

APPENDIX 2

SECTION-BY-SECTION DESCRIPTION AND SUMMARY OF INITIATIVE

This Appendix to the 9212 Report summarizes and describes each part of the Initiative. It was prepared by the City Attorney's office and outside counsel with the assistance of City planning staff. The text of the Initiative *without its exhibits* is set forth in Appendix 1A. The full text of the Initiative, including all exhibits, is over 300 pages long and is available on the City's website.

The Initiative states that it seeks to achieve its stated purposes by amending various provisions of the City of Cupertino's *General Plan (Community Vision 2015-2040)* and Municipal Code, as well as adopting the Vallco Town Center Specific Plan. California law requires each city and county to adopt and maintain a "general plan" that establishes permissible land uses and maximum development densities and intensities for all properties within that jurisdiction. A city's general plan effectively serves as its living "constitution" for all future land use decisions. Under state law, except for provisions adopted by initiative that require voter approval to change, a city council can amend the general plan up to four times per year, and may amend a specific plan as often as the city deems necessary, provided that the specific plan remains consistent with the general plan. A city can amend its municipal code as provided in state law.

The Initiative's proposed amendments to Cupertino's General Plan and Municipal Code, as well as the proposed Specific Plan, are described below in Part III. Where helpful to show the changes made by the Initiative, this summary adopts the Initiative's practice of showing proposed deletions to the existing General Plan in ~~strike through~~ and new language inserted by the Initiative in underline.

I. Section 1. Title. (Page 1 of the Initiative)

Section 1 of the Initiative sets forth the title proposed by the Initiative proponents: "The Vallco Town Center Specific Plan Initiative." As is often the case, this title differs from the official title prepared by the City Attorney pursuant to Elections Code section 9203, which requires the City Attorney to prepare "a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure."

The City Attorney's official ballot title reads as follows: "Initiative adopting the Vallco Town Center Specific Plan to (1) provide that the Vallco Shopping District Special Area ("Area") contains a mixture of residential, office, retail, civic and education uses; (2) require any development to fund or provide community benefits such as transit, schools, a green roof, and recycled water; and (3) grant the property owner initial entitlements to develop in accordance with the Initiative and establish a process for future approvals; and making related amendments to Cupertino's General Plan and Municipal Code."

The City Attorney's full ballot title and summary for the Initiative is set forth in Appendix 1B.

II. Section 2. Findings and Purpose. (Pages 1-2 of the Initiative)

Section 2 of the Initiative contains the Initiative’s proposed “findings and purpose.” Section 2(A) sets forth the proposed “findings,” which summarize the proponents’ rationale for why the Initiative is needed at this time. Further information regarding the proponents’ reasons for proposing the Initiative are set forth in the Notice of Intent to Circulate Petition that the proponents submitted when they requested the official title and summary. The Notice of Intent is reproduced in Appendix 1C.

If the Initiative is adopted, these findings could help guide the City Council, or the courts in the event of a legal challenge, in determining how to interpret and apply any ambiguities in the provisions set forth in the Initiative.

Section 2(B) sets forth the Initiative’s “purpose,” which is to: “ensure that, consistent with the City’s General Plan, the failed Vallco Shopping District Special Area can be redeveloped into a vibrant, sustainable, walkable and safe new neighborhood with a mix of retail, dining, entertainment, recreation, offices, housing, open space, educational, civic, and public amenities, with exceptional community benefits and high-quality design, that will improve the quality of life of Cupertino residents.” The Initiative seeks to achieve this purpose by amending various provisions of the General Plan and Municipal Code, and adopting the Vallco Town Center Specific Plan.

Like the “findings” in Section 2(A), this stated purpose could help guide the City Council, or the courts in the event of a legal challenge, in determining how to interpret and apply any ambiguities in the General Plan amendments set forth in the Initiative. The City Council, however, has broad discretion to interpret any ambiguities in the General Plan and to balance competing policies, goals, and provisions of the General Plan, whether adopted by the Initiative or otherwise. *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 513-16. The City Council has the same broad discretion with respect to its Municipal Code and any specific plan.

III. Section 3. City of Cupertino General Plan Amendments. (Pages 2-6 and Exhibit A of the Initiative)

Section 3 of the Initiative sets forth the proposed changes to the General Plan. The changes are contained in four sub-sections. The first two sub-sections (A and B) contain amendments to two “elements” of the General Plan. The third sub-section (C) contains amendments to the General Plan’s Appendix A (“Land Use Definitions”). The fourth sub-section (D) contains amendments to the General Plan’s Land Use Map.

A. Section 3(A): Amendments to the Land Use and Community Design Element (Pages 2-5 of the Initiative)

This section amends several provisions in the “Vallco Shopping District Special Area” subsection of the Land Use and Community Design Element (General Plan Chapter 3). As the current General Plan explains, Chapter 3 “is the keystone” of the General Plan. “It unifies and informs the other Elements by providing an overall policy context for future physical

change.” The “Vallco Shopping District Special Area” subsection describes the City’s vision for redeveloping the existing Vallco Fashion Mall into a “vibrant mixed-use ‘town center’ that is a focal point for regional visitors and the community.” To achieve this vision, the General Plan requires the creation of a Specific Plan to govern development of the Vallco site and sets forth fourteen “strategies” to be incorporated into the Specific Plan.

The Initiative changes the name of the required specific plan to “Vallco ~~Shopping District~~ Town Center Specific Plan.” It also amends several of the strategies and adds a fifteenth strategy. Among other things, the Initiative:

- Provides an exception to the general rule that “parcelization,” i.e., dividing land into smaller parcels, “is highly discouraged” in the Specific Plan area. The exception would permit “parcelization” whenever it “includes adequate protective measures to provide incentives and guidelines for cooperation among owners.”
- Requires (rather than allows) certain uses within the Specific Plan Area. For example:
 - The Initiative deletes the phrase, “The following uses are *allowed* on the site,” and replaces it with, “the Vallco Town Center Specific Plan *shall require a mix of the following uses* on the site” (emphasis added).
 - Similarly, the Initiative would require (rather than encourage) a hotel; require “[a] minimum of 100,000 square feet shall be set aside for incubator, co-work space and/or multi-tenant spaces for start-ups, mid-sized companies and/or new and emerging technologies, with preference for local companies”; and require the developer to “dedicate the greater of 80 [residential] units, or 20% of the total [residential] units, as senior housing (in compliance with state and federal law).”
 - Instead of “*allow[ing]* residential on upper floors with retail and active uses on the ground floor,” the Initiative requires that this residential development to be “*maintain[ed]*.” Similarly, the Initiative replaces “encourage” with “maintain” in describing the requirements for office space (“~~Encourage~~ Maintain high quality office space arranged in a pedestrian-oriented street grid with active uses on the ground floor, publicly-accessible streets and plazas/green space,”)¹
 - The Initiative also adds a new land use requirement that “property owner(s) ... provide generous amounts of parks and open space, educational facilities, community gathering spaces, civic uses, public art, and community even spaces,” and permits, but does not require, additional

¹ It is unclear what proponents mean by maintain in this context, because there is currently no residential. It appears this is a requirement to create and keep in place residential and office space.

