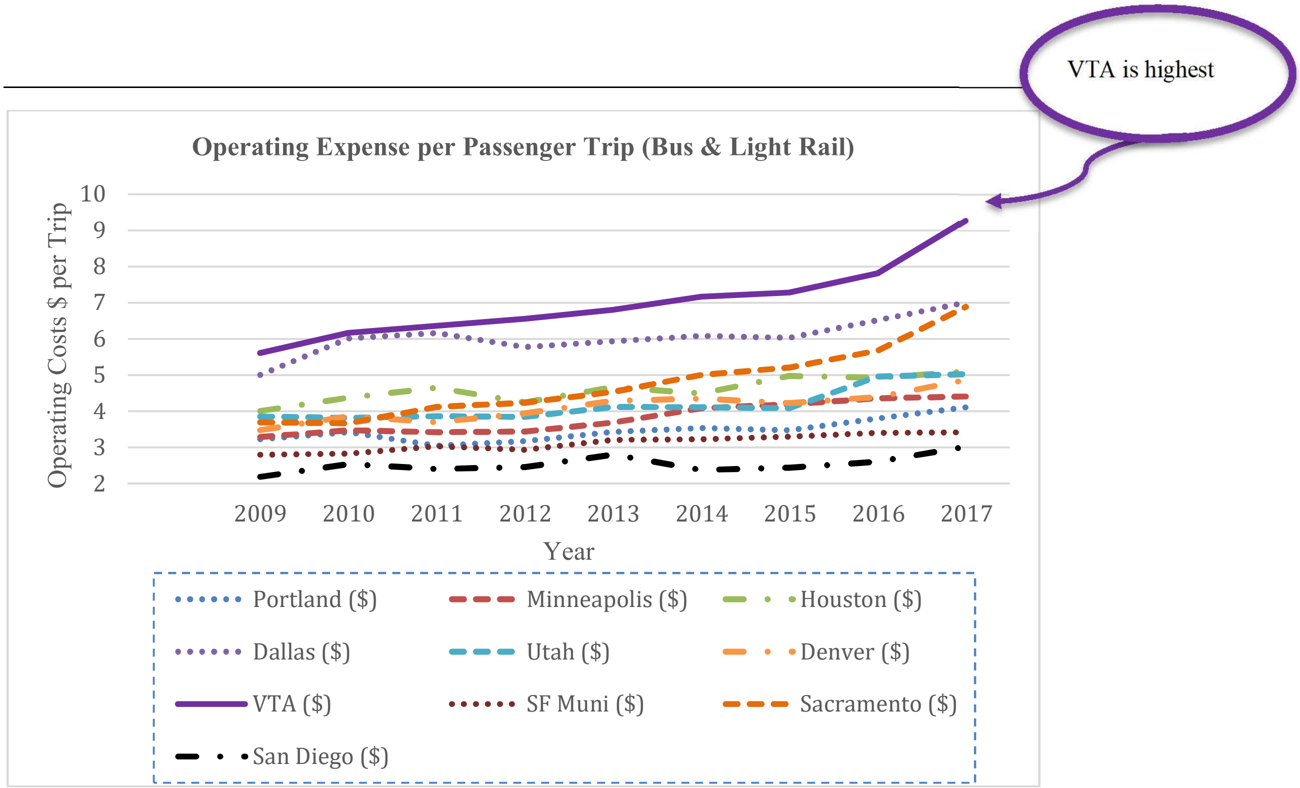
This appendix presents various operational metrics for VTA and nine peer agencies. Generally, VTA under-performs all or most of these agencies as noted.



Source of data: https://www.transit.dot.gov/sites/fta.dot.gov/files/February%202019%20Adjusted%20Database.xlsx



Source of data https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2



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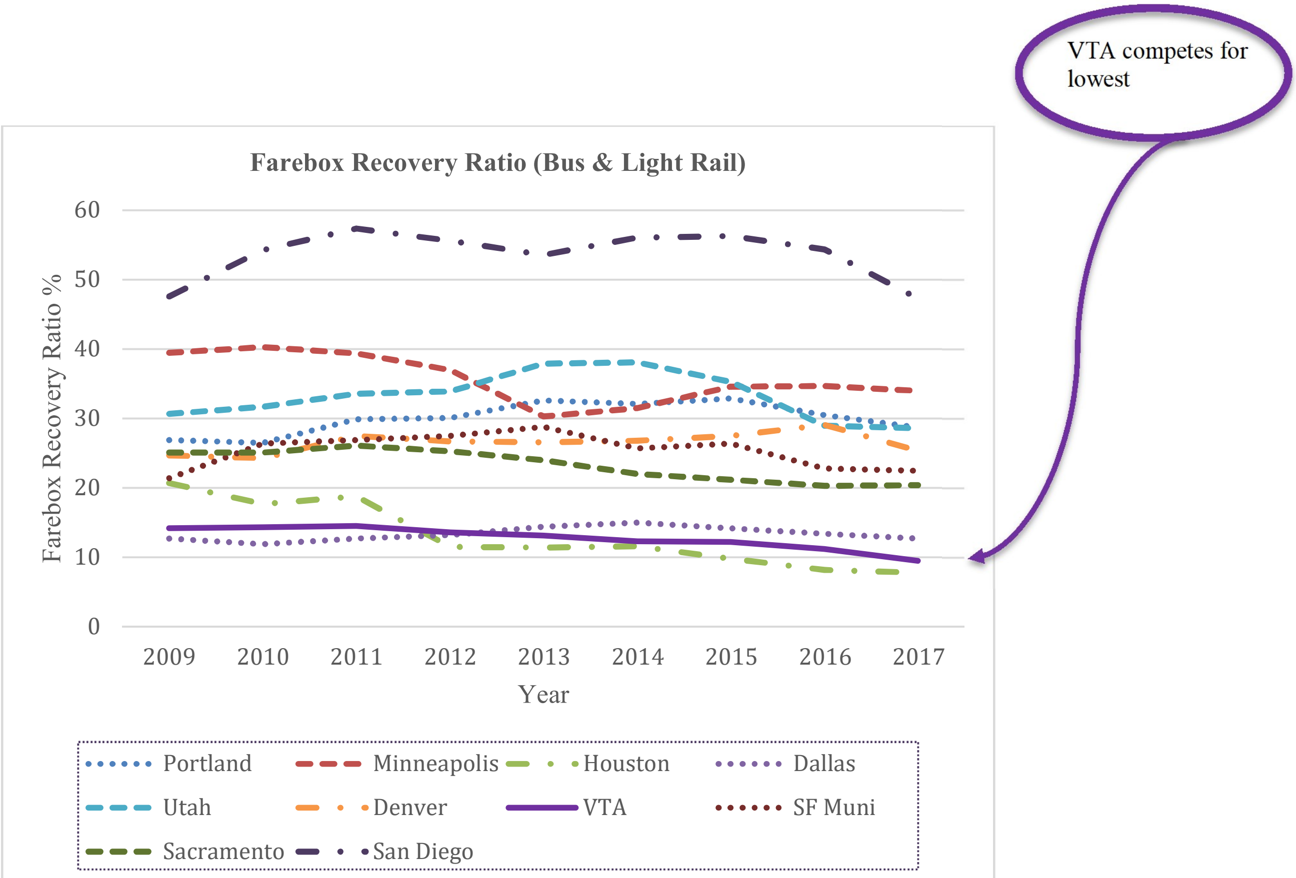

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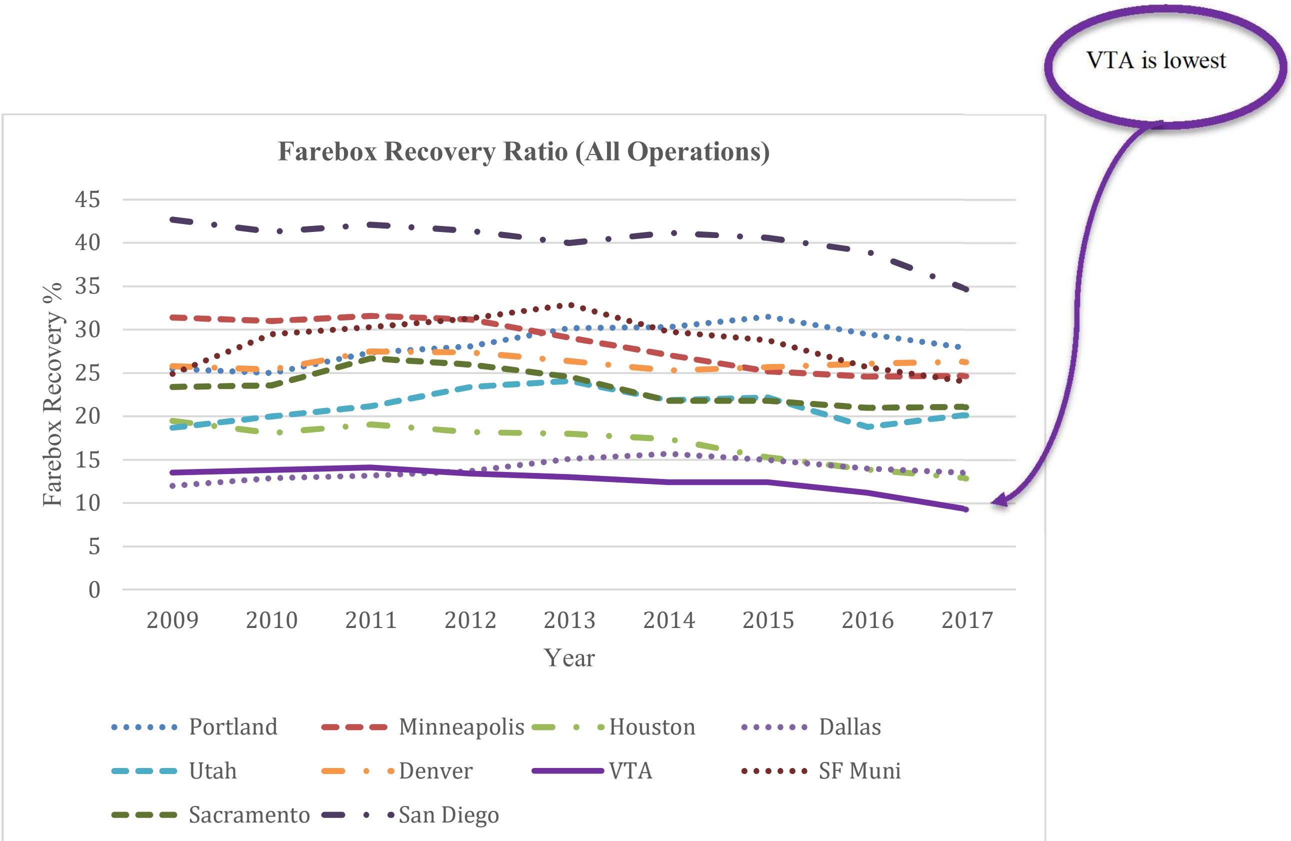

Source of data https://www.transit.dot.gov/ntd/data-product/ts21-service-data-and-operating-expenses-time-series-mode-2

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Note: All links verified June 9, 2019

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 18th day of June 2019.

John Pedersen
Foreperson

CITY OF CUPERTINO

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September 3, 2019

Honorable ____
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Re: Civil Grand Jury Report – Inquiry into Governance of the Valley Transportation Authority (June 18, 2019)

The City of Cupertino expresses our appreciation for the effort and commitment demonstrated by the June 18, 2019 Santa Clara County Civil Grand Jury's report, entitled *Inquiry into Governance of the Valley Transportation Authority*. This letter represents the City's response to Finding # 1 and on recommendations 1a, 1c, 1d and 1e consistent with California Penal Code §§ 933(c) & 933.05 (a) & (b).

Finding # 1: The City agrees with this finding and provides clarifying comments as contained in our response to recommendations 1a, 1c, 1d and 1e.

Recommendation 1a: VTA should commission a study of the governance structures of successful large city transportation agencies, focusing on such elements as: board size; term of service; method of selection (directly elected, appointed or a combination); director qualifications; inclusion of directors who are not elected officials; and methods of ensuring proportional demographic representation. This study should be commissioned prior to December 31, 2019.

Response: The City of Cupertino requests that an independent agent, such as the Cities Association of Santa Clara County, commission the recommended study with funding provided by VTA. Furthermore, for the study to be effective, this comment letter and others received by the Presiding Judge, should be included and considered by the study. To increase the competency of the Board and promote greater accountability, the City of Cupertino suggests that the study include consideration of:

- *Directly elected, full-time VTA Board Members*
- *5 Board Members corresponding to Santa Clara County Board of Supervisors districts*
- *Reasonable Compensation of Board Members in consideration for their full-time service*

Once VTA funding is committed, at least 180 days will be needed to complete the study and ensuing discussion and documentation of perspectives and recommendations by all represented governing bodies to the VTA Board and County Board of Supervisors. This study should be completed prior to June 30, 2020.

The City also requests that the charge be clarified to include not only "large city" transportation agencies, but specifically metropolitan areas (such as Portland, Oregon) where transit agency service areas span multiple municipalities.

Recommendation 1c: As constituent agencies of VTA, each of the cities in the County should prepare and deliver to VTA and the County Board of Supervisors a written report setting forth its views regarding VTA governance, with specific reference to the elements listed in Recommendation 1a. These reports should be completed and delivered prior to December 31, 2019.

Response: To expand on the response provided in Recommendation 1a, the City of Cupertino is often not effective in directly and actively engaging in equitable governance of VTA under the current structure of being represented by one rotating board member among the West Valley cities of Campbell, Los Gatos, Monte Sereno and Saratoga. The composition of the Board, as originally set in 1995, appears to have been based primarily on geographic proximity and/or population instead of other significant transportation and regional economic factors. Much has changed since 1995 and for the City of Cupertino equitable representation on the Board needs to take into consideration other transportation need factors that include centers of employment, sales tax generation, education centers, proximity to other similar cities (San Jose, Santa Clara, Sunnyvale, Mountain View & Palo Alto) and access to major transit infrastructure such as Highways 85, Interstate 280,Stevens Creek Boulevard and Caltrain.

VTA has been ineffective in bringing employees to most major employment centers, particularly those in the West Valley and North County. Figure 1 shows the importance of effective transit near job centers. Several years ago, a transportation specialist with a major employer pointed out that there are some 42,000 jobs in north Sunnyvale, serviced by one ineffective (slow) light rail line and one public bus. He compared that to 35,000 jobs in downtown San Jose serviced by lavish transit resources. Rather than address transit demand with new VTA service in the North County and West Valley over the past two decades, VTA suggested that cities impose aggressive transportation demand management (TDM) plans, and that has become the status quo. Major employers are now serving their own employees with extensive bus networks. This has taken many cars off the road, however has become a disincentive to creating a transit solution for the general public, urgently needed as an alternative to cars. Major employers report that while their buses are often stuck in traffic, their employees are able to work on the bus. Corporate buses have become an important tool in recruiting and retaining employees in our tight labor market, an advantage they hold over smaller employers with which they compete for talent. Consequently, large employers have no clear incentive to help change the status quo in the major employment centers in the North County and West for the benefit of the general public; notably, none of the major employers have publicly engaged at the VTA SR85 Policy Advisory Board meetings.

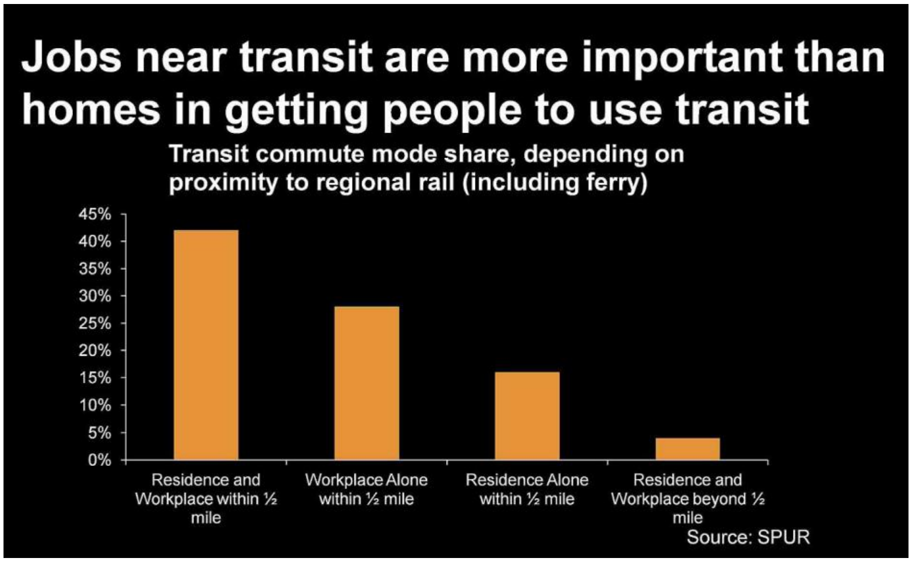

Figure 1: Credit SPUR & Stanford Consulting Professor Stefan Heck

Further compounding the issue of a regional solution is public trust. Public confidence in VTA has been damaged by longstanding but unfulfilled promises in the 1992 transit plan, reinforced by Measure A 2000, that would have connected the North County, West Valley and South San Jose along the SR 85 corridor and Cupertino, Santa Clara and downtown San Jose on the Stevens Creek corridor. Cupertino is at the nexus of these corridors with hours of stop-and-go traffic every morning and evening, but with no effective transit for the general public.

Voters have become fatigued and distrustful of transportation measures due to overpromising and underdelivering. Last year's arguably regressive Regional Measure 3 (RM3) is an example of a promise to mitigate traffic congestion, but all of the transit dollars coming to Santa Clara County were allocated to projects in San Jose: BART, Eastridge and Diridon Station. Moreover, the process that created the allocation was done with complete lack of transparency, behind closed doors with no participation of the public or the majority of its representatives serving on VTA. According to Jim Beall, the author of SB-595, the enabling legislation which set allocations, VTA's allocation came from Executive Director Nuria Fernandez. In July 2018, the allocations were introduced into the bill and passed through committee. In August 2018, the allocation was presented as a fait accompli to the VTA Policy Advisory Board and Board. As a result of such lack of transparency and fairness, future measures to fund needed improvements will be more difficult to achieve.

Per the Civil Grand Jury's report, VTA has begun to expend Measure A and Measure B sales tax receipts originally earmarked for capital improvements to help fund transit operations. This is concerning to the City of Cupertino. Accordingly, and as outlined in our response under Recommendation 1a, the City of Cupertino requests that VTA

provide funding to an appropriate fiscal agent to provide the resources needed to complete a commissioned study that would facilitate a thoughtful discussion of alternatives and positions by cities without designated seats on the VTA Board.
Pending any change to the governance of the VTA Board, and as described in the Civil Grand Jury's report, cities without designated seats on the VTA Board need to be given the time and resources necessary to consider a consensus position.

The City's comments herein represent the City's views regarding VTA governance to implement this recommendation. The City may provide additional responses either in future reports or in coordination with other governing bodies.

Recommendation 1d: Within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation, including appropriate amendments to Sections 100060 through 100063 of the California Public Utilities Code, to improve the governance structure of VTA (which potentially could include an increase in the directors' term of service, the addition of term limitations and the inclusion of appointed directors who are not currently serving elected officials).

Response: Per the response comments provided for Recommendation 1c, the City of Cupertino is open to participating in the development of such legislation, assuming it addresses the significant factors that lead to ineffective governance and poor decisions. Thus, the recommendation requires further analysis and the City will coordinate with other governing bodies over the next six months.

Recommendation 1e: In order to provide more continuity in the leadership of the VTA Board, within six months following the completion of the studies and reports specified in Recommendations 1a, 1b and 1c, the County of Santa Clara and/or one or more of VTA's other constituent agencies, should propose enabling legislation amending Section 100061 of the California Public Utilities code to provide that the Chairperson of the VTA Board shall be elected for a term of two years rather than one.

Response: The City of Cupertino agrees that extending the Chairperson's term may be advantageous for continuity and experience – especially if the two-year term were to coincide in time with the fiscal year. However, the advantage is dependent upon the qualifications of the person and, in the case of City of Cupertino, the assurance that the opportunity is equitably available to cities without designated seats on the VTA Board. The City of Cupertino would prefer to hold this recommendation in abeyance in order to allow time for overall recommendations to be developed and our response to Recommendation 1a considered.

Should you have any questions or concerns regarding this response, please feel free to contact City Manager Deborah Feng at deborahf@cupertino.org.

Sincerely,

Steven Scharf, Mayor

cc: Valley Transportation Authority Board
City of Cupertino City Council

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Amendment to existing voluntary collection agreement with Airbnb regarding transient occupancy taxes to allow certain short-term rental hosts to remit taxes directly to the City.

Recommended Action

Authorize the City Manager to enter into Amendment No. 1 to the voluntary collection agreement with Airbnb and to enter into other minor amendments to the voluntary collection agreement in the future.

Background

People or "transients" occupying short-term rentals for 30 days or less are subject to a 12% Transient Occupancy Tax (TOT) on the rent charged. In June 2018, the City entered into a voluntary collection agreement (VCA) with Airbnb under which Airbnb agreed to collect and remit transient occupancy tax (TOT) on behalf of short-term rental hosts using their platform. Due to this agreement, the City received about $400,000 in TOT from Airbnb in FY 2018-19. For additional information regarding the VCA, please see the staff report for the original agreement in Attachment B.

Discussion

Airbnb has requested an amendment to the VCA (Attachment A) that allows certain short-term rental hosts to register and opt-in to receive TOT directly. Once the TOT is provided to the host, it then becomes the host's responsibility to ultimately remit the TOT to the City. Airbnb has developed this opt-in program with the intention to meet the needs of hosts in the traditional hospitality industry, such as hotels and other professionals, which enables such hosts to control the collection and remittance of TOT to the City. Traditional hospitality hosts such as hotels often already have a practice in place to remit TOT to the City, and Airbnb's remittance on the host's behalf can distort their records. Other platforms already offer this capability and Airbnb has an interest in maintaining services comparable to their competitors.

Airbnb requires that hosts that opt-in to this program must:

- Provide their tax identification or registration number;
- Provide their business identification number; and
- Acknowledge their obligation to collect, remit, and report taxes owed to the City.

Once every twelve months, Airbnb will provide documentation regarding these hosts with information including gross receipts and taxable receipts from Airbnb short-term rentals in Cupertino. This information would allow the City to identify any hosts that were abusing the program and not appropriately remitting TOT. While Airbnb has not determined what actions they would take to address bad actors, they intend to develop a workable solution to discourage hosts from failing to pay all TOT owed to the City.

If hosts that opt-in to this program fail to remit TOT appropriately, TOT revenue may decrease. However, only a subset of hosts would opt-in to this program. In addition, Airbnb has expressed that while they are hopeful that we can continue our agreement, it will be difficult for them to continue operating under the VCA if the amendment is not approved. If Airbnb terminates the VCA, the City would no longer receive any TOT through Airbnb.

Sustainability Impact

No sustainability impact.

Fiscal Impact

In FY 2018-19, Airbnb remitted about $400,000 in TOT to the City on behalf of its users. With this proposed amendment to the VCA, it is possible for the City to receive less TOT if hosts who opt-in fail to remit TOT to the City. However, Airbnb has expressed that it would be difficult to continue operating under the VCA if the amendment is not approved.

Prepared by: Katy Nomura, Assistant to the City Manager
Reviewed by: Dianne Thompson, Interim Assistant City Manager
Approved for Submission by: Deborah Feng, City Manager
Attachments:
A – Draft Amendment to VCA
B – VCA Staff Report 6.19.18

AMENDMENT NO. 1 TO VOLUNTARY COLLECTION AGREEMENT FOR CITY OF CUPERTINO, CALIFORNIA, TRANSIENT OCCUPANCY TAX

This, Amendment No. 1 to the Voluntary Collection Agreement dated June 29, 2018, by and between **AIRBNB, INC.**, a Delaware corporation ("**Airbnb**"), and the **CITY OF CUPERTINO, CALIFORNIA** (the "**TAXING JURISDICTION**"), is entered into this [**DATE**] ("**Amendment No. 1**").

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the "**Platform**") through which third parties offering accommodations ("**Hosts**") and third parties booking such accommodations ("**Guests**") may communicate, negotiate, and consummate a direct booking transaction for accommodations to which Airbnb is not a party ("**Booking Transaction**");

WHEREAS, Airbnb has implemented an optional software feature designed to meet the needs of hosts in the traditional hospitality industry and other professionals, which enables such Hosts to control the collection and remittance of applicable municipal accommodation taxes and applicable sales taxes ("**Taxes**") to the Taxing Jurisdiction;

WHEREAS, Airbnb may expand the types of transactions in Cupertino, California, that may be offered by third parties through its Platform to third parties seeking to book such transactions;

WHEREAS, the Taxing Jurisdiction and Airbnb previously entered into a Voluntary Collection Agreement ("**VCA**") on June 29, 2018, in order to facilitate the reporting, collection, and remittance of applicable Taxes from Hosts and Guests, resulting from Booking Transactions completed by Hosts and Guests on the Platform for occupancy of accommodations located in Cupertino, California; and

WHEREAS, the parties now desire to amend the VCA to identify the optional alternative tax remittance feature for certain Hosts, and to expand the scope of transactions which may be completed by Hosts and Guests on the Platform.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The section entitled "**REGISTERED HOSTS**" shall be added to the VCA as follows:

REGISTERED HOSTS

(C-1) Airbnb reserves the right to implement a software feature on the Platform whereby Airbnb collects Taxes based on tax information supplied by the Host, and remits such Taxes to Hosts for ultimate reporting and remittance by the Host to the Taxing Jurisdiction. In such cases, a Host must provide to Airbnb its (i) applicable Tax identification or registration number; (ii) applicable business identification number; and (iii) acknowledgement of its obligation to collect all Taxes owed on a Host's Taxable Booking Transactions and to remit and report any Taxes collected directly to the Taxing Jurisdiction (a "**Registered Host**"). Upon request from the Taxing Jurisdiction, and not more than once per consecutive twelve-month period, Airbnb may provide the Taxing Jurisdiction with copies of documentation related to Registered Hosts.

(C-2) Airbnb satisfies its obligations of the VCA by remitting the full amount of Taxes collected on behalf of Hosts to the Taxing Jurisdiction, and in the case of Registered Hosts only, by remitting the Taxes collected on a Registered Host's Taxable Booking Transactions directly to the Registered Host.

2. Paragraph **(D)** is hereby deleted in its entirety and replaced with the following:

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of Taxes, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any Taxes and/or penalties, interest, fines or other amounts assessed against it were not due or are the subject of a claim for refund under applicable law, or otherwise bar it from enforcing any rights accorded by law. Notwithstanding the above and solely with respect to Registered Hosts, Airbnb does not assume any liability for the failure of a Registered Host to comply with any applicable collection, reporting or remittance obligations related to Taxable

Booking Transactions. Further, Airbnb does not assume any liability for collection based on information supplied by the Registered Host.

3. Paragraph **(H)** is hereby deleted in its entirety and replaced with the following:

(H) During any period in which this Agreement is effective and provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit Taxes on Taxable Booking Transactions, and shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report Taxes. Notwithstanding the above, Registered Hosts will be solely responsible for directly remitting Taxes collected on Taxable Booking Transactions to the Taxing Jurisdiction. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to Taxes for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

4. The following paragraph shall be added to the VCA as follows:

(K-1) If Airbnb expands the types of transactions that may be completed by Hosts and Guests on the Platform to include additional taxable services or products located in Cupertino, California, and Airbnb decides in its sole discretion to collect and remit any applicable taxes with respect to such transactions on behalf of Hosts and/or Guests, Airbnb agrees to provide reasonable notice to the Taxing Jurisdiction regarding the collection and remittance of such taxes.

5. Except as modified herein, the terms of the VCA shall remain in full force and effect. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Amendment No. 1 effective on the date set forth in the introductory clause above.

