

# REPORT

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## Elections Code 9212 Report on Proposed Initiative

*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.*

**Prepared for:**

**City of Cupertino**

**June 29, 2016**

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### City of Cupertino

#### June 2016

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# I. Executive Summary

On March 31, 2016, the Cupertino City Council requested that City staff and consultants prepare an analysis of the proposed Vallco Town Center Specific Plan Initiative ("Initiative") that would amend the City of Cupertino's General Plan and approve a Specific Plan for the area including and surrounding the Vallco Shopping Center. This report contains this analysis, as authorized under California Elections Code section 9212.

The Initiative states that it will implement and fulfill the requirements of the City's General Plan and vision for the community through the approval of the Vallco Town Center Specific Plan and associated amendments to the City's General Plan and Municipal Code. As described in the ballot summary, the stated purpose of the Initiative is to:

1. Provide that the Vallco Shopping District Special 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.
3. Grant the property owner initial entitlements to develop in accordance with the Initiative, establish a process for future approvals, and make related amendments to Cupertino's General Plan and Municipal Code.

The City of Cupertino recently completed a multi-year planning effort that resulted in the adoption of a new comprehensive General Plan (entitled *General Plan (Community Vision 2015-2040)*) intended to guide development of the City through the year 2040.<sup>1</sup> The Vallco Shopping District Special Area is one of the areas designated in the City's adopted General Plan for mixed-use development and as a Housing Element site. The General Plan envisions the complete redevelopment of the Vallco area, which primarily consists of the 1.2 million square foot Vallco Shopping Center that is currently largely vacant.

## Proposed Adoption of the Vallco Town Center Specific Plan

The principal effect of the Initiative will be to adopt a Specific Plan that will more precisely establish what can and cannot be developed in the Vallco area. The proposed Specific Plan includes the following mix of uses:

- 389 residential units, including a senior housing component that is a minimum of 80 units or 20 percent of total units. *As under the existing General Plan, this number of units could be increased up to the maximum residential units available under the General Plan (estimated to be approximately 800 units) with the issuance of a conditional use permit (CUP). If the Initiative were adopted, the City would have much less ability to deny such a CUP than under the existing Municipal Code.*
- 2,000,000 square feet of office space (with a minimum of 100,000 square feet of incubator space).
- 640,000 square feet of commercial space (regional retail, entertainment, and personal service).
- 191 hotel rooms (in addition to a previously approved hotel).
- 50,000 square feet minimum of public/civic space (increased to 100,000 if office space is correspondingly reduced).

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<sup>1</sup> 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. The General Plan effectively serves as a city's living "constitution" for all future land use decisions, which can be amended by the City Council up to four times per year.

- Parks and open space, consisting of two ground-level Town Squares totaling at least 3 acres in area and a 30-acre, publicly accessible “green roof,” with a community park, nature area and minimum of 3.8 miles of trails.
- Other community facilities, including 20,000 square feet of banquet/event hall, a community hub building, a 300-seat amphitheater, and a playground.

The proposed uses and amount of development are consistent with what is currently permitted in the existing General Plan and could be accomplished without an initiative.

### **Community Benefits and Environmental Design Features**

The Initiative requires a developer of the Vallco area to provide a number of “community benefits” and incorporate specific “environmental design features” into the development in six broad categories of benefit:

1. **Transportation**– Provide \$6 million to the City for a bike/pedestrian trail along I-280; construct or fund additional improvements to pedestrian and bike trails throughout the Plan Area; and make a fair-share financial contribution of \$30 million for freeway infrastructure, along with other significant transit and circulation improvements.
2. **Education**– Provide in-kind and monetary contributions for educational space, buildings and facilities—valued at no less than \$40 million—for the Fremont Unified High School District and Cupertino Union School District, in addition to paying developer impact fees.
3. **Housing**– Include a minimum of 80 units of senior housing, and encourage the onsite provision of affordable housing units rather than paying the City’s in-lieu fee.
4. **Land Use and City Revenue**– Maintain operation of the existing movie theater during construction, deliver 25 percent of the retail component in the first phase, provide a minimum of 100,000 square feet of incubator work space with preference for multiple start ups and emerging companies.
5. **Civic**– build the town squares, green roof, community park, community facilities, other public amenities and a broad range of sustainability features including extension of recycled water infrastructure.
6. **Environmental Design Features**– incorporate and implement improvements to mitigate potentially significant environmental impacts.

### **Proposed Changes to General Plan**

The Initiative would change the General Plan in relatively minor ways, primarily by readopting existing General Plan provisions calling for the complete redevelopment of Vallco and amending several General Plan strategies and elements in order to accomplish the development specified in the Specific Plan. These amendments would:

- Reduce the amount of flexibility regarding the types of land uses that may be developed by requiring rather than permitting certain uses including residential, office, hotel, civic and parks and open space, as described in the Specific Plan
- Add additional requirements for recycled water use, open space, senior apartments, office use, and transportation funding.
- Make it easier for a developer to subdivide the Vallco area, provided there are adequate protective measures to provide incentives and guidelines for cooperation among owners.

These proposed amendments would not change the total amount of allowable development citywide or in the Vallco area from what is currently permitted by the General Plan.

## Proposed Changes to Municipal Code

The Initiative would change the Municipal Code in the following main ways:

- Add a new zoning district entitled “Vallco Town Center Specific Plan” district, and provide that development within that district will be governed by the standards contained in the “Vallco Town Center Specific Plan” (Specific Plan).
- Limit the City’s ability to deny a discretionary “conditional use permit” (CUP) for additional residential units in the Vallco area, up to the maximum General Plan allocations, if there are no significant and unavoidable impacts beyond those identified in the General Plan Environmental Impact Report (EIR).

## Report Findings

As the result of these changes, this Report analyzes the topics described in Elections Code section 9212 and finds that the Initiative, if adopted by the voters or the City Council, would potentially have significant effects on the City, which are summarized below. However, this Report also finds that:

- All of the residential, office, commercial and hotel land uses described in the proposed Specific Plan are currently allowable in the City’s adopted General Plan, and the Specific Plan would not change allowable build out citywide.
- As citywide land use allocations and buildout do not change, the majority of the environmental impacts will occur with or without the Initiative.
- Overall, the Specific Plan and the Specific Plan environmental design features either exceed or are consistent (and sufficient) with what the City would typically require as mitigation or conditions of approval under the standard approval process, with the exception of traffic at certain intersections and vehicle parking, as summarized below.

Based on the analysis in this report, the Initiative would have the following effects and impacts on the City of Cupertino:

- Lock into place new development and building standards for the Vallco Shopping District Special Area through adoption of the Vallco Town Center Specific Plan.
- Incentivize redevelopment of the Vallco Shopping Mall.
- Limit the City’s ability to deny a conditional use permit for additional residential development in the Vallco area up to the maximum available residential allocation in the General Plan (approximately 800 units).
- Reduce commercial/retail from the Vallco area by about 560,000 square feet, which would then be available for use elsewhere in the City. (Although allowable development Citywide does not change, the square footage reduction at Vallco from about 1.2 million square feet to 640,000 square feet can be reallocated elsewhere.)
- Provide for enhanced community benefits as specified in the Specific Plan either through Conditions of Approval or potentially through a Development Agreement.
- Reduce the City’s discretion regarding the timing, mix, location and types of uses to be included within the redeveloped area, and reduce the City’s ability to impose conditions requiring community benefits or mitigation measures different than those described in the Initiative, without subsequent voter approval.
- Indicate an intention to limit the scope of future environmental review and the imposition of additional mitigation measures for subsequent approvals necessary to develop within the Vallco area.

- Potentially create some significant environmental impacts (such as traffic impacts), although the City would likely be able to address these impacts when processing subsequent approvals through required mitigation, application of a Transportation Mitigation Fee Program (TMFP), or conditions of approvals.
- Require voter approval for changes to the Specific Plan, modifications to development that are significantly different from the standards in the Specific Plan, or other changes to provisions of the Initiative, prior to January 1, 2027.
- Facilitate increased job and business opportunities from new retail, office and hotel development in the Vallco area, although the Initiative would not increase what is already permitted in the General Plan.
- Have a positive impact overall on infrastructure funding and the provision of infrastructure for transportation, schools and parks in the City, as well as the development of senior and affordable housing.
- Allow for the increase in potential revenues from the City's major source of General Fund revenues—business-to-business sales tax, property tax revenues and transient occupancy tax revenues.

Chapter III of this Report, along with the accompanying Appendices, present the supporting analyses for these findings in six sections that together cover all of the subjects the City Council directed staff to analyze: land use and housing policy, development patterns, economic development, infrastructure and environment, infrastructure funding and fiscal. Table I.1 on the following page summarizes how the main provisions of the Initiative could potentially affect the City in these ways.

**Table I.1**  
**Summary of Potential Effects or Impacts of Initiative**

Major Changes Proposed by Initiative	Potential Effects According to Analysis*					
	Land Use and Housing Policy	Development Patterns	Economic Development	Infrastructure and Environmental	Infrastructure Funding	Fiscal
<b>Changes to General Plan and Municipal Code</b>						
Amend the General Plan Land Use Map and Zoning Map	■	■				
Formally establish the “Vallco Town Center Specific Plan” district in the place of the Vallco Shopping District Special Area and adopt the “Vallco Town Center Specific Plan” as that area’s specific plan.	■	■				
Enable the granting of a conditional use permit (CUP) for the Vallco area to increase residential units up to the General Plan allocations if there are no significant and unavoidable impacts beyond those identified in the General Plan Environmental Impact Report (EIR).	■	■	■	■	■	■
Reduce the amount of flexibility regarding the types of land uses that may be developed, by requiring rather than permitting certain uses.	■	■	■	■	■	■
Add a new permitted use called “amenities.”	■	■	■	■	■	■
Add additional requirements for open space, senior apartments, and transportation funding.	■	■	■	■	■	■
Make it easier for a developer to subdivide the Vallco area, provided there are adequate protective measures.	■	■	■		■	■
Provide that the standards governing the development of the Specific Plan shall generally be governed by those set forth in the Specific Plan proposed by the Initiative, rather than by the Municipal Code.	■	■	■	■	■	■
<b>Allow Certain Land Uses Under the Specific Plan</b>						
Change the General Plan by requiring, rather than allowing residential, office, hotel, civic and parks and open space, as specifically described in the Specific Plan	■	■	■	■	■	■
Require a developer of the Vallco area to provide a number of “community benefits” and incorporate specific “environmental design features” into the development in six broad categories of benefit.	■	■	■	■	■	■
<b>Reallocate Development Build Out</b>						
With a CUP, allow an increase from 389 to 800 residential units in the Vallco area.	■	■	■	■	■	■
Reallocate commercial/retail square feet from the Vallco area to other areas in the City.	■	■	■	■	■	■

\* Chapter III of this report analyzes the potential effects from the Initiative according to Elections Code section 9212.

■ = Indicates potential effect from the Initiative according to this analysis.



## II. Introduction and Report Background

This Report evaluates the potential impacts of a 2016 Initiative in Cupertino with the following official title:

*“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.”<sup>2</sup>*

This Initiative has qualified for the ballot in Cupertino, California. Following receipt of this Report, the Cupertino City Council must either adopt the Initiative exactly as proposed, or submit it to the voters at the November 8, 2016 election. If adopted by the City Council or the voters, the Initiative would amend the City of Cupertino General Plan, adopt a Specific Plan, and make related amendments to the Municipal Code.

On March 31, 2016, the Cupertino City Council requested that City staff and consultants prepare an analysis of the proposed Initiative specifically addressing its potential impacts on land use, housing, open space, traffic, the community’s ability to attract and retain business, infrastructure funding and potential fiscal impacts. This Report has been prepared pursuant to City Council Resolution No. 16-027 (a copy of which is included as Appendix 4) and Elections Code section 9212, and will be presented to the City Council at a specially scheduled meeting on July 5, 2016.