“amenities,” such as cafeterias, lobbies, community halls, or meeting spaces.

- Adds a new transportation and transit funding requirement, which provides, among other things, that “[a]ny project that fully redevelops the existing mall in the Vallco Shopping District shall also fund transportation and transit infrastructure that provides effective traffic solutions, including providing approximately \$30 million toward planned transportation improvements at the I-280 and Wolf Road interchange and other I-280 segments, partnering with local employers and transit agencies to provide a free community shuttle. . . .” This transportation and transit funding requirement does not apply to any hotel project.
- Adds a new strategy, “Strategy LU-19.1.15: Green Roof and Recycled Water” requiring the developer to: (1) provide a public green roof at least 30 acres in size, with drought tolerant landscaping, and a minimum of 3.8 miles of publicly accessible trails; and (2) extend recycled water service to the Vallco Shopping District. As with the transportation and transit funding, these new green roof and recycled water requirements do not apply to any hotel project.

The requirements to provide transportation funding, a green roof, and recycled water would not apply to any proposal that does not “fully redevelop[] the existing mall in the Vallco Shopping District.” However, given the City’s discretion to interpret its General Plan, it is possible that the City could require the developer of a portion of the Specific Plan area to contribute a proportional amount of the specified benefits. The possible meaning and implications of this provision are discussed in more detail in Chapter III.A of the Report.

B. Section 3(B): Amendments to the Infrastructure Element (Page 5 of the Initiative)

This section adds a new strategy to Policy IF-2.5 of the General Plan’s Infrastructure Element. This policy governs recycled water infrastructure, and directs the City to plan for citywide access to recycled water and encourage its use. The Initiative adds Strategy INF-2.5.4: Vallco Town Center Specific Plan, which requires any project that “fully redevelops the existing mall within the Vallco Shopping District” to “extend the recycled water line to the area covered by the Vallco Town Center Specific Plan and maximize use of recycled water.” As with the new strategies proposed by the Initiative for the Land Use Element, this new strategy would not apply to any hotel project within the Vallco Town Center Specific Plan area.

In addition, and like the requirements for transportation funding, a green roof, and recycled water, this requirement would not apply to any proposal to develop less than the entire existing mall in the Specific Plan Area.

C. Section 3(C): Amendments to Appendix A (Pages 5-6 of the Initiative)

Section 3(C) of the Initiative adds a definition of “Vallco Town Center Specific Plan” to Appendix A (“Land Use Definitions”) of the General Plan. This definition provides:

The Vallco Town Center Specific Plan designation applies to the Vallco Shopping District Special Area, and allows a mix of uses, including retail, restaurant, entertainment, residential, office, hotel, public (including civic), quasi-public, educational, parks, open space, and amenities. Projects developed under this designation must be consistent with the Vallco Town Center Specific Plan.

D. Section 3(D): Amendments to the Land Use Map. (Page 6 and Exhibit A of the Initiative)

This section amends the existing “City of Cupertino Land Use Map” to redesignate the approximately 58-acre Specific Plan area from “Commercial/Office/Residential” to “Vallco Town Center Specific Plan.” Exhibit A to the Initiative includes two copies of the existing Land Use Map (at different scales), and two copies of the Land Use Map (at different scales) with the Specific Plan area redesignated as “Vallco Town Center Specific Plan.”

IV. Section 4. City of Cupertino Municipal Code Amendments. (Pages 6-7 of the Initiative)

This section makes several changes to Titles 19 (Zoning) of the City’s Municipal Code. First, it adds a new chapter, titled “Vallco Town Center Specific Plan (VTCSP) Zone.” This new chapter establishes the “Vallco Town Center Specific Plan” (“VTCSP”) district, and provides that “[t]he standards, guidelines and improvement plans contained in the Vallco Town Center Specific Plan shall govern the VTCSP zoning district.” The Initiative provides that general Municipal Code zoning provisions (including “specific standards and/or procedures for review, approval and/or administration of development projects”) will *not* apply to development within the VTCSP district unless the Vallco Town Center Specific Plan does not provide specific standards and/or procedures for some aspects of development. The Initiative further provides that the City cannot apply any standards or procedures in the Municipal Code that would frustrate or inhibit development of the Vallco Town Center Specific Plan. The implications of this provision are discussed in Chapter III.A of the Report.

This section also adds “VTCSP Vallco Town Center Specific Plan” to the list of designated zoning districts contained in Section 19.16.010 of the Municipal Code. The Initiative states that it would amend Section 19.16.110, entitled (“Zoning Districts Designated”), but the actual Code number for that section is 19.16.010. This apparent typographical error would not affect the validity of this provision.

This section also amends the Municipal Code section governing the City’s issuance of conditional use permits. A conditional use permit (“CUP”) grants permission for uses not allowed as a matter of right in a zone. *Sounhein v. City of San Dimas* (1996) 47 Cal.App.4th 1181, 1188. This enables the City to exercise control over certain sensitive land uses that may be desirable in small numbers but could be detrimental to the community in large numbers. *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. For example, a city may require a CUP for construction of housing that exceeds a certain threshold. *Sounhein*, 47 Cal.App.4th at 1184-85.

Pursuant to Section 19.156.040, the applicable City “decision maker”² may grant a conditional use permit if two findings are made: (1) the proposed use “at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience,” and (2) the use “will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).”

The Initiative would add a new provision to Section 19.156.040 limiting the City’s ability to deny CUPs for additional residential units (above the 389 units allocated in the General Plan) within the Vallco Town Specific Plan district. When presented with an application for such a CUP, the Initiative provides that the City must—rather than “may”—grant the CUP if the two findings are made. In addition, the new provision states that, for purposes of the first required finding, an increase in residential units within the Vallco Town Specific Plan district “shall be deemed not to be detrimental to the public health, safety, general welfare, or convenience if there are no new significant and unavoidable impacts beyond those identified in the Environmental Impact Report prepared for the General Plan: Community Vision 2015 – 2040, as to the residential units.”