AIRBNB, INC., a Delaware corporation

By: ______________________________________
Signature of Authorized Representative

Mirei Yasumatsu, Global Tax Director
Name and Title of Authorized Representative

CITY OF CUPERTINO, CALIFORNIA

By: ______________________________________
Deborah Feng
City Manager

APPROVED AS TO FORM:

____
Heather Minner
City Attorney

ATTEST:

____
Grace Schmidt
City Clerk

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CITY COUNCIL STAFF REPORT
Meeting: June 19, 2018

Subject
Agreement with Airbnb to collect transient occupancy taxes from its platform users who operate short-term rentals in Cupertino.

Recommended Action
Authorize the City Manager to enter into a voluntary collection agreement with Airbnb to collect transient occupancy taxes owed to City from short-term rental operators in Cupertino using the Airbnb platform.

Background
Short-term rentals (STRs) fall under the definition of "hotel" under Cupertino's Transient Occupancy Tax (TOT) regulations (Section 3.12.020 of Chapter 3.12, Transient Occupancy Tax). People or "transients" occupying these short-term rentals are subject to a 12% TOT on the rent charged during the first 30 days of occupancy. Proprietors or "operators" of these short-term rentals are required to register and obtain a Transient Occupancy Registration Certificate from the City within 30 days of commencing business as well as collect TOT from renters. To date, the City has not received any TOT remittances from short-term rental operators in the City.

As reported to Council in February, there are roughly 300 STRs available within City limits. However, the City does not have the data or resources required to proactively enforce TOT requirements at this time. Enforcement of STRs has been complaint-based and focused on zoning requirements.

A study session was held on February 5, 2018 in which Council directed staff to pursue a voluntary collection agreement (VCA) with STR platforms like Airbnb. In addition, Council expressed interest in creating a regulatory program for STRs.

<u>Discussion</u>

Based on data we gathered from STR compliance vendors, the majority of STR operators in Cupertino utilize the Airbnb platform. In addition to marketing STRs, Airbnb acts as a collection agent for STR operators. While Airbnb is not an STR operator and is therefore not responsible for collecting TOT, it has agreed to voluntarily collect TOT on behalf of its users and remit the revenue to cities that sign a voluntary collection agreement (VCA). Under the terms of the VCA, Airbnb agrees to assume the duties to collect the TOT completed on its hosting platform and remit it to the City on a monthly basis pursuant to our TOT code.

Airbnb represents that it achieves 100% compliance with TOT collection through the VCA. It achieves this compliance by programming its hosting platform to automatically collect the TOT from transients who rent short-term rental units from Airbnb hosts. Once collected, Airbnb remits the TOT directly to the City as required by the City's code. While the hosts are responsible for remitting the tax, Airbnb voluntarily collects and remits the tax on the hosts' behalf.

According to the League of California cities, Airbnb has signed VCAs with nearly half of California cities. Neighboring cities such as Palo Alto, Santa Clara, and San Jose have already signed agreements, while Sunnyvale and Mountain View are considering it. Cities are signing on because the arrangement facilitates the collection of TOT and STR operators. There are, however, some important caveats the City will need to consider:

- *Confidentiality for Hosts and Guests.* Airbnb will not provide the City with personally identifiable information regarding its hosts or guests, unless it is part of a binding legal process. Without this data, it is difficult to ensure compliance with other parts of the City's municipal code, including zoning regulations.
- *Limits on Audits.* The agreement limits the City's ability to audit transactions to a consecutive 12 month period within a three-year period.

Airbnb was reluctant to negotiate the terms of their voluntary collection agreement as it is trying to maintain consistency in administering the voluntary collection program. Confidentiality for hosts and guests is a non-negotiable term for them. The City of San Francisco was successful in forcing platforms such as Airbnb and Homeaway to require hosts to register with the City by enacting laws requiring qualified website companies to comply with certain data requirements, which prompted litigation and a lengthy mediation process. San Francisco had leverage as one of the largest markets for STRs with over 11,000 listings.

While it would be ideal for Airbnb to share host data with the City, the alternatives are also not ideal. The City could attempt to pro-actively enforce the City's TOT regulations but this would require a significant investment in enforcement resources to identify, notify, and cite TOT violators. Identifying STR operators would be very time consuming as rental platforms do not provide basic information like an operator's full name, exact address, or occupancy rates for their listings. If identified, hosts are likely to have been unaware of the City's regulations requiring them to collect TOT. Therefore, staff is concerned that attempting to collect TOT would result in little to no net revenues to the City.

The City could also enact regulations similar to San Francisco, which require hosting platforms to collect TOT, require host registration with the City, and require hosting platforms to make available transaction data. However, this could invite costly legal action against the City as in the case of San Francisco but with far fewer benefits given the relatively small number of STRs actively operating in Cupertino. Enforcement would also remain a time-consuming and costly issue.

Staff recommends that the City enter into the VCA with Airbnb and begin to collect TOT revenues as of August 1, 2018. The VCA will simplify the remittance process for STR operators using the Airbnb platform and enable the City to receive 100% of the TOT associated with taxable rental bookings completed on Airbnb.

Cupertino stands to generate an additional $350,000 in TOT revenue annually with little to no effort from City staff. This estimate is based on activity from 2017 showing 190 active rentals in Cupertino and transactions totaling $3.4 million. All TOT is credited to the General Fund and can be used for general purposes.

Nothing in this VCA prevents the City from enacting a regulatory program that restricts how STRs operate in the City. Based on Council direction, staff is drafting amendments to its zoning code to provide more flexibility to STR operators while ensuring these STRs do not take away opportunities for long-term rentals. The program will also create a process for addressing nuisance issues. Staff does not anticipate that draft regulations will conflict with the VCA and expects to bring a draft to Council on July 3.

Staff also reached out to Homeaway but was informed that the platform is not entering into VCAs at this time.

Sustainability Impact
No impact.

Fiscal Impact

Based on estimates from Airbnb, the City could generate an additional $350,000 in annual TOT revenue.

Prepared by: Jaqui Guzmán, Deputy City Manager
Approved for Submission by: David Brandt, City Manager

Attachments:

A – Draft Voluntary Collection Agreement

CITY OF CUPERTINO

PARKS AND RECREATION DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject
Library Commission Fiscal Year (FY) 2019-20 Work Program

Recommended Action
Approve the Library Commission FY 2019-20 Work Program

Discussion
The Library Commission serves as a liaison for the City to the Cupertino Library, Poet Laureate, Cupertino Library Foundation, Santa Clara County Library District, and Friends of the Library, and advises the City Council on matters related to the Cupertino Library. The monthly meetings also provide an opportunity for library patrons and Cupertino residents to voice concerns or suggestions to both City and Library staff. At the regular meeting of the Library Commission on August 7, 2019 the Commission proposed the following FY 2019-20 Work Program:

Community Livability
1. Solve Programming and Library Space Issues
2. Address Library Parking Space Shortage and Safety Issues Affecting Library Patron Drop-off and Pick-up

Public Engagement and Transparency
3. Promote Partnership Opportunities with Community-based Organizations to Bring Programs to Cupertino Library Patrons
4. Support Data Collection, Analysis of Results, and Policy Recommendations Associated with the Tri-annual Library Patron Survey

Operational Efficiency
5. Collaborate with the Parks and Department and the Current Poet Laureate to Select the 2020-2021 Poet Laureate. Promote Poet Laureate Events Throughout the Year.

Public and Private Partnerships
6. Solve Programming and Library Space Issues (also under Community Livability)

The Commission is supported in its work by the staff liaison, Recreation Supervisor of Parks and Recreation. Approximately 5% of the staff liaison's time or 90 hours per year are spent providing this support.

Commission meetings are held at the Cupertino Library, 2nd Floor ThinkTank, approximately 11 months each year (no July meeting in 2019) at 7:00 p.m.

The Commission will begin working on their FY 2020/2021 work program in November 2019, in order to provide input into the City Work Program discussion in early 2020. Many of the items on the current work program are expected to carry over to next year, due to this year's transition to align the Commissions' Work Programs with the City's Work Program, budget process, and to maintain consistency across commissions.

Staff and the Library Commission recommend that City Council approve the Library Commission FY 2019-20 Work Plan.

Sustainability Impact
No sustainability impact.

Fiscal Impact
No fiscal impact.

Prepared by: Kim Calame, Recreation Supervisor
Reviewed by: Jeff Milkes, Director of Parks and Recreation
Approved for Submission by: Deborah Feng, City Manager
Attachments:
A – Draft Library FY 2019-20 Work Program

FY 2019-2020 Work Program, Library Commission

Community Livability

Library Commission Work Program Items
Solve Programming and Library Space Issues. *Support the efforts of Council and community-based organizations to address space constraints affecting programming, meeting, and study uses of the library. Duration: ongoing, as needed. See also: Public and Private Partnerships.*
Address Library Parking Space Shortage and Safety Issues Affecting Library Patron Drop-off and Pick-up. *This item is related to the Library Community Room Addition, but some aspects can be addressed independent of new construction. For example, explore opportunities for off-site parking during peak evening and weekend hours. Duration: ongoing, as needed.*

Related Council Work Program Item

Project Title	Project Objective	Progress to Date	Merged Columns 4-5 Next Steps, Timeline	Current Status	Goal	End Date	Merged Columns 9-13, Refer to Council's Proposed FY 2019-2020 Work Program
Library Community Room Addition	Create additional programming space	-Preferred alternative was adopted by City Council in 2015. -Funding was pledged by Irvine Company in development agreement for Hamptons development pending issuance of building permits. -Irvine Company (Hamptons Appts) has stated project is currently on hold. - In February 2019, Council authorized $311k of annual funding offset for FY 2019-20 & FY 2020-21 from County for building addition design services. -Proceeding with FY 2019-20 design funding request in Capital Improvement Program (CIP).	Initiate architectural design. Authority to begin design will be presented in FY 2019-2020 CIP budget. Authority to begin construction will occur in future, pending Council Direction.	In Progress	Meet programming needs of the library	June 2021	Budget: TDB Expenses to Date: N/A Est Staff Hours: 2000 Staff Lead: Roger Lee Dept: Public Works

Related Municipal Code Items (Library Commission, 2.68.070 Duties–Powers–Responsibilities)
A. Consult with the City Council, the City staff and the Santa Clara County Library Joint Powers Authority and staff regarding the functioning of the physical facilities of the Cupertino Library and shall make recommendations from time to time for improvement or modification thereof; C. Consult with and act as liaison with private community groups supportive of the library program; D. Consult with the architect and the City Council in the planning of any main or branch library building facilities, including locations, building layout, architecture, landscaping and furnishings;

Public Engagement and Transparency

Library Commission Work Program Item

Promote Partnership Opportunities with Community-based Organizations to Bring Programs to Cupertino Library Patrons. *Partner organizations can include but are not limited to: sibling city commissions, local school districts, the Cupertino Library Foundation, and Friends of the Cupertino Library. Commissioners will connect with potential partner organizations to strengthen connections, identify common goals, and support shared initiatives. Possible initiatives could include organizing workshops about parenting styles or stress management, supporting efforts to bring library services to Cupertino schools, or other items of interest to the community. Duration: ongoing.*

Related Council Work Program Item

Project Title	Project Objective	Progress to Date	Merged Columns 4-5 Next Steps, Timeline	Current Status	Goal	End Date	Merged Columns 9-13, Refer to Council's Proposed FY 2019-2020 Work Program
Review Current Commissions	...Consider having a meeting where like commissions from other jurisdictions can come together to share ideas and experiences.	- Research on best practices conducted. - Restructured commission work program process and introduced process to all commissions. - Survey conducted for commissioner feedback.	1) Report back to Council regarding commission feedback, Spring 2019 2) Plan and execute implementation of commission process changes according to Council direction and decision, Summer/Fall 2019	In Progress	1) Provide an opportunity for every commissioner to provide feedback. 2) Provide options for Council to consider regarding commission process changes.	Spring 2020	Budget: $3,000 Expenses to Date: N/A Est Staff Hours: 500 Staff Lead: Katy Nomura Grace Schmidt Dept: City Manager's Office/City Clerk

Related Municipal Code Item (Library Commission, 2.68.070 Duties–Powers–Responsibilities)

C. Consult with and act as liaison with private community groups supportive of the library program;

Public Engagement and Transparency

Library Commission Work Program Item

Support Data Collection, Analysis of Results, and Policy Recommendations Associated with the Tri-annual Library Patron Survey. Support the efforts of the Santa Clara County Library District to engage with the community to gather data regarding library patrons' needs and interests. Analyze the survey data to identify opportunities to improve library services and programming for patrons. Duration: data collection, Spring 2019. Analysis of results and policy recommendations, ongoing thereafter.

Related Council Work Program Item (Complementary Project)

Project Title	Project Objective	Progress to Date	Merged Columns 4-5 Next Steps, Timeline	Current Status	Goal	End Date	Merged Columns 9-13, Refer to Council's Proposed FY 2019-2020 Work Program
Neighborhood Engagement*Priority Setting Item*	Increase membership in, and engagement with, neighborhood groups and members. Provide support for Councilmembers who want to conduct town hall/office hour meetings with residents.	Currently we have more than 300 members in the Block Leader Program	1) Work with Block Leaders and Neighborhood Watch volunteers, as well as neighborhood groups to be neighborhood representatives and stakeholders related to City relations. 2) Continue outreach to areas in Cupertino that do not currently have Block Leader and Neighborhood Watch membership. June 2020	In Progress	Increase Block Leader and Neighborhood Watch membership.	June 2020	Budget: $2,000 Estimate hour: 500 Staff Lead: Brian Babcock Dept: City Manager's Office/Block Leader/Neighborhood Watch

Related Municipal Code Item (Library Commission, 2.68.070 Duties–Powers–Responsibilities)

B. Consult with the City Council, the City staff and the Santa Clara County Library Joint Powers Authority and staff regarding the Cupertino Library programs and services to the community and shall make recommendations from time to time for improvements or modifications thereof;

Operational Efficiency

Library Commission Work Program Item

Collaborate with the Recreation and Community Services Department and the Current Poet Laureate to Select the 2020-2021 Poet Laureate. Promote Poet Laureate Events Throughout the Year. *Support the effort to select the next Poet Laureate in whatever capacity is needed or required. Promote and attend Poet Laureate Events whenever possible.*

Related Council Work Program Item

Project Title	Project Objective	Progress to Date	Merged Columns 4-5 Next Steps, Timeline	Current Status	Goal	End Date	Merged Columns 9-13, Refer to Council's Proposed FY 2019-2020 Work Program
Recreation and Community Services Marketing Plan and Program Review	Create additional programming space	Contract was awarded in 2018	Provide background information and data to LERN, the contractor who will be completing the process in November 2019, Fall 2019	In Progress	To create a marketing plan that includes an analysis of programs to offer, fees to charge and evaluation of the department program brochure.	Winter 2019	Budget: $20,000 Expenses to Date: $4,000 Est Staff Hours: 150 Staff Lead: Christine Hanel Dept: Recreation and Community Services

Related Municipal Code Item (Library Commission, 2.68.070 Duties–Powers–Responsibilities)

B. Consult with the City Council, the City staff and the Santa Clara County Library Joint Powers Authority and staff regarding the Cupertino Library programs and services to the community and shall make recommendations from time to time for improvements or modifications thereof;

C. Consult with and act as liaison with private community groups supportive of the library program;

Public and Private Partnerships

Library Commission Work Program Item
Solve Programming and Library Space Issues. *Support the efforts of Council and community-based organizations to address space constraints affecting programming, meeting, and study uses of the library. Duration: ongoing, as needed. See also: Community Livability.*

Related Council Work Program Item

Project Title	Project Objective	Progress to Date	Merged Columns 4-5 Next Steps, Timeline	Current Status	Goal	End Date	Merged Columns 9-13, Refer to Council's Proposed FY 2019-2020 Work Program
Library Lease	Sign a new lease with the Library JPA for use of the City's Library facility.	Staff has begun meeting with Library staff to discuss terms of the new lease.	1) Begin negotiation of new lease/MOU, ongoing 2) Coordinate lease terms with Council, May 2019 3) Final lease agreement, August 2019 4) Develop license agreement with Library addressing program opportunities and Community Hall	In Progress	Complete updated lease agreement	Sept 2019	Budget: N/A Expenses to Date: N/A Est Staff Hours: 280 Staff Lead: Chad Mosley Heather Minner Jeff Milkes Roger Lee Dept: Public Works City Attorney's Office Recreation & Community Services

Related Municipal Code Item (Library Commission, 2.68.070 Duties–Powers–Responsibilities)

B. Consult with the City Council, the City staff and the Santa Clara County Library Joint Powers Authority and staff regarding the Cupertino Library programs and services to the community and shall make recommendations from time to time for improvements or modifications thereof;

C. Consult with and act as liaison with private community groups supportive of the library program;

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Second reading of Ordinance Nos. 19-2187 and 19-2188 adopting Zoning Text and Map Amendments related to the Vallco Shopping District Special Area. (Application No(s).: MCA-2019-02, Z-2019-01 (EA-2013-03); Applicant(s): City of Cupertino; Location: 10101 to 101333 North Wolfe Road APN#s:316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095)

Recommended Actions

Conduct the second reading and enact:

1. Ordinance No. 19-2187 (MCA-2019-01), an ordinance eliminating references in the Municipal Code to the Vallco Town Center Specific Plan and adding language establishing development standards for a new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)) (Attachment A); and
2. Ordinance No. 19-2188 (Z-2019-01), an ordinance amending the zoning map to rezone 13.1 acres within the Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential zoning P(R3,CG) and General Commercial uses and the remainder of the Special Area to General Commercial (CG) (Attachment B).

Discussion

On August 20, 2019 the City Council introduced and conducted the first reading of Ordinance Nos. 19-2187 and 19-2188. The motions passed on a 3-0-1 vote (No – Sinks, Recuse – Chao). The City Council motion for Ordinance No. 19-2187 included incorporation of amendments shown on dais materials provided to Council. The Council also identified the portion of the site to be zoned P(R3, CG) (see Attachment C).

Environmental Review

Pursuant to the requirements of the California Environmental Quality Act (CEQA), a Second Addendum to the Final Environmental Impact Report (EIR) for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), a program EIR prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168, was prepared. As demonstrated in the Second Addendum and response to comments, the record includes substantial evidence in support of the conclusion that no subsequent environmental review is required because none of the conditions that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 have occurred.

Fiscal Impact

None

Next Steps

These zoning ordinances will not take effect unless and until General Plan Amendment GPA-2019-02, re-designating the site, becomes effective.

Prepared by: Gian Paolo Martire, Senior Planner
Reviewed by: Piu Ghosh, Planning Manager
Benjamin Fu, Director of Community Development
Approved for Submission by: Deborah Feng, City Manager

ATTACHMENTS:

A – Ordinance No. 19-2187
B – Ordinance No. 19-2188
C – Area to be zoned P(R3, CG)

ORDINANCE NO. 19-2187

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ELIMINATING REFERENCES IN THE MUNICIPAL CODE TO THE VALLCO TOWN CENTER SPECIFIC PLAN AND ADDING LANGUAGE ESTABLISHING DEVELOPMENT STANDARDS FOR A NEW MIXED USE PLANNED DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL AND GENERAL COMMERCIAL ZONING DESIGNATION (P(R3,CG))

SECTION I: PROJECT DESCRIPTION

Application No:	MCA-2019-01
Applicant:	City of Cupertino
Location:	10101 to 10333 N Wolfe Rd
APN#s:	316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council's consideration of the Municipal Code amendments, the Council adopted Resolution No. 19-109, approving a General Plan Amendment to remove office uses as a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. 19-110, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Municipal Code to add a new zoning category, Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)), to the text of the Municipal Code that includes development standards enabling the mixed use or residential-only development contemplated for the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and _______________, upon due notice, the City Council has held at least two public hearings to consider the Municipal Code Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Municipal Code Amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:
After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Municipal Code amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. 19-109 and 19-110) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which *concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.*

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

4. The proposed zoning will promote orderly development of the City.

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves the Amendments to the Municipal Code (Application No. MCA-2019-01) as shown in Exhibit A and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published Municipal Code.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of August, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the ____day of ___________, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED: ________________________________ Steven Scharf, Mayor City of Cupertino	____________________ Date
ATTEST: ____________________ Grace Schmidt, City Clerk	____________________ Date
APPROVED AS TO FORM: ____________________ Heather Minner, City Attorney	____________________ Date

Exhibit A

19.12.030 Approval Authority.

Table 19.12.030 shows the approval authority, Noticing Radius, Expiration Date and Extension Dates for different types of Permits.

Table 19.12.030 - Approval Authority

Type of Permit or Decision [A, B]	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period [C]	Noticing/ Noticing Radius [D]	Posted Site Notice	Expiration Date [E]	Chapter/ Findings
General Plan Amendment									
Major [F]	-	-	R	F	PH	CA. Govt. Code 65350-65362	Yes	-	CA. Govt. Code 65350-65362
Minor [G]	-	-	R	F	PH		Yes	-	
Zoning Map Amendments									
Major [F]	-	-	R	F	PH	CA. Govt. Code 65853-65857	Yes	-	19.152.020
Minor [G]	-	-	R	F	PH		Yes	-	
Zoning Text Amendments	-	-	R	F	PH	CA. Govt. Code 65853-65857	-	-	19.152.030
Specific Plans	-	-	R	F	PH	CA. Govt. Code 65350-65362	-	-	20.04.030
Development Agreements	-	-	R	F	PH	CA. Govt. Code 65867	Yes	-	19.144.120
Development Permits									
Major [F, H]	-	-	F/R	A^1/F	PM	19.12.110/300'	Yes	2 years	19.156.050
Minor [G]	F	-	A^1	A^2	PM		Yes	2 years	

Table 19.12.030 - Approval Authority									
Type of Permit or Decision [A, B]	**Administrative Review**	**Design Review Committee**	**Planning Commission**	**City Council**	**Public Hearing/ Public Meeting/ Comment Period** [C]	**Noticing/ Noticing Radius** [D]	**Posted Site Notice**	**Expiration Date** [E]	**Chapter/ Findings**
Conditional Use Permits									
Major [F, H, I]	F	-	A^1/F/R	$A^{1/}$ $A^{2/F}$	PH	CA. Govt. Code 65905	Yes	2 years	19.156.050
Minor [G, I]	F	-	A^1/F/R	$A^{1/}$ $A^{2/F}$	PH		Yes	2 years	
Temporary	F	-	A^1	A^2	-	None	No	1 year	None 19.160.030
Density Bonus (Residential)			R	F	Based on concurrent application	19.52			
Adult-Oriented Commercial Activity (CUP)		-	R	F	PH	CA. Govt. Code 65905/300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval									
Major [J]	F	-	A^1	A^2	PM	19.12.110/	Yes	2 years	19.168.030
Minor [K]	F	-	A^1	A^2	PM		Yes	2 years	
Amendment									
Major [F, H]	-	-	F	A^1	Varies [L]	Depends on permit being amended [L]	Yes	2 years	19.44, 19.144, 19.156, 19.164
Minor [G]	F	-	A^1	A^2	Varies [L]		Yes	2 years	
Minor Modification	F	-	A^1	A^2	-	None	No	2 years	19.164
Hillside Exception/ Height Exception/	-	-	F	A^1	PH	19.12.110/300'	Yes	2 years	19.40.080, 19.24.070,

Table 19.12.030 - Approval Authority									
Type of Permit or Decision [A, B]	**Administrative Review**	**Design Review Committee**	**Planning Commission**	**City Council**	**Public Hearing/ Public Meeting/ Comment Period** [C]	**Noticing/ Noticing Radius** [D]	**Posted Site Notice**	**Expiration Date** [E]	**Chapter/ Findings**
Heart of the City Exception [I]									19.136.090
Variance	F	-	A^1	A^2	PH	CA. Govt. Code 65905	Yes	2 years	19.156.060
Status of non-conforming Use	-	-	F	A^1	PH	19.12.110/300'	Yes	-	19.140.110
Wireless Antennas [I]	F	-	F/ A^1	A^2	Varies [I]	Depends on application type	Yes	2 years	19.136.090
Signs									
Permits	F	-	A^1	A^2	-	None	No	1 year	19.104
Neon, Reader board & Freeway Oriented Signs [I]	-	F	F	A^1 [M]	PM	19.12.110/300'	No	1 year	19.104
Programs	F	-	A^1	A^2	-	None	No	1 year	19.104
Exceptions [I]	-	F	-	A^1 [M]	PM	19.12.110/ Adjacent	Yes	1 year	19.104.290
Parking Exceptions [I]	F	F	A^1	A^1 [M] /A^2	Varies [N]	19.12.110/ Adjacent/ 300' [O]	Yes	1 year	19.124.050
Fence Exceptions	-	F	-	A^1 [L]	PM	19.12.110/ Adjacent	Yes	1 year	19.48.060

Table 19.12.030 - Approval Authority									
Type of Permit or Decision [A, B]	**Administrative Review**	**Design Review Committee**	**Planning Commission**	**City Council**	**Public Hearing/ Public Meeting/ Comment Period** [C]	**Noticing/ Noticing Radius** [D]	**Posted Site Notice**	**Expiration Date** [E]	**Chapter/ Findings**
Front Yard Interpretation	F	-	A^1	A^2	PM	19.12.110/ Adjacent	Yes	1 year	19.08
R-1 Ordinance Permits									
Two-story [I]	F	F	F/A^1	A^1 [L] /A^2	Varies [I]	19.12.110/ Adjacent	Yes	1 year	19.28.140
Minor Residential	F	-	A^1	A^2	CP		No	1 year	
Exceptions [I]	-	F	-	A^1 [M]	PM		Yes	1 year	
Protected Trees									
Tree Removal	F	-	A^1	A^2	CP	Adjacent unless exempt	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-	-	F	A^1	PM	19.12.110/ 300'	Yes	-	14.18
Tree Management Plan	F	-	A^1	A^2	-	None	No	-	14.18
Retroactive Tree Removal	F	-	A^1	A^2	-	None	No	-	14.18
Reasonable Accommodation	F	-	A^1	A^2	-	None	No	1 year	19.52.050
Extensions [P]									
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F	-	A^1	A^2	-	None	No	1 year	
Neon, Reader board	F		A^1	A^2	-	None	No	1 year	

Table 19.12.030 - Approval Authority									
Type of Permit or Decision [A, B]	**Administrative Review**	**Design Review Committee**	**Planning Commission**	**City Council**	**Public Hearing/ Public Meeting/ Comment Period** [C]	**Noticing/ Noticing Radius** [D]	**Posted Site Notice**	**Expiration Date** [E]	**Chapter/ Findings**
& Freeway Oriented Signs									
Two Story Permits, Minor Residential Permits and Exceptions	F		A[1]	A[2]	-	None	No	1 year	
Tree Removals	F	-	A[1]	A[2]	-	-	No	1 year	
All other projects	F	-	A[1]	A[2]	-	19.12.110/ None	No	2 years	
~~For permits within the Vallco Town Center Zone - see Vallco Town Center Specific Plan~~									
KEY:									
R—Review and recommendation body					F—Final decision-making body unless appealed				
A[1]—Appeal Body on first appeal					A[2]—Appeal body on second appeal				
PH—Public Hearing					PM—Public Meeting				
CP—Comment Period									

Notes:

A. Permits can be processed concurrently with other applications, at the discretion of the Director of Community Development.

B. Projects with combined applications shall be processed at the highest level of approval in conformance with Section 19.04.090.

C. Public Hearing: Projects types that need noticing pursuant to the CA Government Code; Public Meeting: Project types that need only a mailed notice and no newspaper notices; Comment Period: Project types that need only a mailed notice and do not need a public hearing or public meeting.

D. Noticing Radius of an application in a combined application shall correspond to the maximum noticing radius required for any one of the applications.

E. Expiration date of an application in a combined application shall correspond to the maximum expiration date allowed for any one of the development applications (not including Subdivision Map Act applications, General Plan Amendments and Zoning Map or Text Amendments.)

F. Major General Plan Amendment, Conditional Use Permit, Development Permit application - for more than ten thousand square feet of commercial and/or industrial and/or office and/or other non-residential use, or greater than six residential units.

G. Minor General Plan Amendment, Conditional Use Permit, Development Permit application - for ten thousand square feet or less of commercial and/or industrial and/or office and/or other non-residential use, or six or less residential units.

H. City Council review for applications with new development greater than fifty thousand square feet of commercial, and/or greater than one hundred thousand square feet of industrial and/or office and/or other non-residential use, and/or greater than fifty residential units.