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<sup>2</sup> State law requires the City Attorney to prepare an official title that gives a “true and impartial statement of the purpose of the proposed measure.” As is often the case, the official title for this Initiative differs from the short title proposed by the Initiative proponents, which refers to the Initiative as the “Vallco Town Center Specific Plan Initiative.” The full text of the City Attorney’s official title and summary is reproduced in Appendix 1.

## II.A. Report Organization

This Report summarizes the proposed Initiative, describes allowable land uses and potential buildout without and with the proposed Initiative, and evaluates alternative development scenarios in order to understand the Initiative's potential effects and impacts on the City. The Appendices include: the Initiative language; a section-by-section summary of the Initiative's provisions (including key changes to the General Plan and Municipal Code, and a summary of the Specific Plan); documentation related to Elections Code requirements; and supporting analysis by the consultant team that was used to prepare this Report.

The Executive Summary in **Chapter I** summarizes the Initiative and its potential effects. This Chapter (**Chapter II**) begins with a description of the Initiative, its intended changes to the General Plan and Municipal Code, and the development permitted by the proposed Specific Plan. The approach of this Report is then explained, including the definition of important terms, methodology of analysis, and figures based upon publicly accessible data. An overview is provided of the four development scenarios that form the basis of analysis in this Report.

**Chapter III** presents the Analysis of potential effects—a more detailed look at the Initiative's impacts beyond the changes explicitly prescribed by the Initiative, as directed by the City Council. The effects and impacts studied in this Chapter are analyzed according to six general categories: land use and housing policy, development patterns, economic development, infrastructure and environmental, infrastructure funding and fiscal impact.<sup>3</sup>

The full text of the proposed Initiative *excluding exhibits* is included as **Appendix 1**, along with the City Attorney's official Title and Summary and the Initiative proponents' "Notice of Intent" describing their reasons for proposing the Initiative.<sup>4</sup> **Appendix 2** summarizes and briefly describes each section of the Initiative. **Appendix 3** reproduces Section 9212 in full, which is the Section of the California Elections Code that authorizes a city council to request a report regarding the potential impacts of an initiative prior to deciding whether to adopt the Initiative or to order an election of the voters to approve or reject it. **Appendix 4** documents the City Council's Resolution to authorize the funding and preparation of this Report. **Appendix 5** contains the supporting analysis and documentation for the infrastructure and environmental analysis. **Appendix 6** contains the education donation agreements with the two local school districts. **Appendix 7** contains the supporting analysis and documentation for the fiscal analysis. **Appendix 8** contains the current property owner's (Applicant's) 2015 project description for the Hills at Vallco and the draft EIR project description, which are used as reference documents for the development scenarios analyzed in this report.<sup>5</sup>

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<sup>3</sup> California Elections Code section 9212 authorizes city councils to request a report evaluating the potential effects or impacts from an initiative. Chapter III provides the specific analysis authorized by section 9212 and requested by Cupertino City Council.

<sup>4</sup> The full text of the Initiative, including all exhibits, is over 300 pages long and is available on the City's website at the following URL: <http://www.cupertino.org/index.aspx?page=1440>

<sup>5</sup> The CEQA process (including the finalization of the Environmental Impact Report (EIR) project description) was placed on-hold indefinitely due to the Initiative. For this reason, the attached project description is in draft form.

## II.B. Description of Initiative

The Initiative would amend the City of Cupertino's General Plan and Municipal Code and would approve a Specific Plan for the area that includes and surrounds the Vallco Shopping Center.<sup>6</sup> The Initiative states that it will implement and fulfill the requirements of the City's General Plan and vision for the community through the approval of the Vallco Town Center Specific Plan and associated amendments to the City's General Plan and Municipal Code.

The City of Cupertino recently completed a multi-year planning effort that resulted in the adoption of a new comprehensive General Plan (entitled *General Plan (Community Vision 2015-2040)*) intended to guide development of the City through the year 2040.<sup>7</sup> The Vallco Shopping District Special Area is one of the areas designated in the General Plan for mixed-use development, and it primarily consists of the 1.2 million square foot Vallco Shopping Center that is currently largely vacant. The General Plan envisions complete redevelopment of this area as a mixed-use development and requires adoption of a specific plan prior to any development.

As stated in the Initiative, the stated purpose of the Initiative 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.*

To accomplish this purpose, the proposed Initiative makes the following primary changes, as more specifically described in this Report:

- Lock into place new development and building standards for the Vallco Shopping District Special Area through adoption of a Specific Plan. (See Exhibit A and B of the Initiative for proposed modifications to the land use maps in the General Plan and Zoning Code.)
- Provide for enhanced community benefits as specified in the Specific Plan either through Conditions of Approval or, potentially, through a Development Agreement. (See Chapter 3 of the Vallco Town Center Specific Plan in Exhibit C of the Initiative.)
- Limit the City's ability to deny a conditional use permit for additional residential development in the Vallco area up to the maximum available residential allocation in the General Plan.
- Reduce commercial/retail from the Vallco area by about 560,000 square feet, which would then be available for use elsewhere in the City. (While allowable development citywide does not change, the square footage reduction at Vallco from about 1.2 million square feet to 640,000 square feet can be reallocated elsewhere.)
- Reduce the City Council's discretion regarding the timing, mix, location, and types of uses to be included the redeveloped area and its ability to impose conditions requiring community benefits or mitigation measures different than those described in the Initiative.

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<sup>6</sup> The General Plan refers to this area as the Vallco Shopping District Special Area, while the Initiative calls it the Vallco Town Center Specific Plan area. This report uses these terms interchangeably and also uses the shortened term "Vallco area."

<sup>7</sup> 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. The General Plan effectively serves as a city's living "constitution" for all future land use decisions, which can be amended by the City Council up to four times per year.

- Purports to limit the scope of future environmental review for subsequent approvals necessary to develop within the Vallco area.
- Require voter approval for changes to the Specific Plan, or other legislation adopted by the Initiative, prior to January 1, 2027.

## II.C. Approach

In order to provide a basis for evaluating how the Initiative might impact the City of Cupertino, this Report defines and then compares potential future development under the **Adopted General Plan** to the General Plan as if it were amended by the Initiative, referred to as **General Plan With Initiative**. More specifically, these two scenarios assume the following:

- **Adopted General Plan**– Development in the City of Cupertino occurs as envisioned by the City’s currently adopted General Plan entitled *General Plan (Community Vision 2015-2040)*.<sup>8</sup>
- **General Plan With Initiative**– Development in the City of Cupertino occurs as envisioned by the Initiative and assumes the City’s General Plan is amended by the Initiative as proposed.

In order to address the requirements in Section 9212, the analysis in this Report evaluates the potential impacts at General Plan buildout (considered to be the year 2040) under these two scenarios.<sup>9</sup> Additionally, both scenarios are evaluated with the allowable number of residential units in the Vallco Shopping District Special Area, ranging from 389 to 800 housing units. Under both scenarios, 800 units could be developed with a Conditional Use Permit; the Initiative amends the Municipal Code, however, to limit the City’s ability to deny a CUP for this increased number of units.

The General Plan governs existing and future development by land use through 2040, so the analysis includes an assessment of currently approved development as well as the maximum allowable development at buildout by land use category under the Adopted General Plan and under the General Plan With Initiative. While not all development may actually occur, projecting the maximum allowable development by land use is intended to provide an equal basis for comparison of the potential effects of the Initiative on the General Plan. In this regard, it is important to note what this report does not do. The environmental analysis in this report is not an analysis under the California Environmental Quality Act (CEQA), rather an evaluation of the adequacy of the environmental design features as mitigation measures.

Overall, this Report’s approach is similar to the one used to analyze the “Cupertino Citizens Sensible Growth Initiative” (“CCSGI”), but focuses on the Vallco Shopping District Special Area, as the Initiative analyzed in this Report does not propose any changes beyond this special area.

A primary difference between this Initiative and the CCSGI Initiative is the inclusion of a detailed Specific Plan and subsequent provision of the Vallco Town Center Specific Plan Environmental Assessment (EA).<sup>10</sup> Following the

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<sup>8</sup> In September 2015, the owner of the majority of the property, Sand Hill Property Company (Sand Hill), submitted an application for development of the property, referred to as The Hills at Vallco project. Based on this application, a draft project description was prepared to assist in the preparation of an Environmental Impact Report (EIR) in December 2015. The City ceased work on that EIR after the project applicant asked the City to suspend that work. These documents were used to develop a variation on the Adopted General Plan scenario without the Initiative, which assumes a Conditional Use Permit is granted.

<sup>9</sup> The increase in housing units in the Vallco Shopping District Special Area would consist of available units reallocated from elsewhere in the City, thus yielding no change to the citywide total. For further information on these scenarios, refer to Section II-E.

<sup>10</sup> Kimley Horn. *Vallco Town Center Specific Plan Environmental Assessment*. April 2016. The document states that it was “[p]aid for by Cupertino Neighbors, Educators, and the Cupertino Chamber of Commerce for the Sensible and Sustainable Revitalization of Vallco, with major funding by Sand Hill Property Company and Vallco Property Owner LLC.” (EA, p. 3.) For purposes of this Report, the proponents’ EA will be referred to simply as “EA”, while recognizing major funding is provided by the developer and property owner.

Initiative sponsors' Notice of Intent to Circulate Petition for the Initiative, Steve Lynch, a representative of Sand Hill Property Company submitted the EA. The purpose stated in the EA is to disclose the potential environmental effects associated with implementation of the Specific Plan. Given the time constraints for completing the 9212 Report, the length of the EA, and the date the EA was submitted to the City, it was not possible for the City or its consultants to complete an adequate technical peer review of the entire EA. The environmental analysis of the Initiative (Section III.D) is primarily qualitative and based on available information and the professional judgment of the City's environmental consultant. The environmental analysis does not include a technical peer review of the entire EA (nor is it an analysis under CEQA).

## 1. Land Use Definitions

As variations in allowable land uses are a critical component of the analysis, potential new development by land use type is defined below (based on those used in the City's existing General Plan), along with a brief description of potential measures of impact used in this Report:

- **Residential**– includes single-family detached or attached homes (such as townhomes), multi-family units in condominium or apartment complexes, and other types of housing units. The number of housing units is used to estimate the projected number of residents, school children, and resident users of City services and infrastructure such as public safety, parks, libraries and utilities.
- **Commercial**– includes square feet of retail development, which is used to estimate retail spending and sales tax revenue that the City may collect, depending on whether or not the goods/services are taxable. It is also used to evaluate the levels of and types of City services and infrastructure that will be needed to serve this type of development.
- **Office**- includes square feet of office development, which is used to estimate the number of jobs in the City, the amount of retail spending from office workers who shop in Cupertino, and the levels and types of City services and infrastructure that will be needed to serve this type of development.
- **Hotel**- includes hotel rooms and other lodging establishments, which is used to estimate transient occupancy tax revenues that the City collects from visitors, as well as the associated level of City services and infrastructure.

## 2. Definitions of Development and General Plan Designations

The General Plan describes the various stages of development in the City, and this Report uses similar definitions in order to analyze how much development would be able to be built as follows:

- **Current Built/Approved** includes both actually built projects as of the General Plan's adoption on December 10, 2014 and those projects that were approved but not yet built as of that date.<sup>11</sup> As only 6 net new housing units were approved during 2015, Current Built/Approved is considered to be approximately equivalent to current conditions on the date this Report was completed.
- **General Plan Buildout** is defined as maximum allowable buildout in 2040 under the adopted General Plan.

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<sup>11</sup> The term Current Built/Approved is used in this Report to be more descriptive of what is included in the "Current Built" column in Table LU-1 of the General Plan. To evaluate potential fiscal revenues to the City and other effects, this Report also evaluates the current amount of existing development that is already built in Cupertino, as further described in later sections of this Report.

- **Development Buildout** is defined as maximum allowable development that could be built under each scenario in 2040.
- **Net Increase in Potential Development** is defined as the difference between Current Built/Approved and Development Buildout.
- **Projects Approved but Not Built** is defined as approved development, as of December 10, 2014, under construction or still in the development stage that does not yet generate fiscal revenues to the City or impact its infrastructure or services.
- **Special Areas** are the nine areas located along major mixed-use corridors that have been identified as key areas to focus future development in the General Plan. The Vallco Shopping District Special Area is one of these nine areas.<sup>12</sup>
- **Vallco Shopping District Special Area** is the name used in the General Plan for this special area, while the Initiative calls it the **Vallco Town Center Specific Plan area**. This report uses these terms interchangeably and also uses the shortened term: **Vallco area**.