This provision would prohibit the City from finding that such residential development is detrimental to public health, safety, general welfare, or convenience unless it also finds the development would have significant and unavoidable impacts beyond those identified in the General Plan EIR. To the extent that this provision precludes the City from denying the CUP or imposing conditions that the City determines are in fact necessary to protect the public health, safety, or general welfare, a court could find it invalid. *See Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648-49 (legislation may not abdicate the police power, including the power to regulate land use to prevent potential danger to the health and safety of the public). Moreover, pursuant to Municipal Code section 19.156.040(A)(1), the City could still deny such a CUP if it found that the proposed residential development: would “be detrimental or injurious to property or improvements in the vicinity;” is inconsistent with the General Plan, underlying zoning regulations, and the purpose of the zoning ordinance; or does not comply with CEQA.

This section also amends Title 20 (“General and Specific Plans”) of the Municipal Code to exempt the Vallco Town Center Specific Plan area from the general requirement that all areas governed by a specific plan be zoned “planned development (P).” Under other provisions of the Initiative, the Vallco Town Center Specific Plan area will be zoned “VTCSP Vallco Town Center Specific Plan.”

Finally, this section amends the existing “City of Cupertino Zoning Map” to change the property’s zoning from P(Regional Shopping) and P(CG) to VTCSP(Vallco Town

² The applicable City “decision maker” depends upon the nature of the permit at issue and whether a permitting decision has been appealed. For purposes of this Initiative, the initial decision maker for any CUP would be the City Director of Community Development, with any appeal going directly to the City Council. *See* Specific Plan, Chapter 9.1

Center Specific Plan). This amendment essentially denotes on the City’s Zoning Map the changes made by Sections 4 and 5 of the Initiative. Copies of the existing City of Cupertino Zoning Map and the Zoning Map as amended by the Initiative are attached to the Initiative as Exhibit B.

V. Section 5. Adoption of the Vallco Town Center Specific Plan. (Page 7 and Exhibit C of the Initiative)

This section adopts the Vallco Town Center Specific Plan, which is attached as Exhibit C to the Initiative. The Specific Plan, which is more than 200 pages long, sets forth detailed standards and provisions governing development within the Vallco Town Center Specific Plan area. The Specific Plan is the heart of this Initiative.

Under state law, a specific plan is a legislative enactment that systematically implements the development policies of the city’s general plan. Gov. Code § 65450; *South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 668. The process for preparing, adopting and amending a specific plan is the same as for a general plan, except that a specific plan may be amended as often as the city council “deems necessary.” Gov. Code § 65453; *Chandis Sec. Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475, 481. The City’s Municipal Code further provides that a specific plan is intended “to provide a means of guiding land development or redevelopment of the City that is uniquely suited for planned coordination of land uses and to provide for a greater flexibility of land use intensity and design because of accessibility, ownership patterns, topographical considerations and community design objectives.” Muni. Code § 20.04.010.A. A specific plan is also intended “to encourage variety in the development pattern of the City, to promote a more desirable living environment, to encourage creative approaches in land development, to provide a means of reducing the amount of improvements required in development through better design and land planning, to conserve natural features, to facilitate a more aesthetic and efficient use of open spaces, and to encourage the creation of public and private common open space.” Muni. Code § 20.04.010.B.. The Cupertino General Plan, adopted in 2014, requires the preparation and adoption of a specific plan prior to any development within the Vallco Shopping District Special Area. The Specific Plan proposed to be adopted as part of the Initiative would satisfy this requirement of the General Plan.

The full text of the Vallco Town Center Specific Plan is attached as Exhibit C to the Initiative and available for review on the City’s website. The Specific Plan contains an Executive Summary and nine chapters: (1) Introduction, (2) Land Use & Development Standards; (3) Community Benefits; (4) Mobility & Connectivity; (5) Sustainable & Smart City Strategies; (6) Infrastructure & Public Facilities; (7) Landscaping & the Public Realm; (8) Town Center Design Guidelines; and (9) Administration, Implementation & Financing.

A. Executive Summary. (Pages C-4 to C-7)

The Executive Summary briefly describes the history of the mall at Vallco; the drafters’ goals in designing the Specific Plan; and the Plan’s vision and plan for redeveloping the Vallco Area into a “vibrant mixed-use Town Center.” According to the Executive Summary, the focus of the Specific Plan “is planning for the redevelopment of the “Mall property, which

includes blocks 1 through 12 (the Town Center, also known as Town Center/Community Park) and the potential future development of Block 14.”

B. Chapter 1: Introduction. (Pages C-12 to C-27)

Chapter 1 provides an introduction to the Specific Plan. Among other things, Chapter 1 describes the Specific Plan’s organization; its relationship to other City plans and policies, including the General Plan and Municipal Code; the history of the existing development within the Specific Plan area (i.e., the existing Valco Mall) and surrounding uses; and the potential subsequent project approvals necessary to carry out the development contemplated in the Specific Plan. It further notes that the illustrations in the Specific Plan are illustrative only, to “convey the concepts and intent” of the Plan. (C-16.) It reiterates that if there are any conflicts between the Specific Plan and the Cupertino Municipal Code, the Specific Plan controls the Plan Area. (C-20.)

C. Chapter 2: Land Use and Development Standards. (Pages C-29 to C-85)

Chapter 2 describes the conceptual land use plan for the 58-acre Specific Plan area (“Plan Area”); identifies the Specific Plan Objectives (including objectives for the Town Center); and sets forth development standards and permitted, conditional, and excluded land uses.

The Specific Plan divides the Plan Area into fourteen “Blocks” (see Figure 2-1, at Initiative Page C-30. As noted above, the principal focus of the Plan is the redevelopment of the Mall Property, which includes Blocks 1-12. Blocks 13 and 14 propose hotel developments that may be processed separately from the mall redevelopment project.

1. The Mall Property (Blocks 1-12)

To accomplish redevelopment of Blocks 1-12, the existing mall would be demolished and redeveloped with a new “Town Center” in accordance with the Specific Plan.

Section 2.2 lists the “objectives” for development of the Town Center. These objectives include “implement[ing] the vision in the City’s General Plan to completely redevelop the Plan Area,” providing “educational uses . . . for youth, seniors, and others in the Cupertino Community,” and mitigating impacts of the redevelopment. (C-32.)

Section 2.3 sets forth the land use plan for the Plan Area. The “key components” of this plan include the “Town Center,” “Community Park and Nature Area,” and “Education.” The Town Center envisions a traditional neighborhood layout. The core focus will be two Town Squares one located on each side of Wolfe Road. The Town Squares “may” be linked by pedestrian bridges. The movie theatre, bowling alley, ice rink and fitness center uses will be co-located to the northwest corner of the Town Center.

The Community Park and Nature Area is a 30-acre “rooftop landscape,” designed to rise from existing grade along the southwestern edge of the Plan Area along Stevens Creek

neighborhood to the center of the Plan Area, west of North Wolfe Road, and “then decrease in height east of North Wolfe Road.” The Community Park and Nature Area may be used for a variety of uses, including community gathering, performances, dining, relaxation, and native planting areas. As described below, the Community Park and Nature Area will also include 2.8 miles of trails for walking, hiking, jogging and docent-led educational tours.