Planning Commission review for all other applications.

I. Please see specific zoning district regulations or chapters in this title that apply to the subject property or project for approval authority.

J. Major Architectural and Site Approval application - architectural and site approval for all projects that are not a Minor Architectural and Site Approval application.

K. Minor Architectural and Site Approval application - single family home in a planned development zoning district, minor building architectural modifications, landscaping, signs and lighting for new development, redevelopment or modification in such zones where review is required and minor modifications of duplex and multi-family buildings.

L. Meeting type and noticing are dependent on the underlying permit being modified.

M. Appeals of Design Review Committee decisions shall be heard by the City Council.

N. Parking Exceptions approved by the Director of Community Development need a comment period.

Parking Exceptions approved by the Design Review Committee need a public meeting.

O. Parking Exceptions in Single-family residential (R1) zones and Duplex (R2) zones need adjacent noticing.

All other Parking Exceptions need notices within three hundred feet of the exterior boundary of the subject property.

P. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the extension.

****

19.16.010 Zoning Districts Designated.

****

B. In addition to the zones identified in Table 19.16.010A, the City may establish separate zoning districts in individual specific plans adopted to promote the orderly development of the plan area. These zoning districts are identified in Table 19.16.010B below:

Table 19.16.010B - Specific Plan Districts	
Zoning Map Designation	**Specific Plan Name**
Heart of the City	Heart of the City
~~VTC Vallco Town Center~~	~~Vallco Town Center~~

Land uses and development standards within a specific plan zone shall be as prescribed in the specific plan.

****

19.16.030 Zoning Map and District Boundaries.

A. The boundaries of districts established by this title shall be shown upon the zoning map. The zoning map, and all amendments, changes, and extensions thereof, and all legends, symbols, notations, references, and other matters shown thereon shall be a part of this title.

B. The zoning map, as currently effective, and a record of all amendments, changes and extensions thereof, shall be maintained as a public record in the office of the Director of Community Development.

C. The boundaries of each district as shown upon the zoning map, or amendments thereto, are adopted by the ordinance codified in this title, and the specific regulations established by this title for each general district and all other regulations applicable therein as set forth in this title are established and declared to be in effect upon all portions of lands included within the boundaries of each and every district as shown upon the zoning map.

****

19.16.060 Application of Regulation to Sites Divided by Zone Boundaries.

Whenever it is found, pursuant to Section 19.28.050, that a lot or site is divided by a boundary between districts, the provisions of the zoning regulations applicable within each district shall apply only to ~~each~~ the portion of this site situated in each ~~a~~ separate district.

****

19.80.030 Establishment of Districts–Permitted and Conditional Uses and Development Standards.

A. Planned development zoning districts may be established, modified or removed from the zoning map, and the regulations applicable to any planned development district may be established, modified or deleted in accord with the procedures described in this chapter.

B. All P districts shall be identified on the zoning map with the letter coding "P" followed by a specific reference to the general type of use allowed in the particular planning development zoning district. For example, a planned development zoning district in which the uses are to be general commercial in nature, would be designated "P(CG)." A planned development zoning district in which the uses are intended to be a mix of general commercial and residential would be designated "P(CG/Res)."

C. Permitted uses in a P zoning district shall consist of all uses which are permitted in the zoning district which constitutes the designation following the letter coding "P." For example, the permitted uses in a P(CG) zoning district are the same uses which are permitted in a CG zoning district for sties with a mixed-use residential designation, Section 19.80.030F shall apply.

D. Conditional uses in a P zoning district shall consist of all uses which require the issuance of a conditional use permit in the zoning district which constitutes the designation following the letter coding "P." For example, the conditional uses in a P(CG) zoning district are the same uses which require a conditional use permit in CG zoning district. Each conditional use in a P zoning district requires a separate conditional use permit for sites with a mixed-use residential designation, Section 19.80.030F shall apply.

E. The general category of uses in a P zone shall be defined at the time of the conceptual plan, and shall be consistent with the adopted General Plan relative to the property in the application. The development standards and regulations of the permitted and conditional uses shall be established in conjunction with the approval of the conceptual and definitive plans, unless specifically identified in Section 19.80.030F below. Developments which are not subject to discretionary approval by the City must comply with the development standards of the underlying zoning district.

F. For sites with a mixed-use residential designation the following shall apply:

1. For sites in the Monta Vista Village Special Area, residential shall be a permitted use.

2. If a site is listed as a Priority Housing Site in the City's adopted Housing Element of the General Plan, then residential development that does not exceed the number of units designated for the site in the Housing Element shall be a permitted use.

3. Residential development on sites not designated as Priority Housing Sites in the City's adopted Housing Element of the General Plan and residential development on a Priority Housing Site that exceeds the number of units designated for that Priority Housing Site shall be a conditional use.

4. Priority Housing Sites shall be shown on the City's zoning map.

5. For sites zoned P(R3, CG), no conceptual or definitive plans shall be required to establish permitted and conditional uses. Multifamily residential use is the primary permitted use. Commercial uses may be incorporated into the development on the ground floor but shall not be the primary permitted use.

G. For sites which require a specific plan prior to development approval, the permitted and conditional uses and all development regulations shall be as shown in the specific plan.

ORDINANCE NO. 19-2188

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING THE ZONING MAP TO REZONE 13.1 ACRES WITHIN THE VALLCO SHOPPING DISTRICT SPECIAL AREA TO MIXED USE PLANNED DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL ZONING P(R3,CG) AND GENERAL COMMERCIAL USES AND THE REMAINDER OF THE SPECIAL AREA TO GENERAL COMMERCIAL (CG)

SECTION I: PROJECT DESCRIPTION

Application No:	Z-2019-01
Applicant:	City of Cupertino
Location:	10101 to 10333 N Wolfe Rd
APN#s:	316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council’s consideration of the Master Zoning Map amendments, the Council adopted Resolution No. 19-109, approving a General Plan Amendment to remove office uses as a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. 19-110, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Master Zoning Map apply the new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)) created in MCA-2019-01 to the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and _______________, upon due notice, the City Council has held at least two public hearings to consider the Master Zoning Map Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Master Zoning Map amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:
After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Master Zoning Map amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. 19-109 and 19-110) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which *concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.*

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

4. The proposed zoning will promote orderly development of the City.

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves amendments to the Master Zoning Map as shown in Exhibit A.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of August, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the ____day of ___________, 2019 by the following vote:

AYES:

NOES:

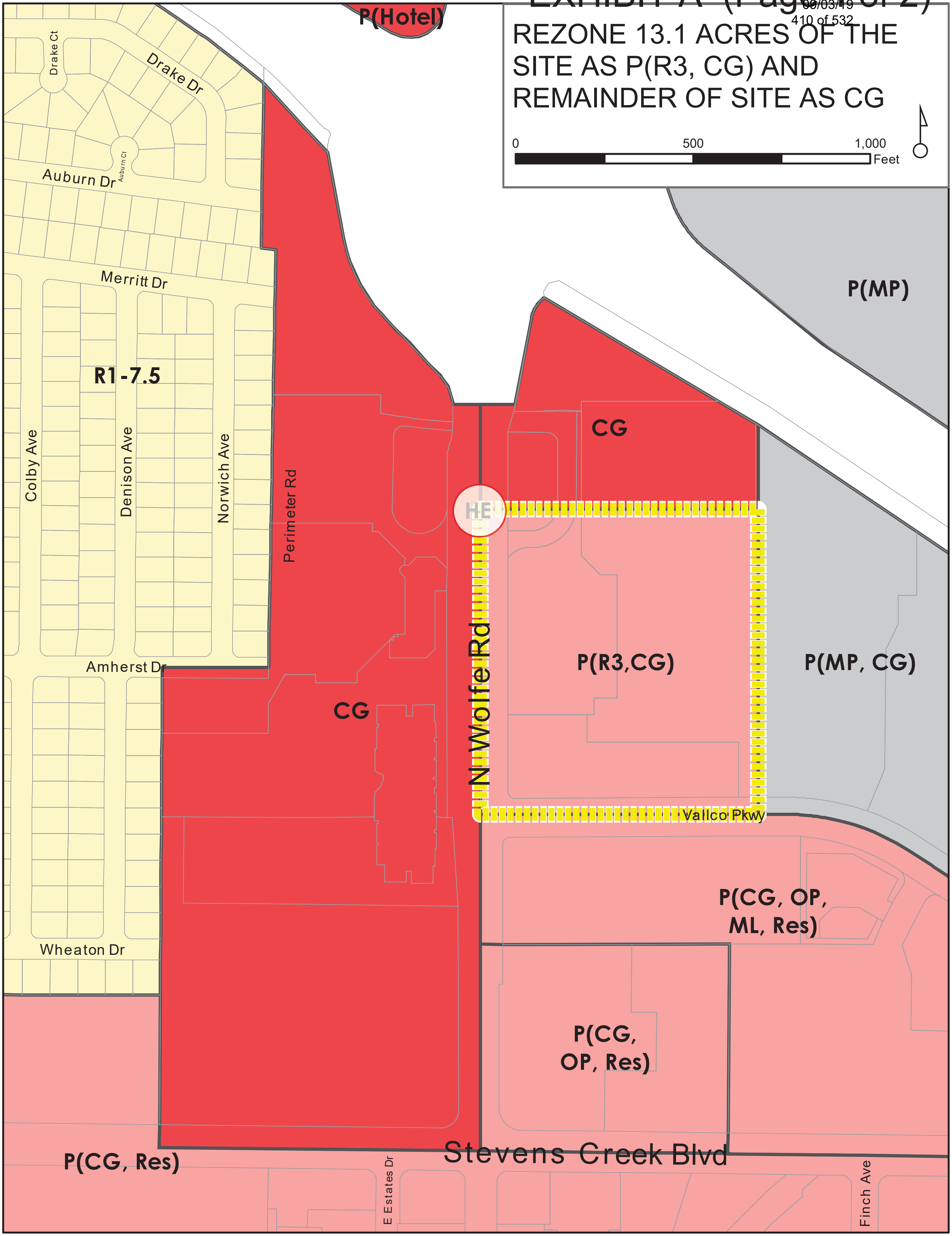
ABSTAIN:

ABSENT:

SIGNED: ______________________________ Steven Scharf, Mayor City of Cupertino	______________________ Date
ATTEST: ______________________ Grace Schmidt, City Clerk	______________________ Date
APPROVED AS TO FORM: ______________________ Heather Minner, City Attorney	______________________ Date

EXHIBIT A (Page 1 of 2)

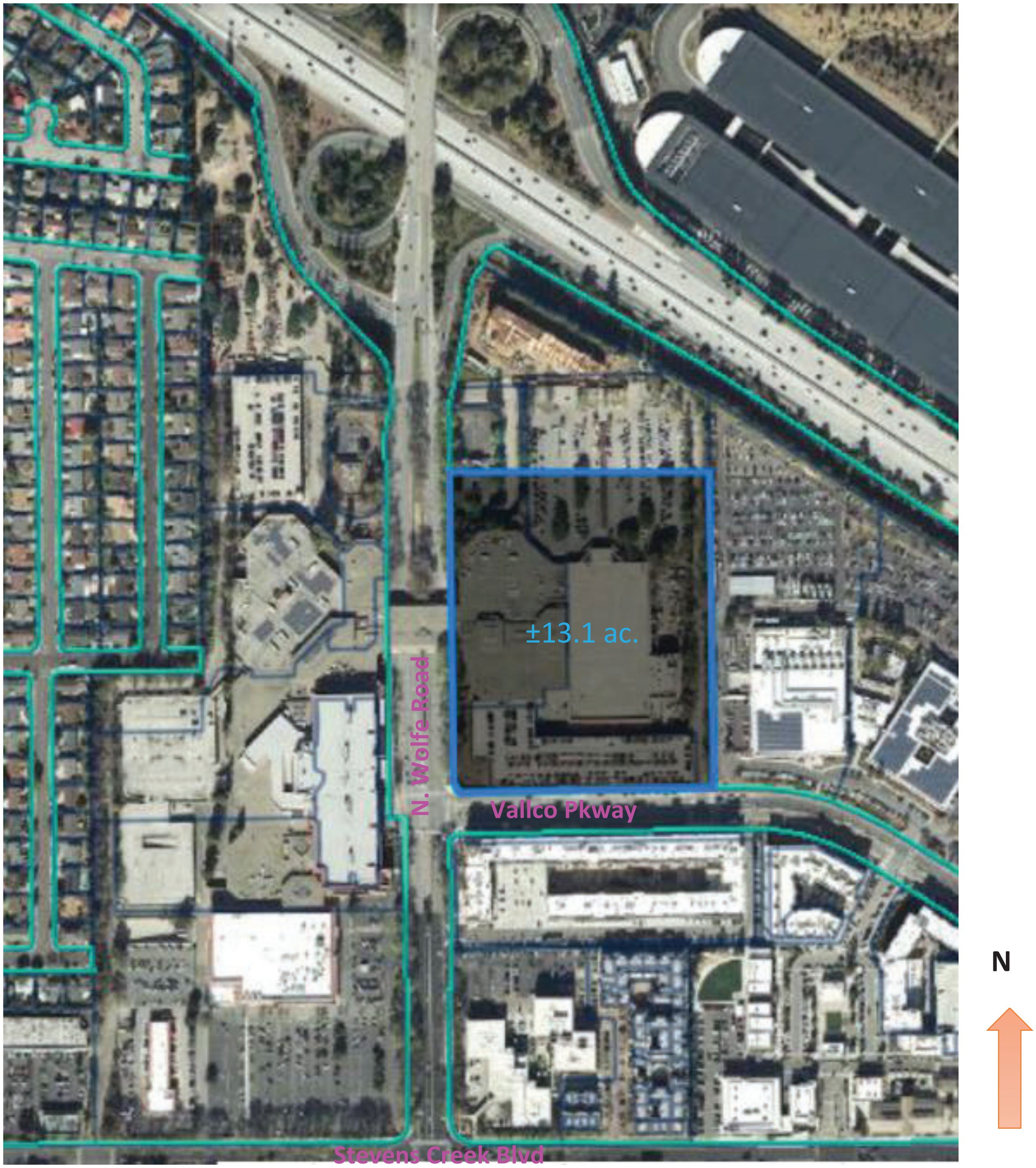
REZONE 13.1 ACRES OF THE SITE AS P(R3, CG) AND REMAINDER OF SITE AS CG



APN	Zoning Prior to Ord. Z-2018-2178 Adoption	Zoning Proposed by Ord. Z-2018-2178[1]	New Zoning
316-20-080	P(CG)	Vallco Town Center	CG
316-20-081	P(CG)	Vallco Town Center	CG
316-20-088	P(Regional Shopping)	Vallco Town Center	CG
316-20-092	P(Regional Shopping)	Vallco Town Center	CG
316-20-094	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-095	P(Regional Shopping)	Vallco Town Center	P(R3, CG)
316-20-099	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-100	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-101	P(Regional Shopping)	Vallco Town Center	CG
316-20-104	P(Regional Shopping)	Vallco Town Center	CG
316-20-105	P(Regional Shopping)	Vallco Town Center	CG
316-20-106	P(Regional Shopping)	Vallco Town Center	CG
316-20-107	P(Regional Shopping)	Vallco Town Center	CG

[1] The zoning on assessors' parcels in the table below was amended in September 2018 (Ord. Z-2018-2178) in connection with the City's approval of the Vallco Specific Plan. The adoption of that Zoning Ordinance has been challenged and thus the validity of the zoning code amendments therein is uncertain. *See, e.g., Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765. The table shows the zoning as adopted in September 2018, and the parcels' zoning as existing before that date.

Potential Location D: East of Wolfe Road and North of Vallco Parkway



CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

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

CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action

That the City Council find adoption of the proposed Resolution exempt from CEQA, adopt the Resolution for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35 (Attachment A), and review and provide any input on the Draft Senate Bill 35 Application Package (Attachment B).

Discussion

I. Background

The Planning Commission considered a draft of the Resolution for Application and Review Procedures for Projects proposed pursuant to Senate Bill 35 (Review Procedures) and a draft of the Senate Bill 35 Application Package (Application Package) at a July 30, 2019 Study Session and provided comments to the City Council. The City Council considered a revised Draft Review Procedures and Application Package at an August 6, 2019 Study Session. The staff report and supplemental staff report for the City Council study session are attached as Attachments C and D. They include information on the background of SB 35, the Department of Housing and Community Development's SB 35 Guidelines, and recent amendments to the Government Code section enacting SB 35. The attached staff reports also summarize the draft Review Procedures to be used when the City processes SB 35 applications in the future and discuss the proposed Application Package, which will be maintained by the City's Department of Community Development. Attachments E and F contain the text of SB 35, as amended, and the Department of Housing and Community Development's Guidelines, respectively. The Planning Commission and the City Council's comments are summarized in Attachment G.

This staff report focuses on changes made to the Review Procedures and Application Package since the Council's study session. Changes made to the Review Procedures since the City Council Study Session are shown in redlines in Attachment H. Changes made to the Application Package since the City Council Study Session are shown in redlines in Attachment I. Direction from Council and edits as a result of comments from the public are incorporated in the proposed Resolution to the extent possible under current law.

II. <u>Analysis:</u>

The Review Procedures are proposed to be adopted by resolution. The Review Procedures include an eligibility checklist based on SB 35, the Guidelines, and the City's laws and policy, that specify the requirements for a project to be eligible for streamlined approval under SB 35. The Application Package is presented for Council's review and will be maintained by the Community Development Department.

A. <u>Changes Made to Resolution</u>: Following direction from Council, the proposed resolution has been amended adding language that reflects the history and policy consequences of AB 101. Language has also been added to note that if in the future it becomes possible to calculate the two-thirds residential requirement excluding density bonus additions per the Guidelines prior to the amendments enacted by AB 101, the City intends to do so.

B. <u>Changes Made to Review Procedures and Eligibility Checklist:</u> With input from Council, the proposed Procedures have been amended to allow a second meeting to be convened, if possible, given the timelines and review process to allow additional oversight regarding the 2/3 residential requirement prior to determining eligibility of a project for streamlining. Other minor changes have been made to ensure compatibility with the current law and in response to comments, including language making clear that requirements for an application will not be added to the checklist when an application has been submitted. Staff also amended language referring to the Application Checklist to clarify that the checklist in fact includes detailed requirements that ensure sufficient information will be provided to determine whether the development is consistent with the required objective planning standards.

C. <u>Changes Made to Application Package:</u>

With input from the Council, the Application Package has been updated to require items that may be required under the current General Plan and Municipal Code and applicable items that were requested in the City's 90-day letter regarding the Vallco SB 35 Project Application. It has also been updated to require that applicants provide additional information that allows the City to determine compliance with the eligibility criteria related to a project's location on certain sites that would otherwise be ineligible for SB 35. Other minor changes have been made to ensure compatibility with current law and in response to comments from the public. One item requested by the Council related to exhibits demonstrating how to calculate square footage of projects. Draft exhibits will be provided to Council as desk items at the meeting on September 3rd. The final exhibits will be incorporated into the application package prior to uploading on the City's website and distribution to applicants.

D. Changes Made in Response to Comments from the Public

Two members of the public spoke at the City Council Study Session on August 6th. Planning Commissioner Kitty Moore spoke in her individual capacity and submitted written comments regarding the SB 35 Procedures and Application Package. Council directed staff to respond to her comments. Staff reviewed her comments and made changes to the Eligibility Checklist, specifically the Affordability and the Location sections. The Affordability Section reflects the City's BMR requirements and further explains how the BMR standards will apply to the project. The Location section has been amended to more closely match the language of the Guidelines. Ms. Moore's comments regarding the City's BMR standards in the Application Checklist have been included to the extent possible in the Eligibility Checklist's Affordability Section.

In addition, Ms. Moore suggested including references to specific plans and requiring completion of specific plans prior to accepting applications for sites where there is a pending specific plan. Recent Council actions have largely addressed this issue by removing the specific plan requirement for the residential portion of the Vallco site and adding residential development standards. There are no other properties in the City that are designated for residential or residential mixed use that require preparation of a Specific Plan. Moreover, SB 35 Guidelines section 300(b)(2) provide that general plan or zoning ordinance requirements for preparation of a specific plan or another discretionary permit do not necessarily constitute objective zoning standards. Ms. Moore made several additional suggestions in her written comments to the questions and standards related to hazardous waste sites and easements that staff have determined are not appropriate until the law has been further clarified by the courts. Once the law has been clarified, the Review Procedures may be updated by Council, and the Application Package can be updated by the Department of Community Development to reflect any changes.

Ms. Moore also suggested adding a section allowing appeals of CEQA exemption determinations, and referenced CEQA Guidelines sections 15061 and 15062. Both of these sections only apply to "projects" subject to CEQA. SB 35 expressly provides that "[t]he determination of whether an application for a development is subject to the streamlined ministerial approval process . . . is *not* a 'project' as defined in" CEQA. Gov. Code § 65913.4(k) (emphasis added). Therefore, the City's procedures do not include an appeal procedure pursuant to CEQA Guidelines section 15061 for SB 35 determinations.

E. Environmental Impacts
The adoption of the Resolution is not a project under the requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. Even if the Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. In this instance, the City's Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35 would have no effect on the environment because it only lays out the City's procedures for implementing state law and would not cause any physical change in the environment.

Next Steps
The City Council's decision will be in effect immediately upon adoption of the resolution. Upon the Council's decision, the application package will be updated to ensure consistency with the adopted Procedures and published on the City's website and will be available at the public counter for applicants.

Prepared by: Caitlin Brown, City Attorney's Office
Reviewed by: Benjamin Fu, Director of Community Development
Heather Minner, City Attorney
Approved by: Deborah Feng, City Manager

Attachments:
A. Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35, clean copy
B. Draft SB 35 Application Package, clean copy
C. Staff Report re Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35, August 6, 2019, without attachments
D. Supplemental Staff Report re Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35, August 6, 2019, without attachments
E. SB 35 Statute, as Amended
F. HCD Guidelines – Streamlined Ministerial Approval Process
G. Comments from Planning Commission and City Council Study Sessions
H. Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
I. Draft SB 35 Application Package with redlines

RESOLUTION NO. ________

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
ADOPTING THE PROCESS FOR APPLYING FOR AND RECEIVING MINISTERIAL APPROVAL UNDER SENATE BILL 35

WHEREAS, Senate Bill 35 added Government Code Section 65913.4 providing for the ministerial approval of infill affordable housing projects.

WHEREAS, the California Division of Housing Development issued Guidelines for implementing SB 35, Streamlined Ministerial Approval Process Guidelines ("Guidelines") on November 29, 2018.

WHEREAS, Assembly Bill 101, among its numerous other provisions, amended Government Code Section 65913.4 to provide that the law's minimum two-thirds residential square footage requirement for qualifying projects is calculated including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law. AB 101 was a budget trailer bill and as such was adopted through a highly abbreviated process that allowed for very limited review or public input. Its amendment to the residential square-footage calculation reverses the guidance adopted by the Department of Housing and Community Development last year and will allow projects with a larger amount of non-residential development and fewer housing units to qualify for streamlined approval.

WHEREAS, the City Council, with the intention of requiring SB 35 projects to provide as much housing as possible, will calculate the two-thirds residential requirement excluding density bonus additions if in the future the law is further amended and it becomes possible to do so.

WHEREAS, the Guidelines direct local jurisdictions to provide information about their process for applying and receiving ministerial approval.

WHEREAS, the City Council now provides that information about its process by this resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby adopt the following:

Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35

SECTION 1. **Overview.** Senate Bill 35 (SB 35) enacted Government Code section 65913.4, which requires certain cities and counties to use a streamlined ministerial review process for qualifying multifamily housing developments that comply with the jurisdiction's objective planning standards, provide specified levels of affordable housing, and meet other specific requirements. Government Code section 65913.4 has been twice amended, most recently on July 31, 2019, and the City's process reflects these amendments. The California Department of Housing and Community Development (HCD) determined that Cupertino is subject to SB 35.[1] The HCD issued guidelines for implementing SB 35, *Streamlined Ministerial Approval Process Guidelines* (Guidelines), on November 29, 2018, which took effect on January 1, 2019. These Guidelines direct a local jurisdiction to provide information about its process for applying and receiving ministerial approval under SB 35. Guidelines § 300(a).

Under SB 35, the City is required to review qualifying projects using a ministerial review process, which means that the City cannot require an applicant to obtain discretionary permits that would typically be required (e.g., development permit or conditional use permit). Guidelines § 301(a)(1). Instead, the City is required to process applications within the timeframes specified in Government Code section 65913.4, applying only those objective standards contained the City's General Plan, municipal code, and other adopted land use plans in effect at the time the project application was submitted. Guidelines § 300. The review process is also to be streamlined because the project is not subject to environmental review under the California Environmental Quality Act (CEQA). Guidelines § 301(a)(6).

This Resolution establishes the City of Cupertino's SB 35 application and review processes. It is not intended to supersede or waive any requirements from SB 35 or the Guidelines not explicitly discussed in this document. This Resolution shall be interpreted to incorporate and be consistent with Government Code section 65913.4 and the Guidelines, as they be amended from time to time.

SECTION 2. **Eligibility Criteria.** To be eligible for a streamlined review process, an application must meet the objective planning standards required by SB 35, including all applicable City objective land use standards, as described in Exhibit 1, the SB 35 Eligibility Checklist. These eligibility criteria are collectively referred to as the required "objective planning standards."

[1] As of January 31, 2018, HCD determined that Cupertino is subject to SB 35 streamlining for eligible projects. Cupertino remained subject to SB 35 streamlining under HCD's December 2018 Statewide Determination Summary.

SECTION 3. **Procedures for processing SB 35 Applications.** To apply for a project that qualifies under SB 35, an applicant must follow the procedures below:

1. Submit an SB 35 Application and a Certification of Compliance with Eligibility Requirements on forms provided by the Community Development Director to the Planning Division. The application must be submitted along with all of the material identified in an SB 35 Application Checklist provided by the Community Development Director. The SB 35 Application Checklist requires sufficient information for a reasonable person to determine whether the development is consistent with the required objective planning standards.

   SB 35 applications will be subject to a Staff Hourly Rate fee for applicable staff time and materials to process the project application, based on the rates set in the adopted Fee Schedule.

2. The City shall post all application materials on the City's webpage within two business days after the application has been submitted, and keep the project webpage updated including posting any additional submittals from the applicant, initial and final City consistency determinations, and any project approval or denial.

SECTION 4. **Completeness Determination.** Once the application is submitted, staff will determine within seven business days whether the application is complete. Applications shall be complete if they contain all documents and other information required by the City, as specified in the SB 35 Application Checklist provided by the Department of Community Development. *See* Guidelines § 301(b)(1). All of the information in the SB 35 Application Checklist is necessary to determine whether the development is consistent, compliant, or in conformity with the objective planning standards. If the application is incomplete, staff will deny the project, unless doing so would be an invalid basis to deny the project under the Guidelines. *See* Guidelines § 301(b)(1). An applicant may submit a revised application for a previously denied project at any time. The City will process the revised application as a new application under these procedures and the timeframes for consistency determinations and project approval shall commence on the date of resubmittal. Guidelines § 301(a)(4).

SECTION 5.
(a) **Timeframe for Consistency Determination.** If the application is complete, within 60 days of the initial application submittal for a project with 150 or fewer units, and within 90 days for a project more than 150 units, the City will determine whether the project conflicts with any of the required objective planning standards. Guidelines § 301(b).

(b) **Initial Determination.** The Department of Community Development will make an initial written determination of the proposed project's consistency with applicable objective planning standards. The application may be routed to other City department staff for review, if deemed necessary. The Community Development Director shall submit the department's initial consistency determination to the Planning Commission and the City Council for consideration at the Oversight and Consistency Review Meeting.

(c) **Oversight and Consistency Review Meeting.** When the initial determination is complete or at least five business days before a final consistency determination is made, the Planning Commission and the City Council shall hold a joint oversight meeting to assess the proposed project's compliance with required objective planning standards. The Community Development Director may, on a case by case basis, schedule this meeting earlier than five business days before the final consistency determination for projects with more than 150 housing units, if necessary, and the timing of initial review allows.