### 3. Maximum Allowable Development Citywide

Table II.1 compares the maximum allowable development citywide at buildout for the **Adopted General Plan** and the **General Plan With the Initiative** and shows the potential increase or decrease in allowable development. As it indicates, the Initiative would have no impact upon the maximum allowable amount of residential, commercial, office or hotel development that could be built citywide.

**Table II.1**  
**Comparison of Citywide Development Buildout in 2040**  
**by Land Use**

Land Use	Citywide Development Buildout in 2040 <sup>a</sup>		
	Adopted General Plan	General Plan with Initiative	Increase / (Decrease) with Initiative
<b>Residential (units)</b>	23,294	23,294	No Change
<b>Commercial (sq. ft.)</b>	4,430,982	4,430,982	No Change
<b>Office (sq. ft.)</b>	11,470,005	11,470,005	No Change
<b>Hotel (rooms)</b>	1,429	1,429	No Change
a. As described above, this table presents the maximum allowable buildout under each scenario, which is defined to include existing development "on the ground," projects approved as of December 10, 2014, and potentially allowable future development through 2040. This definition is used consistently throughout this Report.			

<sup>12</sup> For further description of the designated Special Areas and Neighborhoods, please refer to Chapter 2 of the Adopted General Plan.

#### 4. Resident and Employee Population Citywide

The amount of future development by land use will affect the number of future residents and employees (jobs) in the City, which are key factors to consider in evaluating potential impacts on the City's infrastructure and environment. Table II.2 shows that there is no change in the amount of citywide resident and employee population with the Initiative, as there is no change in development buildout citywide.<sup>13</sup> However, while citywide population would not change, there could be changes to the number of residents and employees in the Vallco Shopping District Special Area and in other areas of the City, as further described below.

**Table II.2  
Citywide Resident and Employee Population  
at Development Buildout in 2040**

Future Residents and Employees at Development Buildout	Citywide Resident and Employee Population		
	Adopted General Plan	General Plan with Initiative	Increase/ (Decrease) with Initiative
<b>Population<sup>a</sup></b>	<b>68,484</b>	<b>68,484</b>	No change
<b>Jobs<sup>b</sup></b>			
Office	38,233	38,233	No change
Commercial	9,847	9,847	No change
Hotel	429	429	No change
<b>Total Employees</b>	<b>48,509</b>	<b>48,509</b>	No change
Notes: <sup>a</sup> Assumes 2.94 persons per household (City of Cupertino. <i>General Plan Amendment, Housing Element Update and Associated Rezoning EIR</i> . June 18, 2014. Table 4.11-3, footnote b.). <sup>b</sup> Assumes 1 job/300 square feet (sq.ft.) of office; 1 job/450 sq.ft. of commercial/retail; 0.3 jobs/hotel room (City of Cupertino. <i>General Plan Amendment, Housing Element Update and Associated Rezoning EIR</i> . June 18, 2014. Table 4.11-3, footnote c.)			

<sup>13</sup> Factors for resident and employee populations are the same as those used in the General Plan Environmental Impact Report, Table 4.11-3, as follows: 2.94 persons per housing unit, 1 employee per 450 square feet of retail, 1 employee per 300 square feet of office and 0.3 employees per lodging room.



## II.D. Vallco Shopping District Special Area

As described above, the Initiative adopts a Specific Plan for the Vallco Shopping District Special Area (also referred to as Vallco area). This analysis, thus, focuses on the impacts at Vallco. The Vallco Shopping District Special Area is described in the General Plan as follows:

*The Vallco Shopping District Special Area encompasses Cupertino's most significant commercial center, formerly known as the Vallco Fashion Park. This Special Area is located between Interstate 280 and Stevens Creek Boulevard in the eastern part of the city. The North Blaney neighborhood, an established single-family area, is adjacent on the west side of the Vallco Shopping District. Wolfe Road bisects the area in a north-south direction, and divides Vallco Shopping District into distinct subareas: Vallco Shopping District Gateway West and Vallco Shopping District Gateway East. The Vallco Shopping District is identified as a separate Special Area given its prominence as a regional commercial destination and its importance to future planning/ redevelopment efforts expected over the life of the General Plan.<sup>14</sup>*

This report evaluates potential development in the Vallco area under the Adopted General Plan without the Initiative and under the General Plan as amended by the Initiative. Four development scenarios are evaluated, two without and two with the Initiative, to illustrate the potential range of allowable development, as further described below.

### 1. Allowable Development at Vallco Without the Initiative

Under the Adopted General Plan without the Initiative, the General Plan envisions Vallco Shopping District as a:

*...major regional and community destination. The City envisions this area as a new mixed-use "town center" and gateway for Cupertino. It will include an interconnected street grid network of bicycle and pedestrian-friendly streets, more pedestrian-oriented buildings with active uses lining Stevens Creek Boulevard and Wolfe Road, and publicly-accessible parks and plazas that support the pedestrian-oriented feel of the revitalized area. New development in the Vallco Shopping District should be required to provide buffers between adjacent single-family neighborhoods in the form of boundary walls, setbacks, landscaping or building transitions.<sup>15</sup>*

The land use and community design policies in the General Plan are focused on achieving the:

*...complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use "town center" that is a focal point for regional visitors and the community. This new Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley.<sup>16</sup>*

Policy LU-19.1 of the General Plan also requires the creation of a Specific Plan:

*...prior to any development on the site that lays out the land uses, design standards and guidelines, and infrastructure improvements required.<sup>17</sup>*

The General Plan land use policies require that the Specific Plan must be based on a set of strategies that include redevelopment of the site by a master developer, parcel assembly and a plan for the complete redevelopment of the

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<sup>14</sup> General Plan, Chapter 2, Land Use and Community Design Element, Vallco Shopping District, Context.

<sup>15</sup> General Plan, Chapter 2, Land Use and Community Design Element, Vallco Shopping District, Vision.

<sup>16</sup> General Plan, Chapter 3, Land Use and Community Design Element, Vallco Shopping District Special Area.

<sup>17</sup> General Plan, Chapter 3, Land Use and Community Design Element, Vallco Shopping District Special Area, LU-19.1.

site prior to adding residential and office uses, and it discourages parcelization in order to preserve the site for future redevelopment.

#### **a. Adopted General Plan Scenario (389 Units)**

The Adopted General Plan without the Initiative encourages a mix of land uses consisting of:<sup>18</sup>

- High-performing retail, restaurant and entertainment uses, which must be maintained at a minimum of 600,000 square feet with no more than 30 percent entertainment uses. (Table LU-1 of the General Plan indicates that the existing 1.2 million square feet of retail at Vallco is maintained, as no Specific Plan for Vallco had been adopted prior to the adoption of the General Plan update.)
- Business class hotel with conference center and active uses.
- Residential on upper floors above ground-floor retail that encourages a mix of units for young professionals, couples and/or active seniors who like to live in an active “town center” environment.
- High-quality office space (up to 2 million square feet) arranged in a pedestrian-oriented street grid with active uses on the ground floor, publicly accessible streets and plazas/green space.

The **Adopted General Plan** scenario assumes the development allocation to the Vallco Shopping District Special Area at Buildout that is presented in Table LU-1 of the General Plan,<sup>19</sup> which includes 1,207,744 square feet of commercial (which reflects the size of the existing Vallco Mall), 2 million square feet of office, 339 hotel rooms and 389 residential units. While the City does allow mixed-use sites with residential zoning to request approval of additional units with a CUP, this scenario assumes a residential allocation of 389 units as allocated per the Housing Element to the Vallco site.

#### **b. Adopted General Plan Assuming Sand Hill Proposal Scenario (800 Units)**

The policies contained in the General Plan for the Vallco area are, by definition, general. A variety of projects could be developed in the Vallco area consistent with these policies. Thus, to provide a more specific review of the potential effects of the Initiative, this Report also considers a variation to the **Adopted General Plan** scenario to illustrate what could have been allowed under the Adopted General Plan without the Initiative under a master development proposal. Prior to the Initiative process, the owner of the majority of the property, Sand Hill Property Company (Sand Hill), had submitted an application to the City in September 2015 for the redevelopment of the property as the master developer. This Report uses the Sand Hill proposal as one example of the type of development permitted under the General Plan without the Initiative. This scenario is referred to as **Adopted General Plan Assuming Sand Hill Proposal**. While similar to what is proposed under the Initiative, this scenario differs in a few specific ways as further described under Section II.D.3 below. The City used this same scenario in the 9212 Report that analyzed the impacts of the CCGSI Initiative. As a result, the use of this scenario here may also assist readers of both Reports in determining the comparative impacts of the two Initiatives.

The assumptions for the **Adopted General Plan Assuming Sand Hill Proposal** scenario are derived from Sand Hill's September 2015 application, referred to as The Hills at Vallco project, and the draft December 2015

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<sup>18</sup> General Plan, Chapter 3, Land Use and Community Design Element, Vallco Shopping District Special Area, Strategy LU-19.1.4.

<sup>19</sup> General Plan, Chapter 3, Land Use and Community Design Element, Policy LU-1 and Table LU-1.

project description prepared for the project EIR.<sup>20</sup> This redevelopment proposal would demolish the existing buildings (including the shopping mall, fitness gym and restaurant buildings) and the onsite parking facilities. It would remove the existing pattern of internal driveways and construct a new mixed-use “Town Center” with the following land uses:

- 800 residential units<sup>22</sup>
- Up to 650,000 square feet of commercial uses (including retail, restaurant, event, entertainment, and fitness uses)
- 2.0 million square feet of office uses
- Approximately 40,000 square feet of civic/community space

The 2015 Sand Hill proposal also includes a number of additional features and community benefits that differ from the City’s basic requirements, as briefly summarized here:

- Affordable Housing – includes 10 percent (80 of 800) below-market rate residential units on site, rather than paying the minimum mandatory fee.
- Green Roof – provides about 30 acres of open/green space on the roof.
- Sustainability – meets LEED Platinum standards, which is two levels higher than City requirement of LEED Silver.
- Transit, Bike and Pedestrian improvements – commits to a funding variety of improvements including a complementary community shuttle, enhanced bus transit stops, new and restriped bicycle lanes and improved pedestrian bridges.
- Transportation – commits to construct a new signalized intersection on North Wolfe Road between Vallco Parkway and the I-280 interchange; modify the existing tunnel under North Wolfe Road and spearhead the widening and rebuilding of Wolfe Road/I-280, to include pedestrian and bicycle connectivity.
- Schools – In addition to paying the maximum school impact fees allowed under state law, commits to build a new 700-student elementary school, upgrade classroom and playing field facilities at an existing elementary school, provide \$1 million for the 8<sup>th</sup> grade Yosemite Science Program, and build a 10,000 square foot high school “innovation lab” and classroom facility on the project site.
- Infrastructure – Extends reclaimed water line from Homestead Road, down Wolfe Road to Vallco Parkway.

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<sup>20</sup> The Hills at Vallco was a development project proposed on the southern 50 acres of the Vallco Shopping District. Development of the northern seven acres of the Specific Plan area is not proposed as part of The Hills at Vallco project. The specifics of the project are based on the December 2015 The Hills at Vallco Project Description (available at this URL: <http://www.cupertino.org/index.aspx?page=1365>) and the Draft Project Description from City staff dated December 8, 2015 and shared with the Project Applicant, which is attached as part of Appendix 6.

<sup>21</sup> September 2015 The Hills at Vallco Project Description, Building Information

<sup>22</sup> The Sand Hill proposal would include 411 more residential units than allocated to the Vallco Shopping District area in Table LU-1 of the General Plan Land Use Element and shown in the General Plan Housing Element. However, the City’s General Plan has additional housing units available in other Planning Areas that are not allocated to specific Housing Element sites. While the General Plan Housing Element allocation for the site is 389 units, the General Plan EIR analyzed the development of up to 800 residential dwelling units on the site, and there is adequate allocation in the General Plan to consider 411 additional units. The proposal also indicated that the 800 units would include 40 senior apartments and 80 onsite below market rate units.