The “Education” component of the plan centers on a commitment to provide “community benefits for local schools . . . valued in the aggregate at no less than 10 times the legally-required amount, which would represent a total financial contribution of approximately \$40 million.” (C-40.) Section 2.3.3 describes some options for providing this benefit, subject to school district approval. These options include “construction and 34-year charitable lease of a new 10,000 square foot, turn-key High School science and engineering ‘Innovation Center’”; Construction and 34-year charitable lease of up to 5,000 square feet of classroom and/or administrative space for FUHSD’s Adult School; a new 700 student elementary school at the former Nan Allan Elementary School site; and a community hub building of at least 6,000 square feet for use by study groups and parent volunteer meetings. The Specific Plan does not require a developer to provide any of these particular options, but rather describes them as possible ways of providing benefits for local schools “valued in the aggregate at no less than 10 times the legally-required amount.” (These benefits are further analyzed in Chapter III.A of the Report.)

Section 2.3.4 describes the types and amounts of development permitted within the Plan Area. Table 2-1, the “Land Use Summary,” (at page C-42 of the Initiative) sets forth the permitted uses and amounts in summary form. Permitted uses, which are further defined in Section 2.6 of the Plan (beginning at page C-77), include:

Residential. 389 residential units, which may be increased up to the maximum amount permitted under the General Plan with the issuance of a conditional use permit (or CUP). A minimum of 80 residential units, or 20% of the total number of residential units, whichever is greater, must be dedicated senior housing. As explained in Chapter III.A, these provisions could allow for an increase up to 800 units.

Office. A maximum of 2,000,000 sf of office space. At least 100,000 sf of the office space developed must be “incubator work space and multi-tenant spaces for start-ups and new and emerging technologies, per General Plan.”

Commercial. Approximately 640,000 sf of commercial, of which at least 600,000 sf must be retail (which includes “community and regional retail, entertainment, and personal services”); up to 40,000 sf may be “fitness” (e.g., a fitness center).

Public/Civic. At least 50,000 sf public/civic space, which may be increased up to 100,000 sf if office space is reduced commensurately.

Town Center Squares. Two “town squares” (Town Square West and Town Square East), which together must comprise at least 3 acres.

Community Park and Nature Area. A 30-acre rooftop community park and nature area accessible to the public. This rooftop park must also include at least 3.8 miles of public trails.

Services, Facility management, & Loading. 120,000 sf dedicated to services, facility management, and loading, including central plants, loading docks, and maintenance facilities.

Parking. Approximately 9,060 parking spaces located below grade, above grade and at street level. Deviation from this number by more than 5% (450 stalls) requires approval by the City's Community Development Director.

Hotel. The City has already approved a 148-room hotel on Block 13 of the Plan Area. The Specific Plan also permits a 191-room hotel on Block 14. However, parking shall also be a permitted use on Block 14.

Section 2.4 divides the Plan Area into five "land use districts," "to help describe the predominant land uses and their locations." However, the Plan also notes that these districts are not "meant to serve as zoning designations," and that "[t]he allocation of space for each land use may vary between districts and construction sequencing, as long as the total gross development area for each land use is not exceeded." (C-53.) These districts include:

Town Center Retail/Residential District (Blocks 1, 2, 4), bounded by Stevens Creek, the Portal Neighborhood, the Mixed-Use Entertainment District and North Wolfe Road. Commercial uses may include retail, personal services, civic, and small format medical uses. Residential uses are also envisioned on upper levels. This district will include a portion of Town Square West, a publicly-accessible plaza. A 10,000 square foot, turn-key High School Innovation Center may also be located in this district.

Town Center Retail/Entertainment/Office/Residential District (Blocks 3, 5, & 6), bounded by 2nd Street, N. Wolfe Road, Vallco Parkway, and A Street. The Plan anticipates that new and existing entertainment uses, including a multiplex movie theater, bowling alley, and ice rink, will be located in this district. A portion of Town Square West will also be included in this district.

Town Center Retail/Office District (Blocks 7 – 12), bounded by 2nd Street, N. Wolfe Road, Vallco Parkway, and E Street. This district will contain Class-A office space, Amenity & Support Space, and Town Square East, "a quiet compliment to the active heart of Town Square West." A transit center for employees is also envisioned in this district.

Town Center Hotel District (Blocks 3, 14), south of I-280 on either side of N. Wolfe Road. On the east side of North Wolfe Road, Block 13 is already approved for the development of a 148-room hotel. The majority of Block 14 is currently occupied by a surface parking lot. Block 14 may be developed with a hotel with up to 191 rooms; it also may remain a parking lot or be used as part of the planned North Wolfe Road/I-280 interchange improvements.

Community Park and Nature Area, a separate, landscaped roof structure over the redeveloped Mall portion of the Plan Area. This district will include an approximately 30-acre "Community Park and Nature Area." A majority of the roof structure will be open to the general public and accessible for all visitors. Some areas will be closed to public use for safety and security reasons; other areas may only be privately-accessible by residents and employees. This

district may also include retail uses, private amenities (e.g., pool and clubhouse), and community facilities (e.g., playground, community hub, banquet hall, amphitheater). The district will provide a variety of planting zones. (See Chapter 7 for description of landscaping and design elements.)

Section 2.5 provides development standards that apply to all districts in the Plan Area. According to this section, these standards address: (1) Ground Floor Activation; (2) Building Setbacks; (3) Building and Roof Height; (4) Parking; and (5) Parks and Open Space. Under these standards:

- Maximum building heights shall not exceed those shown on Figure 2-20. According to that figure, buildings in blocks 9-12 may be 80-95 feet high; buildings in the center of the site may be between 30-80 feet high; and buildings along the western edge may not exceed 65 feet high.³
- Figures 2-18 and 2-19 show 20 to 30 foot setbacks from public roadways and existing residential areas.
- There does not appear to be a maximum height for the separate green roof structure. However, rooftop pavilions cannot be higher than 24 feet (single story) from the finished floor elevation at Community Park and Nature Area level. Rooftop pavilions shall be set back from the edge the roof at least 100 feet if above westernmost Blocks 1 and 3 (and Block 14 if part of the park structure); they must also comply with the 1:1 building plane. No mechanical structures, other than those necessary to support the respective rooftop pavilions, may be placed on top of the rooftop.
- Parking must be provided in accordance with the City of Cupertino Municipal Code Parking Regulations, with certain adjustments. According to the Specific Plan, these regulations, as adjusted, would require 9,060 parking stalls for development of the Town Center, excluding development of Blocks 13 and 14.