The Community Development Director may, on a case by case basis, schedule one additional oversight meeting to assess a mixed-use project's compliance with the two-thirds residential requirement in Government Code § 65913.4(a)(2)(C) prior to the oversight and consistency review meeting discussed above. This additional meeting would be held within 45 days after the application is submitted, if possible.

If the project includes an application for a tentative or parcel map, this application will also be considered during the joint oversight meeting, and the Council and Planning Commission will assess the application's consistency with objective subdivision standards. Gov. Code § 65913.4(c)(2). If the project includes an application for a density bonus, this application will also be considered during the joint oversight meeting, and the Council and Planning Commission will assess the application's consistency with objective density bonus ordinance standards. Gov. Code § 65913.4(a)(5).

The Planning Commission and City Council's oversight shall be objective, involving little or no personal judgement as to the wisdom or manner of carrying out the project, and be strictly focused on compliance with required objective planning standards. *See* Guidelines § 102(n), 301(a)(2). The oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval. Guidelines § 300(a)(2).

The Oversight Meeting shall be a noticed, open, and public meeting in compliance with the Ralph M. Brown Act. The applicant and members of the public shall have an opportunity to speak as they would at other Planning Commission and City Council meetings.

In addition, the noticing requirements of Municipal Code section 19.12.110A for Development Permits shall apply to the Oversight and Consistency Review Meeting.

(d) **City Manager action following Oversight and Consistency Review Meeting.** Following the Council and Planning Commission's Oversight and Consistency Review Meeting and before the expiration of the timeframe for a consistency determination, the City Manager will send the applicant either (1) a letter documenting which standard or standards the development conflicts with and an explanation for the reason or reasons the development conflicts with that standard or standards, or (2) a letter stating that the project is consistent with all required objective planning standards and an explanation for reasons the development is consistent with those standards. *See* Guidelines § 301(a)(3).

SECTION 6. **Procedure if project is consistent with all objective planning standards.** If the proposed development is consistent with all required objective planning standards, the City Manager will prepare final approval documents and standard conditions of approval. *See* Guidelines § 301(a)(5). Within 90 days from the initial project application's submittal for a project with 150 or fewer units, and within 180 days for a project with more than 150 units, the City Manager will provide the project applicant with the final approval documents and standard conditions of approval. Guidelines § 301(b)(3).

SECTION 7. **Procedure if application is ineligible for streamlined review.** If the City determines that a project conflicts with any required objective planning standard, it will deny the application for streamlined processing under SB 35. The City will not continue to process the application while allowing the applicant to correct any deficiencies. The denial of an application for streamlined processing does not preclude the applicant from correcting any deficiencies and resubmitting a new application for streamlined review or for review under standard City procedures. If the applicant submits a corrected or revised application, the timeframes specified in these procedures shall commence on the date of resubmittal. Guidelines § 301(a).

SECTION 8. **Exhibit.** The Exhibit to this document may be updated periodically by Planning Division staff in order to respond to changes to the Cupertino Municipal Code or to state law. Staff shall not weaken or remove any requirements unless required to do so by changes in the law.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to actions which have the potential for resulting in a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the City's Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35 would have no effect on the environment because it only lays out the City's procedures for implementing state law and would not cause any physical change in the environment. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this ___ day of _______, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED: ___________________________ Steven Scharf, Mayor City of Cupertino	 _________________________ Date
ATTEST: _________________________ Grace Schmidt, City Clerk	 _________________________ Date

Exhibit 1:
Senate Bill 35 Eligibility Checklist

To be eligible for a streamlined review process under SB 35, an application must meet the objective planning standards required by SB 35, including all applicable City objective land use standards, in effect at the time the application is submitted, as described below.

1. **NUMBER AND DENSITY OF UNITS.** The project must comply with the minimum and maximum residential density range permitted for the site, plus any applicable density bonus. Guidelines § 300(c)(1). If the zoning code's density designation for the site conflicts with the density allowed in the general plan's land use designation, the density in the general plan's land use designation prevails. Gov. Code § 65913.4(a)(5). The project, if eligible, may request a density bonus and/or waivers and/or concessions under the Density Bonus Law (Gov. Code § 65915). Guidelines § 300(b)(3). Any increase in density granted under the Density Bonus Law is considered consistent with maximum allowable densities. Guidelines § 300(b)(3).

   In addition:

   (a) The project must propose at least two multifamily residential units. Guidelines §§ 102(o), 400(a).

   (b) If the project is mixed-use, at least two-thirds of the proposed development's square footage must be designated for residential use. Guidelines § 400(b).
      i. The two-thirds calculation is based upon the proportion of gross square footage of residential space and related facilities to gross development building square footage for an unrelated use, such as commercial or office uses. Structures utilized by both residential and non-residential uses shall be credited proportionally to intended use. Guidelines § 400(b).
      ii. Related residential facilities are defined as 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. Guidelines § 102(u).
      iii. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law are included in the square footage calculation. Gov. Code § 65913.4(a)(2)(C).

(c) If the development project qualifies for a density bonus under Government Code section 65915, the applicant must submit detailed plans clearly showing location and the square footage of:

i. Affordable units that qualify the project for a density bonus,

ii. Additional density, floor area, or units granted pursuant to Density Bonus law

The plans must be of sufficient detail to verify the square footage of the residential units and additional bonus units, floor area, or density granted pursuant to Density Bonus Law. The applicant must comply with all objective standards relating to density bonus found in CMC Chapter 19.56. Guidelines § 300(b)(5).

(d) Both residential and non-residential components of a qualified mixed-use development are eligible for the streamlined approval process. Guidelines § 400(b)(2). Additional or subsequent permitting requirements pertaining to the individual businesses located in the commercial component (e.g. late night activity, live music or child care use permits) are subject to the City's General Plan and Development Code requirements. Guidelines § 400(b)(3).

2. **AFFORDABILITY.** The project must provide affordable housing as specified under Government Code section 65913.4(a)(3)(A) and (a)(4)(B) and under Cupertino's Below Market Rate Housing Program inclusionary zoning ordinance specifically:

(a) SB 35 projects must reserve at least 50% of their total units as affordable to households making below 80 percent of the area median income in Santa Clara County.[2] Guidelines § 402(a)(2); *see* § 402(e).

(b) Cupertino's inclusionary zoning ordinance provides objective affordability standards for its inclusionary BMR units in a project as follows:

i. For developments that offer rental housing: very low-income and low-income households at a 60:40 ratio. Because SB 35 requires rental units be made available to households making below 80 percent of the area median income, if the project applicant wants to take credit for both SB 35 units and the City BMR Program, then the most restrictive requirement would apply and these rental units must be made available to households at the ratio required by the City's BMR Program.

ii. For developments that offer ownership housing: median and moderate income households at a 50:50 ratio. Because SB 35 requires ownership units be made

[2] When jurisdictions have insufficient progress toward their Lower income RHNA (Very Low and Low income) but have had sufficient progress toward their Above Moderate income RHNA, they are subject to the streamlined ministerial approval process for proposed developments with at least 50 percent affordability. Gov. Code § 65913.4(a)(4)(B)(ii). Cupertino has had sufficient progress toward the Above Moderate income RHNA, but not toward the Lower income RHNA, and is therefore subject to streamlining of projects offering at least 50 percent affordability under SB 35 according to the most recent SB 35 Determination Summary, available at http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf.

available to households making below 80 percent of the area median income, if the project applicant wants to take credit for both SB 35 units and the BMR Program, then the most restrictive requirement would apply and these ownership units must be made available to households making below 80 percent of the area median income rather than median and moderate income households.

iii. The objective standards in Cupertino's inclusionary zoning ordinance shall apply to the project. Guidelines § 402(e).

iv. As provided in the City's BMR Program, applicants for projects proposing up to six residential units may pay the Affordable Housing Mitigation Fee in-lieu of providing on-site affordable units subject to the City's BMR Ordinance. Payment of the fee does not change or override any of SB 35's affordability requirements.

(c) The applicant must record a land use restriction or covenant providing that the lower income housing units shall remain available at affordable housing costs or rent to persons and families of lower-income (or very low income, as applicable) for no less than the following periods of time, as applicable:

i. For the units subject to Cupertino's inclusionary zoning ordinance:
- 99 years or
- 55 years (if a project financed with low-income housing tax credits (LIHTC))

(d) An affordable housing and/or regulatory agreement concerning all affordable units shall be recorded against the property prior to the issuance of the first building permit. The agreement(s) shall ensure compliance with all applicable laws and regulations and be consistent with the City's BMR Housing Mitigation Program Procedural Manual, except to the extent the Manual conflicts with SB 35's requirements.

3. **URBAN INFILL.** The project must be located on a legal parcel or parcels within the incorporated City limits. Guidelines § 401(a). At least 75 percent of the perimeter of the site must adjoin parcels that are developed with urban uses. Guidelines §§ 102(j), 400(a). For purposes of SB 35, "urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. Guidelines § 102(z). Parcels that are only separated by a street or highway shall be considered adjoined. Guidelines § 102(j).

4. **ZONED OR PLANNED RESIDENTIAL USES.** The project must be located on a site that is either zoned or has a General Plan designation for residential or residential mixed-use development, including sites where residential uses are permitted as a conditional use. Guidelines § 401(a).

5. **CONSISTENT WITH OBJECTIVE STANDARDS.** The project must meet all objective general plan, zoning, design review, and other objective land use standards in effect at the time the application is submitted. Gov. Code § 65913.4(a)(5).
   (a) If the project is consistent with the minimum and maximum density range allowed within the General Plan land use designation, it is consistent with housing density standards. Guidelines § 300(c).

   (b) Modifications to otherwise-applicable standards under density bonus law do not affect a project's ability to qualify for SB 35. Guidelines § 300(c)(3).

   (c) Objective standards are those that require no personal or subjective judgment and must be verifiable by reference to an external and uniform source available prior to submittal. Guidelines § 102(p). Sources of objective standards include, without limitation:
      i. General Plan.
      ii. Municipal Code, including, without limitation, the Zoning, Subdivisions, and Building Codes
      iii. Heart of the City Specific Plan
      iv. Monta Vista Design Guidelines
      v. North De Anza Conceptual Zoning Plan
      vi. South De Anza Conceptual Plan
      vii. Saratoga-Sunnyvale Conceptual Plan
      viii. BMR Housing Mitigation Procedural Manual

6. **PARKING.** The project must provide at least one parking space per unit; however, no parking is required if the project meets any of the following criteria. Guidelines § 300(d):
   (a) The project is located within one-half mile of public transit.

   (b) The project is located within an architecturally and historically significant historic district.

   (c) On-street parking permits are required but not offered to the occupants of the project.

   (d) The project is located within one block of a car share vehicle station.

   However, if any parking is provided, it must meet the City's objective standards from Chapter 19.124 of the Municipal Code and Public Works Standards. Guidelines § 300(d)(2).

7. **LOCATION.**
   (a) The project must **not** be located on a legal parcel(s) that is any of the following (*see* Guidelines § 401(b)):

      i. Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland

Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by Cupertino's voters.[3]

ii. Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

iii. Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This does not apply to sites excluded from the specified hazard zones by the City, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

iv. A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

v. Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

vi. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. This restriction does not apply if the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the City or if the applicant can demonstrate that the site will be able to meet the minimum flood plain management criteria of the National Flood Insurance Program.

[3] As of July 1, 2019, no properties in Cupertino fall within this category. Prior to submitting an application for streamlined review, applicants should confirm with the Planning Division if the listed exclusion is applicable.

vii. Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

viii. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. Lands under conservation easement.

(b) In addition, the project must not be located on a site where any of the following apply:

i. A site that would require demolition of housing that is:

1. Subject to recorded restrictions or law that limits rent to levels affordable to moderate, low, or very-low income households.
2. Subject to rent control.
3. Or has been occupied by tenants within the past 10 years.

ii. A site that previously contained housing occupied by tenants that was demolished within the past 10 years.

iii. A property that contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

iv. A parcel of land or site governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.[4]

v. A site that would require demolition of an historic structure that is on a local, state, or federal register.

[4] As of June 2019, no properties in Cupertino fall within this category. Prior to submitting an application for streamlined review, applicants should confirm with the Planning Division if the listed exclusion is applicable.

8. **SUBDIVISIONS.** The project does not involve an application to create separately transferable parcels under the Subdivision Map Act. Guidelines § 401(d). However, a subdivision is permitted if the development is consistent with all objective subdivision standards in the subdivision ordinance, and either of the following apply (Guidelines § 401(d)):
   (a) The project is financed with low-income housing tax credits (LIHTC) and satisfies the prevailing wage requirements identified in item 9 of this Eligibility Checklist.
   (b) The project satisfies the prevailing wage and skilled and trained workforce requirements identified in items 9 and 10 of this Eligibility Checklist.

9. **PREVAILING WAGE.** The project proponent must certify that at least one of the following is true (Guidelines § 403):
   (a) The entirety of the project is a public work as defined in Government Code section 65913.4(8)(A)(i).
   (b) The project is not in its entirety a public work and all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
   (c) The project includes 10 or fewer units AND is not a public work AND does not require subdivision.

10. **SKILLED AND TRAINED WORKFORCE.** If the project consists of 75 or more units that are not 100 percent subsidized affordable housing, the project proponent must certify that it will use a skilled and trained workforce, as defined in Government Code section 65913.4(8)(B)(ii).[5] Guidelines § 403.

[5] Beginning January 1, 2022, the skilled and trained workforce requirement is reduced to apply to projects of 50 units or more that are not 100 percent subsidized affordable housing.

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT

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

DRAFT SENATE BILL 35 APPLICATION FORM

SUBMITTAL REQUIREMENTS. The following information and materials listed on the attached SB 35 Application Checklist, at the time the application is submitted, are required for a complete application in order to determine if a project qualifies under Senate Bill 35. Please review this checklist with City's Planning Division staff to confirm specific requirements and to determine if other applications are required.

Project Information to be filled in by Applicant and/or Property Owner:

Applicant's Contact Information:	**Property Owner's Contact Information:**
Name:______________________	Name:______________________
Address:____________________	Address:____________________
City, State:__________ZIP:_______	City, State:__________ZIP:_______
Email: _____________________	Email: _____________________
Phone: _____________________	Phone: _____________________

Project Site / Address(es):	
Assessor's Parcel Number(s):	
General Plan and Zoning Designations:	
Proposed Unit Count with Density Bonus Units, if applicable:	**Proposed Non-Residential Square Footage:**
Proposed Unit Count without Density Bonus Units, if applicable:	**Proposed Residential Square Footage:**

	YES	NO	N/A
1. Type of Multifamily Housing Development Proposed:			
a. Multifamily rental; residential only with no proposed subdivision.			
b. Multifamily residential with proposed subdivision (must qualify for exception to subdivision exclusion)			
c. Mixed-use: at least 2/3 of gross square footage (including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law) must be designated for residential use. If a subdivision is included, the development must qualify for exception to subdivision exclusion.			
2. Number of Parking Spaces Proposed: - ______________________			
a. Is the site within one-half mile of public transit?			
b. Is the site within an architecturally and historically significant historic district?			
c. Are on-street parking permits required but not offered to the occupants of the project?			
d. Is the site within one block of a car share vehicle station?			
3. Does the project propose 2 or more residential units?			
a. Has the applicant certified compliance with affordability requirements?			
4. Does the project include more than 10 units?			
5. Is the project a public work?			
a. If it is a public work, has the applicant certified to the City that the entirety of the development is a public work?			
b. If it is not a public work, has the applicant certified compliance with prevailing wage requirements?			
6. Does the project propose 75 units or more?			
a. Has the applicant certified compliance with skilled and trained workforce requirements?			
7. Does the project involve a subdivision of land?			
a. Is the development consistent with all objective standards in the subdivision ordinance?			
b. Is the project financed with low-income housing tax credits?			
c. Has the applicant certified compliance with prevailing wage requirements?			

	YES	NO	N/A
d. Has the applicant certified compliance with skilled and trained workforce requirements?			
8. Would the development require demolition of any of the following types of housing?			
a. Housing subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.			
b. Housing that is subject to any form or rent or price control.			
c. Housing that has been occupied by tenants within the past 10 years.			
9. Was the site previously used for housing that was occupied by tenants that was demolished within 10 years before the application was submitted?			
10. Does the property contain housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property?			
11. Would the development require demolition of a historic structure that was placed on a national, state, or local historic register?			
12. Is the project site within a very high fire hazard severity zone?			
a. If yes, are there adopted fire hazard mitigation measures applicable to the development?			
13. Is the project site a hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356 of the Health and Safety Code?			
a. If the site has been so listed or designated, has the applicant provided evidence that the site has received the required clearance from the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control for development as a residential use or residential mixed-use?			
14. Is the project site within a delineated earthquake fault zone?			
a. If yes, does the development comply with applicable seismic protection building code standards?			

	YES	NO	N/A
15. Is the project site habitat for protected species, identified in an adopted natural community conservation plan, or under a conservation easement?			
16. Does the project site contain wetlands?			
17. Is the project site within a special flood hazard area?			
a. If yes, has the site been subject to a Letter of Map Revision or does the site meet Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria?			
18. Is the project site within a regulatory floodway?			
a. If yes, has the project received a no-rise certification?			
19. Is the project site located on lands under a conservation easement?			
20. Is the project seeking a density bonus and/or any incentive, concession, waiver, or reduction of parking standards under state Density Bonus Law?			
a. If yes, does the project proponent demonstrate how the requested concession, waiver or reduction of standards is the least amount necessary to develop the proposed affordable housing?			
21. Are the project's affordable units distributed throughout the development and of comparable size, both in terms of the square footage and the number of bedrooms, and quality to the market rate units with access to the same common areas and amenities?			

X____

Property Owner Signature(s) Print Property Owner's Name Date

FOR STAFF USE ONLY:

Application accepted on ____________________ *by* ________________________________

Application Type: _______________________________________

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL
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Certification of Compliance with Eligibility Requirements

I, ____, do hereby certify and declare as follows:

(a) The subject property is located at:

________________________________ ________________________________

Address(es) *Assessor's Parcel Number(s)*

(b) I am a duly authorized officer or owner of the subject property.

(c) The property owner agrees to comply with the applicable affordable housing dedication requirements established under Government Code section 65913.4(a)(4).

(d) That one of the following is true pursuant to Government Code section 65913.4(a)(8)(A) *(check one that applies)*:

- ☐ The entirety of the development is a public work under Government Code section 65913.4(a)(8)(A)(i).
- ☐ The property owner agrees to comply with the applicable prevailing wage requirements established under Government Code section 65913.4(a)(8)(A)(ii).

(e) The property owner agrees to comply with the applicable skilled and trained workforce requirements established under Government Code section 65913.4(a)(8)(B).

(f) The property owner certifies that the project site has not contained any housing occupied by tenants within 10 years prior to the date written above.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all submitted material is true and correct.

Executed on this day in:

________________________________ ________________________________

Location *Date*

________________________________ ________________________________

Signature *Name (Print), Title*

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SENATE BILL 35 APPLICATION CHECKLIST

SUBMITTAL REQUIREMENTS. The following materials are required for a complete application in order for the City to determine eligibility for streamlining under SB 35. Please review this checklist with City of Cupertino Planning and Public Works Divisions.

1. **APPLICATION FORM.** Include signature and contact information for the legal property owner, applicant or authorized agent and contact information for the Civil Engineer, Architect, Landscape Architect, and all other consultants involved with the application on another sheet if necessary.

2. **FILING FEE.** (See the City's Fee Schedule for current year. Note: Depending on the project, it could be subject to the City's hourly staff rate and the cost of contracts plus any administrative charges).

3. **CERTIFICATION OF COMPLIANCE WITH ELIGIBILITY REQUIREMENTS.** The property owner or the owner's authorized agent must certify under penalty of perjury that certain threshold eligibility criteria are satisfied.

4. **POWER OF ATTORNEY.** Provide evidence of power of attorney, if the application is being by a person other than the property owner.

5. **TITLE REPORT.** Prepared within the past three months (three copies). The title report must include a legal description of the property and a listing of all easements, rights-of-way, and owners shall be supplied.

6. **ARBORIST REPORT.** Prepared within the last year by an ISA Certified Arborist for the removal or disturbance of any Protected Tree on the site or on an adjacent property which could be impacted by the proposed development. Describe the condition of all Protected trees to be removed/disturbed and provide a statement of specific reasons for the proposed removal. Provide three copies.

7. **ENVIRONMENTAL SITE ASSESSMENT (ESA) REPORTS.** A Phase 1 ESA report shall be provided with the application. If the Phase 1 ESA report indicates

that a Phase 2 ESA report or additional assessment is recommended, a Phase 2 ESA report must accompany the application.

8. **FISCAL IMPACT ANALYSIS.** Provide a fiscal impact analysis, in compliance with General Plan Strategy LU-8.2.1.

9. **PRELIMINARY TRASH MANAGEMENT PLAN.** Provide a preliminary trash management plan. Chapters 6.24, 9.16 and 9.18 of the Municipal Code relate to Garbage, Recycling and Organic Waste Collection. Contact the Environmental Services Division for coordination with Recology, the City's waste collection company.

10. **PROJECT DESCRIPTION.** A narrative project description that summarizes the proposed project and its purpose must be provided. Please include a discussion of the project site context, including what existing uses, if any, adjoin the project site and whether the location is eligible for Streamlined Housing Development processing.

11. **AFFORDABLE HOUSING PLAN.** Provide an Affordable Housing Plan describing how a development project will comply with the City's Below Market Rate (BMR) Program requirements set forth in the BMR Housing Mitigation Program Procedural Manual.

12. **STATEMENT OF CONSISTENCY WITH OBJECTIVE STANDARDS.** Explain how the proposed project is consistent with all objective zoning, subdivision (if applicable), and design review standards applicable to the project site, including those standards included in the General Plan, Cupertino Municipal Code, Heart of the City Specific Plan, Monta Vista Design Guidelines, North De Anza Boulevard Conceptual Plan, South De Anza Conceptual Plan, Saratoga-Sunnyvale Conceptual Zoning Plan, and other applicable City documents. Particular details shall be provided to define how the project complies with use requirements, floor area standards, density, setbacks, height standards, lot coverage ratios, landscaping standards, creek setbacks, tree preservation and protection standards, water efficient landscaping requirements, stormwater requirements, and common open space, private useable open space, and public open space requirements.

13. **STATEMENT OF DESIGN INTENT.** Describe the design program, the designer's approach, and how the architectural, landscape and other elements have been integrated in compliance with the City's objective standards. The relationship of the project to adjacent properties and to the adjacent streets

should be expressed in design terms. Define the site, building design, and landscape concepts in terms of site design goals and objectives, pedestrian circulation, outdoor-use areas, visual screening and enhancements, conservation of natural resources, mitigation of negative site characteristics, and off-site influences.

14. **DEVELOPMENT PLAN SETS.** The following plans shall comprise the development plan set:

REQUIREMENTS FOR ALL DEVELOPMENT PLANS. If the application is filed in conjunction with other applications, submittal requirements from all applicable checklists shall be incorporated into one set of plans. All plans shall:

___ Be prepared, signed and stamped by licensed professionals.
___ Include the date of preparation and dates of each revision.
___ Be fully dimensioned and drawn to scale on the same size sheets, with a consistent scale (as noted) throughout all plan sheets.
___ Be submitted in collated sets and folded to 8-1/2" x 11".
___ Be numbered in proper sequence.

A set of plans shall be submitted on a CD or USB flash drive in pdf format and the following numbers of plan sets are required:

___ 8 sets full size 24" x 36"
___ 15 sets reduced to 11" x 17"
Additional plan sets may be requested if necessary.

15. **TITLE SHEET** Including project name, location, assessor's parcel numbers, prior development approvals, and table of contents listing all the plan sheets with content, page numbers, and date prepared. Include a vicinity map showing north arrow, the location and boundary of the project, major cross streets and the existing street pattern in the vicinity with the following information: General Plan and Zoning designations.

16. **DEVELOPMENT PROGRAM.** The development plans shall clearly include the following in a tabular format:

    a. Size of property including gross and net lot area (square feet and acres).

    b. For mixed use projects, total square footage of residential space and related residential facilities (as defined in the City's Eligibility Checklist), square footage of non-residential uses, and square footage utilized by both residential and non-residential uses. A calculation of how the project meets the eligibility criteria to qualify for streamlined and ministerial review pursuant to SB 35. Detailed breakdowns, to scale, with dimensions, shall be shown on Floor Plan submittals as indicated below. Exhibits showing how to calculate the 2/3 residential requirement are included below.

c. For residential development, include the floor area for each unit type, the number of bedrooms, the number of units by type, the number of units per building, the total number of units, and net density. Include the amount of private open space provided for each unit. Identify unit type, size, number of bedrooms, number of units in each building and total number of units by affordability level and tenure (rental or ownership).

d. For commercial development, total floor area in each building (including basements, mezzanines, interior balconies, and upper stories or levels in a multistory building) and total building area, including non-residential garages.

e. Percent lot coverage, percent of net lot area covered by buildings (total ground floor area of all buildings divided by net lot area).

f. Percentage of net lot area devoted to landscaping, common open space and private useable open space.

g. Parking requirements under Government Code section 65913.4(d) and tabulation of the number of parking spaces proposed by type (universal and ADA compliant) and proposed parking ratios.

h. Bicycle parking (required and proposed) under City of Cupertino Municipal Code Chapter 19.124.040.

17. **SITE PLAN.** Prepared by a licensed Civil Engineer, drawn at 1”= 20’ scale, with scale noted, a graphic bar scale, and north arrow. The plan shall include the following:

a. Existing and proposed property lines with dimensions, bearings, radii and arc lengths, easements, and net & gross lot area for existing and proposed parcels. Benchmark based on USGS NAVD 88 vertical.

b. Location and dimensions of all existing and proposed structures extending beyond the property as required for other, non-SB 35, projects.

If adjacent to a street, show the entire width of street to the next property line, including driveways. Clearly identify all existing and proposed structures such as fencing, walls, all building features including decks and porches, all accessory structures including garages and sheds, mailboxes, and trash enclosures. Label all structures and indicate the structures to remain and the structures to be removed.

c. Dimensions of setbacks from property lines and between structures.

d. Location, dimension and purpose (i.e. water, sewer, access, etc.) of all easements including sufficient recording data to identify the conveyance (book and page of official records).

e. Location and dimensions for all adjacent streets (public and private) and proposed streets showing both sides of streets, street names, street width, striping, centerlines, centerline radii of all curves, median and landscape strips, bike lanes, pedestrian ways, trails, bridges, curb, gutters, sidewalks, driveways, and edge of right-of-way including any proposed or required right-of-way dedication. Show all existing and proposed improvements including traffic signal poles and traffic signs. Show line of sight for all intersections and driveways based on current City of Cupertino standards.

f. Existing topography and proposed grading extending 50 feet beyond the property at 2 foot contour intervals for slopes up to 10% and less than 5 feet in height; and contour intervals of 5 feet for slopes over 10% or greater than 5 feet in height. Include spot elevations, pad elevations, and show all retaining walls with TOW/BOW elevations.

g. Drainage information showing spot elevations, pad elevations, existing catch basins, and direction of proposed drainage, including approximate street grade and existing and proposed storm drain locations.

h. Location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities, wells, septic tanks, underground and overhead electrical lines, utility poles, utility vaults, cabinets and meters, transformers, electroliers, street lights, lighting fixtures, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, traffic signal poles, underground conduit for signals and interconnect, and traffic signal pull boxes, signal cabinets, service cabinets, and other related facilities.

i. Location and dimensions of parking spaces, back-up, safe pedestrian paths to building entrances, loading areas, and circulation patterns.

j. Survey of all existing trees on the site and adjacent to the site, at 1″=20′ scale, indicating species, diameter at breast height (DBH) as defined in Chapter 14.18 of the Cupertino Municipal Code, and base elevation. Trunk locations and the drip line shall be accurately plotted. Identify all protected trees as defined in Chapter 14.18 of the Cupertino Municipal Code.

k. Tentative locations for public artwork in compliance with Section 19.148.050(B) of the Municipal Code.

l. Location of all natural features such as creeks, ponds, drainage swales, wetlands (as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)), etc., extending 50 feet beyond the property line to show the relationship with the proposed development.

m. Location on the site of any prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by Cupertino's voters.

n. If any parcel is within a FEMA defined 100-year floodplain or floodway:

    i. Identify the floodplain or floodway on all plan sheets depicting the existing and proposed site, with the base flood elevation (BFE) and flood zone type clearly labeled. In addition, show the existing site topography and finish floor elevations for all existing and proposed structures. If FEMA has not defined a BFE, a site specific hydraulic analysis will be required to determine the BFE prior to deeming the application complete (CMC Sec. 34-32.b2).

    ii. Flood zone boundaries and floodwater surface elevation. If the property proposed to be developed is within or adjacent to the 100 year flood zone (Zone A or AE) or the National Flood Insurance Program, Flood Insurance Rate Map, the extent of Zone A or AE shall be clearly drawn on the tentative map and the 100 year flood water surface elevation shall be shown. The map shall show the approximate location of the Floodway Boundary as shown on the latest edition of the "Flood Boundary and Floodway Map" published by the Federal Emergency Management Agency.