- Community Facilities – Provides for a 20,000-square-foot community banquet hall on the green roof and 5,000 square foot civic meeting space located in the western portion of the site.

The Sand Hill developer proposed to include these community benefits in a “development agreement” entered by the developer and the City. A development agreement is a procedure authorized by State law that allows a developer to propose through the development process—and a city to agree to accept—certain types of economic and other benefits that the city could not otherwise legally require a property owner or developer to provide. The proposed Initiative includes many of these same features, as further discussed in Section III.A.

## 2. Allowable Development at Vallco With the Initiative

The proposed Initiative would change the General Plan and adopt the Vallco Town Center Specific Plan to provide for the following mix of uses, as specifically described in the Specific Plan that is included as Exhibit C of the Initiative:

- 389 residential units, which may be increased to 800 through a Conditional Use Permit (CUP), including a senior housing component that is a minimum of 80 units or 20 percent of total units.
- 640,000 square feet of commercial space (regional retail, entertainment, and personal service).
- 2,000,000 square feet of office space (with a minimum of 100,000 square feet of incubator space).
- 191 hotel rooms (in addition to a previously approved hotel).
- 50,000 square feet minimum of public/civic space (increased to 100,000 if office space is correspondingly reduced).
- Parks and open space, consisting of two ground-level Town Squares totaling at least 3 acres in area and a 30-acre “green roof,” with a community park, nature area and minimum of 3.8 miles of trails.

All of the residential and non-residential land uses and development buildout described in the proposed Vallco Town Center Specific Plan are currently allowable under the City’s adopted General Plan, provided that the City Council first approves a specific plan for the area allowing this specific mix of uses and a conditional use permit to increase the residential component from 389 to 800 units. Moreover, the Specific Plan proposed in the Initiative would not change maximum allowable buildout citywide. However, the Initiative would specify the precise mix of land uses and amount of development that could be built in the Vallco area, and it would provide specific building and development standards. As detailed in Chapter III, it would also limit the City Council’s discretion regarding the specific mix and layout of uses and the applicable building standards.

While the amount of commercial space proposed by the Initiative represents a significant reduction in the maximum square feet allowed under the General Plan, the proposed amount of commercial space with the Initiative is consistent with the General Plan. (The General Plan allows for as little as 600,000 square feet of commercial use at Vallco, and allows the reallocation of the remaining square feet elsewhere in the City.)

As the amount of residential development that could occur at Vallco with the Initiative would vary depending on whether or not a CUP is adopted, two variations on the General Plan With Initiative scenario are analyzed.

The proposed Initiative also requires the following community benefits and environmental design features (discussed in greater detail in Chapter III):

- Civic– build the town squares, green roof, community park, community facilities, other public amenities and a broad range of sustainability features including extension of recycled water infrastructure.
- Education– provide in-kind and monetary contributions for educational space, buildings and facilities, valued at no less than \$40 million, for the Fremont Unified High School District and Cupertino Union School District, in addition to paying school fees,

- **Housing**– include a minimum of 80 units (or at least 20 percent) of senior housing and encourage the provision of the on-site provision of affordable housing units rather than paying the City’s in-lieu fee.
- **Land Use and City Revenue**– maintain operation of the existing movie theater during construction, deliver 25 percent of the retail component in the first phase, provide a minimum of 100,000 square feet of incubator work space with preference for multiple start ups and emerging companies.
- **Mobility and Connectivity**– provide \$6 million to the City for a bike/pedestrian trail along I-280, construct or fund additional improvements to pedestrian and bike trails throughout the Plan Area and a fair share financial contribution of \$30 million for freeway infrastructure, along with other significant transit and circulation improvements.
- **Environmental Design Features**– incorporate and implement improvements to mitigate potentially significant environmental impacts.

#### **a. Amended General Plan and Specific Plan (389 Units)**

The first variation on the **General Plan With Initiative** scenario assumes that a CUP is not sought and approved, and that a total of 389 residential units would be built. All of the other proposed uses are assumed to be the same. This scenario is referred to as the **Amended General Plan and Specific Plan (389 Units)**.

#### **b. Amended General Plan and Specific Plan (800 Units)**

The Initiative would facilitate the granting of a CUP for the Vallco area to increase residential units up to the maximum allowed under the General Plan, as long as there are no significant and unavoidable impacts associated with that increase beyond those identified in the General Plan Environmental Impact Report (General Plan EIR) certified by the City Council in 2014. Under the General Plan’s residential allocation system, an additional approximately 410 residential units will likely be available for development in the Vallco area with a CUP (refer to Chapter III, Section A, for further discussion on this potential reallocation from other areas of the City). In addition, the General Plan EIR analyzed the impacts of up to 800 residential units at the Vallco site. As a result, the Initiative would facilitate the development of up to 800 residential units in the Vallco area with a CUP. The second variation on the **General Plan With Initiative** scenario assumes that a CUP is granted, and this scenario is referred to as **Amended General Plan and Specific Plan (800 Units)**.

### **3. Comparison of Vallco Development Scenarios Without and With Initiative**

As described above, this Report defines and then compares potential future development with and without the Initiative, and it presents two variations on each of these scenarios that reflect alternative buildout scenarios at Vallco. Table II.3 summarizes allowable development at Vallco under these scenarios. As the number of residential units that could be built in the Vallco area depends on whether or not a CUP is adopted, this table indicates whether or not a CUP is assumed.

**Table II.3  
Comparison of Development Buildout at Vallco by Scenario**

<b>Scenarios</b>	<b>Vallco Shopping District Special Area</b>			
<b>Initiative Scenario</b>	<b>Without Initiative</b>		<b>With Initiative</b>	
<b>Development Scenario</b>	<b>Adopted General Plan (389 Units)</b>	<b>Adopted General Plan Assuming Sand Hill Proposal <sup>a</sup> (800 Units)</b>	<b>Amended General Plan and Specific Plan (389 units)</b>	<b>Amended General Plan and Specific Plan (800 units) <sup>b</sup></b>
<b>CUP Scenario</b>	<b>Without CUP</b>	<b>With CUP</b>	<b>Without CUP</b>	<b>With CUP</b>
<b>Residential (units) <sup>b</sup></b>	389	800	389	800
<b>Office (sq. ft.)</b>	2,000,000	2,000,000	2,000,000	2,000,000
<b>Commercial (sq. ft.)</b>	1,200,000 <sup>c</sup>	650,000 <sup>c</sup>	640,000 <sup>d</sup>	640,000 <sup>d</sup>
<b>Hotel (rooms) <sup>e</sup></b>	339	339	339	339
<p>a. To provide a more complete portrayal of the range of potential impacts that could occur under the existing General Plan, this Report also considers the impacts associated with the Sand Hill development application for the Vallco site that was submitted to the City in September 2015. See Chapter III of this Report for a fuller description of the assumptions and rationale for analyzing this variation.</p> <p>b. The Initiative would limit the City's ability to deny a CUP for additional residential units because it eliminates one of the required CUP findings, provided no significant and unavoidable impacts are associated with that increase beyond those identified in the General Plan Environmental Impact Report (General Plan EIR) certified by the City Council in 2014.</p> <p>c. The allowable number of housing units citywide would remain the same because the City's General Plan has additional housing units available in other Planning Areas that are not allocated to specific Housing Element sites. The adopted General Plan EIR analyzed the development of up to 800 residential dwelling units on Vallco.</p> <p>d. Pursuant to the existing General Plan, a minimum of 600,000 commercial sq. ft. must be retained onsite.</p> <p>e. While the Initiative would prescribe changes at the Specific Plan level, the changes are consistent with the adopted General Plan. The General Plan allows a reduction of commercial square feet to a minimum of 600,000 square feet, and the reallocation of the remaining square feet (difference between proposed square feet and maximum allowable buildout of 1,207,744 at Vallco) within the Vallco Shopping District or elsewhere in the City. (Numbers shown above are rounded to nearest 10,000 square feet for ease of discussion and analysis.)</p> <p>f. The City has already approved 148 rooms for the Hyatt House Hotel. No current development plans have been submitted for the remaining 191 rooms.</p>				

As this table demonstrates, there is very little difference in allowable buildout without or with the Initiative, taking into account the variation in residential units without and with the CUP as well as the number of square feet of commercial space to be developed at Vallco.

## **II.E. Summary of Scenarios Analyzed in this Report**

As described above, this Report evaluates the effects and impacts of the Initiative by comparing what would occur under the Adopted General Plan without the Initiative and what would occur under the General Plan with the Initiative. Additionally it also evaluates two variations on each of these scenarios, with a CUP that would allow for as many as 800 units at Vallco and without a CUP. These variations are considered as scenarios in their own right for a total of four scenarios as depicted in Table II.4. For the purpose of this Report, the impacts of proposed community benefits, further described in Chapter III, are included in analyses of the Initiative.

The next chapter of this report (Chapter III) describes the potential effects and impacts of the Initiative, informed by an evaluation of potential allowable development buildout under each of these development scenarios. Table II.4 summarizes the land use and development buildout assumptions that are associated with each scenario, as described in the prior sections of this chapter.

**Table II.4  
Comparison of Citywide Development Buildout By Scenario**

<b>Scenarios</b>	<b>Buildout Citywide and in Vallco Area</b>			
<b>Initiative Scenario</b>	<b>Without Initiative</b>		<b>With Initiative</b>	
<b>Development Scenario</b>	<b>Adopted General Plan (389 Units)</b>	<b>Adopted General Plan Assuming Sand Hill Proposal (800 Units)</b>	<b>Amended General Plan and Specific Plan (389 Units)</b>	<b>Amended General Plan and Specific Plan (800 Units)<sup>a</sup></b>
<b>Residential (Units)</b>				
<b>Citywide<sup>b</sup></b>	<b>23,294</b>	<b>23,294</b>	<b>23,294</b>	<b>23,294</b>
Vallco (Allowable)	389	800	389	800
CUP Variation	(Without CUP)	(With CUP)	(Without CUP)	(With CUP)
Senior Apartments	Unspecified	40	80	160
Onsite Affordable <sup>c</sup>	Per City Policy	80	Per City Policy	Per City Policy
Other Areas	22,905	22,494	22,905	22,494
<b>Non-Residential</b>				
<b>Office (sq.ft.)</b>				
<b>Citywide<sup>d</sup></b>	<b>11,470,005</b>	<b>11,470,005</b>	<b>11,470,005</b>	<b>11,470,005</b>
Vallco (Allowable)	2,000,000	2,000,000	2,000,000	2,000,000
Other Areas	9,470,005	9,470,005	9,470,005	9,470,005
<b>Commercial/Retail (sq.ft.)</b>				
<b>Citywide</b>	<b>4,430,982</b>	<b>4,430,982</b>	<b>4,430,982</b>	<b>4,430,982</b>
Vallco (Allowable) <sup>d, e</sup>	1,200,000	650,000	640,000	640,000
Vallco (Assumed Occupancy)	1,104,000	598,000	589,000	589,000
Other Areas	3,230,982	3,780,982	3,790,982	3,790,982
<b>Hotel (rooms)<sup>f</sup></b>	<b>1,429</b>	<b>1,429</b>	<b>1,429</b>	<b>1,429</b>

- a. The Initiative would limit the City's ability to deny a CUP for additional residential units because it eliminates one of the required CUP findings, provided no significant and unavoidable impacts are associated with that increase beyond those identified in the General Plan Environmental Impact Report (EIR) certified by the City Council in 2014.
- b. The allowable number of housing units citywide would remain the same because the City's General Plan has additional housing units available in other Planning Areas that are not allocated to specific Housing Element sites. The adopted General Plan EIR analyzed the development of up to 800 residential dwelling units on Vallco.
- c. For purposes of the assessed valuation assumptions for the fiscal analysis presented in Chapter III, City policy is assumed to potentially result in approximately 10 percent of total units being affordable as BMR units.
- d. The Vallco area has an allocation of 2 million square feet in the Adopted General Plan, and this would not change with the Initiative. The Initiative does, however, propose a minimum of 100,000 sq. ft. for incubator space.
- e. Per the existing General Plan, a minimum of 600,000 commercial sq. ft. must be retained onsite.
- f. The Vallco area has an allocation of 339 hotel rooms, of which the City has already approved 148 rooms for the Hyatt House Hotel. No current development plans have been submitted for the remaining 191 rooms.