The remaining development standards contained in Section 2.5 are fairly general and flexible. For example, Section 2.5.6 requires the Town Squares to “incorporate high-quality furnishings and materials” and “incorporate landscaping that is distinctive and visually attractive.” The Community Park and Nature Area must “[i]ncorporate thematic landscaping that is based on the native ecologies of Santa Clara Valley and is resilient to climate conditions, such as extended period of drought and increasing global temperatures.”

Table 2-2, included in Section 2.6, lists the permitted, conditional, and excluded uses. According to Section 2.6, “[t]hese descriptions are representative of the types of land uses envisioned and are not meant to be completely inclusive.” Other uses that, in the opinion of the City’s Director of Community Development, are similar to those listed in Table 2-2 and do not create significant adverse impacts, “are permitted or conditionally permitted.” Moreover, the

³ Section 2.5.4 notes that, because the Community Park and Nature Area will be on a separate green roof structure,

City’s Director of Community Development retains discretion to permit uses that are “fundamentally different.”

According to Table 2-2, a broad range of uses are permitted in four of the five land use districts (Town Center Retail/Residential; Town Center Retail/Entertainment/Office/Residential; Town Center Retail/Office; and Community Park and Nature Area). For example, within the Community Park and Nature Area, permitted uses include Alcohol Sales, Community Retail, Community Space, Educational Uses, Entertainment, Eating Establishments, Outdoor Dining, along with more traditional park uses such as Agricultural Uses, Outdoor Uses, and Parks and Open Space. Fewer uses are permitted in the Town Center Hotel District, but there remain numerous Conditional uses in that District as well. The remainder of Section 2.6 defines the various uses.

Section 2.7 contains general provisions applicable to all land uses within the Plan Area. Section 2.7.1 provides that, if any provision of the Specific Plan or application of the Plan is found to be invalid, that finding shall not affect the remaining provisions or applications. Section 2.7.3 provides that the Specific Plan will constitute the zoning for the Plan Area. Any subsequent development must be consistent with the development standards contained in the Specific Plan. Section 2.7.8 provides that existing uses within the Plan Area are deemed legal nonconforming uses, and can continue as an interim use “subject to the Cupertino Municipal Code.” The intent of the Specific Plan is that “legal nonconforming uses are allowed until such time as market conditions cause the property on which they are situated to be redeveloped.”

D. Chapter 3: Community Benefits (Pages C-86 to C-91)

Chapter 3 of the Specific Plan describes the “community benefits” that must, or, in some cases, may, be provided as part of a Development Agreement or as a condition of approval in the Master Site Development Agreement. The Specific Plan divides these “community benefits” into six categories.

3.2. Civic Benefits. The proposed Civic Benefits include

- A 30-acre “Green Roof and Community Park,” accessible to the public with 3.8 miles of public trails. The park must be privately constructed and maintained at no cost to taxpayers, and irrigated by recycled water.
- A sustainable design goal of achieving the highest level of certification from a globally recognized environmental sustainability certification program, such as LEED Platinum certification or its equivalency.
- Two ground-level “Town Squares” (totaling 3 acres) “programmed to accommodate civic, cultural, community, and school events, performances and celebrations.”
- Improvements to existing utility infrastructural system (including extension of recycled water infrastructure).

- Community facilities,⁴ including 20,000 square feet of banquet/event hall; community hub building (6,000 square feet); a 300-seat amphitheater; and a playground.
- Charitable lease(s) for 5,000 square feet of civic space.⁵
- An option for a project applicant to provide up to an additional 50,000 square feet for an appropriate, necessary and meritorious civic use subject to a separate agreement with the City. Any civic space over and above 50,000 square feet will require an equal reduction in the Vallco Area's office space allocation.

Section 3.3. Education Benefits. The Specific Plan requires that, “[i]n addition to paying the maximum state-required school fees, which are expected to be approximately \$4 million, the Plan Area will provide . . . community benefits for local schools . . . valued in the aggregate at no less than 10 times the legally-required amount . . .” The Plan provides some examples of the types of “in-kind” or monetary contributions that would be “strongly encouraged” (e.g., providing space, buildings, facilities on-site, in lieu parcel tax), but notes that the relevant school districts (Fremont Unified High School District (“FUHSD”) and Cupertino Union School District (“CUSD”)) must be consulted about their needs before final plans approved.

Section 3.4. Housing Benefits. The Housing Benefits include a provision “strongly encourag[ing]” compliance with the City’s Below Market Rate (“BMR”) Housing Mitigation Program “by providing affordable units on-site rather than paying the City’s in-lieu fee.” Also, to the extent permitted by law, the Specific Plan would give CUSD and FUHSD teachers housing priority. At least 80 residential units (or 20% of total number of units, whichever is greater) would be dedicated senior housing.

Section 3.5. Land Use and City Revenue Benefits. These proposed benefits include:

- A requirement that at least 25% of the retail component, including a new multiplex movie theater, be delivered in the initial construction sequence of the Plan Area (not including the hotel on Block 13) and allowing for the continuous operation of the existing multiplex movie theater during initial construction sequence.
- A commitment to demolish 100% of the remaining existing Mall improvements within 6 months of receiving a certificate of occupancy for the initial retail component, “subject to existing leases and an appropriate temporary improvement plan for demolished areas.”

⁴ “Community Facilities” are not defined in the Specific Plan. However, “Community Space” is defined in Section 2.6.8.

⁵ The Specific Plan does not define “charitable leases.”

- A commitment to office tenant diversity by providing a minimum of 100,000 square feet of incubator work space and/or multi-tenant office spaces for multiple start-ups and/or emerging or mid-size companies, with a preference for local companies.
- A requirement to retain healthy trees and existing walls and encouraging inactive and/or generously set-back building facades along the Plan Area’s western property line, to protect adjacent residential property owners.

Section 3.6. Mobility and Connectivity. Section 3.6 requires contributions to local transportation improvements, including:

- donating \$6 million to the City for a bike/pedestrian trail along I-280 and “[c]onstruct and/or fund additional improvements to pedestrian and bike trail(s) throughout the Plan Area, including along the entirety of the existing Perimeter Road”;
- providing “fair share financial contribution of \$30 million for freeway infrastructure, specifically improvements for North Wolfe Road and I-280 overpass and interchange and future I-280 freeway segment improvements;”
- requiring a project applicant to “spearhead and provide substantial funding for a community effort to provide a free community shuttle, in partnership with the City, VTA, local school districts, property owners, and/or corporate employers”; and
- funding certain traffic signal timing improvements.