18. **CONTEXTUAL PLAN.** Use topographic or aerial map as base. Show the relationship of the project to the building and site features within 50 feet of the property line. The plan shall include:

    a. Building footprints, pad elevations and building height. Land use and zoning designation on all lots.

    b. Property lines and dimensions of the subject site and adjacent properties showing all easements.

    c. Location of streets, medians, curb cuts, sidewalks, driveways, and parking areas.

    d. Location of all creeks, waterways and trees.

    e. Vicinity map indicating site in relation to major streets.

19. **DENSITY BONUS.** In addition to the other submittal requirements, projects requesting a density bonus or concessions are required to submit a density bonus application pursuant to CMC Chapter 19.56, including plans for the project that clearly indicate the location and square footage of:

    a. Affordable units that qualify the project for a density bonus,

    b. Additional density, floor area, or units granted pursuant to Density Bonus law,

    c. which units are the density bonus units.

20. **BUILDING ELEVATIONS.** Plans shall be drawn by a licensed Architect at 1/8"= 1′ minimum scale; dimensioned vertically and horizontally with sample representations at ¼"= 1′ scale for detail areas. Elevations should not include superimposed landscaping and trees that hide the buildings. Height is measured from natural grade established at subdivision. The plans shall include:

    a. Fully dimensioned elevations for buildings identifying materials, details and features include visible plumbing, electrical meters and method of concealment.

b. All four sides of all buildings.

c. Vertical dimensions from all points above natural, existing and finished grade on all elevations.

d. Topography with natural, existing, and proposed grades accurately represented to show building height to show the relationship of the building to the site and adjacent properties.

e. Location, height and design of rooftop mechanical equipment and proposed screening. Provide a section detail showing height of equipment in relation to the height of the proposed screen structure.

f. Elevations and dimensions for existing structures to remain. Location and type of building mounted exterior lighting.

g. Detailed building sections showing depth of reveals, projections, recesses, etc.

h. Details of vents, gutters, downspouts, scuppers, external air conditioning equipment, etc.

i. Details including materials and dimensions of door and window treatments, railings, stairways, handicap ramps, trim, fascia, soffits, columns, fences, and other elements which affect the building. Provide wall sections at ½″=1′ scale to clarify detailing as appropriate.

21. **FLOOR PLANS.** Plan shall be drawn by a licensed Architect at 1/8″= 1′ or larger scale.

a. Floor area diagrams must be provided with dimensions and tabulations of each area of each floor.

b. Floor plans shall clearly indicate areas attributed to residential, non-residential, and shared use and should show garages, parking areas, and amenity spaces.

c. Floor plans shall include the square footage of residential space and related residential facilities, non-residential uses, and structures uses by both residential and non-residential uses.

d. Floor plans shall clearly identify affordable units (City BMR and SB 35 units)

e. If structured parking is provided, identify compliance with requirements of Chapter 19.124 of the Municipal Code and clearly identify required pedestrian paths pursuant to General Plan Policy M-3.6.

22. **ROOF PLAN.** Plan shall be drawn by a licensed Architect at 1/8″= 1′ or larger scale. The plan shall include property lines, outline of building footprint, ridgelines, valleys, flat roof areas, roof pitch and rooftop mechanical equipment, and screening. Plans shall show existing roof forms and roof forms to be added or changed.

23. **TRUE CROSS-SECTIONS.** A minimum of two cross-sections (more as needed to showing varying site conditions) drawn at 1:1 scale (same scale used for both vertical and horizontal axis), 1″=20′ minimum scale, with scale noted, and a graphic bar scale, through critical portions of the site extending 50 feet beyond the property line onto adjacent properties or to the property lines on the opposite side of adjacent streets. Sections shall include existing topography, slope lines, final grades, location and height of existing and proposed structures, fences, walls, roadways, parking areas, landscaping, trees, and property lines. Section locations shall be identified on the Site Plan.

24. **COLOR AND MATERIALS BOARD.** Samples of materials and color palette representative of actual materials/colors for all buildings and structures. Identify the name of manufacturer, product, style, identification numbers and other pertinent information on the display. Displays should be no larger than 24″ by 36″, except where actual material samples are presented.

25. **LANDSCAPE PLANS.** Plan shall be drawn at 1″ = 20′ or larger scale by a licensed Landscape Architect. The plan shall incorporate the proposed Grading and Utility Plan, showing the location of existing and proposed utility lines and utility structures screened back, but legible, and shall include the following:

a. Final planting plan showing proposed trees, shrubs and shrub groupings, lawn, and groundcover areas, existing trees to be saved, stormwater treatment areas, special paving, hardscape, and site furnishings. Include a landscape legend with a list of proposed plant materials (indicate both Latin and common name), including size, spacing, total quantities, ultimate height, and spread of materials.

b. Size, species, trunk location, and canopy of all existing trees (6″ in diameter or larger) on-site and on abutting property that could be affected by the project. Identify which trees will remain and trees to be removed.

Any tree proposed as mitigation for the removal of a protected tree shall be identified as a replacement tree. Replacement trees shall comply with the requirements of Chapter 14.15 of the Cupertino Municipal Code.

c. Show accurate representation of plant materials within three years.

d. Identify the location and screening of all above ground utilities and bio-swales or other stormwater treatment areas with 1:10 scale cross sections showing the planting within the bio-swales and screening of the utilities.

e. Provide enlarged details (minimum of 1:10 scale) for focal points and accent areas.

f. Location and details and/or manufacturers catalogue cuts of walls, fences, paving, decorative planters, trellises, arbors, and other related site improvements.

g. Landscape plans with more than two sheets shall show the plant legend with symbols for each species on every sheet.

h. Statement indicating that a fully automatic irrigation system will be provided.

i. Color and materials submittal for all special paving, hardscape treatment, walls, landscape lighting, and site furnishings.

j. The Landscape plan shall be coordinated and consistent with the Stormwater Plan.

k. Note signed and dated by project Landscape Architect that plans are in compliance with all City standards.

l. Provide information on landscaping used as screening for utility equipment.

26. **TREE SURVEY.** Prepared by an ISA Certified Arborist, drawn at 1″=20′ scale, showing accurate trunk location and drip line for all existing trees on the site and adjacent to the site**.** For each tree, specify the species, diameter breast height (DBH) as defined in Chapter 14.18.020, and base elevation and clearly indicate if it is to be preserved or to be removed. Identify all Protected Trees as defined in Chapter 14.18.020. Identify existing trees or plant materials on abutting properties that could influence site design or be impacted by the project.

27. **FENCE PLAN.** Drawn at 1″=20′ scale showing the location, height and type of all fences and walls.

28. **LIGHTING PLAN.** Location and type of exterior lighting, both fixed to the building and freestanding, any and all lights for circulation, security, landscaping, building accent or other purpose.

29. **PHOTOMETRIC PLAN.** Indicate compliance with no lighting glare. Photometric plan must indicate that lighting levels do not spill into adjacent properties.

30. **PHOTO-SIMULATIONS**. Digital photo-simulations of the site with and without the project, taken from various points off-site with the best visibility of the project. Include a key map showing the location where each photo was taken.

31. **GRADING PLAN.** Use the grading plans approved with any past subdivision to indicate the natural grade and how the proposed project meets height requirements based on this. If a new subdivision is proposed, please indicate the new proposed natural grade. Grading shall comply with requirements of Chapters 16.08 and 18.52 of the Cupertino Municipal Code, as applicable. Show the relationship of the project to the building and site features within 50 feet. The plan shall include:

    a. Proposed building footprints, pad elevations and building height

    b. Existing and proposed contours which can be easily differentiated (2ft intervals if slope is 10% or less, 5 ft intervals for slopes greater than 10%)

    c. Spot elevations of survey points

    d. Source and date of the contour and spot elevation information

    e. Limits of cut and fill

    f. Grading Quantities (Cut and Fill Cubic Yards)

    g. Cross-sections of the areas of greatest cut and greatest fill to scale

    h. Topography and elevation of adjoining parcels (for a minimum of 50′)

    i. Slope ratio

j. Show all existing and proposed retaining walls with TOW/BOW elevations.

32. **SUBDIVISION PLAN.** Provide a subdivision plan, if applicable. Please indicate compliance with the objective zoning and subdivision development standards. The plan shall comply with the City's subdivision ordinance and shall include:

a. Existing Assessor's Parcel Numbers

b. A title which shall contain the subdivision number, name and type of subdivision.

c. Name and address of legal owner, subdivider and person preparing the map (include professional license number)

d. Date, north arrow, scale and contour interval

e. Land Use (existing and proposed)

f. Vicinity Map showing roads, adjoining subdivisions, Cities, creeks, railroads, and other data sufficient to locate the proposed subdivision and show its relation to the community.

g. Existing Trees, type, diameter at breast height (DBH) and indicate drip line/canopy. Any trees proposed to be removed shall be clearly indicated.

h. Existing structures, approximate location and outline identified by type. Buildings to be removed shall be clearly indicated.

i. Lot area with density per gross acre for each parcel (net square footage)

j. Existing and proposed lot line dimensions (bearings and distances)

k. Exhibits indicating compliance with objective zoning standards (e.g. minimum lot sizes, lot widths etc.)

l. Areas subject to inundation or storm water overflow. Width and direction of flow for each water course should be shown with approximate location.

m. Existing easements with widths, locations, type and sufficient recording data to identify the conveyance (book and page of official records).

n. New and amended easements with width, locations, type and purpose.

o. Proposed infrastructure including utilities and surface/street improvements (both private and public). Show location and size of utilities. Show proposed slopes and elevations of utilities and surface hardscape improvements.

p. Accompanying data and reports to be supplied with Subdivision Plan:

i. Geologic and Geotechnical Report – A preliminary geotechnical report is required by Section 16.12 of the Cupertino Municipal Code and shall verify if there is a presence of critically expansive soils or other soil problems, which, if not corrected, would lead to structural defects or differential settlement of infrastructure, and shall provide recommendations for necessary corrective action. The report shall show all geological hazard zones identified in the General Plan and which are known or portrayed in other geological studies for the area. It shall also include descriptions and physical characteristics on all geological formations, anomalies, and earthquake characteristics. Mitigation measures shall be identified for any geological hazard or concern.

33. **UTILITY PLAN.** Prepared by a licensed Civil Engineer and drawn at 1”= 20’ scale, with scale noted, showing the location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities/storm drainage system, wells, septic tanks, underground and overhead electrical lines, utility poles, utility vaults, cabinets and meters, transformers, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, electroliers, lighting fixtures, street lights, traffic signal poles, traffic signal pull boxes, signal cabinets. Provide details on screening utility equipment. Indicate compliance with Chapter 14.24.

34. **STORMWATER CONTROL PLAN.** See Stormwater Control Plan Application Checklist. All Stormwater Plans shall be coordinated and consistent with all Site, Grading, Utility, and Landscape Plans. If the project creates or replaces more than 10,000 sq. ft. of impervious area, a Stormwater Control Plan is required, and shall meet the standards and regulations established for the Municipal Regional Stormwater NPDES Permit. Provide the following information to determine if the project meets this threshold:

a. Site size in sq. ft.

b. Existing impervious surface area (all land covered by buildings, sheds, patios, parking lots, streets, paved walkways, driveways, etc.) in sq. ft.

c. Impervious surface area created, added or replaced in sq. ft. Total impervious surface area in sq. ft.

d. Percent increase/replacement of impervious surface area (new impervious surface area in sq. ft./existing impervious surface area in sq. ft. multiplied by 100).

e. Estimated area in sq. ft. of land disturbance during construction (including clearing, grading or excavating.

35. **ADDITIONAL INFORMATION TO DETERMINE COMPLIANCE WITH ELIGIBILITY CRITERIA.** Provide the following information if applicable:

a. If the project is located on a hazardous waste site that is listed pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, submit a signed Hazardous Waste and Substances Statement as required by Government Code Section 65962.5(f) and information showing that the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

b. If the project is located within a special flood hazard area defined by Government Code Section 65913.4(a)(6)(G), explain why development is allowed under the exceptions explained in Government Code Section 65913.4(a)(6)(G).

c. If the project is located within a regulatory floodway defined by Government Code Section 65913.4(a)(6)(H), submit the development's no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

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CITY COUNCIL STAFF REPORT

Meeting: August 6, 2019

Subject

Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action

That the City Council conduct the study session, receive this report and provide direction regarding the proposed Application and Review Procedures (Attachment A) and draft Application Package (Attachment B) for Projects Proposed Pursuant to Senate Bill 35.

Discussion

I. Background

Senate Bill 35 (SB 35) became effective on January 1, 2018. It enacted Government Code section 65913.4 which requires cities and counties to use a streamlined ministerial review process for qualifying multifamily housing developments that comply with the jurisdiction's objective planning standards, provide specified levels of affordable housing, and meet other specific requirements. Note that there were amendments made to SB 35 in 2018. (The text of SB 35, as amended is included as Attachment C). In addition, the California Department of Housing and Community Development (HCD) issued Guidelines for implementing SB 35, Streamlined Ministerial Approval Process Guidelines ("Guidelines"), on November 29, 2018, which took effect on January 1, 2019. These Guidelines direct a local jurisdiction to provide information about its process for applying and receiving ministerial approval under SB 35. Guidelines § 300(a). (see Attachment D.) The Draft Resolution and draft application materials are being prepared to specify the City's procedures and requirements for processing and approving SB 35 applications. This also implements an item on the City's Fiscal Year 2019/2020 Work Program to "develop procedures for mandated streamlined project approvals."

It should be noted that the City received an SB 35 application for a multifamily housing development encompassing 50.82 acres within the Vallco Shopping District Special Area on March 27, 2018. This was processed within the timelines allowed pursuant to SB 35 and approved on September 21, 2018. The project is currently the subject of a lawsuit. The Guidelines were not in effect at the time the City approved the project and, additionally, the Legislature has made amendments to SB 35 since that time. The proposed City Procedures would not apply to the approved Vallco SB 35 project.

Planning Commission Study Session

The Planning Commission met at a special meeting on July 30, 2019 to consider the proposed procedures and application package to provide input. Four members of the public spoke at the meeting with comments ranging from concerns about the SB 35 statute, past approvals pursuant to SB 35, density bonus law, and concerns about Commissioner Moore's decision to recuse herself from discussions related to this subject. The Planning Commission discussed both the proposed resolution and the draft application package. Their comments are presented later in this report.

II. Analysis:

Under SB 35, the City is required to review qualifying projects using a ministerial review process, which means that the City cannot require an applicant to obtain discretionary permits that would typically be required (e.g., development permit). Instead, the City is required to process applications within the timeframes specified in Government Code section 65913.4(c),[1] applying only those objective zoning and design review standards contained the City's general plan, municipal code, and other adopted land use plans in effect at the time the project application was submitted and specific parking standards identified in SB 35. The review process must also be streamlined because the project is not subject to environmental review under the California Environmental Quality Act (CEQA).

A. Processing Procedures: SB 35 allows a City's Planning Commission or City Council to conduct public oversight of the development application. It requires oversight focused on assessing compliance with criteria required for streamlined projects, which includes a local government's objective land use standards, as well as any reasonable objective design standards published before submission of an application. The statute defines objective standards to mean "standards that involve no personal

[1] Once an application is submitted, within 60 days for a project with 150 or fewer units, and within 90 days for a project more than 150 units, the City must provide the development proponent with written documentation ("Consistency Letter") of any objective planning standard that the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard. If the City fails to provide that information within the time period, the development will be deemed consistent with the objective planning standards.

or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." Public oversight must be completed within the timelines specified in the statute for project approval (90 days for projects of 150 units or fewer and 180 days for larger projects) and cannot inhibit, chill or preclude the ministerial approval provided for by SB 35.

The Draft Review Procedures would be adopted by resolution and are included in Attachment A. The Draft Review Procedures also include an eligibility checklist, based on SB 35, the Guidelines, and the City's laws and policy, that specify the requirements for a project to be eligible for streamlined approval under SB 35. Initial changes made to the Draft Review Procedures since publication of the Planning Commission agenda packet and meeting are shown in redlines in Attachment A.

The Draft Procedures require a Joint Planning Commission and City Council meeting for oversight and consistency review, prior to issuance of a Consistency Letter[2] for that project. This would be an open meeting, noticed to the public and neighbors in advance, including an opportunity for public and applicant comments. The oversight meeting is proposed to be held at least five business days prior to the consistency determination for the project. For projects that include a Tentative Map or Parcel Map application, this map application will be considered by the Planning Commission and City Council during the oversight and consistency review meeting.

If after the Oversight and Consistency Meeting, a project is determined to be ineligible for streamlined and ministerial review by the City Manager, the application will be rejected and the applicant must make a new submittal which will be subject to the timelines for new applications specified in SB 35. If after the Oversight and Consistency Meeting, an application is determined to be eligible for SB 35 streamlined and ministerial review by the City Manager, the final approval documents and standard conditions of approval will be prepared and issued.

<u>Planning Commission comments:</u> The following is a summary of comments and concerns from Planning Commissioners regarding the proposed Draft Review Procedures :

- Concerns that the Joint Oversight meeting may be perceived as an "approval" meeting while the resolution is clear that the final determination is made by the City Manager.

[2] See Footnote no. 1

- Concerns about disapproving an incomplete application without an opportunity for the applicant to correct minor deficiencies.
- Concerns about whether five business days would be adequate time to determine whether a project is complete.
- Consider whether it would be possible to disallow applicants from applying for concurrent review of a streamlined, ministerial project and a discretionary project.
- Concerns that one joint Planning Commission and City Council meeting, prior to determination of SB 35 eligibility of a project, would not be enough public oversight.
- Requiring plans that indicate density bonus baseline for the site when a density bonus application is submitted – suggestion for a future update to the Municipal Code.

B. <u>Application Package:</u> HCD Guidelines also direct local jurisdictions to provide information about the materials required for an application. Attachment B, is a draft application package, that would be provided to an applicant interested in making an application for a streamlined project. Initial changes to the draft application package since publication of the Planning Commission agenda packet and meeting are indicated in redlines.

This package includes:

1. An application form;
2. A form certifying compliance with the eligibility requirements of SB 35 (based on SB 35 requirements related to affordability, prevailing wages requirements, skilled and trained workforce requirements etc.); and
3. An application checklist indicating all the items required for a complete application (based on information necessary to determine the application's compliance with objective General Plan and Municipal Code standards)

<u>Planning Commission comments:</u> The following is a summary of comments and concerns from Planning Commissioners regarding the draft application package:

- Prefer not to use the word "listed" contaminants in item #13 of the Project Checklist in the Application Form.
- Recommend that plans include design specifications for density bonus units in addition to BMR units to address item #20 of the Project Checklist in the Application Form.

- Recommending that specifications for density bonus units not be required to be included in the initial application and a request to research law to determine whether this is lawful.
- Two commissioners recommended that a public hearing be required on Density Bonus incentives/benefits while another suggested that this could be done as part of the Oversight and Consistency meeting if it is done objectively.

Next Steps

Staff and the City Attorney's Office are still reviewing the Planning Commission's comments and expect additional changes to address those and the City Council's study session comments. The final draft resolution will be presented to Council to be considered and adopted at a subsequent meeting. The City Council's decision will be in effect immediately upon adoption of the resolution. Upon the Council's decision, the application package will be updated to ensure consistency with the adopted Procedures and published on the City's website and will be available at the public counter for applicants.

Prepared by: Caitlin Brown, City Attorney's Office
Reviewed by: Benjamin Fu, Director of Community Development
Heather Minner, City Attorney
Approved by: Deborah Feng, City Manager

Attachments:

A. Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
B. Draft SB 35 Application Package with redlines
C. SB 35 Statute, as Amended
D. HCD Guidelines – Streamlined Ministerial Approval Process

CITY OF CUPERTINO

COMMUNITY DEVELOPMENT DEPARTMENT
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SUPPLEMENTAL CITY COUNCIL STAFF REPORT

Meeting: August 6, 2019

Subject

Study Session regarding Application and Review Procedures for Projects Proposed Pursuant to Senate Bill 35 (Application No(s): CP-2019-04; Applicant(s): City of Cupertino; Location: Citywide)

Recommended Action

That the City Council conduct the study session, receive these reports and provide direction regarding the proposed Application and Review Procedures (Attachment A) and draft Application Package (Attachment B) for Projects Proposed Pursuant to Senate Bill 35.

Discussion

This Supplemental Staff Report is posted in addition to the staff report made available on July 31 to reflect subsequent amendments to SB 35. The following attachments are also updated: the Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 and the Draft SB 35 Application Package. And a new attachment, Excerpts of AB 101 re SB 35, is added.

On July 31, the Governor signed AB 101 (Housing development and financing), a budget trailer bill that amended, among other laws, Government Code section 65913.4 (SB 35). AB 101 amended only two subdivisions of Government Code section 65913.4, but both changes are relevant to the Process and Application Package.

AB 101 modified the objective planning standards a proposed development must meet in order to be eligible for the SB 35 streamlined, ministerial approval process.

First, AB 101 amended the subdivision providing that an eligible mixed-use project must designate at least two-thirds of the square footage of the development for residential use, Gov. Code § 65913.4(a)(2)(C), by adding the following underlined sentence: "A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation." This change to how minimum residential square footage is calculated contradicts the guidance adopted by the Department of Housing and Community Development in November of 2018, which explicitly ***excluded*** additional density, floor area, or units granted under the Density Bonus Law from the two-thirds calculation. Guidelines § 400(b)(1).

Second, AB 101 amended the subdivision relating to hazardous waste sites by adding the following underlined text. A project located on a hazardous waste site may still be eligible for SB 35 streamlining if "the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses." Gov. Code § 65913.4(a)(6)(E).

Because of these statutory amendments, both the Draft Resolution's Eligibility Checklist and the Draft Application Package have been updated to reflect the current law. Updates are shown in track changes in Attachments A and B.

Prepared by: Caitlin Brown, City Attorney's Office
Reviewed by: Benjamin Fu, Director of Community Development
Heather Minner, City Attorney
Approved by: Deborah Feng, City Manager

Attachments:
A. Updated Draft Resolution Adopting the Process for Applying and Receiving Ministerial Approval Under Senate Bill 35 with redlines
B. Updated Draft SB 35 Application Package with redlines
C. Excerpts of AB 101 re SB 35

State of California

GOVERNMENT CODE

Section 65913.4

65913.4. (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation.

(3) (A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies both of the following:

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project seeking approval dedicates a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income. If the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making below 80 percent of the area median income, unless the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, in which case that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management

Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) (i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(c) (1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division

13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making below 80 percent of the area median income.

(2) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making below 80 percent of the area median income, that approval shall automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and process set forth in this section.

(f) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(g) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(h) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(i) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development which has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(8) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(9) "Subsidized" means units that are price or rent restricted such that the units are permanently affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(10) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(11) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(j) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a “project” as defined in Section 21065 of the Public Resources Code.

(*l*) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

(m) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(Amended by Stats. 2019, Ch. 159, Sec. 8. (AB 101) Effective July 31, 2019. Repealed as of January 1, 2026, by its own provisions.)

Streamlined Ministerial Approval Process
(Chapter 366, Statutes of 2017)

Guidelines

State of California
Governor Edmund G. Brown Jr.

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Division of Housing Policy Development

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November 29, 2018

The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

> Quasi-legislative regulations … have the dignity of statutes … [and]… delegation of legislative authority includes the power to elaborate the meaning of key statutory terms…
>
> *Ramirez v. Yosemite Water Co.*, 20 Cal. 4th 785, 800 (1999)

> The Department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
> Government Code section 65913.4, subdivision (j)

> Government Code section 65913.4 relates to the resolution of a statewide concern and is narrowly tailored to limit any incursion into any legitimate municipal interests, and therefore the provisions of Government Code section 65913.4, as supplemented and clarified by these Guidelines, are constitutional in all respects and preempt any and all inconsistent laws, ordinances, regulations, policies or other legal requirements imposed by any locality.

Streamlined Ministerial Approval Process
Development Approval Process

Program Guidelines

Table of Contents

Contents

INTRODUCTION

Chapter 366, Statutes of 2017 (SB 35, Wiener) was part of a 15 bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need. Eligible developments must include a specified level of affordability, be on an infill site, comply with existing residential and mixed use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions. The intent of the legislation is to facilitate and expedite the construction of housing. In addition, as part of the legislation, the Legislature found ensuring access to affordable housing is a matter of statewide concern and declared that the provisions of SB 35 would apply to all cities and counties, including a charter city, a charter county, or a charter city and county. Please note, the Department of Housing and Community Development (Department) may take action in cases where these guidelines are not adhered to under its existing accountability and enforcement authority.

Guidelines for the Streamlined Ministerial Approval Process are organized into five Articles, as follows:

Article I. General Provisions: This article includes information on the purpose of the guidelines, applicability, and definitions used throughout the document.

Article II. Determination Methodology: This article describes the methodology for which the Department shall determine which localities are subject to the Streamlined Ministerial Approval Process.

Article III. Approval Process: This article describes the parameters of the approval process, including local government responsibilities, approval processes, and general provisions.

1) Local Government Responsibility – This section specifies the types of requirements localities can require a development to adhere to in order to determine consistency with general plan and zoning standards, including objective standards, controlling planning documents, and parking.

2) Development Review and Approval – This section details the types of hearings and review allowed under the Streamlined Ministerial Approval Process, timing provisions for processing and approving an application, denial requirements, and timeframes related to the longevity of the approval.

Article IV. Development Eligibility: This article describes the requirements for developments in order to apply for streamlining including type of housing, site requirements, affordability provisions, and labor provisions.

Article V. Reporting: This article describes reporting requirements specific to the Streamlined Ministerial Approval Process in the locality's annual progress report on the general plan.

ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

(a) These Guidelines (hereinafter "Guidelines") implement, interpret, and make specific the Chapter 366, Statutes of 2017 (SB 35, Wiener), and subsequent amendments (hereinafter "Streamlined Ministerial Approval Process") as authorized by Government Code section 65913.4.

(b) These Guidelines establish terms, conditions and procedures for a development proponent to submit an application for a development to a locality that is subject to the Streamlined Ministerial Approval Process provided by Government Code section 65913.4.

(c) It is the intent of the Legislature to provide reforms and incentives to facilitate and expedite the construction of affordable housing. Therefore these Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply.

(d) These Guidelines shall remain in effect until January 1, 2026, and as of that date are repealed.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65582.1 and 65913.4(l) and (m).

Section 101. Applicability

(a) The provisions of Government Code section 65913.4 are effective as of January 1, 2018.

(b) These Guidelines are applicable to applications submitted on or after January 1, 2019. Nothing in these Guidelines may be used to invalidate or require a modification to a development approved through the Streamlined Ministerial Approval Process prior to the effective date.

(c) These Guidelines are applicable to both general law and charter cities, including a charter city and county.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(i)(6).

Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meaning of terms described in Government Code section 65913.4

(a) "Annual Progress Report (APR)" means the housing element annual progress report required by Government Code section 65400 and due to the Department April 1 of each year reporting on the prior calendar year's permitting activities and implementation of the programs in a local government's housing element.