### III. Analysis

This chapter of the Report presents the analysis of the Initiative's potential effects and impacts, pursuant to Elections Code section 9212. The analysis is presented in six sections that together cover all of the section 9212 subjects that the City Council directed staff to analyze:

- **Land Use and Housing**– Effect on the internal consistency of the City's General and Specific Plans, including the Housing Element, consistency between planning and zoning, and any limitations on city actions,<sup>23</sup> as well as its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs, per section 9212 (b)(2 & 3).
- **Development Patterns**– Impact on agricultural lands, uses of vacant parcels of land, and developed areas designated for revitalization and existing business districts, per section 9212 (b)(6 & 7).
- **Economic Development**–Impact on the community's ability to attract and retain business and employment, per section 9212 (b)(5).
- **Infrastructure and Environmental**– Impact on transportation (traffic congestion), schools, parks and open space, other public services, and utility infrastructure, per section 9212 (b)(7), as well as other environmental effects.
- **Infrastructure Funding**– Impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space, per section 9212 (b)(4).
- **Fiscal**– Impact on the City's fiscal conditions, per section 9212 (b)(1).

Each section begins with a brief overview of the key components of the analysis and describes the potential effects and/or impacts of the Initiative in specific ways.

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<sup>23</sup> Elections Code section 9212 specifically authorizes reports to address "limitations on city actions under Section 65008 of the Government Code and Chapters 4.2. (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code."

## III.A. Land Use, Housing, and Land Use Approval Process

The principal effect of the Initiative will be to adopt a Specific Plan for the complete redevelopment of the Vallco Town Center. The Specific Plan contains standards and guidelines for redevelopment of the Vallco area, as detailed below. While these standards and guidelines are consistent with the existing General Plan goals and policies for the area, the adoption of the Specific Plan will more precisely establish what can and cannot be developed in the Vallco area. As a result, the Initiative's effects on land use and housing are considered first in this Chapter of the Report because they provide the context for the rest of the analyses in the Report.

The Initiative also modifies the standard City approval process for development in the area governed by the Specific Plan. The Initiative refers to the "land use designations, regulations, standards, and community benefits" that are set forth in the Specific Plan as the "Initial Entitlement Actions" for the Vallco area. The Initiative states that these actions "entitle" the owner(s) of the property within the Vallco area "the right to develop the property in accordance with the provisions of the Specific Plan and other related approvals."<sup>24</sup>

Nevertheless, the Initiative also recognizes that before any development in the Vallco area can occur, the developer will need to obtain other approvals from the City including, most importantly, a Master Site Development Permit (MSDP) and an Architectural and Site Review (ASR). At the same time, the Initiative contains several provisions limiting the City's ability to deny an application for an MSDP or ASR. Most importantly, as detailed below in Section III.A.4 of this Report, the Initiative requires that the City *must* approve the MSDP, ASR and any other subsequent approvals requested for the Project so long as they "substantially conform" with the Specific Plan. This provision is a limitation on the City's power to approve or reject a project under the existing General Plan.

Accordingly, in addition to analyzing the land use and housing impacts of the Initiative, this portion of this Report addresses the Initiative's effect on the City Council's discretion to disapprove or modify development proposals within the Vallco area. It also evaluates the Initiative's effect on the scope of potential future environmental review, and analyzes how and whether the City can enforce the "community benefits" and "environmental design features" required by the Initiative. Finally, this analysis discusses the Initiative's requirement that the voters must approve any changes to the Specific Plan or other legislation adopted by the Initiative.

### 1. Summary of Redevelopment Envisioned under the Specific Plan

This section briefly summarizes the mix of land uses and specific development criteria that are included in the Specific Plan. In order to redevelop the Vallco area, the Specific Plan would enable the existing mall to be demolished and redeveloped with a new "Town Center" containing the following uses:

- **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).
  - As explained below (Section III.A.3), the maximum number of units permitted under the General Plan with a CUP is approximately 800 units.
  - A minimum of 80 residential units, or 20 percent of the total number of residential units, whichever is greater, must be senior apartments.
- **Office**— A maximum of 2,000,000 square feet of office space.

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<sup>24</sup> See Initiative at C-198, § 9.3.1.

- Of which at least 100,000 square feet 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 square feet of commercial
  - Of which, at least 600,000 square feet must be “community and regional retail, entertainment, and personal services” and up to 40,000 square feet may be “fitness” (e.g., a fitness center).
  - No more than 30 percent of commercial (retail) space can be entertainment uses.
- **Hotel**– 339 hotel rooms, of which 148 rooms have already been approved by the City.
  - While the Specific Plan permits a 191-room hotel on Block 14 in addition to the 148 rooms that the City has already approved, parking is also a permitted use on Block 14.
- **Public/Civic**– At least 50,000 square feet public/civic space, which may be increased up to 100,000 square feet 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 green roof that will contain a community park and nature area accessible to the public. (This rooftop park must also include at least 3.8 miles of public trails.)
- **Parking**– Approximately 9,060 parking spaces located below grade, above grade and at street level.
- **Services, Facility Management, & Loading**– 120,000 square feet dedicated to services, facility management, and loading, including central plants, loading docks, and maintenance facilities.

The Specific Plan contains a conceptual land use plan that divides the Vallco area into five land use “districts,” describes predominant land uses envisioned in each, and defines permitted, conditional, and excluded uses. Table 2-2 on page C-78 of the Initiative lists the permitted, conditional and excluded uses for each of these districts.

Figure 2-20 of the Specific Plan establishes building height limits for specific areas, and Figures 2-18 and 2-19 show 20 to 30 foot setbacks from public roadways and existing residential areas. The Specific Plan also contains numerous design guidelines related to circulation, landscaping, building design, signage, and etcetera.

In addition to the uses, regulations, and guidelines, listed above, the Specific Plan also requires a number of “community benefits” and “environmental design features”:

- Onsite affordable units are strongly encouraged, and to the extent permitted by law, CUSD and FUHSD teachers should be given preference.
- Community facilities, including 20,000-square foot of banquet/event hall, community hub building (6,000 square feet), a 300-seat amphitheater; and a playground, which may be located on the green roof.
- Community benefits for local schools “valued in the aggregate at no less than 10 times the legally-required amount . . .,” or \$40 million. The Plan provides some examples of the types of facilities or other programs that are “strongly encouraged” to satisfy this requirement, but notes that the relevant school districts must be consulted about their needs before final plans are approved.
- \$6 million donation to the City for a bike/pedestrian trail along I-280 and the construction and/or funding of additional improvements to pedestrian and bike trail(s) throughout the Plan Area, including along the entirety of the existing Perimeter Road.
- Fair share financial contribution of \$30 million for freeway infrastructure; specifically, improving the North Wolfe Road and I-280 overpass and interchange and future I-280 freeway segment.

- 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.”

The impacts and enforceability of these provisions, along with the process for implementing them, are discussed below.

## 2. Land Use Impacts

### a. General Plan Consistency

California law requires every city and county in the State to adopt a general plan with policies and objectives to guide land use and development. The law requires that the general plan be comprehensive, forward-looking, and internally consistent, and it also requires that all zoning regulations, capital planning, and individual land use decisions be consistent with that general plan.

As described earlier, the City Council updated the City’s General Plan in 2014 to establish the policies and regulatory framework necessary to build a great community in alignment with the City’s vision for how planning and development should occur through buildout in 2040. The General Plan was further amended in 2015. The General Plan consists of nine chapters, and Chapter 4 of the General Plan is the City’s Housing Element. Some General Plan policies are quite specific, establishing minimum parcel sizes, building heights and allowable land uses within the various land use designations, while others are more general.<sup>25</sup>

The General Plan also contains specific policies for nine designated Special Areas, one of which is the Vallco Shopping District, which is the primary focus of the Initiative.<sup>26</sup> The Special Areas, which comprise approximately one quarter of the City’s land area, are located along the City’s four main thoroughfares. According to the General Plan, the Special Areas “represent key areas within Cupertino where future development and reinvestment will be focused.”

One of the key legal aspects that must be analyzed with any proposed initiative that amends the General Plan is how it affects both the General Plan’s “internal consistency” and the “vertical consistency” between the General Plan (as amended by the Initiative) and the City’s Zoning Ordinance and subordinate plans. Each of these terms is briefly described to establish context for this analysis:

- Internal Consistency– State law requires that the General Plan, which functions as the “constitution” for the City’s land use decisions, must comprise an integrated, internally consistent and compatible statement of policies.<sup>27</sup> This is known as the internal (or horizontal) consistency requirement. As the California Supreme Court has explained, it is unlawful for an initiative to cause a city’s general plan to become internally inconsistent or otherwise defective.
- Vertical Consistency– State law also requires that the City’s Zoning Ordinance, which is contained in Title 19 of the Cupertino Municipal Code, and any specific plan must be consistent with its General Plan. This requirement is referred to as “vertical” consistency. “An action, program, or project is consistent with the

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<sup>25</sup> Please refer to the City’s website for further information on the General Plan: <http://www.cupertino.org/index.aspx?page=1275>.

<sup>26</sup> These “Special Areas” are described in Chapter 2 of the General Plan and depicted in the General Plan’s Community Form Diagram (Figure LU-1).

<sup>27</sup> Gov’t Code § 65300.5.

general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.”<sup>28</sup>

The Initiative will have no adverse effect on the General Plan’s internal or vertical consistency, as further described below. The Initiative proposes amendments to two elements (or chapters) of the General Plan, as well as to the General Plan’s Appendix A and Land Use Map. These amendments are summarized in Appendix 2 to this Report. These amendments would not change the General Plan’s overall vision for the “complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use town center or the overall goal for development within the Vallco Shopping District, which is to “create a distinct and memorable mixed-use ‘Town Center’ that is a regional destination and a focal point for the community.”<sup>29</sup>

The Initiative, however, would amend 7 of the 14 specific “strategies” for the Vallco area that are set forth in the existing General Plan. As described in Appendix 2, these amendments do the following:

- Reduce the amount of flexibility regarding the types of land uses that may be developed in the Vallco area (e.g., by “requiring” rather than “permitting” certain uses, including hotel, residential, and office)
- Add a new permitted use called “amenities”
- Add additional requirements for open space, senior apartments, and transportation funding.
- Make it easier to subdivide the Vallco area (also referred to as “parcelization”), provided there are “adequate protective measures to provide incentives and guidelines for cooperation among owners.”

The Initiative also amends the Infrastructure Element of the General Plan to require any project that “fully redevelops the existing mall” to extend the recycled water line to the area and maximize use of recycled water. Finally, the Initiative adds a new definition (“Vallco Town Center Specific Plan”) and amends the General Plan Land Use Map to reflect a change in the designation from “Commercial/Office/Residential” to “Vallco Town Center Specific Plan.” None of these changes creates any internal inconsistency within the General Plan.

As contemplated by the General Plan, the Initiative adopts a “Specific Plan” for the Vallco area. As with any Specific Plan, the Specific Plan controls development within the area. However, the Municipal Code will still govern any issues not addressed in the Specific Plan, provided that doing so would not frustrate the intent and purposes of the Plan. As such, the Specific Plan does not create any vertical inconsistency with the General Plan.<sup>30</sup>

Both the existing General Plan and the General Plan as amended by the Initiative expressly require the adoption of a specific plan “that lays out the land uses, design standards and guidelines, and infrastructure improvements required” prior to development of the Vallco area.<sup>31</sup> As described in more detail below and in Appendix 2, the Specific Plan adopted by the Initiative contains provisions governing land uses, design standards and guidelines, and infrastructure improvements, and thus is consistent with this Policy. Moreover, the amount of development and mix of land uses specified in the Specific Plan are consistent with those permitted in the existing General Plan, including the Housing Element. For example, the existing General Plan and Housing Element permit up to 389 residential units on the Vallco site without a conditional use permit (CUP), and would allow a potentially much larger number of units with a CUP provided the increase is consistent with the General Plan.