This section also requires, consistent with the Specific Plan’s “Environmental Design Features,” the preparation and implementation of a Transportation Demand Management (“TDM”) Plan “with an overall target of reducing Specific Plan office-generated weekday peak hour trips by 30 percent below applicable Institute of Transportation Engineers trip generation rates.” In additional, it sets “[a] goal to establish such a successful retail model, efficient traffic circulation plan, and popular bicyclist and pedestrian environment to enable the majority of the streets in the Plan Area to be permanently closed (market conditions permitting).”

Section 3.7. Environmental Design Feature Benefits. In addition to the community benefits listed in Chapter 3, the Specific Plan also requires “Environmental Design Features” (“EDF”), which are intended to mitigate potentially significant environmental impacts caused by development permitted by the Specific Plan. These additional EDFs are listed in Appendix A to the Specific Plan (Initiative pages C-211 – 227).

Chapter 3 further provides that these community benefits “may be agreed to through a [Development Agreement] or may be set forth as conditions of approval.” Section 3.1 (page 3-1; C-87). The timing for providing these benefits is largely left to subsequent approvals (either the Development Agreement or the “Master Site Development Permit,” discussed in Chapter 9 of the Specific Plan; *See*, Section 3.8, C-91).

E. Chapter 4: Mobility & Connectivity (Pages C-92 to C-128)

Chapter 4 describes the plans that must be prepared, and improvements that must be made, related to mobility and connectivity for pedestrians, bicyclists, public transit, automobiles, and service vehicles. Intersections “will be designed to accommodate vehicle, pedestrian, and bike traffic.” A new proposed intersection at Wolfe Road and 2nd Street will provide east-west bidirectional bike lanes to allow bicycles and pedestrians to cross without conflicts with turning vehicles. Chapter 4 discusses, among other things, a landscaped pedestrian bridge over North Wolfe Road to replace the existing enclosed bridge, and further describes access to the below-grade garages. The Plan describes two options for the Perimeter Road Tunnel: (1) modification to accommodate alternate modes of transportation, including bicycle, pedestrians, and small service vehicles; or (2) construction of dedicated off-or on-ramps from 280 in and out of the Town Center. (C-95) The Community Park and Nature area access will be provided through walkways and elevators. (See, Figure 4-3.)

The Plan also envisions a shared use path around its boundary to connect future trails. Chapter 4 also includes, among other items, improvements to Portal Avenue, Tantau Avenue, conceptual pedestrian and bicycle connectivity plan diagrams; descriptions of the planned “Mobility Hub” and transit centers; a conceptual vehicle access plan; conceptual street design elements; and a description of the As for Vehicle Circulation, the Plan calls for safe pedestrian and bicycle crossings at the access points, and temporary street closures during peak times. The Conceptual Vehicle Access Plan describes the primary roadway access points, the street hierarchy, connectors, and Traffic Zones which are closed to cars during events. Conceptual Plans for the Retail Entertainment Streets, Retail/Office Streets, Entrance Streets, and Municipal Streets describe vehicular and bicycle lanes of travel, as well as sidewalks and planting areas.

Off-Site Transportation improvements include projects to be coordinated with the VTA, Caltrans, and the City, and are listed in Appendix A Environmental Design Features. Transportation Demand Management (TDM) strategies (e.g., partial funding for free community shuttle, bicycle and pedestrian facilities) that “are committed to be implemented” as part of development of the Plan area. A TDM coordinator will be hired to “fully implement and sustain the TDM strategies. “[P]arking is closely related to the Town Center’s efforts to reduce driving. In correspondence with the mandatory reduction in trips, a reduction (compared to the Cupertino Municipal Code) in office parking spaces is planned.” (C-128). The Plan describes non-automobile transportation methods to support parking reduction including walking and cycling improvements.

F. Chapter 5: Sustainable & Smart City Strategies (Pages C-129 to C-137)

Chapter 5 describes strategies for addressing “economic, social and environmental sustainability.” These strategies include the provision of the 30-acre green roof, use of non-potable water for landscape irrigation, green building standards, urban design and accessibility goals, and provision of community spaces and recreational facilities. The stated sustainability goal is to achieve the highest level of “globally recognized environmental sustainability certification program, such as LEED Platinum, or equivalency.”

G. Chapter 6: Infrastructure & Public Facilities (Pages C-138 to C-148)

Chapter 6 describes the public services that will be required within the Plan Area (e.g., water, sewer, fire, etc.), including the entities responsible for providing those services and projected water supply and demand. Chapter 6 also describes necessary stormwater management including installation of a new public storm drain, treatment measures, wastewater system improvements, and other utility improvements. The Plan describes collection and reuse of rainwater for the Community Park and Nature Area. (C-141.) The Plan identifies a net increase of total water demand of 155 (Acre Feet per Year). The Conceptual Waste Water Plan will, among other things, reroute the main sewer, and upgrade existing lines to accommodate projected flows. (C-146.)

H. Chapter 7: Landscaping & the Public Realm (Pages C-149 to C-168)

Chapter 7 describes the landscape design principles applicable to the parks, streetscape, and public gathering spaces within the Plan Area. This Chapter clarifies that “a vast majority of the Community Park and Nature Area will be fully accessible by the public,” but that “there will be some limited access areas open only to residents and office workers.” (C-154.) The Tree Retention and Replanting Plan identifies 894 existing trees, and requires a developer to “maintain a majority of the existing trees located on North Wolfe Road, Stevens Creek Boulevard, and the landscape buffer along the western perimeter of the new Plan Area. (C-153.) Chapter 7 describes the Community Park and Nature Area’s planting zones, drainage, soils, typical planting cross sections, lighting, wind protection and safety. For the Town Squares, the Plan describes the streetscapes and plantings. The “private open space” for the residential units in the Community Park and Nature Area will be provided “in lieu of balconies or private back yards.” The Chapter also describes streetscape landscaping including canopy trees.

I. Chapter 8: Town Center Design Guidelines (Pages C-169 to C-195)

Chapter 8 sets forth design principles and guidelines for development within the Plan Area. According to the introduction to this Chapter, these guidelines augment but do not replace “applicable codes, standards, and ordinance provisions associated with the permitting process.” The extent to which the Initiative’s guidelines and standards would supplant other provisions of the City’s Municipal Code is discussed in Chapter III.A. This Chapter describes the streetscape furnishings, bicycle parking, lighting standards, design of transit shelters and public art which will be incorporated as defined by the Cupertino Municipal Code. (C-182.) It further provides site and building guidelines for future developers. This Chapter also requires the preparation of a Master Sign Program (“MSP”), which will not necessarily comply with the Zoning Code requirements of Chapter 19.104 of the Municipal Code. *See* page C-187. Instead, the MSP will comply with the design guidelines set forth in Sections 8.5.1 and 8.5.2 of the Specific Plan.