(b) “Application” means a submission containing such information necessary for the locality to determine whether the development complies with the criteria outlined in Article IV of these Guidelines. This may include a checklist or other application documents generated by the local government pursuant to Section 300(a) that specifies in detail the information required to be included in an application, provided that the information is only that required to determine compliance with objective standards and criteria outlined in article IV of these Guidelines.

(c) “Area Median Income (AMI)” means the median family income of a geographic area of the state, as published annually by the Department within the State Income Limits: http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml.

(d) “Car share vehicle” is an automobile rental model where people rent cars from a car-sharing network for roundtrip or one-way where vehicles are returned to a dedicated or reserved parking location. An example of such a service is Zipcar.

(e) “Density Bonus” means the same as Government Code section 65915.

(f) “Department” means the Department of Housing and Community Development.

(g) “Determination” means the published identification, periodically updated, by the Department of those local governments that are required to make the Streamlined Ministerial Approval Process available per these Guidelines.

(h) “Development proponent or applicant” means the owner of the property, or person or entity with the written authority of the owner, that submits an application for streamlined approval..

(i) “Fifth housing element planning period” means the five- or eight-year time period between the due date for the fifth revision of the housing element and the due date for the sixth revision of the housing element pursuant to Government Code section 65588(f)..

(j) “Infill” means at least 75 percent of the linear measurement of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this definition, parcels that are only separated by a street or highway shall be considered to be adjoined.

(k) “Locality” or “local government” means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(l) “Low-Income” means households earning 50 to 80 percent of AMI.

(m) “Lower-income” means households earning 80 percent or less of AMI pursuant to Health and Safety Code section 50079.5.

(n) “Ministerial processing or approval” means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision.

(o) “Multifamily” means a housing development with two or more attached residential units. The definition does not include accessory dwelling units unless the project is for new construction of a single-family home with an attached accessory dwelling units in a zone that allows for multifamily. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2

(p) “Objective zoning standard”, “objective subdivision standard”, and “objective design review standard” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. “Objective design review standards” means only objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, which are broadly applicable to development within the jurisdiction.

(q) “Project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(r) “Public transit” means a site containing an existing rail transit station (e.g. light rail, Metro, or BART), a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. For purposes of these Guidelines, measurements for frequency of bus service can include multiple bus lines.

(s) “Public works project” means developments which meet the criteria of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(t) “Regional housing need” means the local government’s share of the regional housing need allocation as determined by Article 10.6 of the Government Code.

(u) "Related facilities" means 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.

(v) “Reporting period” means the timeframe for which APRs are utilized to create the determination for which a locality is subject to the Streamlined Ministerial Approval Process. The timeframes are calculated in relationship to the planning period of the housing element pursuant to Government Code section 65588 and are cumulative through the most recent calendar year.

(w) “Skilled and trained workforce” has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(x) “Subsidized” means units that are price or rent restricted such that the units are permanently affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code. For the purposes of these Guidelines, the word “permanently” has the same meaning described in Section 402(b).

(y) “Tenant” means a person who occupies land or property rented or leased for use as a residence.

(z) “Urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(aa) “Very low-income” means households earning less than 50 percent or less of AMI pursuant to Health and Safety Code section 50105.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4.

ARTICLE II. STREAMLINED MINISTERIAL APPROVAL PROCESS DETERMINATION

Section 200. Methodology

(a) The Department will calculate the determination, as defined in Section 102(g), based on permit data received through APRs at the mid-point of the housing element planning period pursuant to Government Code section 65488 and at the end point of the planning period.

(1) APRs, as defined in Section 102(a), report on calendar years, while housing element planning periods may begin and end at various times throughout the year. When a planning period begins after July, the APR for that year is attributed to the prior housing element planning period. When the planning period ends before July 1, the APR for that year will be attributed to the following housing element planning period.

(b) The determination is based on permitting progress toward a pro-rata share of the regional housing need for the reporting period.

(1) Determinations calculated at the mid-point of the planning period are based upon permitting progress toward a pro-rata share of half (50 percent), of the regional housing need, while determinations calculated at the end of the planning period are based upon permitting progress towards the entirety (100 percent) of the regional housing need.

(2) For localities, as defined in Section 102(k), on a 5-year planning period, the mid-point determination is based upon a pro-rata share of the regional housing need for the first three years in the planning period, and 60 percent of the regional housing need.

(3) The determination applies to all localities beginning January 1, 2018, regardless of whether a locality has reached the mid-point of the fifth housing element planning period. For those local governments that have achieved the mid-point of the fifth housing element planning period, the reporting period includes the start of the planning period until the mid-point, and the next determination reporting period includes the start of the planning period until the end point of the planning period. In the interim period between the effective date of the Streamlined Ministerial Approval Process, until a locality reaches the mid-point in the fifth housing element planning period, the Department will calculate the determination yearly. This formula is based upon the permitting progress towards a pro-rata share of the regional housing need, dependent on how far the locality is in the planning period, until the mid-point of the fifth housing element planning period is reached. See example below.

Example Calculation
For a locality two years into the reporting period, the determination is calculated at two out of eight years of the planning period and will be based upon a pro-rata share of two-eighths, or 25 percent, of the regional housing need, and the following year, for the same locality, the determination will be calculated at three out of eight years of the planning period based upon a pro-rata share of three-eighths, or 37.5 percent, of the regional housing need, and the following year for the same locality the determination will be calculated at four out of eight years of the planning period based upon a pro-rata share of four-eighths, or 50 percent, of the regional housing need. At that point, the locality will reach its mid-point of the planning period and the determination, the pro-rata share, and the permitting progress toward the pro-rata share will hold until the locality reaches the end-point of the planning period.

(c) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households, the Department shall compare the permit data received through the APR to the pro-rata share of their above-moderate income regional housing need for the current housing element planning period. If a local government has permitted less than the pro-rata share of their above-moderate income regional housing need, then the jurisdiction will be subject to the Streamlined Ministerial Approval Process for developments with 10 percent affordability.

(d) Local governments that do not submit their latest required APR prior to the Department's determination are subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households.

(e) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 50 percent of units affordable to lower-income households, the Department shall compare the permit data received through the APR to the pro-rata share of their independent very-low and low-income regional housing need for the current housing element planning period. If a local government has permitted the pro-rata share of their above-moderate income regional housing need, and submitted their latest required APR, but has permitted less than the pro-rata share of their very-low and lower income regional housing need, they will be subject to the Streamlined Ministerial Approval

Process for developments with 50 percent affordability. For purposes of these Guidelines, as the definition of lower-income is inclusive of very low-income units. Very low-income units permitted in excess of the very low-income need can be applied to demonstrate progress towards the lower-income need. However, as the definition of very low-income units does not include low-income units. Low-income units permitted in excess of the low-income need cannot be applied to demonstrate progress towards the very low-income need.

(f) To determine if a locality is not subject to the Streamlined Ministerial Approval Process, the permit data from the APR shall demonstrate that the locality has permitted the entirety of the pro-rata share of units for the above moderate-, low-, and very low- income categories of the regional housing need for the relevant reporting period, and has submitted the latest APR.

(g) The Department's determination will be in effect until the Department calculates the determination for the next reporting period unless updated pursuant to Section 201. A locality's status on the date the application is submitted determines whether an application is subject to the Streamlined Ministerial Approval Process, and also determines which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a)(4).

Section 201. Timing and Publication Requirements

The Department shall publish the determination by June 30 of each year, accounting for the APR due April 1 of each year, though this determination may be updated more frequently based on the availability of data, data corrections, or the receipt of new information. The Department shall publish the determination on the Department's website.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a)(4).

ARTICLE III. APPROVAL PROCESS

Section 300. Local Government Responsibility

(a) A local government that has been designated as subject to the Streamlined Ministerial Approval Process by the Department shall provide information, in a manner readily accessible to the general public, about the locality's process for applying and receiving ministerial approval, materials required for an application as defined in Section 102(b), and relevant objective standards to be used to evaluate the application. The information provided may include reference documents and lists of other information needed to enable the local government to determine if the application is consistent with objective standards, consistent with Section 102(b). This can be through the use of checklists, maps, diagrams, flow charts, or other formats. The locality's process and application requirements shall not in any way inhibit, chill, or preclude the ministerial approval process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects in Article IV of these guidelines.

(b) Determination of consistency

(1) When determining consistency with objective zoning, subdivision, or design review standards, the local government can only use those standards that meet the definition referenced in Section 102(p). For example, design review standards that require subjective decision-making, such as consistency with "neighborhood character", cannot be applied as an objective standard unless "neighborhood character" is defined in such a manner that is non-discretionary.

Example Design Review
Objective design review could include use of specific materials or styles, such as Spanish-style tile roofs or roof pitches with a slope of 1:5. Architectural design requirements such as "craftsman style architecture" could be used so long as the elements of "craftsman style architecture" are clearly defined (e.g., "porches with thick round or square columns and low-pitched roofs with wide eaves), ideally with illustrations.

(2) General plan or zoning ordinance requirements for a specific plan or another discretionary permit do not necessarily constitute objective zoning standard. A locality may not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis, about whether to impose that standard on similarly situated development proposals.

(3) Modifications to objective standards granted as part of a density bonus concession, incentive, parking reduction, or waiver of development standards pursuant to Density Bonus Law Government Code section 65915,[1] or a local density bonus ordinance, shall be considered consistent with objective standards.

(4) Project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards shall be determined consistent with Density Bonus Law.

(5) Objective standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, the general plan, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(6) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective standards pursuant to Section 400(c) of these Guidelines if the development is consistent with the standards set forth in the general plan.

[1] Amended 1/9/19 -Grammatical correction

(7) Developments are only subject to objective zoning standards, objective subdivision standards, and objective design review standards enacted and in effect at the time that the application is submitted to the local government.

(8) Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. For example, design review standards or other objective standards that serve to inhibit, chill, or preclude the development of housing under the Streamlined Ministerial Approval Process are inconsistent with the application of state law.

(c) Density calculation

(1) When determining consistency with density requirements, a development that is compliant with up to the maximum density allowed within the land use element designation of the parcel in the general plan is considered consistent with objective standards. For example, a development on a parcel that has a multifamily land use designation allowing up to 45 units per acre is allowed up to 45 units per acre regardless of the density allowed pursuant to the zoning code. In addition, the development may request a density of greater than 45 units per acre if eligible for a density bonus under Density Bonus Law.

(2) Growth, unit, or other caps that restrict the number of units allowed in the proposed development or that expressly restricts the timing of development can be applied only to the extent that those caps do not inhibit the development’s ability to achieve the maximum density allowed by the land use designation and any density bonus the project is eligible for and do not restrict the issuance of building permits for the project.

(3) Additional density, floor area, or units granted as density bonus shall be considered consistent with maximum allowable densities.

(4) Development applications are only subject to the density standards in effect at the time that the development is submitted to the local government.

(d) Parking requirements

(1) Automobile parking standards shall not be imposed on a development that meets any of the following criteria:

(A) The development is located where any part of the parcel or parcels on which the development is located is within one-half mile of public transit, as defined by Section 102(r) of these Guidelines.

(B) The development is located within a district designated as architecturally or historically significant under local, state, or federal standards.

(C) When on-street parking permits are required, but not made available to the occupants of the development.

(D) When there is a car share vehicle, (i.e. a designated location to pick up or drop off a car share vehicle as defined by Section 102(d),) within one block of the development. A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.

(2) For all other developments, the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined processing.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a),(d), and (l).

Section 301. Development Review and Approval

(a) Ministerial processing

(1) Ministerial approval, as defined in Section 102(n), of a project that complies with Article IV of these guidelines shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval.

(2) Any ministerial design review or public oversight of the application may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate.

(A) Design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local government before submission of the development application, and shall be broadly applicable to development within the locality.

(B) Design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect.

(3) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards, it shall provide the development proponent, as defined in Section 102(h), written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframe specified in Section 301(b)(2) below. The local government may elect to allow the development proponent to correct any deficiencies within the timeframes for project approval specified in Section 301(b)(3) below.

(4) The denial of an application for streamlined processing does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamline review, or from to applying for the project under other local

government processes. If the application is denied and the development proponent elects to resubmit an application for streamlined review, the timeframes specified in Section 301(b) below shall commence on the date of resubmittal.

(5) Approval of ministerial processing does not preclude imposed standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality regardless of streamline approval. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building period or, if required, final map, on a ministerial basis is subject to the objective standards.

(A) Notwithstanding Paragraph (5), standard conditions that specifically implement the provisions of these Guidelines such as commitment for recording covenant and restrictions and provision of prevailing wage can be included in the conditions of approval.

(6) The California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) does not apply to the following in connection with projects qualifying for the Streamlined Ministerial Approval Process :

(A) Actions taken by a state agency or local government to lease, convey, or encumber land or to facilitate the lease, conveyance, or encumbrance of land owned by the local government.

(B) Actions taken by a state agency or local government to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income.

(C) The determination of whether an application for a development is subject to the Streamlined Ministerial Approval Process.

(b) Upon a receipt of application, the local government shall adhere to the following:

(1) An application submitted hereunder shall be reviewed by the agency whether or not it contains all materials required by the agency for the proposed project, and it is not a basis to deny the project if either:

(A) The application contains sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards (outlined in Article IV of these Guidelines); or

(B) The application contains all documents and other information required by the local government as referenced in section 300(a) of these Guidelines.

(2) Local governments shall make a determination of consistency, as described in Section 301(a)(3), as follows:

(A) Within 60 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

(C) Documentation of inconsistencies with objective standards must be provided to the development proponent within these timeframes. If the local government fails to provide the required documentation determining consistency within these timeframes, the development shall be deemed to satisfy the objective planning standards.

(3) Any design review or public oversight, as described in Section 301(a)(2), including resulting final approval shall be completed as follows:

(A) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

(C) Although design review may occur in parallel with or as part of the consistency determination set forth in paragraphs (1) and (2) above, failure to meet subjective design review standards or obtain design review approval from the oversight board shall not itself prevent or otherwise preclude a project from being approved for development pursuant to this Section if objective design review standards are met.

(c) Modifications to the development subsequent to the approval of the ministerial review but prior to issuance of a building permit can be granted in the following circumstances:

1) For modification initiated by the development proponent.

A) Following approval of an application under the Streamlined Ministerial Review Process, but prior to issuance of a building permit for the development, an applicant may submit written request to modify the development. The modification must conform with the following:

i. The change is consistent with the Streamlined Ministerial Approval Process Guidelines.
ii. The change will not modify the project's consistency with objective development standards considered as part of the project's review.
iii. The change will not conflict with a plan, ordinance or policy addressing community health and safety.
iv. The change will not result in modifications to the concessions, incentives or waivers to development standards approved pursuant to density bonus law.

B) Upon receipt of the request, the local agency shall determine if the requested modification is consistent with the local agency's objective development standards in effect when the development was approved. Approval of the modification request must be completed within 60 days of submittal of the modification or 90 days if design review is required.

2) For modification initiated by the local agency

A) Following approval of an application under the Streamlined Ministerial Review Process, but prior to issuance of a building permit for the development, a local agency may require one-time changes to the development that are necessary to comply with the local agency's objective uniform construction codes (including, without limitation building, plumbing, electrical, fire, and grading codes), to comply with federal or state laws, or to mitigate a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without modifying the development. A "specific, adverse impact" has the meaning defined in Government Code section 65589.5(d)(2).

B) A determination that a change is required is a ministerial action. If a revised application is required to address these modifications, the application shall be reviewed as a ministerial approval within 60 days of re-submittal of the application.

(d) If a local government approves a development under the Streamlined Ministerial Approval Process, notwithstanding any other law, the following expiration of approval timeframes apply:

(1) If the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the AMI, then that approval shall not expire.

(2) If the project does not include public investment in housing affordability (including local, state, or federal government assistance), beyond tax credits and at least 50 percent of the units are not affordable to households making at or below 80 percent of the AMI, that approval shall automatically expire after three years.

(A) That development may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and process set forth in this section.

(B) Approval shall remain valid for a development so long as vertical construction of the development has begun and is in progress.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a),(b), (c), (e), (h), and (k).

ARTICLE IV. DEVELOPMENT ELIGIBILITY

Section 400. Housing Type Requirements

To qualify to apply for the Streamlined Ministerial Approval Process, the development proponent shall demonstrate the development meets the following criteria:

(a) Is a multifamily housing development. The development can offer units for rental or for-sale.

(b) At least two-thirds of the square footage of the development shall be designated for residential use:

(1) For purposes of these Guidelines, the two-thirds calculation is based upon the proportion of gross square footage of residential space and related facilities as defined in Section 102(u), to gross development building square footage for an unrelated use such as commercial. Structures utilized by both residential and non-residential uses shall be credited proportionally to intended use. Additional density, floor area, or units granted pursuant to Density Bonus Law are excluded from this calculation.

(2) Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined Ministerial Approval Process. Additional permitting requirements pertaining to the individual business located in the commercial component (e.g. alcohol use permit or adult business permit) are subject to local government processes.

(3) When the commercial component is not part of a vertical mixed-use structure, construction of the residential component of a mixed-use development shall be completed prior to, or concurrent with, the commercial component. .

(c) The development is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time of the development application submittal per Section 300 of these Guidelines, provided that any modifications to density or other concessions, incentives, or waivers granted pursuant to the Density Bonus Law shall be considered consistent with such objective zoning standards, objective subdivision standards, and objective design review standards.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a).

Section 401. Site Requirements

(a) The development proponent shall demonstrate in the application that, as of the date the application is submitted, the proposed development is located on a site that meets the following criteria:

(1) The site is a legal parcel, or parcels, located in either:

(A) A city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or

(B) An unincorporated area where the area boundaries are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The site meets the definition of infill as defined by Section 102(j) of these Guidelines.

(3) The site must be zoned for residential use or residential mixed-use development, or have a general plan designation that allows residential use or a mix of residential and nonresidential uses.

(A) To qualify for the Streamlined Ministerial Approval Process, the site's zoning designation, applicable specific plan or master plan designation, or general plan designation must permit residential or a mix of residential and nonresidential uses by right or with a use permit.

(b) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a legal parcel(s) that is any of the following:

(1) Within a coastal zone, as defined in Division 20 (commencing with section 30000) of the Public Resources Code.

(2) Prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that locality.

(3) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21,1993).

(4) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code section 4202.

(A) This restriction does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to Government Code section 51179(b), or sites that are subject to adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(B) This restriction does not apply to sites that have been locally identified as fire hazard areas, but are not identified by the Department of Forestry and Fire Protection pursuant to Government Code section 51178 or Public Resources Code section 4202.

(5) A hazardous waste site that is currently listed pursuant to Government Code section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356.

(A) This restriction does not apply to sites the Department of Toxic Substances Control has cleared for residential use or residential mixed uses.

(6) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist.

(A) This restriction does not apply if the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(7) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(A) This restriction does not apply if the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local government.

(B) This restriction does not apply if the development proponent can demonstrate that they will be able to meet the minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

i. If the development proponent demonstrates that the development satisfies either subsection (A) or (B) above and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for the development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to special floor hazard areas.

ii. If the development proponent is seeking a floodplain development permit from the local government, the development proponent must describe in detail in the application for the Streamlined Ministerial Approval Process how the development will satisfy the applicable federal qualifying criteria necessary to obtain the floodplain development permit. Construction plans demonstrating these details shall be provided to the locality before the time of building permit issuance, however construction plans shall not be required for the local jurisdiction to take action on the application under the Streamlined Ministerial Approval Process.

(8) Within a regulatory floodway, as determined by the Federal Emergency Management Agency, in any official maps published by the Federal Emergency Management Agency.

(A) This restriction does not apply if the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

(B) If the development proponent demonstrates that the development satisfies subsection (A) above and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to regulatory floodways.

(9) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), a habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or another adopted natural resource protection plan.

(10) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(A) The identification of habitat for protected species discussed above may be based upon information identified in underlying environmental review documents for the general plan, zoning ordinance, specific plan, or other planning documents associated with that parcel that require environmental review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(11) Lands under conservation easement.

(12) An existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13

of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(c) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a site where any of the following apply:

(1) The development would require the demolition of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a locality's valid exercise of its police power.

(C) Housing that has been occupied by tenants, as defined by Section 102(y), within the past ten years.

(2) The site was previously used for housing that was occupied by tenants that was demolished within ten years before the development proponent submits an application under the Streamlined Ministerial Approval Process.

(A) When property with a building that was demolished in the past ten years has been zoned for exclusively residential use, there is a presumption that it was occupied by tenants, unless the development proponent can provide verifiable documentary evidence from a government or independent third party source to rebut the presumption for each of the ten years prior to the application date.

(B) When property with a building that was demolished in the past ten years has been zoned to allow residential use in addition to other uses, the developer proponent shall include in its application a description of the previous use and verification it was not occupied by residential tenants.

(3) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register prior to the submission of an application.

(4) The property contains housing units that are occupied by tenants and the development would require a subdivision.

(d) A development that involves a subdivision of a parcel that is, or, notwithstanding the Streamlined Ministerial Approval Process, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land is not eligible for the Streamlined Ministerial Approval Process.

(1) Subdivision (d) does not apply if the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to Section 403 of these Guidelines.

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used.

(2) An application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) for a development that meets the provisions in (1) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Such an application shall be subject to a ministerial process as part of the Streamlined Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a) and (c).

Section 402. Affordability Provisions

(a) A development shall be subject to a requirement mandating a minimum percentage of units be affordable to households making at or below 80 percent AMI, based on one of the following categories:

(1) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (c), the development shall dedicate a minimum of 10 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the area median income.

(A) Developments of ten units or less are not subject to the 10 percent affordability provision.

(B) If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.

(2) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (e), the development shall dedicate a minimum of 50 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the AMI.

(A) If the locality has adopted a local ordinance that requires greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.

(3) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (d), the development shall dedicate a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the AMI.

(A) If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the AMI, that local affordable housing requirement applies.

(b) A covenant or restriction shall be recorded against the development dedicating the minimum percentage of units to housing affordable to households making at or below 80 percent of the AMI pursuant to Section 402 (a)(1-3).

(1) The recorded covenant or restriction shall remain an encumbrance on the development for a minimum of either:

(A) 55 years for rental developments or

(B) 45 years for owner-occupied properties

(2) The development proponent shall commit to record a covenant or restriction dedicating the required minimum percentage of units to below market housing prior to the issuance of the first building permit.

(c) The percentage of units affordable to households making at or below 80 percent of the area median income per this section is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.

(d) The percentage of units affordable to households making at or below 80 percent of the area median income per this section shall be built on-site as part of the development.

(e) If the locality has adopted an inclusionary ordinance, the objective standards contained in that ordinance apply to the development under the Streamlined Ministerial Approval Process. For example, if the locality's adopted ordinance requires a certain percentage of the units in the development to be affordable to very low-income units, the development would need to provide that percentage of very low-income units to be eligible to use the Streamlined Ministerial Approval Process.

(f) All affordability calculations resulting in fractional units shall be rounded up to the next whole number. Affordable units shall be distributed throughout the development and shall be of comparable size, both in terms of the square footage and the number of bedrooms, and quality to the market rate units with access to the same common areas and amenities.

(g) Affordability of units to households at or below[2] 80 percent of the area median income per the section is calculated based on the following:

[2] Amended 1/19/19 – Grammatical Correction

1) For owner-occupied units, affordable housing cost is calculated pursuant to Health and Safety Code Section 50052.5.
2) For rental units, affordable rent is calculated pursuant to Health and Safety Code Section 50053.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a).

Section 403. Labor Provisions

The Labor Provisions in the Streamlined Ministerial Approval Process, located in paragraph (8) of subdivision (a) of Government Code section 65913.4, contain requirements regarding payment of prevailing wages and use of a skilled and trained workforce in the construction of the development.

The development proponent shall certify both of the following to the locality to which the development application is submitted:

(a) The entirety of the development is a public work project, as defined in Section 102(s) above, or if the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.

(1) The Department of Industrial Relations posts on its website letters and decisions on administrative appeal issued by the Department in response to requests to determine whether a specific project or type of work is a “public work” covered under the state’s Prevailing Wage Laws. These coverage determinations, which are advisory only, are indexed by date and project and available at: https://www.dir.ca.gov/OPRL/pwdecision.asp

(2) The general prevailing rate is determined by the Department of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. General prevailing wage rate determinations are posted on the Department of Industrial Relations’ website at: https://www.dir.ca.gov/oprl/DPreWageDetermination.htm.

(3) Apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. To find out if an apprentice is registered in an approved program, please consult the Division of Apprenticeship Standards’ “Apprenticeship Status and Safety Training Certification” database at https://www.dir.ca.gov/das/appcertpw/appcertsearch.asp.

(4) To find the apprentice prevailing wage rates, please visit the Department of Industrial Relations’ website at: https://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp. If you are interested in requesting an apprentice, a list of approved programs is available at: https://www.dir.ca.gov/databases/das/aigstart.asp. General information regarding the state’s Prevailing Wage Laws is available in the Department of Industrial Relations’ Public Works website (https://www.dir.ca.gov/Public-

Works/PublicWorks.html) and the Division of Labor Standards Enforcement Public Works Manual (https://www.dir.ca.gov/dlse/PWManualCombined.pdf).

(5) For those portions of the development that are not a public work, all of the following shall apply:

(A) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(B) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(C) All contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

i. The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee though a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

ii. The payroll record and Labor Commissioner enforcement provisions in (C) and (C)(i), above, shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement, as defined in Section 102(q) above, that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

(D) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Sections 511 or 514 of the Labor Code.

(b) For developments for which any of the following conditions in the charts below apply, that a skilled and trained workforce, as defined in Section 102(w) above, shall be used to complete the development if the application is approved.

Developments Located in Coastal or Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2021	225,000 or more	75 or more
January 1, 2022, until December 31, 2025	225,000 or more	50 or more

Developments Located in Non-Coastal or Non-Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2019	Fewer than 550,000	75 or more
January 1, 2020, until December 31, 2021	Fewer than 550,000	More than 50
January 1, 2022, until December 31, 2025	Fewer than 550,000	More than 25

(1) Coastal and Bay Counties include: Alameda, Contra Costa, Del Norte, Humboldt, Los Angeles, Marin, Mendocino, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma and Ventura.

(2) Non-Coastal and Non-Bay Counties include: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba.

(3) The skilled and trained workforce requirement in this subparagraph is not applicable to developments with a residential component that is 100 percent subsidized affordable housing.

(4) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(A) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(B) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(C) The applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

i. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided.

ii. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

iii. The requirements in (C), (C)(i), and (C)(ii), above, do not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(c) Notwithstanding subsections (a) and (b) A development is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(1) The project includes ten or fewer housing units.

(2) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(d) Offsite fabrication is not subject to this Section if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular development. However, offsite fabrication performed at a temporary facility that is dedicated to the development is subject to Section 403.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a), Subdivision (d) of Section 2601 of the Public Contract Code, *Sheet Metal Workers' International Association, Local 104, v. John C. Duncan* (2014) 229 Cal.App.4th 192 [176 Cal.Rptr.3d 634].

Section 404. Additional Provisions

(a) A local government subject to the Streamlined Ministerial Approval Process shall allow for a development proponent's use of this process. However, the ability for a development proponent to apply for the Streamlined Ministerial Approval Process shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including, but not limited to, the use by right provisions of housing element law Government Code section 65583.2(i), local overlays, or ministerial provisions associated with specific housing types.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(g).

ARTICLE V. REPORTING

Section 500. Reporting Requirements

As part of the APR due April 1 of each year, local governments shall include the following information. This information shall be reported on the forms provided by the Department. For forms and more specific information on how to report the following, please refer to the Department's Annual Progress Report Guidelines.

(a) Number of applications submitted under the Streamlined Ministerial Approval Process.

(b) Location and number of developments approved using the Streamlined Ministerial Approval Process.

(c) Total number of building permits issued using the Streamlined Ministerial Approval Process.

(d) Total number of units constructed using the Streamlined Ministerial Approval Process by tenure (renter and owner) and income category.

NOTE: Authority cited: Government Code section 65400(a)(2)(B). Reference cited: Government Code section 65400(a)(2)(E).