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<sup>28</sup> *Corona-Norco Unified School District v. City of Corona* (1983) 17 Cal.App.4th 985.

<sup>29</sup> Goal LU-19 of the General Plan.

<sup>30</sup> Municipal Code Chapter 20.04 discusses specific plans.

<sup>31</sup> Policy LU-10.1.

The existing General Plan provides that the maximum residential density for the Vallco area is 35 units per acre. (Figure LU-2.) Maximum heights for the Vallco area are to be set “Per Specific Plan.”<sup>32</sup> The development permitted by the Specific Plan is consistent with the General Plan’s density of 35 dwelling units per acre even under an 800-unit scenario. As further contemplated by the General Plan, the Specific Plan designates maximum building heights for the area.

Appendix D to the Initiative includes what the Initiative proponents describe as a “General Plan Consistency Chart.” This 85-page appendix lists numerous goals and policies in the General Plan and then provides a rationale for why, in the proponents’ view, the Specific Plan is consistent with those goals and policies.<sup>33</sup> While the authors of this Report agree with the overall conclusion in Appendix D—i.e., that the Specific Plan (and the rest of the Initiative) do not create any General Plan inconsistencies—the rationale set forth in Appendix D is that of the proponents, not of the City or the preparers of this Report.

## **b. Land Use Designations, Regulations, and Standards**

The Specific Plan provides land use designations, regulations and standards that would govern development within the Vallco area. As stated above, the amount of development and mix of land uses specified in the Specific Plan are consistent with those permitted in the General Plan, including the Housing Element.

Thus, the main impact of the Initiative with respect to land use is that it establishes more detailed guidelines and standards for development and, as explained below, a vision for where the allowable land uses may be situated within the Vallco area. As discussed in Section III.A.4, the Initiative also would substantially limit the City’s ability to deny a proposed development project if it “substantially conforms” to the land use designations, regulations, and standards provided in the Specific Plan.

### **(1) Locating Permitted Uses Within Vallco Area**

Chapter 2 discusses the land uses that would be permitted in the Vallco area and a vision for where they would be located, as summarized above. While the Specific Plan contains concrete and mandatory limits on the total amount of development permitted for each land use,<sup>34</sup> it generally provides only a conceptual plan for where these uses will be located within the Vallco area. For example, Section 2.4 divides the Vallco area into five “land use districts,” and describes “the predominant land uses” to be developed in each. This is consistent with the Cupertino Municipal Code, which requires that permitted and conditional uses shall be shown in a specific plan.<sup>35</sup>

The Specific Plan notes, however, 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.”<sup>36</sup> Thus, the Plan’s description of the uses envisioned for

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<sup>32</sup> The General Plan, Figure LU-2, also provides: “Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element shall be as reflected in the Housing Element.” The City’s adopted Housing Element provides density for the site at 35 du/acre, and defers heights to the Specific Plan

<sup>33</sup> Initiative at D-1. Appendix D—which the Initiative states “has been prepared for informational purposes only”—does not contain all of the goals, policies, and strategies contained in the General Plan. Moreover, some of the General Plan provisions included in Appendix D do not reflect changes made by the City Council in Resolution 15-087 (adopted October 20, 2015). As the chart is provided for information purposes only, and because it expressly acknowledges that the actual text of the General Plan controls, these minor discrepancies have no effect on the Initiative’s consistency with the General Plan.

<sup>34</sup> See Table 2-1: Land Use Summary at page C-42 of the Initiative.

<sup>35</sup> See Cupertino Municipal Code §19.08.030F.

<sup>36</sup> See Initiative at C-53, § 2.4.

each of the five districts in the Vallco area does not, with certain exceptions, prohibit a developer from rearranging those uses, provided the final project does not exceed the total land use areas and allocations permitted by the General Plan.

Similarly, within each “land use district” the Specific Plan permits, or conditionally permits, a wide array of uses. For example, within the Community Park and Nature Area, which is the district encompassing the 30-acre rooftop park, permitted uses include Community Space, Educational Uses, Community Retail, Entertainment, Eating Establishments, Outdoor Dining and Alcohol Sales.

All of these provisions preserve substantial flexibility for a developer in locating permitted uses throughout the Vallco area. This is significant because, as described further in Section III.A.4, the Initiative also **requires** the City to approve an application to develop the Vallco area as long as the application “substantially conforms” to the Specific Plan. Thus, there is a fairly wide array of potential projects that could be proposed—and would have to be approved—consistent with the Specific Plan.

There are several exceptions to this flexibility, however. For example, the Specific Plan provides that the Community Park and Nature Area “**will** be constructed on a separate landscaped roof structure over the redeveloped Mall portion of the Plan Area.” Likewise, the Plan provides that “Town Square West” will be on the west side of North Wolfe Road while “Town Square East” will be on the east side. “Blocks on the west side of North Wolfe Road **will** be the focal point of the retail, entertainment, and residential uses. Blocks east of North Wolfe Road are designed to contain limited mixed use retail and **will** accommodate a majority of the office space,” and “[t]he Town Center Retail/Office District will contain Class-A office space and Amenity & Support Space.”<sup>37</sup> (See Appendix 2 for further information.) Therefore, the City has the authority to ensure that the uses are consistent with the vision for the Plan Area.

Any development proposal that does not comply with these mandatory and specific requirements would not likely be found to be in substantial conformance with the Specific Plan.

## **(2) Building Standards and Design Guidelines**

The Specific Plan also establishes mandatory and specific building height and parking standards.

As described above, maximum building heights shall not exceed those shown on Figure 2-20. According to that figure, buildings will be higher to the east of North Wolfe Road and lower to the west. Specifically, buildings on Blocks 1, 2B, 3, 4B, 5B, 6B, 7B, 8B, 13 and 14 will be between 30-65 feet; buildings on Blocks 2C, 4C, 5C, 6C, 7C, and 8C will be 65-80 feet; and buildings on Blocks 9-12 will be 80-95 feet.<sup>38</sup>

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. A detailed discussion of parking is provided in the Section III.D of this Report.

The Specific Plan also establishes specific building setbacks: Figures 2-18 and 2-19 show 20- to 30-foot setbacks from public roadways and existing residential areas. Although the text of the Specific Plan does not state whether

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<sup>37</sup> See Initiative at C-52, § 2.4; C-61, § 2.4.3; C-63, § 2.4.5.

<sup>38</sup> See Initiative at C-72.

these setbacks are mandatory, it appears that the City would have the discretion to require any developer to comply with these setbacks.<sup>39</sup>

Any development proposal that does not comply with these mandatory and specific requirements would likely not be found in substantial conformance with the Specific Plan and therefore, as explained below in Section III.A.4, could not proceed without voter approval.

The remaining development standards contained in Section 2.5 of the Specific Plan 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.”

Chapter 8 provides more detailed design guidelines for the Town Center, including guidelines for the streetscape furnishings, bicycle parking, lighting, transit shelters and public art. But, as with the bulk of the standards set forth in Section 2.5 of the Specific Plan, these guidelines provide enough flexibility to encompass a variety of designs and styles. Indeed, that seems to have been the purpose: “These guidelines seek to establish both qualitative and performative thresholds for the expected high-end architectural and urban design of the Plan Area. They do not intend to prescribe design or promote a particular fashion or styles, rather they provide policy direction to future designers as to the degree of excellence, innovation, and creative execution expected by the City of Cupertino for the design of the Plan Area.”<sup>40</sup>

Although the Specific Plan refers specifically to Section 2.5 and Chapter 8 as providing the building standards and design guidelines for the area, other Chapters also contain standards and guidelines. For example, Section 7.3.1 includes specific requirements for planting the green roof and locating community activity areas, vineyards, orchards, and nature areas within the 30-acre space. While these provisions, like the other design guidelines in the Specific Plan, are fairly flexible, the City will have the ability to evaluate any specific development proposal for substantial conformance with these guidelines as well.<sup>41</sup> (See Section III.A.4 for more information regarding substantial conformance review.)

### **c. Community Benefits and Environmental Design Features**

As summarized in Appendix 2 of this Report, the Initiative requires a developer of the Vallco area to provide a number of “community benefits” and incorporate specific “environmental design features” into the development. This portion of the analysis describes these benefits and features, identifies areas where the scope or enforceability of the benefits is not clear, and compares them with what could be provided or required without the Initiative. (See Section A.4.c for additional analysis of the enforceability of these benefits.)

Chapter 3 of the Specific Plan describes the “community benefits” that must, or, in some cases, may, be provided as part of Development Agreement or as a condition of approval in the Master Site Development Permit (MSDP) for the Vallco area. The Plan identifies six broad categories of community benefits, each of which is analyzed separately below.

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<sup>39</sup> See Initiative at C-69 to C-70.

<sup>40</sup> See Initiative at C-170, § 8.1.

<sup>41</sup> See Initiative at C-156, § 7.3.1; C-157, Figure 7-3.



## (1) Civic Benefits

The first category of benefits listed in Chapter 3 of the Specific Plan is “Civic Benefits.” These 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.<sup>42</sup>
- 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,<sup>43</sup> 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.<sup>44</sup>
- 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.

The Specific Plan clearly requires an applicant to provide the 30-acre green roof and park, two Town Squares (totaling 3 acres), certain improvements to utility infrastructure, and the listed community facilities and charitable leases. For some of these benefits, however, the Specific Plan leaves open a number of questions about final design and implementation. For example, the Plan requires the construction of a 30-acre, publicly accessible green roof, and the provision of 3.8 miles of public trails. The Specific Plan (C-154) provides that “[a] vast majority of the Community Park and Nature Area will be fully accessible by the public, however, there will be some limited access areas open only to residents and office workers.” Also, “[f]or safety and security of the public, residential and employment uses, some areas of the roof or other areas may require limited public access such as roof perimeters, roof edges open to below and residential or office pavilion areas.” (C-161.) The area of the green roof that would be devoted to these non-public uses is not specified in the Specific Plan. Moreover, the Specific Plan permits a wide variety of uses on the roof, including Community Retail, Entertainment, Eating Establishments, and Temporary Retail, as well as educational, outdoor, parks and open space uses.<sup>45</sup> Thus, it is not clear precisely how many acres of the “Community Park and Nature Area” will be open space, and how many will be developed with other uses.

Similarly, it is not clear what mechanism will be used to make the rooftop park and “Town Squares” open to the public, as there is no mention of dedications or easements to the City. It is also not clear to whom the “charitable leases” will be provided.

These details would be provided in an application for MDSP or ASR. The City’s ability to deny or condition an MDSP or ASR is limited by the Initiative. Nevertheless, as described below in Section A.4, the City Council would retain discretion to determine whether a particular development application complied with the Specific Plan’s mandates—

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<sup>42</sup> This “community benefit” is also mandated by the Initiative’s amendment to the General Plan.

<sup>43</sup> “Community Facilities” are not defined in the Specific Plan. However, “Community Space” is defined in Section 2.6.8.

<sup>44</sup> The Specific Plan does not define “charitable leases.”

<sup>45</sup> Initiative at C-78 to C-79, Table 2-2.

e.g., that the “vast majority of the Community Park and Nature Area will be fully accessible by the public”—and the Council would likely be **required** to deny such an application if it determined that the application did not comply with this requirement.

The Specific Plan does not present an alternative to the green roof or Community Park and Nature Area. Thus, removal of this requirement from the General Plan and Specific Plan would need voter approval.