J. Chapter 9: Administration (Pages C-196 to C-210)

Chapter 9 describes the development review procedures applicable to any proposal for development under the Specific Plan. Section 9.1 provides that development within the Plan Area (except for Block 13 and any portion of Block 14 not processed as part of the

Town Center) is governed by the standards and guidelines of the Specific Plan. “Any issues not addressed in the Specific Plan shall be subject to the Cupertino Municipal Code unless a strict application of the Municipal Code would frustrate the intent of the Specific Plan.” If any provision of the Municipal Code conflicts with the Specific Plan, the provisions of the Specific Plan “shall control.” *See* page C-197. As noted above, the effect of these provisions on the standards in the City’s Municipal Code is discussed in Chapter III.A.

Any development under the Specific Plan will require at least two subsequent approvals by the Director of Community Development (“Director”): (1) a Master Site Development Permit (“MSDP”); and (2) Architectural and Site Review (“ASR”). In addition, as noted above, the Director may also approve a Conditional Use Permit to increase the number of residential units from 389 (the number allocated to the Vallco Site in the General Plan and Housing Element), provided the total number of units approved is consistent with the General Plan.

The Director must review any proposed MSDP or ASR for “substantial conformance” with the Specific Plan. Substantial conformance is further defined in Section 9.5.1. Any determinations or administrative interpretations by the Director regarding a proposed MSDP, ASR, or CUP may be appealed directly to the City Council. Additional approvals may be required (e.g., subdivision map, grading permits, encroachment permits, etc.).

Any application for an MSDP must include, among other information, “[t]he proposed conceptual site development plan indicating a street-level plan and roof-level Community Park and Nature Area plan for: the location of all buildings and structures; the location and types of land uses; paved areas, such as roadways, driveways, alleys, access points, and walkways; and general landscaping scheme.” Page C-201. The MSDP application must also contain a proposed traffic-circulation system and conceptual construction sequencing plan.

The Director “shall issue” the MSDP if the following findings can be made:

- The application promotes the goals and objectives contained in the General Plan; and
- The application substantially conforms with the Specific Plan.

(C-201.) Thus, as described in more detail in Chapter III.A of the Report, the Initiative would significantly limit the City’s authority or discretion to require changes to a development plan for the Vallco site as long the proposed MSDP “substantially conforms” to the Specific Plan.

Applications for Architectural and Site Review must include “architectural drawings of the proposed development, building additions or other structures;” color renderings of exterior facades, and a landscape plan. Once again, the Director “shall issue” an ASR approval if the following findings can be made:

- The application promotes the goals and objectives contained in the General Plan;
- The application substantially conforms with the Specific Plan; and

- The application substantially conforms with a number of listed design criteria, including the design guidelines from Chapter 8 of the Specific Plan.

(C-201.) This provision, like the one requiring approval of the MSDR, would significantly limit the City’s authority or discretion to require changes to architectural and site design plans for the Vallco site as long the proposed ASR “substantially conforms” to the design guidelines in the Specific Plan.

Section 9.4.3 describes the process for reviewing applications for an MSDP or ASR. This section states that these permits “shall be reviewed for substantial conformance with the Specific Plan and approved administratively by the [Director] or designee.” (C-202.) MSDP and ASR approval require a public meeting, with public notice comparable to that provided for similar public meetings. The Plan states that “[n]o comment period shall be required for” approval of a MSDP or ASR. The MSDP or ASR approval expires within two years of its effective date unless certain conditions are met.

Section 9.5 defines “substantial conformance,” and lists a number of changes, modifications, and deviations from the Specific Plan that may be made and still remain in “substantial conformance.” This list includes minor modifications to development standards, landscape materials, architectural or design guidelines, etc.

This Section also provides that additional conditions, features, or mitigation measures that avoid or minimize environmental effects of the Specific Plan may be included in a MSDP or ASR without rendering those permits non-conforming, “provided that such features, conditions or measures are feasible, linked with a legitimate governmental interest (i.e., there is an essential nexus), roughly proportional, and consistent with the intent and purpose of this Specific Plan.” Page C-203. However, “in no event may additional conditions, Environmental Design Features, or mitigation measures conflict with or impede the final policy decision[s]” included in the Specific Plan, including those regarding permitted uses or densities, off-site transportation improvements, “administration, implementation and financing.” Thus, this provision, like the others discussed above, may significantly limit the City’s ability to impose any additional conditions or mitigation measures on the MSDP or ASR if doing so would conflict with or impeded development according to the Specific Plan.

Section 9.5.2 provides that, prior to January 1, 2027, the Specific Plan can only be amended “by ballot measure approved at an election by the City of Cupertino voters.” If there is litigation challenging the Initiative, this date will be extended for a period equal to the period of time during which the litigation is pending.

Section 9.6 describes the construction sequencing for development under the Specific Plan. This section explains that the Plan “may be implemented over time and in a sequenced approach.” (C-204.) “Demolition and subsequent construction of the Mall portion of the Plan Area is expected to occur in a single phase over five years.” However, “[t]he actual timing of construction may vary.” Demolition of all Mall buildings must begin within 6 months of the issuance of a Certificate of Occupancy for the first completed Mall buildings, unless the Director makes certain findings and allows an extension. Similarly, “[t]o ensure the timely construction of the Town Center Entertainment/Office/Residential District, no Certificate of

Occupancy shall be issued for any office building until the shell and core of building [sic] located in Blocks 3 and 6 (entertainment, civic, and office uses) has been substantially completed.” The “anticipated sequence of Plan Area construction” is shown in Figure 9-1. However, that sequencing is subject to change depending on events outside the reasonable control of the project applicant, such as significant adverse market and economic conditions, site access constraints, natural events (e.g., severe weather events, earthquakes, fire), and legal challenges.”

Section 9.7 states that all infrastructure, facilities, and improvements must be “installed, constructed, and completed prior to or concurrent with need.” Sections 9.7 and 9.8 then describe financing mechanisms that could be used to fund this work, including community facilities districts, landowner funding agreements, development impact fees, and private financing.

Section 9.9 refers to and incorporates Appendix A, which lists a number of “Environmental Design Features” required to be applied to any development under the Specific Plan. Section 9.9 further provides that the City shall implement a monitoring and enforcement program to ensure compliance with these EDFs. As part of the 9212 Report, the City has prepared an Environmental Analysis (Appendix 5 to the 9212 Report) that describes these EDFs and compares them to the measures that would typically be applied to a development project like the Specific Plan under the City’s normal environmental review and permitting process.