Attachment I

Comments from Planning Commission and City Council Study Sessions

Planning Commission comments: The following is a summary of comments and concerns from Planning Commissioners regarding the proposed Draft Review Procedures:

- Concerns that the Joint Oversight meeting may be perceived as an "approval" meeting while the resolution is clear that the final determination is made by the City Manager.
- Concerns about disapproving an incomplete application without an opportunity for the applicant to correct minor deficiencies.
- Concerns about whether five business days would be adequate time to determine whether a project is complete.
- Consider whether it would be possible to disallow applicants from applying for concurrent review of a streamlined, ministerial project and a discretionary project.
- Concerns that one joint Planning Commission and City Council meeting, prior to determination of SB 35 eligibility of a project, would not be enough public oversight.
- Requiring plans that indicate density bonus baseline for the site when a density bonus application is submitted – suggestion for a future update to the Municipal Code.

Planning Commission comments: The following is a summary of comments and concerns from Planning Commissioners regarding the draft application package:

- Prefer not to use the word "listed" contaminants in item #13 of the Project Checklist in the Application Form.
- Recommend that plans include design specifications for density bonus units in addition to BMR units to address item #20 of the Project Checklist in the Application Form.
- Recommending that specifications for density bonus units not be required to be included in the initial application and a request to research law to determine whether this is lawful.
- Two commissioners recommended that a public hearing be required on Density Bonus incentives/benefits while another suggested that this could be done as part of the Oversight and Consistency meeting if it is done objectively.

City Council comments: The following is a summary of comments and concerns from City Councilmembers:

- Review Kitty Moore's proposed changes and advise on them.
- Tighten up the language in Section 7 that Ms. Moore objects to.
- Look at the BMR section to make sure it reflects the City's BMR program to the extent it can.
- Add language that items will not be added to the checklist midstream when an application has been submitted.
- Add to the recitals language that reflects the history and policy consequences of AB 101. And add language that if in the future it becomes possible to calculate excluding density bonus additions (per HCD's November 2018 guidance), the City intends to do so.
- Add sample calculations for how to calculate 2/3 residential use requirement.
- Clarify that staff has the option to hold the oversight hearing earlier than 5 days before the consistency determination for larger projects if necessary.
- Consider allowing a second oversight hearing regarding the 2/3 residential use requirement earlier at discretion of staff.
- In the section that says the application "needs sufficient" detail/information to determine the 2/3 residential use determination, try to amend to have more specific language and clarify what "sufficient" would be.
- Require applicants to specify the size and number of bedrooms for BMR units (if the draft procedures don't do this already).

RESOLUTION NO. ________

A RESOLUTION OF THE CUPERTINO CITY COUNCIL
ADOPTING THE PROCESS FOR APPLYING FOR AND RECEIVING MINISTERIAL APPROVAL UNDER SENATE BILL 35

WHEREAS, Senate Bill 35 added Government Code Section 65913.4 providing for the ministerial approval of infill affordable housing projects.

WHEREAS, the California Division of Housing Development issued Guidelines for implementing SB 35, Streamlined Ministerial Approval Process Guidelines ("Guidelines") on November 29, 2018.

WHEREAS, Assembly Bill 101, among its numerous other provisions, amended Government Code Section 65913.4 to provide that the law's minimum two-thirds residential square footage requirement for qualifying projects is calculated including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law. AB 101 was a budget trailer bill and as such was adopted through a highly abbreviated process that allowed for very limited review or public input. Its amendment to the residential square-footage calculation reverses the guidance adopted by the Department of Housing and Community Development last year and will allow projects with a larger amount of non-residential development and fewer housing units to qualify for streamlined approval.

WHEREAS, the City Council, with the intention of requiring SB 35 projects to provide as much housing as possible, will calculate the two-thirds residential requirement excluding density bonus additions if in the future the law is further amended and it becomes possible to do so.

WHEREAS, ~~these~~ the Guidelines direct local jurisdictions to provide information about their process for applying and receiving ministerial approval.

WHEREAS, the City Council now provides that information about its process by this resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby adopt the following:

Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35

SECTION 1. **Overview.** Senate Bill 35 (SB 35) enacted Government Code section 65913.4, which requires certain cities and counties to use a streamlined ministerial review process for qualifying multifamily housing developments that comply with the jurisdiction's objective planning standards, provide specified levels of affordable housing, and meet other specific requirements. Government Code section 65913.4 has been twice amended, most recently on July 31, 2019, and the City's process reflects these amendments. The California Department of Housing and Community Development (HCD) determined that Cupertino is subject to SB 35.[1] The HCD issued guidelines for implementing SB 35, *Streamlined Ministerial Approval Process Guidelines* (Guidelines), on November 29, 2018, which took effect on January 1, 2019. These Guidelines direct a local jurisdiction to provide information about its process for applying and receiving ministerial approval under SB 35. Guidelines § 300(a).

Under SB 35, the City is required to review qualifying projects using a ministerial review process, which means that the City cannot require an applicant to obtain discretionary permits that would typically be required (e.g., development permit or conditional use permit). Guidelines § 301(a)(1). Instead, the City is required to process applications within the timeframes specified in Government Code section 65913.4, applying only those objective standards contained the City's General Plan, municipal code, and other adopted land use plans in effect at the time the project application was submitted. Guidelines § 300. The review process is also to be streamlined because the project is not subject to environmental review under the California Environmental Quality Act (CEQA). Guidelines § 301(a)(6).

This Resolution establishes the City of Cupertino's SB 35 application and review processes. It is not intended to supersede or waive any requirements from SB 35 or the Guidelines not explicitly discussed in this document. This Resolution shall be interpreted to incorporate and be consistent with Government Code section 65913.4 and the Guidelines, as they be amended from time to time.

SECTION 2. **Eligibility Criteria.** To be eligible for a streamlined review process, an application must meet the objective planning standards required by SB 35, including all applicable City objective land use standards, as described in Exhibit 1, the SB 35 Eligibility Checklist. These eligibility criteria are collectively referred to as the required "objective planning standards."

[1] As of January 31, 2018, HCD determined that Cupertino is subject to SB 35 streamlining for eligible projects. Cupertino remained subject to SB 35 streamlining under HCD's December 2018 Statewide Determination Summary.

SECTION 3. **Procedures for processing SB 35 Applications.** To apply for a project that qualifies under SB 35, an applicant must follow the procedures below:

1. Submit an SB 35 Application and a ~~Certificate for~~ Certification of Compliance with Eligibility Requirements on forms provided by the Community Development Director to the Planning Division. The application must be submitted along with all of the material identified in an SB 35 Application Checklist provided by the Community Development Director. The SB 35 Application Checklist ~~shall require~~ requires sufficient information for a reasonable person to determine whether the development is consistent with the required objective planning standards.

   SB 35 applications will be subject to a Staff Hourly Rate fee for applicable staff time and materials to process the project application, based on the rates set in the adopted Fee Schedule.

2. The City shall post all application materials on the City's webpage within two business days after the application has been submitted, and keep the project webpage updated including posting any additional submittals from the applicant, initial and final City consistency determinations, and any project approval or denial.

SECTION 4. **Completeness Determination.** Once the application is submitted, staff will determine within ~~5~~ seven business days whether the application is complete. Applications shall be complete if they contain all documents and other information required by the City, as specified in the SB 35 Application Checklist provided by the Department of Community Development. *See* Guidelines § 301(b)(1). All of the information in the SB 35 Application Checklist is necessary to determine whether the development is consistent, compliant, or in conformity with the objective planning standards. If the application is incomplete, staff will deny the project, unless doing so would be an invalid basis to deny the project under the Guidelines. *See* Guidelines § 301(b)(1). An applicant may submit a revised application for a previously denied project at any time. The City will process the revised application as a new application under these procedures and the timeframes for consistency determinations and project approval shall commence on the date of resubmittal. Guidelines § 301(a)(4).

SECTION 5.
(a) **Timeframe for Consistency Determination.** If the application is complete, within 60 days of the initial application submittal for a project with 150 or fewer units, and within 90 days for a project more than 150 units, the City will determine whether the project conflicts with any of the required objective planning standards. Guidelines § 301(b).

(b) **Initial Determination.** The Department of Community Development will make an initial written determination of the proposed project's consistency with applicable objective planning standards. The application may be routed to other City department staff for review, if deemed necessary. The Community Development Director shall submit the department's initial consistency determination to the Planning Commission and the City Council for consideration at the Oversight and Consistency Review Meeting.

(c) **Oversight and Consistency Review Meeting.** ~~At~~ When the initial determination is complete or at least five business days before a final consistency determination is made, the Planning Commission and the City Council shall hold a joint oversight meeting to assess the proposed project's compliance with required objective planning standards. The Community Development Director may, on a case by case basis, schedule this meeting earlier than five business days before the final consistency determination for projects with more than 150 housing units, if necessary, and the timing of initial review allows.

The Community Development Director may, on a case by case basis, schedule one additional oversight meeting to assess a mixed-use project's compliance with the two-thirds residential requirement in Government Code § 65913.4(a)(2)(C) prior to the oversight and consistency review meeting discussed above. This additional meeting would be held within 45 days after the application is submitted, if possible.

If the project includes an application for a tentative or parcel map, this application will also be considered during the joint oversight meeting, and the Council and Planning Commission will assess the application's consistency with objective subdivision standards. Gov. Code § 65913.4(c)(2). If the project includes an application for a density bonus, this application will also be considered during the joint oversight meeting, and the Council and Planning Commission will assess the application's consistency with objective density bonus ordinance standards. Gov. Code § 65913.4(a)(5).

The Planning Commission and City Council's oversight shall be objective, involving little or no personal judgement as to the wisdom or manner of carrying out the project, and be strictly focused on compliance with required objective planning standards. *See* Guidelines § 102(n), 301(a)(2). The oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval. Guidelines § 300(a)(2).

The Oversight Meeting shall be a noticed, open, and public meeting in compliance with the Ralph M. Brown Act. The applicant and members of the public shall have an opportunity to speak as they would at other Planning Commission and City Council meetings.

In addition, the noticing requirements of Municipal Code section 19.12.110A for Development Permits shall apply to the Oversight and Consistency Review Meeting.

(d) **City Manager action following Oversight and Consistency Review Meeting.** Following the Council and Planning Commission's Oversight and Consistency Review Meeting and before the expiration of the timeframe for a consistency determination, the City Manager will send the applicant either (1) a letter documenting which standard or standards the development conflicts with and an explanation for the reason or reasons the development conflicts with that standard or standards, or (2) a letter stating that the project is consistent with all required objective planning standards and an explanation for reasons the development is consistent with those standards. *See* Guidelines § 301(a)(3).

SECTION 6. **Procedure if project is consistent with all objective planning standards.** If the proposed development is consistent with all required objective planning standards, the City Manager will prepare final approval documents and standard conditions of approval. *See* Guidelines § 301(a)(5). Within 90 days from the initial project application's submittal for a project with 150 or fewer units, and within 180 days for a project with more than 150 units, the City Manager will provide the project applicant with the final approval documents and standard conditions of approval. Guidelines § 301(b)(3).

SECTION 7. **Procedure if application is ineligible for streamlined review.** If the City determines that a project conflicts with any required objective planning standard, it will deny the application for streamlined processing under SB 35. The City will not continue to process the application while allowing the applicant to correct any deficiencies. The denial of an application for streamlined processing does not preclude the applicant from correcting any deficiencies and resubmitting a new application for streamlined review or for review under standard City procedures. If the applicant submits a corrected or revised application, the timeframes specified in these procedures shall commence on the date of resubmittal. Guidelines § 301(a).

SECTION 8. **Exhibit.** The Exhibit to this document may be updated periodically by Planning Division staff in order to respond to changes to the Cupertino Municipal Code or to state law. Staff shall not weaken or remove any requirements unless required to do so by changes in the law.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in

CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to actions which have the potential for resulting in a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the City's Process for Applying for and Receiving Ministerial Approval Under Senate Bill 35 would have no effect on the environment because it only lays out the City's procedures for implementing state law and would not cause any physical change in the environment. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this ___ day of _______, by the following vote:

Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

SIGNED: ____________________________ Steven Scharf, Mayor City of Cupertino	 __________________________ Date
ATTEST: __________________________ Grace Schmidt, City Clerk	 __________________________ Date

Exhibit 1:
Senate Bill 35 Eligibility Checklist

To be eligible for a streamlined review process under SB 35, an application must meet the objective planning standards required by SB 35, including all applicable City objective land use standards, in effect at the time the application is submitted, as described below.

1. **NUMBER AND DENSITY OF UNITS.** The project must comply with the minimum and maximum residential density range permitted for the site, plus any applicable density bonus. Guidelines § 300(c)(1). If the zoning code's density designation for the site conflicts with the density allowed in the general plan's land use designation, the density in the general plan's land use designation prevails. Gov. Code § 65913.4(a)(5). The project, if eligible, may request a density bonus and/or waivers and/or concessions under the Density Bonus Law (Gov. Code § 65915). Guidelines § 300(b)(3). Any increase in density granted under the Density Bonus Law is considered consistent with maximum allowable densities. Guidelines § 300(b)(3).

   In addition:

   (a) The project must propose at least two multifamily residential units. Guidelines §§ 102(o), 400(a).

   (b) If the project is mixed-use, at least two-thirds of the proposed development's square footage must be designated for residential use. Guidelines § 400(b).
      i. The two-thirds calculation is based upon the proportion of gross square footage of residential space and related facilities to gross development building square footage for an unrelated use, such as commercial or office uses. Structures utilized by both residential and non-residential uses shall be credited proportionally to intended use. Guidelines § 400(b).
      ii. Related residential facilities are defined as 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. Guidelines § 102(u).
      iii. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law are included in the square footage calculation. Gov. Code § 65913.4(a)(2)(C).

(c) If the development project qualifies for a density bonus under Government Code section 65915, the applicant must submit detailed plans clearly showing location and the square footage of:

i. Affordable units that qualify the project for a density bonus,

ii. Additional density, floor area, or units granted pursuant to Density Bonus law

The plans must be of sufficient detail to verify the square footage of the residential units and additional bonus units, floor area, or density granted pursuant to Density Bonus Law. The applicant must comply with all objective standards relating to density bonus found in CMC Chapter 19.56. Guidelines § 300(b)(5).

(d) Both residential and non-residential components of a qualified mixed-use development are eligible for the streamlined approval process. Guidelines § 400(b)(2). Additional or subsequent permitting requirements pertaining to the individual businesses located in the commercial component (e.g. late night activity, live music or child care use permits) are subject to the City's General Plan and Development Code requirements. Guidelines § 400(b)(3).

2. AFFORDABILITY. The project must provide affordable housing as specified under Government Code section 65913.4(a)(3)(A) and (a)(4)(B) and under Cupertino's Below Market Rate Housing Program inclusionary zoning ordinance specifically:

(a) SB 35 projects must reserve at least 50% of their total units as affordable to households making below 80 percent of the area median income in Santa Clara County.[2] Guidelines § 402(a)(2); *see* § 402(e). ~~As a subset of the SB 35 affordable units, Cupertino's inclusionary zoning ordinance requires either payment of an Affordable Housing Mitigation Fee or that 15% of the base number of units (total units minus any density bonus units) in a project be reserved as follows:~~

(b) Cupertino's inclusionary zoning ordinance provides objective affordability standards for its inclusionary BMR units in a project as follows:

i. For developments that offer rental housing: very low-income and low-income households at a 60:40 ratio. Because SB 35 requires rental units be made available to households making below 80 percent of the area median income, if the project applicant wants to take credit for both SB 35 units and the City BMR Program, then the most restrictive requirement would apply and these rental

[2] When jurisdictions have insufficient progress toward their Lower income RHNA (Very Low and Low income) but have had sufficient progress toward their Above Moderate income RHNA, they are subject to the streamlined ministerial approval process for proposed developments with at least 50 percent affordability. Gov. Code § 65913.4(a)(4)(B)(ii). Cupertino has had sufficient progress toward the Above Moderate income RHNA, but not toward the Lower income RHNA, and is therefore subject to streamlining of projects offering at least 50 percent affordability under SB 35 according to the most recent SB 35 Determination Summary, available at http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary.pdf.

units must be made available to households at the ratio required by the City's BMR Program.

ii. For developments that offer ownership housing: median and moderate income households at a 50:50 ratio. Because SB 35 requires ownership units be made available to households making below 80 percent of the area median income, if the project applicant wants to take credit for both SB 35 units and the BMR Program, then the most restrictive requirement would apply and these ownership units must be made available to households making below 80 percent of the area median income rather than median and moderate income households.

iii. The objective standards in Cupertino's inclusionary zoning ordinance shall apply to the ~~BMR Program subset of the units of the project's affordable units.~~ project. Guidelines § 402(e).

iv. ~~Alternatively, if the project applicant does not wish to provide units subject to Cupertino's BMR Program, it may instead~~ As provided in the City's BMR Program, applicants for projects proposing up to six residential units may pay the Affordable Housing Mitigation Fee ~~and provide~~ in-lieu of providing on-site affordable units subject ~~only to SB 35's restrictions~~to the City's BMR Ordinance. Payment of the fee does not change or override any of SB 35's affordability requirements.

(c) ~~(b)~~The applicant must record a land use restriction or covenant providing that the lower income housing units shall remain available at affordable housing costs or rent to persons and families of lower-income (or very low income, as applicable) for no less than the following periods of time, as applicable:

i. For the units subject to Cupertino's inclusionary zoning ordinance:
- 99 years or
- 55 years (if a project financed with low-income housing tax credits (LIHTC))

~~ii. For the units subject to SB 35 affordability requirements in excess of Cupertino's inclusionary zoning ordinance:~~
- ~~55 years for rental units~~
- ~~45 years for ownership units~~

(d) An affordable housing and/or regulatory agreement concerning all affordable units shall be recorded against the property prior to the issuance of the first building permit. The agreement(s) shall ensure compliance with all applicable laws and regulations and be consistent with the City's BMR Housing Mitigation Program Procedural Manual, except to the extent the Manual conflicts with SB 35's requirements.

3. **URBAN INFILL.** The project must be located on a legal parcel or parcels within the incorporated City limits. Guidelines § 401(a). At least 75 percent of the perimeter of the

site must adjoin parcels that are developed with urban uses. Guidelines §§ 102(j), 400(a). For purposes of SB 35, "urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. Guidelines § 102(z). Parcels that are only separated by a street or highway shall be considered adjoined. Guidelines § 102(j).

4. **ZONED OR PLANNED RESIDENTIAL USES.** The project must be located on a site that is either zoned or has a General Plan designation for residential or residential mixed-use development, including sites where residential uses are permitted as a conditional use. Guidelines § 401(a).

5. **CONSISTENT WITH OBJECTIVE STANDARDS.** The project must meet all objective general plan, zoning, design review, and other objective land use standards in effect at the time the application is submitted. Gov. Code § 65913.4(a)(5).
   (a) If the project is consistent with the minimum and maximum density range allowed within the General Plan land use designation, it is consistent with housing density standards. Guidelines § 300(c).
   (b) Modifications to otherwise-applicable standards under density bonus law do not affect a project's ability to qualify for SB 35. Guidelines § 300(c)(3).
   (c) Objective standards are those that require no personal or subjective judgment and must be verifiable by reference to an external and uniform source available prior to submittal. Guidelines § 102(p). Sources of objective standards include, without limitation:
      i. General Plan.
      ii. Municipal Code, including, without limitation, the Zoning, Subdivisions, and Building Codes
      iii. Heart of the City Specific Plan
      iv. Monta Vista Design Guidelines
      v. North De Anza Conceptual Zoning Plan
      vi. South De Anza Conceptual Plan
      vii. Saratoga-Sunnyvale Conceptual Plan
      viii. BMR Housing Mitigation Procedural Manual

6. **PARKING.** The project must provide at least one parking space per unit; however, no parking is required if the project meets any of the following criteria. Guidelines § 300(d):
   (a) The project is located within one-half mile of public transit.
   (b) The project is located within an architecturally and historically significant historic district.
   (c) On-street parking permits are required but not offered to the occupants of the project.
   (d) The project is located within one block of a car share vehicle station.

However, if any parking is provided, it must meet the City's objective standards from Chapter 19.124 of the Municipal Code and Public Works Standards. Guidelines § 300(d)(2).

7. **LOCATION.** ~~The project must be located on a property that is **outside** each of the following areas (*see* Guidelines § 401(b)):~~

(a) The project must **not** be located on a legal parcel(s) that is any of the following (*see* Guidelines § 401(b)):

i. ~~xv.~~Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by Cupertino's voters.[3]

ii. ~~xvi.~~Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

iii. ~~xvii.A~~ Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This does not apply to sites excluded from the specified hazard zones by the City, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

iv. ~~xviii.~~A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed~~-use~~ uses.

v. ~~xix.A~~ Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13

[3] As of July 1, 2019, no properties in Cupertino fall within this category. Prior to submitting an application for streamlined review, applicants should confirm with the Planning Division if the listed exclusion is applicable.

of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

vi. ~~xx.A~~ Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. This restriction does not apply if the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the City or if the applicant can demonstrate that the site will be able to meet the minimum flood plain management criteria of the National Flood Insurance Program.

vii. ~~xxi.A~~ Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations~~–~~.

viii. ~~xxii.xxii.~~Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of ~~.xxiii.~~the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

ix. Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

x. ~~xxiv.~~Lands under conservation easement.

(b) In addition, the project must not be located on a site where any of the following apply:

i. ~~(k)~~A site that would require demolition of housing that is:

~~i.~~1. Subject to recorded restrictions or law that limits rent to levels affordable to moderate, low, or very-low income households.

~~ii.~~2. Subject to rent control.

~~iii.~~3. Or has been occupied by tenants within the past 10 years.

ii. ~~(l)~~A site that previously contained housing occupied by tenants that was demolished within the past 10 years.

iii. ~~(m)~~A property that contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

iv. ~~(n)~~A parcel of land or site governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.[4]

v. ~~(o)~~ A site that would require demolition of an historic structure that is on a local, state, or federal register.

8. **SUBDIVISIONS.** The project does not involve an application to create separately transferable parcels under the Subdivision Map Act. Guidelines § 401(d). However, a subdivision is permitted if the development is consistent with all objective subdivision standards in the subdivision ordinance, and either of the following apply (Guidelines § 401(d)):
   (a) The project is financed with low-income housing tax credits (LIHTC) and satisfies the prevailing wage requirements identified in item 9 of this Eligibility Checklist.
   (b) The project satisfies the prevailing wage and skilled and trained workforce requirements identified in items 9 and 10 of this Eligibility Checklist.

9. **PREVAILING WAGE.** The project proponent must certify that at least one of the following is true (Guidelines § 403):
   (a) The entirety of the project is a public work as defined in Government Code section 65913.4(8)(A)(i).
   (b) The project is not in its entirety a public work and all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
   (c) The project includes 10 or fewer units AND is not a public work AND does not require subdivision.

10. **SKILLED AND TRAINED WORKFORCE.** If the project consists of 75 or more units that are not 100 percent subsidized affordable housing, the project proponent must certify that it will use a skilled and trained workforce, as defined in Government Code section 65913.4(8)(B)(ii).[5] Guidelines § 403.

[4] As of June 2019, no properties in Cupertino fall within this category. Prior to submitting an application for streamlined review, applicants should confirm with the Planning Division if the listed exclusion is applicable.

[5] Beginning January 1, 2022, the skilled and trained workforce requirement is reduced to apply to projects of 50 units or more that are not 100 percent subsidized affordable housing.

DRAFT SENATE BILL 35 APPLICATION FORM

SUBMITTAL REQUIREMENTS. The following information and materials listed on the attached SB 35 Application Checklist~~–~~, at the time the application is submitted, are required for a complete application in order to determine if a project qualifies under Senate Bill 35. Please review this checklist with City's Planning Division staff to confirm specific requirements and to determine if other applications are required.

Project Information to be filled in by Applicant and/or Property Owner:

Applicant's Contact Information:	Property Owner's Contact Information:
Name:_______________ Address:_______________ City, State:__________ZIP:________ Email: _______________ Phone: _______________	Name:_______________ Address:_______________ City, State:__________ZIP:________ Email: _______________ Phone: _______________

Project Site / Address(es):	
Assessor's Parcel Number(s):	
General Plan and Zoning Designations:	
Proposed Unit Count with Density Bonus Units, if applicable:	**Proposed Non-Residential Square Footage:**
Proposed ~~Residential Square Footage~~ Unit Count without Density Bonus Units, if applicable:	**Proposed Residential Square Footage ~~with Density Bonus (if applicable)~~:**

	YES	NO	N/A
1. Type of Multifamily Housing Development Proposed:			
a. Multifamily rental; residential only with no proposed subdivision.			
b. Multifamily residential with proposed subdivision (must qualify for exception to subdivision exclusion)			
c. Mixed-use: at least 2/3 of gross square footage (including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law) must be designated for residential use. If a subdivision is included, the development must qualify for exception to subdivision exclusion.			
2. Number of Parking Spaces Proposed: - ____________________			
a. Is the site within one-half mile of public transit?			
b. Is the site within an architecturally and historically significant historic district?			
c. Are on-street parking permits required but not offered to the occupants of the project?			
d. Is the site within one block of a car share vehicle station?			
3. Does the project propose 2 or more residential units?			
a. Has the applicant certified compliance with affordability requirements?			
4. Does the project include more than 10 units?			
5. Is the project a public work?			
a. ~~Has the development proponent~~ If it is a public work, has the applicant certified to the City that the entirety of the development is a public work?			
b. ~~Has~~ If it is not a public work, has the applicant certified compliance with prevailing wage requirements?			
6. Does the project propose 75 units or more?			
a. Has the applicant certified compliance with skilled and trained workforce requirements?			
7. Does the project involve a subdivision of land?			
a. Is the development consistent with all objective standards in the subdivision ordinance?			
b. Is the project financed with low-income housing tax credits?			
c. Has the applicant certified compliance with prevailing wage requirements?			

	YES	NO	N/A
d. Has the applicant certified compliance with skilled and trained workforce requirements?			
8. Would the development require demolition of any of the following types of housing?			
a. Housing subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.			
b. Housing that is subject to any form or rent or price control.			
c. Housing that has been occupied by tenants within the past 10 years.			
9. Was the site previously used for housing that was occupied by tenants that was demolished within 10 years before the application was submitted?			
10. Does the property contain housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property?			
11. Would the development require demolition of a historic structure that was placed on a national, state, or local historic register?			
12. Is the project site within a very high fire hazard severity zone?			
a. ~~Are~~ If yes, are there adopted fire hazard mitigation measures applicable to the development?			
13. Is the project site a hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356 of the Health and Safety Code?			
a. If the site has been so listed or designated, has the applicant provided evidence that the site has received the required clearance from the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control for development as a residential use or residential mixed-use?			
14. Is the project site within a delineated earthquake fault zone?			
a. ~~Does~~ If yes, does the development comply with applicable seismic protection building code standards?			

	YES	NO	N/A
15. Is the project site habitat for protected species, identified in an adopted natural community conservation plan, or under a conservation easement?			
16. Does the project site contain wetlands?			
17. Is the project site within a special flood hazard area?			
a. ~~Has~~ If yes, has the site been subject to a Letter of Map Revision or does the site meet Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria?			
18. Is the project site within a regulatory floodway?			
a. ~~Has~~ If yes, has the project received a no-rise certification?			
19. Is the project site located on lands under a conservation easement?			
20. Is the project seeking a density bonus and/or any incentive, concession, waiver, or reduction of parking standards under state Density Bonus Law?			
a. ~~**21.Does**~~ If yes, does the project proponent demonstrate how the requested concession, waiver or reduction of standards is the least amount necessary to develop the proposed affordable housing?			
21. Are the project's affordable units distributed throughout the development and of comparable size, both in terms of the square footage and the number of bedrooms, and quality to the market rate units with access to the same common areas and amenities?			

X____

Property Owner Signature(s) Print Property Owner's Name Date

FOR STAFF USE ONLY:
Application accepted on __________________ *by* ____________________________
Application Type: ___________________________________

~~Certificate for~~ Certification of Compliance with Eligibility Requirements

I, ______________________________________, do hereby certify and declare as follows:

(a) The subject property is located at:

______________________________ ______________________________

Address(es) *Assessor's Parcel Number(s)*

(b) I am a duly authorized officer or owner of the subject property.