Finally, neither the LEED certification nor the provision of an additional 50,000 square feet of civic space is a mandatory condition of the Specific Plan. However, while the LEED certification is not a mandatory condition of the Specific Plan, the City’s Municipal Code requires applicants to obtain a certification of LEED silver (or alternative standard). As the Specific Plan does not contain a mandatory LEED certification standard, this provision of the Municipal Code would likely apply. In addition, while the additional 50,000 square feet of civic space are not required, the City and the developer may agree to mandate the inclusion of this extra civic space in the final project design as part of a development agreement.

## **(2) Education Benefits**

The Specific Plan also 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.

Requiring a developer to provide community benefits for local schools that are valued at 10 times the legally-required amount raises questions about the legality and hence enforceability of this provision. These questions are discussed in Section A.4.

Moreover, the Specific Plan leaves the precise nature of these benefits to separate agreements between the developer(s) and school districts. Thus, although the Specific Plan “strongly encourages” the benefits to take a certain form, there is no requirement that any of the specifically enumerated facilities or other benefits actually be constructed, so long as the total value of the benefits totals no less than 10 times the legally required amount.<sup>46</sup>

## **(3) Housing Benefits**

The Housing Benefits section of the Specific Plan includes 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 percent of the total number of units, whichever is greater) would be senior apartments. The overall housing impacts of the Initiative are discussed below in Section A.3, and the level of potential fee payments is projected in Section E.4.

Notably, the Specific Plan does not require provision of affordable housing onsite; on-site units are only “strongly encouraged.” This could be because state law prohibits local legislation mandating provision of *on-site* housing (as

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<sup>46</sup> In June, FUHSD approved an Educational Facilities and Donation Agreement and CUSD approved a Donation Agreement with the “Vallco Property Owner, LLC” that on their face require the developer of the Vallco area to provide the community benefits specified in the Initiative. These agreements are attached as Appendix 6 to this Report.

opposed to payment of a fee) for rental units. However, a developer can provide affordable units on-site through a subsequent development agreement with the City.

#### **(4) Land Use and City Revenue Benefits**

These proposed benefits include:

- At least 25 percent of the retail component, including a new multiplex movie theater, would be required to be delivered in the initial construction sequence of the Plan Area (not including the hotel on Block 13).
- The existing multiplex movie theater would remain in continuous operation during the initial construction sequence.
- Commitment to demolish 100 percent 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.”
- A minimum of 100,000 square feet of incubator workspace and/or multi-tenant office spaces would be provided for multiple start-ups and/or emerging or mid-size companies, with a preference for local companies.
- Healthy mature trees and existing walls would be retained, and inactive and/or generously set-back building facades used along the Plan Area’s western property line, to protect adjacent residential property owners.

The provision committing to prompt demolition of the existing mall contains a number of caveats and, as a result, leaves open the possibility that demolition will not occur within 6 months of a certificate of occupancy for the initial retail component. However, as described below in Section A.4, the City would have considerable discretion to establish the timing sequence for demolition as a condition of approval. In addition, the City would likely be required to deny any application that did not provide for the demolition of the existing mall. The minimum 100,000 square feet of incubator workspace is also a requirement under the General Plan, as amended by the Initiative, and thus is mandatory.

#### **(5) Mobility and Connectivity**

The proposed mobility and connectivity benefits include:

- Donation of \$6 million to the City for a bike/pedestrian trail along I-280 and to “[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”;
- “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;”
- Requirement that a project applicant “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 for certain traffic signal timing improvements.

This section of the Specific Plan also requires, consistent with the “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.” It also 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).”

In addition to providing these “benefits,” a developer would have to comply with any other transportation mitigation programs in place at the time of subsequent approvals, as further described in Section III.E.1.

## **(6) Environmental Design Features**

Although voter initiatives are not subject to CEQA, the Specific Plan also requires a project applicant to incorporate and implement “Environmental Design Features” (EDFs), which appear similar to “mitigation measures” that could be required under CEQA 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. Some of the EDFs overlap with the community benefits described above. Where a particular EDF or community benefit is discussed in more than one place, the Specific Plan provides that the most detailed description of the measure or benefit shall govern.

Although these EDFs are described in the Specific Plan as “avoid[ing] or minimiz[ing] environmental effects” of development, the City has not conducted environmental review of the Specific Plan in accordance with CEQA. In 2015, after the application for the Sand Hill project was submitted, the City began preparing an environmental impact report (EIR) for the project, but stopped work on the EIR at the request of the applicant in a letter dated December 21, 2015. Furthermore, the City has not conducted a detailed peer review of the Environmental Assessment (EA) submitted in April 2016 to the City—by Steve Lynch, Director of Planning and Entitlements at Sand Hill Property Company—to determine whether it has identified all potentially significant project impacts and identified feasible mitigation.<sup>47</sup> Nevertheless, Appendix 4 (Environmental Analysis) of this Report compares the EDFs identified in the Initiative sponsors’ environmental assessment to the mitigation and conditions of approval that would typically be required for a development of this size and with these characteristics, if the standard approval process were followed.

## **(7) Timing of Provision of Community Benefits**

The timing for providing these community benefits is largely left to subsequent approvals, either through a Development Agreement or the Master Site Development Permit. However, as described above, 25 percent of the retail component is required be included in the initial construction sequence, and the existing multiplex cinema must be allowed to continually operate during this initial construction phase. Moreover, regardless of how construction is phased, adequate parking must be provided for each phase as it occurs. The City would have the ability to impose specific timing requirements regarding the timing for demolition of the existing mall, as a condition of approval of the MSDP or pursuant to a development agreement.<sup>48</sup>

## **(8) Comparison to “Community Benefits” Available Through Traditional Approval Process**

Under the City’s typical land use review and approval process, when an application for a specific plan is submitted to the City, the City reviews the plan for compliance with state and local law (e.g., General Plan consistency) and conducts environmental review under the California Environmental Quality Act to determine whether the proposed plan would have a significant effect on the environment. Following this review, the City either denies the specific plan, negotiates modifications with the applicant, or approves the plan with conditions, including mitigation measures and community-serving design features. The City and applicant also could enter into a development agreement, which is an agreement authorized by State law that allows developer to propose through the development process—and a city to agree to accept—certain types of economic and other benefits that the city could not otherwise legally require a property owner or developer to provide.

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<sup>47</sup> This document is entitled “Vallco Town Center Specific Plan Environmental Assessment.” It is not part of the Initiative and does not reflect the City’s assessment of the significant environmental effects of the Specific Plan.

<sup>48</sup> Chapter 3 of the Specific Plan further provides that these benefits and features “may be agreed to through a [Development Agreement] or may be set forth as conditions of approval.”

The City was in the process of reviewing the Sand Hill project application at the time the Initiative was proposed. Therefore, it is difficult to compare the benefits and features included in the Initiative with those that could have been required or negotiated under the standard approval process. Nonetheless, similar benefits were proposed as part of the Sand Hill project application in 2015 and could be included in a voluntary development agreement for a project proposed in the Vallco area without the Initiative.

In summary, while the Initiative provides for the Community Benefits discussed above, it also reduces the City's ability to require different community benefits than those that are specified in the Initiative's Specific Plan. In addition, the Environmental Analysis included as Appendix 5 to this Report compares the EDFs included in the Initiative with the types and quantities of mitigation measures that would typically be required for a development of this size, if the normal approval process were followed. Finally, redevelopment of the Vallco area under the Specific Plan would also be subject to the City's BMR housing program, parkland dedication fee ordinance, and traffic impact fee program (if adopted), as discussed elsewhere in this Report.

### **3. Housing Impacts**

California law recognizes the vital role that local governments play in the supply and affordability of housing. It also requires that all cities' Housing Elements must be updated on a regular basis and reviewed by the Department of Housing and Community Development (HCD) for compliance with State law. Cupertino's Housing Element (Chapter 4 of the City's General Plan) was updated along with the recent General Plan Amendment, and it was reviewed and approved by HCD in 2015.<sup>49</sup>

The Housing Element contains plans to meet the City's share of the Bay Area's housing needs, referred to as the City's Regional Housing Needs Allocation, or RHNA. For the period from 2015 to 2023, State law requires that the City make sites available for at least 1,064 housing units to meet regional needs.

The Housing Element contains two lists of "priority Housing Element sites" that can accommodate the City's share of regional needs. Scenario A, the preferred scenario, includes Vallco as a housing site. Scenario B, the contingency plan, removes Vallco as a priority site and transfers those units to other sites in the event that a Specific Plan to develop housing as part of a mixed-use project at Vallco is not approved by May 31, 2018. (Exhibit III.1 below compares the two scenarios.)

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<sup>49</sup> The City's Housing Element was adopted on May 19, 2015.

**Exhibit III.1**  
**Comparison of Housing Element Scenarios**

<b>Special Area</b>	<b>Scenario A Housing Units</b>	<b>Scenario B Housing Units</b>
<b>North Vallco Park</b> The Hamptons	600 net new units; 942 total	750 net new units; 1,092 total
<b>Vallco Shopping District</b> Vallco Shopping District	389	0
<b>Heart of the City</b> The Oaks Shopping Center Marina Plaza Barry Swenson Site Glenbrook Apartments	200 200 11 -	235 200 11 58 net new units; 575 total
<b>Homestead</b> Homestead Lanes and adjacent sites	-	132
<b>Total Net New Units</b>	<b>1,400</b>	<b>1,386</b>

The Initiative would not amend the Housing Element or otherwise affect the City's ability to meet its share of the region's housing needs. The Specific Plan adopted by the Initiative permits 389 residential units, which is consistent with preferred Scenario A in the Housing Element. If the voters adopt the Initiative, then the City would not need to invoke the Scenario B contingency plan set forth in the Housing Element.

The Specific Plan further provides that the number of residential units at the Vallco site "may be increased upon approval of a Conditional Use Permit by the Director of Community Development, subject to direct appeal to the City Council, to allow transfer of development allocation between planning areas, consistent with the General Plan." This provision expands upon and codifies existing City policies, which provide that residential units allocated to one planning area may be re-allocated to another planning area with a conditional use permit ("CUP"), provided the units are not specifically allocated to a Priority Housing Element Site.<sup>50</sup> Unlike the existing General Plan and Municipal Code, however, and as explained in Section A.4, below, the Initiative significantly limits the City's ability *to deny* such a CUP.

The Initiative does not specify how many additional residential units may be developed in the Vallco area "consistent with the General Plan." For purposes of analysis, this Report assumes that the maximum number of residential units that could be authorized with a CUP is 800, based on the following assumptions:

- The total number of residential units allocated citywide under the General Plan is 1,882.

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<sup>50</sup> See General Plan Strategies LU-1.2.1 and LU-1.2.3.

- Of that total number, 1,400 residential units are specifically allocated to Priority Housing Element Sites and 28 additional units have been approved, which leaves 454 units to be allocated.<sup>51</sup>

By the time a developer of the Vallco area could apply for a CUP for additional residential units, the City assumes that sufficient unallocated units (approximately 410) would be available to develop a maximum of 800 units in the Vallco area. Moreover, the General Plan Strategy LU-1.2.1 provides that allocations may only be transferred among planning areas provided “no significant environmental impacts are identified beyond those already studied in the Environmental Impact Report (EIR)” for the General Plan. The General Plan EIR studied a maximum 800 units for the Vallco area. As a result, 800 is considered the likely maximum number of residential units that could be developed within the Vallco area, consistent with the General Plan and with a CUP.<sup>52</sup> While the Initiative does not change existing City policies governing the allowable number of residential units at the Vallco site, it limits the City’s discretion to deny a CUP for residential units over and above the 389 allocated in the General Plan.

The Initiative also requires that either 80 residential units, or 20 percent of the total number of residential units, whichever is greater, be dedicated to senior apartments (also referred to as senior housing in the Initiative). This requirement is contained in both the Initiative’s amendments to Strategy LU-19.1.4 of the General Plan and in the Specific Plan.<sup>53</sup>

Any development proposed within the Vallco area would also have to comply with the City’s Below Market Rate Housing Mitigation Program (“BMR Program”). For rental residential developments, the City’s BMR Program requires the payment of the residential affordable housing mitigation fee. However, developers may provide BMR units on-site instead of paying fees and encourages this to occur through a development agreement. For developments with seven or more ownership (for-sale) units, the City’s BMR Program requires that 15 percent of all housing units be provided as onsite BMR units that are affordable to low and moderate income households.