VI. Section 6. Implementation of the Initiative. (Page 16 of the Initiative)

This section contains three provisions related to when the Initiative would go into effect and what the City must do to implement the Initiative following the effective date. Subsection A requires the City to “promptly take all appropriate actions needed to implement this Initiative” once it is effective. This subsection also provides that the Initiative will be considered “adopted and effective upon the earliest date legally possible after the Elections Official certifies the vote on the Initiative by the voters of the City of Cupertino.” Under the Elections Code, an adopted initiative “shall go into effect 10 days after” the date the Elections Official certifies the vote. Elections Code § 9217.

Subsection B provides that, “[u]pon the effective date of this Initiative, the provisions of Section 3” (i.e., the Initiative’s changes to the General Plan) will be automatically inserted into the General Plan, unless, at that time, the City has already made the four General Plan Amendments permitted by state law in any year. If the City cannot make any additional changes to the General Plan in the year the Initiative is adopted, this subsection requires the City to make the General Plan amendments set forth in the Initiative on January 1 of the following year.

Subsection C states the proponents’ view that the General Plan in effect when they filed the “Notice of Intent to Circulate” the Initiative (“Filing Date”), and the General Plan as amended by the Initiative, “comprise an integrated, internally consistent and compatible statement of policies for the City.” State law requires that a City’s General Plan be internally consistent, i.e., that it not include substantial contradictions and inconsistencies that would prevent those subject to the plan from determining what it says should happen or not happen.

Friends of Aviara v. City of Carlsbad (2012) 210 Cal.App.4th 1103, 1112; . Gov. Code § 65300.5.

Subsection C further provides that, if any provision of the General Plan is amended between the Filing Date and the effective date of the Initiative's General Plan amendments, and if these interim amendments are inconsistent with the Initiative's General Plan amendments, the City must amend the General Plan "as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by the Initiative and other elements of the General Plan."

Most land use initiatives contain similar "conformity" provisions authorizing and directing the governing city council or board of supervisors to implement the measure's terms. To the extent this provision simply directs that the City implement the Initiative and revise subordinate laws to conform with the General Plan, these provisions appear to be valid. *See Pala Band of Mission Indians v. San Diego County* (1997) 54 Cal.App.4th 565, 577 n.8.

VII. Section 7. Effect of Other Measures on the Same Ballot. (Pages 7-8 of the Initiative)

This section provides that the purpose of the Initiative is to "create a comprehensive regulatory plan to govern the future use and development of the Vallco Town Center Specific Plan area." Thus, if the voters adopt both this Initiative and another initiative on the same ballot that would "regulate the use or development of property within the Vallco Town Center Specific Plan area in any manner whatsoever" ("Conflicting Initiative"), only the measure that receives the greatest number of affirmative votes "shall control in its entirety." All other conflicting measures "shall be rendered void and without any legal effect." This section further provides that the Initiative shall not be interpreted to operate in conjunction with any Conflicting Initiative, even if some of the provisions of this Initiative and the Conflicting Initiative do not directly conflict. Moreover, if this Initiative and a Conflicting Initiative are adopted by the voters, and the Conflicting Initiative receives more affirmative votes but is later held invalid, "this Initiative shall be self-executing and given full force of law."

This provision appears to be consistent with existing case law regarding "competing" ballot measures. Under existing law, the general rule is that, if provisions of two competing ballot measures conflict, and if both measures are passed at the same election, the provisions of the measure with the highest affirmative vote shall prevail. Cal. Const. Art. II, § 10(b); Elections Code § 9221; *see Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission* (1990) 51 Cal.3d 744, 770; *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 987-988. However, if measures are presented to voters as complementary or supplementary, the court should engage in a section-by-section comparison of the specific features of each measure to determine whether provisions of both measures can be given effect, at least in the absence of a specific provision in one or more of the initiatives specifying otherwise. *Yoshisato*, 2 Cal.4th at 987-988.

As of the date of this Report, there is one other initiative measure—the Cupertino Citizens Sensible Growth Initiative⁶ or “CCSGI”—that has qualified for the ballot in Cupertino and may conflict, at least in part, with this Initiative. In light of the existing case law and the provisions of Section 7, if both this Initiative and the CCSGI Initiative are adopted by the voters, then a court would likely conclude that the measure obtaining the most votes takes effect in its entirety and that the measure receiving fewer votes does not take effect at all.

VIII. Section 8. Interpretation and Severability. (Page 8 of the Initiative)

Subsection 8(A) contains a standard “severability” clause, similar to those found in most laws. This clause is designed to protect the rest of the Initiative if one or more provisions are held invalid by a court. This subsection also declares that, if any provision of the Initiative is found invalid as applied to one person or circumstance, that finding does not mean that the Initiative will necessarily be invalid as applied to other people or circumstances.

Subsection 8(B) provides that, if any portion of the Initiative is held invalid by a court, the voters have a “strong desire” for the City Council to re-enact that provision, “taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Initiative.” This subsection does not require the City to re-enact any portion of the Initiative that is held invalid, but rather expresses the voters desire for the City to try to do so.

Subsection 8(C) states that the Initiative “must be broadly construed in order to achieve the purposes stated above,” and that it is the intent of the voters that the City “and others” interpret and implement the Initiative “in a manner that facilitates the purpose set forth in the Initiative.” As noted above, both courts and the City would normally look to the purpose of the Initiative in interpreting and implementing its provisions. This subsection states the voters wish that the City and others do so.

IX. Section 9. Amendment. (Page 8 of the Initiative)

This section of the Initiative states that, prior to January 1, 2027, no provision of the Initiative, including the Vallco Town Center Specific Plan, may be amended without voter approval. On or after January 1, 2027, the Initiative, including the Specific Plan, may be amended or repealed by any procedure authorized by law. Under state law, legislation adopted by voter initiative may never be amended without voter approval unless the initiative itself provides otherwise. Elections Code § 9217. Thus, this section limits the requirement for future voter approval to amendments made within approximately ten years on the Initiative’s adoption.

X. Section 10. List of Initiative Exhibits. (Page 8 of the Initiative)

⁶ The official title for this other measure is: “Initiative amending Cupertino’s General Plan to limit redevelopment of the Vallco Shopping District, limit building heights and lot coverages in areas throughout the City, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions.” (*Referred to in this Appendix as “the Better Cupertino Initiative.”*)

This section lists the exhibits attached to the Initiative and provides that the Exhibits are incorporated by reference into the Initiative. The Exhibits include:

Exhibit A – Amendment to General Plan Land Use Map;

Exhibit B – Amendment to Zoning Map;

Exhibit C – Vallco Town Center Specific Plan;

Exhibit D – General Plan Consistency Chart.⁷

⁷ Exhibits D is an 86-page table that lists a number of General Plan goals and policies and states the Initiative proponents' rationale for why the Specific Plan is consistent with these goals and policies. The Initiative states that this table is provided for "informational purposes only." As described in the Report, it appears that the Specific Plan is consistent with the City's General Plan as amended by the Initiative.