(c) The property owner agrees to comply with the applicable affordable housing dedication requirements established under Government Code section 65913.4(a)(4).

(d) That one of the following is true pursuant to Government Code section 65913.4(a)(8)(A) *(check one that applies)*:

- ☐ The entirety of the development is a public work under Government Code section 65913.4(a)(8)(A)(i).
- ☐ ~~(d)~~The property owner agrees to comply with the applicable prevailing wage requirements established under Government Code section 65913.4(a)(8)(A)(ii).

(e) The property owner agrees to comply with the applicable skilled and trained workforce requirements established under Government Code section 65913.4(a)(8)(B).

(f) The property owner certifies that the project site has not contained any housing occupied by tenants within 10 years prior to the date written above.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all submitted material is true and correct.

Executed on this day in:

______________________________ ______________________________

Location *Date*

______________________________ ______________________________

Signature *Name (Print), Title*

SENATE BILL 35 APPLICATION CHECKLIST

SUBMITTAL REQUIREMENTS. The following materials are required for a complete application in order for the City to determine eligibility for streamlining under SB 35. Please review this checklist with City of Cupertino Planning and Public Works Divisions.

1. ☐**APPLICATION FORM.** Include signature and contact information for the legal property owner, applicant or authorized agent and contact information for the Civil Engineer, Architect, Landscape Architect, and all other consultants involved with the application on another sheet if necessary.

2. ☐**FILING FEE.** (See the City's Fee Schedule for current year. Note: Depending on the project, it could be subject to the City's hourly staff rate and the cost of contracts plus any administrative charges).

3. ☐~~**CERTIFICATE FOR**~~ **CERTIFICATION OF COMPLIANCE WITH ELIGIBILITY REQUIREMENTS.** The property owner or the owner's authorized agent must certify under penalty of perjury that certain threshold eligibility criteria are satisfied.

4. ☐**POWER OF ATTORNEY.** Provide evidence of power of attorney, if the application is being by a person other than the property owner.

5. ☐**TITLE REPORT.** Prepared within the past three months (three copies). The title report must include a legal description of the property and a listing of all easements, rights-of-way, and owners shall be supplied.

6. ☐**ARBORIST REPORT.** Prepared within the last year by an ISA Certified Arborist for the removal or disturbance of any Protected Tree on the site or on an adjacent property which could be impacted by the proposed development. Describe the condition of all Protected trees to be removed/disturbed and provide a statement of specific reasons for the proposed removal. Provide three copies.

7. ~~☐PHASE I REPORT~~ENVIRONMENTAL SITE ASSESSMENT (ESA) REPORTS. A Phase 1 ESA report shall be provided with the application. If the Phase 1 ESA report indicates that a Phase 2 ESA report or additional assessment is recommended, a Phase 2 ESA report must accompany the application.

8. **FISCAL IMPACT ANALYSIS.** Provide a fiscal impact analysis, in compliance with General Plan Strategy LU-8.2.1.

9. **PRELIMINARY TRASH MANAGEMENT PLAN.** Provide a preliminary trash management plan. Chapters 6.24, 9.16 and 9.18 of the Municipal Code relate to Garbage, Recycling and Organic Waste Collection. Contact the Environmental Services Division for coordination with Recology, the City's waste collection company.

10. ~~☐~~**PROJECT DESCRIPTION.** A narrative project description that summarizes the proposed project and its purpose must be provided. Please include a discussion of the project site context, including what existing uses, if any, adjoin the project site and whether the location is eligible for Streamlined Housing Development processing.

11. ~~☐~~**AFFORDABLE HOUSING PLAN.** Provide an Affordable Housing Plan describing how a development project will comply with the City's Below Market Rate (BMR) Program requirements set forth in the BMR Housing Mitigation Program Procedural Manual.

12. ~~☐~~**STATEMENT OF CONSISTENCY WITH OBJECTIVE STANDARDS.** Explain how the proposed project is consistent with all objective zoning, subdivision (if applicable), and design review standards applicable to the project site, including those standards included in the General Plan, Cupertino Municipal Code, Heart of the City Specific Plan, Monta Vista Design Guidelines, North De Anza Boulevard Conceptual Plan, South De Anza Conceptual Plan, Saratoga-Sunnyvale Conceptual Zoning Plan, ~~South Vallco Connectivity Plan~~ and other applicable City documents. Particular details shall be provided to define how the project complies with use requirements, floor area standards, density, setbacks, height standards, lot coverage ratios, landscaping standards, creek setbacks, tree preservation and protection standards, water efficient landscaping requirements, stormwater requirements, and common open space, private useable open space, and public open space requirements.

13. ~~☐~~**STATEMENT OF DESIGN INTENT.** Describe the design program, the designer's approach, and how the architectural, landscape and other elements

have been integrated in compliance with the City's objective standards. The relationship of the project to adjacent properties and to the adjacent streets should be expressed in design terms. Define the site, building design, and landscape concepts in terms of site design goals and objectives, pedestrian circulation, outdoor-use areas, visual screening and enhancements, conservation of natural resources, mitigation of negative site characteristics, and off-site influences.

14. ~~☐~~**DEVELOPMENT PLAN SETS.** The following plans shall comprise the development plan set:

REQUIREMENTS FOR ALL DEVELOPMENT PLANS. If the application is filed in conjunction with other applications, submittal requirements from all applicable checklists shall be incorporated into one set of plans. All plans shall:

___ Be prepared, signed and stamped by licensed professionals.
___ Include the date of preparation and dates of each revision.
___ Be fully dimensioned and drawn to scale on the same size sheets, with a consistent scale (as noted) throughout all plan sheets.
___ Be submitted in collated sets and folded to 8-1/2" x 11".
___ Be numbered in proper sequence.

A set of plans shall be submitted on a CD or USB flash drive in pdf format and the following numbers of plan sets are required:

___ 8 sets full size 24" x 36"
___ 15 sets reduced to 11" x 17"
Additional plan sets may be requested if necessary.

15. ~~☐~~**TITLE SHEET** Including project name, location, assessor's parcel numbers, prior development approvals, and table of contents listing all the plan sheets with content, page numbers, and date prepared. Include a vicinity map showing north arrow, the location and boundary of the project, major cross streets and the existing street pattern in the vicinity with the following information: General Plan and Zoning designations.

16. ~~☐~~**DEVELOPMENT PROGRAM.** The development plans shall clearly include the following in a tabular format:

a. ~~☐~~Size of property including gross and net lot area (square feet and acres).

b. ☐For mixed use projects, total square footage of residential space and related residential facilities (as defined in the City's Eligibility Checklist), square footage of non-residential uses, and square footage utilized by both residential and non-residential uses. A calculation of how the project meets the eligibility criteria to qualify for streamlined and ministerial review pursuant to SB 35. Detailed breakdowns, to scale, with dimensions, shall be shown on Floor Plan submittals as indicated below. Exhibits showing how to calculate the 2/3 residential requirement are included below.

c. ☐For residential development, include the floor area for each unit type, the number of bedrooms, the number of units by type, the number of units per building, the total number of units, and net density. Include the amount of private open space provided for each unit. Identify unit type, size, number of bedrooms, number of units in each building and total number of units by affordability level and tenure (rental or ownership).

d. ☐For commercial development, total floor area in each building (including basements, mezzanines, interior balconies, and upper stories or levels in a multistory building) and total building area, including non-residential garages.

e. ☐Percent lot coverage, percent of net lot area covered by buildings (total ground floor area of all buildings divided by net lot area).

f. ☐Percentage of net lot area devoted to landscaping, common open space and private useable open space.

g. ☐Parking requirements under Government Code section 65913.4(d) and tabulation of the number of parking spaces proposed by type (universal and ADA compliant) and proposed parking ratios.

h. ☐Bicycle parking (required and proposed) under City of Cupertino Municipal Code Chapter 19.124.040.

17. ☐**SITE PLAN.** Prepared by a licensed Civil Engineer, drawn at 1"= 20' scale, with scale noted, a graphic bar scale, and north arrow. The plan shall include the following:

a. ☐Existing and proposed property lines with dimensions, bearings, radii and arc lengths, easements, and net & gross lot area for existing and proposed parcels. Benchmark based on USGS NAVD 88 vertical.

b. ~~☐~~Location and dimensions of all existing and proposed structures extending ~~50 feet~~ beyond the property as required for other, non-SB 35, projects. If adjacent to a street, show the entire width of street to the next property line, including driveways. Clearly identify all existing and proposed structures such as fencing, walls, all building features including decks and porches, all accessory structures including garages and sheds, mailboxes, and trash enclosures. Label all structures and indicate the structures to remain and the structures to be removed.

c. ~~☐~~Dimensions of setbacks from property lines and between structures.

d. ~~☐~~Location, dimension and purpose (i.e. water, sewer, access, etc.) of all easements including sufficient recording data to identify the conveyance (book and page of official records).

e. ~~☐~~Location and dimensions for all adjacent streets (public and private) and proposed streets showing both sides of streets, street names, street width, striping, centerlines, centerline radii of all curves, median and landscape strips, bike lanes, pedestrian ways, trails, bridges, curb, gutters, sidewalks, driveways, and edge of right-of-way including any proposed or required right-of-way dedication. Show all existing and proposed improvements including traffic signal poles and traffic signs. Show line of sight for all intersections and driveways based on current City of Cupertino standards.

f. ~~☐~~Existing topography and proposed grading extending 50 feet beyond the property at 2 foot contour intervals for slopes up to 10% and less than 5 feet in height; and contour intervals of 5 feet for slopes over 10% or greater than 5 feet in height. Include spot elevations, pad elevations, and show all retaining walls with TOW/BOW elevations.

g. ~~☐~~Drainage information showing spot elevations, pad elevations, existing catch basins, and direction of proposed drainage, including approximate street grade and existing and proposed storm drain locations.

h. ~~☐~~Location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities, wells, septic tanks, underground and overhead electrical lines, utility poles, utility vaults, cabinets and meters, transformers, electroliers, street lights, lighting fixtures, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, traffic signal poles, underground conduit for signals and interconnect, and traffic signal pull boxes, signal cabinets, service cabinets, and other related facilities.

i. Location and dimensions of parking spaces, back-up, safe pedestrian paths to building entrances, loading areas, and circulation patterns.

j. Survey of all existing trees on the site and adjacent to the site, at 1”=20’ scale, indicating species, diameter at breast height (DBH) as defined in Chapter 14.18 of the Cupertino Municipal Code, and base elevation. Trunk locations and the drip line shall be accurately plotted. Identify all protected trees as defined in Chapter 14.18 of the Cupertino Municipal Code.

k. Tentative locations for public artwork in compliance with Section 19.148.050(B) of the Municipal Code.

l. Location of all natural features such as creeks, ponds, drainage swales, wetlands (as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993)), etc., extending 50 feet beyond the property line to show the relationship with the proposed development.

m. Location on the site of any prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by Cupertino’s voters.

n. If any parcel is within a FEMA defined 100-year floodplain or floodway:

   i. Identify the floodplain or floodway on all plan sheets depicting the existing and proposed site, with the base flood elevation (BFE) and flood zone type clearly labeled. In addition, show the existing site topography and finish floor elevations for all existing and proposed structures. If FEMA has not defined a BFE, a site specific hydraulic analysis will be required to determine the BFE prior to deeming the application complete (CMC Sec. 34-32.b2).

   ii. Flood zone boundaries and floodwater surface elevation. If the property proposed to be developed is within or adjacent to the 100 year flood zone (Zone A or AE) or the National Flood Insurance

Program, Flood Insurance Rate Map, the extent of Zone A or AE shall be clearly drawn on the tentative map and the 100 year flood water surface elevation shall be shown. The map shall show the approximate location of the Floodway Boundary as shown on the latest edition of the "Flood Boundary and Floodway Map" published by the Federal Emergency Management Agency.

18. ☐**CONTEXTUAL PLAN.** Use topographic or aerial map as base. Show the relationship of the project to the building and site features within 50 feet of the property line. The plan shall include:

a. ☐Building footprints, pad elevations and building height. Land use and zoning designation on all lots.

b. ☐Property lines and dimensions of the subject site and adjacent properties showing all easements.

c. ☐Location of streets, medians, curb cuts, sidewalks, driveways, and parking areas.

d. ☐Location of all creeks, waterways and trees.

e. ☐Vicinity map indicating site in relation to major streets.

19. ☐**DENSITY BONUS.** In addition to the other submittal requirements, projects requesting a density bonus or concessions are required to submit a density bonus application pursuant to CMC Chapter 19.56, including plans for the project that clearly indicate the location and square footage of:

☐ Affordable units that qualify the project for a density bonus,

☐ Additional density, floor area, or units granted pursuant to Density Bonus law,

☐ which units are the density bonus units.

20. ☐**BUILDING ELEVATIONS.** Plans shall be drawn by a licensed Architect at 1/8"= 1' minimum scale; dimensioned vertically and horizontally with sample representations at ¼"= 1' scale for detail areas. Elevations should not include superimposed landscaping and trees that hide the buildings. Height is measured from natural grade established at subdivision. The plans shall include:

a. Fully dimensioned elevations for buildings identifying materials, details and features include visible plumbing, electrical meters and method of concealment.

b. All four sides of all buildings.

c. Vertical dimensions from all points above natural, existing and finished grade on all elevations.

d. Topography with natural, existing, and proposed grades accurately represented to show building height to show the relationship of the building to the site and adjacent properties.

e. Location, height and design of rooftop mechanical equipment and proposed screening. Provide a section detail showing height of equipment in relation to the height of the proposed screen structure.

f. Elevations and dimensions for existing structures to remain. Location and type of building mounted exterior lighting.

g. Detailed building sections showing depth of reveals, projections, recesses, etc.

h. Details of vents, gutters, downspouts, scuppers, external air conditioning equipment, etc.

i. Details including materials and dimensions of door and window treatments, railings, stairways, handicap ramps, trim, fascia, soffits, columns, fences, and other elements which affect the building. Provide wall sections at ½"=1' scale to clarify detailing as appropriate.

21. **FLOOR PLANS.** Plan shall be drawn by a licensed Architect at 1/8"= 1' or larger scale.

a. Floor area diagrams must be provided with dimensions and tabulations of each area of each floor.

b. Floor plans shall clearly indicate areas attributed to residential, non-residential, and shared use and should show garages, parking areas, and amenity spaces.

c. ~~☐~~Floor plans shall include the square footage of residential space and related residential facilities, non-residential uses, and structures uses by both residential and non-residential uses.

d. ~~☐~~Floor plans shall clearly identify affordable units (City BMR and SB 35 units)

e. If structured parking is provided, identify compliance with requirements of Chapter 19.124 of the Municipal Code and clearly identify required pedestrian paths pursuant to General Plan Policy M-3.6.

22. ~~☐~~**ROOF PLAN.** Plan shall be drawn by a licensed Architect at 1/8"= 1' or larger scale. The plan shall include property lines, outline of building footprint, ridgelines, valleys, flat roof areas, roof pitch and rooftop mechanical equipment, and screening. Plans shall show existing roof forms and roof forms to be added or changed.

23. ~~☐~~**TRUE CROSS-SECTIONS.** A minimum of two cross-sections (more as needed to showing varying site conditions) drawn at 1:1 scale (same scale used for both vertical and horizontal axis), 1"=20' minimum scale, with scale noted, and a graphic bar scale, through critical portions of the site extending 50 feet beyond the property line onto adjacent properties or to the property lines on the opposite side of adjacent streets. Sections shall include existing topography, slope lines, final grades, location and height of existing and proposed structures, fences, walls, roadways, parking areas, landscaping, trees, and property lines. Section locations shall be identified on the Site Plan.

24. ~~☐~~**COLOR AND MATERIALS BOARD.** Samples of materials and color palette representative of actual materials/colors for all buildings and structures. Identify the name of manufacturer, product, style, identification numbers and other pertinent information on the display. Displays should be no larger than 24" by 36", except where actual material samples are presented.

25. ~~☐~~**LANDSCAPE PLANS.** Plan shall be drawn at 1" = 20' or larger scale by a licensed Landscape Architect. The plan shall incorporate the proposed Grading and Utility Plan, showing the location of existing and proposed utility lines and utility structures screened back, but legible, and shall include the following:

a. ~~☐~~Final planting plan showing proposed trees, shrubs and shrub groupings, lawn, and groundcover areas, existing trees to be saved, stormwater treatment areas, special paving, hardscape, and site furnishings. Include a landscape legend with a list of proposed plant materials (indicate both Latin and common name), including size, spacing, total quantities, ultimate height, and spread of materials. ~~Trees shall be a minimum of 24 gallon size and shrubs a minimum of 5 gallon size. Accent or sub-shrubs may be 1- gallon in size. Larger trees may be required depending on project location, size, or other conditions.~~

b. ~~☐~~Size, species, trunk location, and canopy of all existing trees (6” in diameter or larger) on-site and on abutting property that could be affected by the project. Identify which trees will remain and trees to be removed. Any tree proposed as mitigation for the removal of a protected tree shall be identified as a replacement tree. Replacement trees shall comply with the requirements of Chapter 14.15 of the Cupertino Municipal Code.

c. ~~☐~~Show accurate representation of plant materials within three years.

d. ~~☐~~Identify the location and screening of all above ground utilities and bio-swales or other stormwater treatment areas with 1:10 scale cross sections showing the planting within the bio-swales and screening of the utilities.

e. ~~☐~~Provide enlarged details (minimum of 1:10 scale) for focal points and accent areas.

f. ~~☐~~Location and details and/or manufacturers catalogue cuts of walls, fences, paving, decorative planters, trellises, arbors, and other related site improvements.

g. ~~☐~~Landscape plans with more than two sheets shall show the plant legend with symbols for each species on every sheet.

h. ~~☐~~Statement indicating that a fully automatic irrigation system will be provided.

i. ~~☐~~Color and materials submittal for all special paving, hardscape treatment, walls, landscape lighting, and site furnishings.

j. ~~☐~~The Landscape plan shall be coordinated and consistent with the Stormwater Plan.

k. ~~☐~~Note signed and dated by project Landscape Architect that plans are in compliance with all City standards.

l. Provide information on landscaping used as screening for utility equipment.

26. **TREE SURVEY.** Prepared by an ISA Certified Arborist, drawn at 1″=20′ scale, showing accurate trunk location and drip line for all existing trees on the site and adjacent to the site**.** For each tree, specify the species, diameter breast height (DBH) as defined in Chapter 14.18.020, and base elevation and clearly indicate if it is to be preserved or to be removed. Identify all Protected Trees as defined in Chapter 14.18.020. Identify existing trees or plant materials on abutting properties that could influence site design or be impacted by the project.

27. **FENCE PLAN.** Drawn at 1″=20′ scale showing the location, height and type of all fences and walls.

28. **LIGHTING PLAN.** Location and type of exterior lighting, both fixed to the building and freestanding, any and all lights for circulation, security, landscaping, building accent or other purpose.

29. **PHOTOMETRIC PLAN.** Indicate compliance with no lighting glare. Photometric plan must indicate that lighting levels do not spill into adjacent properties.

30. **PHOTO-SIMULATIONS**. Digital photo-simulations of the site with and without the project, taken from various points off-site with the best visibility of the project. Include a key map showing the location where each photo was taken.

31. **GRADING PLAN.** Use the grading plans approved with any past subdivision to indicate the natural grade and how the proposed project meets height requirements based on this. If a new subdivision is proposed, please indicate the new proposed natural grade. ~~The natural grade should not be modified to a great extent unless necessary to meet engineering standards and specifications~~Grading shall comply with requirements of Chapters 16.08 and 18.52 of the Cupertino Municipal Code, as applicable. Show the relationship of the project to the building and site features within 50 feet. The plan shall include:

a. Proposed building footprints, pad elevations and building height

b. Existing and proposed contours which can be easily differentiated (2ft intervals if slope is 10% or less, 5 ft intervals for slopes greater than 10%)

c. Spot elevations of survey points

d. ☐Source and date of the contour and spot elevation information

e. ☐Limits of cut and fill

f. ☐Grading Quantities (Cut and Fill Cubic Yards)

g. ☐Cross-sections of the areas of greatest cut and greatest fill to scale

h. ☐Topography and elevation of adjoining parcels (for a minimum of 50′)

i. ☐Slope ratio

j. ☐Show all existing and proposed retaining walls with TOW/BOW elevations.

32. ☐**SUBDIVISION PLAN.** Provide a subdivision plan, if applicable. Please indicate compliance with the objective zoning and subdivision development standards. The plan shall comply with the City's subdivision ordinance and shall include:

a. ☐Existing Assessor's Parcel Numbers

b. ☐A title which shall contain the subdivision number, name and type of subdivision.

c. ☐Name and address of legal owner, subdivider and person preparing the map (include professional license number)

d. ☐Date, north arrow, scale and contour interval

e. ☐Land Use (existing and proposed)

f. ☐Vicinity Map showing roads, adjoining subdivisions, Cities, creeks, railroads, and other data sufficient to locate the proposed subdivision and show its relation to the community.

g. ☐Existing Trees, type, diameter at breast height (DBH) and indicate drip line/canopy. Any trees proposed to be removed shall be clearly indicated.

h. ☐Existing structures, approximate location and outline identified by type. Buildings to be removed shall be clearly indicated.

i. ☐Lot area with density per gross acre for each parcel (net square footage)

j. Existing and proposed lot line dimensions (bearings and distances)

k. Exhibits indicating compliance with objective zoning standards (e.g. minimum lot sizes, lot widths etc.)

l. Areas subject to inundation or storm water overflow. Width and direction of flow for each water course should be shown with approximate location.

m. Existing easements with widths, locations, type and sufficient recording data to identify the conveyance (book and page of official records).

n. New and amended easements with width, locations, type and purpose.

o. Proposed infrastructure including utilities and surface/street improvements (both private and public). Show location and size of utilities. Show proposed slopes and elevations of utilities and surface hardscape improvements.

p. Accompanying data and reports to be supplied with Subdivision Plan:

i. Geologic and Geotechnical Report – A preliminary geotechnical report is required by Section 16.12 of the Cupertino Municipal Code and shall verify if there is a presence of critically expansive soils or other soil problems, which, if not corrected, would lead to structural defects or differential settlement of infrastructure, and shall provide recommendations for necessary corrective action. The report shall show all geological hazard zones identified in the General Plan and which are known or portrayed in other geological studies for the area. It shall also include descriptions and physical characteristics on all geological formations, anomalies, and earthquake characteristics. Mitigation measures shall be identified for any geological hazard or concern.

33. **UTILITY PLAN.** Prepared by a licensed Civil Engineer and drawn at 1"= 20' scale, with scale noted, showing the location and dimensions of existing and proposed utilities including water supply system, sanitary sewers and laterals, drainage facilities/storm drainage system, wells, septic tanks, underground and overhead electrical lines, utility poles, utility vaults, cabinets and meters, transformers, underground irrigation and drainage lines, backflow prevention and reduced pressure devices, electroliers, lighting fixtures, street lights, traffic

signal poles, traffic signal pull boxes, signal cabinets. Provide details on screening utility equipment. Indicate compliance with Chapter 14.24.

34. ☐**STORMWATER CONTROL PLAN.** See Stormwater Control Plan Application Checklist. All Stormwater Plans shall be coordinated and consistent with all Site, Grading, Utility, and Landscape Plans. If the project creates or replaces more than 10,000 sq. ft. of impervious area, a Stormwater Control Plan is required, and shall meet the standards and regulations established for the Municipal Regional Stormwater NPDES Permit. Provide the following information to determine if the project meets this threshold:

a. ☐Site size in sq. ft.

b. ☐Existing impervious surface area (all land covered by buildings, sheds, patios, parking lots, streets, paved walkways, driveways, etc.) in sq. ft.

c. ☐Impervious surface area created, added or replaced in sq. ft. Total impervious surface area in sq. ft.

d. ☐Percent increase/replacement of impervious surface area (new impervious surface area in sq. ft./existing impervious surface area in sq. ft. multiplied by 100).

e. ☐Estimated area in sq. ft. of land disturbance during construction (including clearing, grading or excavating.

35. **ADDITIONAL INFORMATION TO DETERMINE COMPLIANCE WITH ELIGIBILITY CRITERIA.** Provide the following information if applicable:

a. If the project is located on a hazardous waste site that is listed pursuant to Government Code Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code Section 25356, submit a signed Hazardous Waste and Substances Statement as required by Government Code Section 65962.5(f) and information showing that the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

b. If the project is located within a special flood hazard area defined by Government Code Section 65913.4(a)(6)(G), explain why development is allowed under the exceptions explained in Government Code Section 65913.4(a)(6)(G).

c. If the project is located within a regulatory floodway defined by Government Code Section 65913.4(a)(6)(H), submit the development's no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

CITY OF CUPERTINO

OFFICE OF THE CITY CLERK

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CITY COUNCIL STAFF REPORT

Meeting: September 3, 2019

Subject

Options for unofficial transcription of City Council meetings (continued from July 16).

Recommended Action

Receive options for unofficial transcription of City Council meetings and provide direction to staff to use the free YouTube auto-captioning feature for transcription of Council meetings.

Discussion

At its July 16 meeting, Council viewed a demonstration of the free YouTube auto-captioning feature which can be used to create an unofficial transcript of City Council meetings. The demonstration showed how timestamps in the transcript are live and link directly to that portion in the video. One can also search the transcript for specific words which will again link directly to that part of the video. It is also possible to copy the entire transcript and paste it into a Word document to search text.

If Council decides to implement YouTube auto-captioning, then a YouTube video link to the Council meeting would be placed on the Granicus agendas/minutes page. Meetings that extend beyond four hours would contain multiple videos with a link to a YouTube playlist. The City Council meeting would be the first video in the playlist and would automatically play each section of the meeting in order until the end of the sequence.

Another option for transcribing meetings would be to hire an outside transcription vendor service. This could be Granicus, our current vendor, or a new vendor. Using one of these services would provide a more accurate transcription but with a large cost. Additional detail regarding options and cost is listed below.

Outside vendor transcription service

- Done by a person after the meeting from the audio/video
- Average Cost: $33 to $60 per hour
- Typically takes 4 to 5 times the length of the meeting to transcribe (not verbatim)
- Example: 5-hour meeting would take 20 to 25 hours to transcribe for an estimate of $660 to $1500 per meeting or $15,840 to $36,000 per year (24 meetings)
- 98% accurate

- Text is searchable

Granicus (current vendor) captioning and transcription service for televised meetings

- Live transcriber during the meeting provides real-time captioning for viewers of the live Granicus feed
- Transcription document available within 48 hours after meeting (not verbatim)
- Text is searchable and contains video timestamps
- Average Cost: $140 per hour (Example: 5-hour meeting estimate of $700 per meeting or $16,800 per year (24 meetings))
- After-the-fact captioning/transcription service also available at about $200 per hour (estimate $1,000 per meeting or $24,000 per year)
- 98% accurate
- Text is searchable

You-Tube

- Has auto-captioning feature for videos
- The auto-captioning (speech-to-text) has difficulty with proper names and syntax
- Average Cost: free
- 88-90% accurate
- Text is searchable (not verbatim)

In reaching out to other cities in the area, the City of Palo Alto uses an outside transcription service at a cost to provide "sense (summary)" minutes for reference only and action minutes and video recording are considered the official record. The action minutes record only the action whereas the "sense" minutes include a summary of all speaker comments. The Cities of Sunnyvale and San Jose use Granicus captioning services for reference only and action minutes and video recording are considered the official record.

The advantage of providing an unofficial transcript is to allow Council and the public to recap the discussion without the need to watch the video recording. Using a free service provided by YouTube would save taxpayer money. The disadvantage of using a free service, rather than an outside transcription service or Granicus, is that the transcription would not be as accurate, although it would be used for reference only.

Staff recommends providing an unofficial transcript of City Council meetings using the free YouTube auto-captioning feature.

Sustainability Impact
No sustainability impact.

Fiscal Impact
No fiscal impact unless Council wishes to use a vendor to create a transcript instead of using the free YouTube feature.

Prepared by: Grace Schmidt, City Clerk
Approved for Submission by: Deborah Feng, City Manager
Attachments: None