The Initiative does not specifically state whether the residential units developed at the Vallco site will be rental or for-sale, although the Specific Plan indicates in several places that at least some of the units would be rental. The Specific Plan “strongly encourages,” but does not require, the developer of the Vallco area to comply with the BMR Program by developing affordable units on-site. Therefore, affordable units could be provided in the Vallco area through a development agreement.

## 4. Impacts on Cupertino’s Land Use Approval Process

Cupertino Municipal Code Section 20.04.050 states that a specific plan shall describe “standards and criteria by which development will proceed ....(and) [a] program of implementation measures including regulations, programs, public work projects and financing measures necessary to carry out” the distribution of land uses, open spaces and major components of public and private transportation and essential facilities.

Thus, it is contemplated that a Specific Plan will have different standards and criteria for development. However, the Initiative substantially changes the normal land use approval process that would typically be used by Cupertino to consider and approve subsequent applications in the Vallco area.

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<sup>51</sup> Under the Cupertino Municipal Code, for housing element sites, residential units that exceed the number shown in the Housing Element are conditional uses. Municipal Code §19.08.030(F)(3).

<sup>52</sup> This number is an approximation. The actual number could be slightly higher or lower, depending on actions of other developers that undertake residential developments between now and when a developer applies for a CUP for Vallco.

<sup>53</sup> Initiative at C-42 to C-43, Table 2-1.

This portion of the Report first summarizes the ways in which the Initiative would modify the City's standard land use approval process and then analyzes how those changes would:

- Limit the City's discretion to approve, disapprove or modify proposed development applications in the Vallco area.
- Affect the City's ability to enforce conditions of approval and the community benefits proposed in the Initiative.
- Affect CEQA review of development in the Vallco area.
- As is typical for most initiatives, require voter approval for any project that does not comply with the provisions of the Initiative (including the provisions of the Specific Plan) or to make any changes to the Initiative prior to its "sunset" date.

#### **a. Summary of Changes to Land Use Approval Process**

The principal way the Initiative modifies the normal land use approval process is to significantly limit the City's discretion to consider, approve, deny, and condition future land use approvals necessary to construct the development envisioned in the Specific Plan. The Initiative provides that voter approval of the General Plan amendments, Specific Plan, and Municipal Code amendments that the Initiative contains constitute the "Initial Entitlement Actions" for the complete redevelopment of the Vallco area, and states that these actions "entitle" the owner(s) of the property within the Vallco area with "the right to develop the property in accordance with the provisions of the this Specific Plan and other related approvals."<sup>54</sup>

Other provisions of the Initiative indicate its "intent" to limit the need for—and the City's ability to deny or place conditions on—future discretionary approvals to develop in accordance with the Specific Plan:

*The intent of this Specific Plan is to make a final policy determination regarding: the density and intensity of use; the types of uses permitted; the general location of uses; building massing, heights and setbacks; roof structure heights; streetscape network and hierarchy; off-site transportation improvements; on- and off-site infrastructure improvements; and administration, implementation, and financing (except as to the approved hotel use on Block 13). . . . No subsequent approval shall revisit these issues or place additional conditions of approval or environmental design features that may serve to limit or inhibit this final policy determination without a prior amendment to this Specific Plan. The City's discretion shall be limited to determining substantial conformance with the Specific Plan, in accordance with the procedures set forth in this Chapter....<sup>55</sup>*

*Except as provided in this Specific Plan, no new City of Cupertino discretionary permit, approval, or entitlement shall be required for the Mall property or Block 14. . . . The intent of this Specific Plan is to replace and supersede the need for any other new entitlements, permit or approvals.<sup>56</sup>*

The Initiative acknowledges, however, that subsequent approvals will be required. These subsequent approvals include, most importantly, a Master Site Development Permit (MSDP) and Architectural and Site Review (ASR), and

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<sup>54</sup> See Initiative at C-198, § 9.3.1.

<sup>55</sup> Initiative at C-199, § 9.3.2.

<sup>56</sup> Initiative at C-199, § 9.3.2.



likely many other additional approvals as well.<sup>57</sup> The MSDP and ASR approvals are critical because they will address many of the project-specific design details for development under the Plan. As discussed above, the land use designations, regulations, and standards contained in the Plan allow for a broad range of potential project designs. The applications for the MSDP and ASR will be the first time the City and public are able to review the actual proposed building locations, access and circulation design, and architectural drawings.

Critically, the Initiative significantly limits the City's ability to deny, condition, or modify these approvals. Specifically, it provides that the City's Director of Community Development ("Director") "**shall issue**" the MSDP and the ASR if the following two 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, including Chapter 2: Land Use and Development Standards." (For the ASR, the Specific Plan also requires a finding that the application "substantially conforms" with Specific Plan "Chapter 8: Town Center Design Guidelines.")<sup>58</sup>

The Specific Plan defines the criteria governing this "substantial conformance" determination.<sup>59</sup> It also adopts provisions governing the procedures for the approval process, specifying that the "MSDP and ASR approval shall require a Public Meeting," but shall not require a public comment period,<sup>60</sup> and it modifies the City's standard appeal process to require that any appeal be made directly from the Director to the City Council rather than first being heard by the Planning Commission.<sup>61</sup>

Following approval of the MSDP and ASR, the additional types of subsequent approvals that may be required include demolition and grading permits, subdivision maps, conditional use permits, encroachment permits, and various easements and agreements. For a complete listing of the additional potential subsequent approvals envisioned under the Specific Plan, see section 9.3.2, pages 9-2 to 9-4 (C-198 to C-200).

The Initiative specifically provides that some of these additional approvals—large lot Tentative or Final Maps (including Vesting Maps) and Demolition, Excavation, On-Site Utilities, and Rough Grading Permits—may be approved or issued *before* the MSDP and ASR are approved. Like the MSDP and ASR, all of these subsequent approvals are to be reviewed only for "substantial conformance" with the Specific Plan.<sup>62</sup>

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<sup>57</sup> Section 9.4 of the Specific Plan requires approval of both an MSDP and ASR "prior to the issuance of permits for development work on the Mall property and any portion of Block 14." Initiative at C-202, § 9.4.

<sup>58</sup> Initiative at C-200, § 9.4.1 to C-202, § 9.4.2.

<sup>59</sup> Initiative at C-202 to C-203, § 9.5.

<sup>60</sup> As discussed in Section III.A.4, CEQA requires a public comment period and thus, to the extent this provision seeks to prohibit the City from providing such a comment period when CEQA review is required, it is likely invalid.

<sup>61</sup> Initiative at C-202, § 9.4.3. Most decisions by the Director are subject to appeal to the City's Planning Commission. (See, Cupertino Municipal Code Section 19.12.030.)

<sup>62</sup> Initiative at C-199, § 9.3.2. To the extent the Initiative attempts to change the findings the City must make to approve a tentative or final subdivision map under the Subdivision Map Act, those provisions of the Initiative are likely preempted by State law. See Gov't Code § 66474 (city "shall deny approval of a tentative map" if it finds, e.g., that the site is not physically suitable for the type or proposed density of development; if the design is likely to cause serious public health problems, or if the design will conflict with public access easements); *N. Cal. Psychiatric Soc'y v. City of Berkeley* (1986) 178 Cal.App.3d 90, 100 ("Local legislation in conflict with general law is void.").

The Initiative acknowledges a separate process for developing Block 13 and, potentially, Block 14. As described above, the City has already permitted a 148-room hotel on Block 13. Block 14 is currently a surface parking lot and has been identified as a possible location for a 191-room hotel. An application to develop Block 14 as a hotel may be processed separately from the rest of the Vallco area, in which case it will be subject to the City's standard development application process. However, the Specific Plan also contemplates that a portion of Block 14 may be included in the "Town Center/Community Park" redevelopment. If it is, that development will be subject to the application and approval process set forth in the Specific Plan. (C-29; C-197 ["Director . . . shall review development applications within the Mall property *and any portion of Block 14 processed as part of the Town Center/Community Park* for substantial conformance with the Specific Plan . . . ."].)

## **b. Limitations on City's Discretion Over Subsequent Approvals**

The process set forth in the Initiative for reviewing subsequent development approvals limits the City's discretion and differs considerably from the City's typical development approval process.

The City normally retains broad discretion to modify and condition development permits to address a wide variety of concerns and ensure consistency with the City's General Plan and any specific plan. For example, under the City's Municipal Code, any major new development project would require, among other permits, a "Major Development Permit."<sup>63</sup> Applications for large scale Major Development Permits are first considered by the Planning Commission, which provides a recommendation for the final decision makers, the City Council. In reviewing these applications, the City is not required to approve the project upon a finding that the project "substantially conforms" to an existing Specific Plan (or to the General Plan and zoning). Rather, the City can consider a range of issues.

The City also generally retains the ability to amend the governing General Plan and Specific Plan provisions to further adjust what is permissible on a particular property. The range of issues the City may typically address in making such determinations includes: zoning changes, subdivision densities, and height requirements.<sup>64</sup> Moreover, because a city has "broad discretion to construe its [general plan] policies in light of the plan's purposes," the courts have explained that a City's decision that a project is—or is not—consistent with the general plan normally must be upheld unless "no reasonable person" could have come to a similar conclusion.<sup>65</sup>

By contrast, the Initiative provides that the Specific Plan's standards for determining "substantial conformance" constitute "the sole, exclusive, and objective criteria for the City to approve subsequent entitlements."<sup>66</sup> Moreover, the Initiative requires the City to "determine that subsequent entitlements . . . are in substantial conformance" even if the MDSP or ASR deviates from the Specific Plan's requirements and guidance, if such deviations are necessary to produce "an environmentally superior plan." It has similar determination requirements where a project design feature "has become outdated or infeasible," but another feature can be substituted in its place.<sup>67</sup>

The Initiative imposes an additional limitation on the City's power to deny a conditional use permit ("CUP") to increase the amount of housing allowed in the Vallco area. As described in more detail in the Section-by-Section Analysis contained in Appendix 2, the Initiative amends the City's Municipal Code to modify one of the findings the City is required to make to deny a CUP. Specifically, it prohibits the City from finding that such residential

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<sup>63</sup> [Municipal Code § 19.12.030](#).

<sup>64</sup> *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 650.

<sup>65</sup> *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.

<sup>66</sup> Initiative at C-202, § 9.5.1.

<sup>67</sup> Initiative at C-204, § 9.5.1.

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. However, to the extent 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.<sup>68</sup>

By stating that the Specific Plan has made final policy determinations about land use and development standards in the Vallco area, the Initiative also limits the City's discretion to **approve** a proposed project that is not in substantial conformance with those determinations. For example, if the City finds that a proposed project is **not** in substantial conformance because it does not include 100,000 square feet of incubator space, the City could not approve that project unless and until the voters approve an amendment to the General or Specific Plan changing the requirements to allow the project. Other examples could include the potential that the green roof cannot be constructed or is smaller than 30 acres, or the setbacks are significantly smaller than shown in the Specific Plan.<sup>69</sup>

One question raised by the Initiative is whether the City could approve an application for an MDSP or ASR that sought to develop only a portion of the Vallco area, and, if so, whether such a project would have to provide all, part of, or none of the community benefits required for complete redevelopment. The General Plan, as amended by the Initiative, contains a few provisions that appear to contemplate—at least indirectly—the possibility that development applications could be approved that do not fully develop the Vallco area. Specifically, three of the General Plan's land use "strategies" for the Vallco area were amended to make the provision of certain "community benefits" required for any project that "**fully redevelops** the existing mall."<sup>70</sup>

The Specific Plan, on the other hand, contains no such caveats, and simply requires provision of all community benefits as a condition of developing within the Vallco area. Moreover, numerous policies in both the Specific Plan and General Plan, as amended by the Initiative, envision or require complete redevelopment of the entire existing mall area.

Given the lack of clarity in the Initiative on this issue, the City likely could either approve or disapprove an application to redevelop only a portion of the Vallco area. If the City approves such an application, it would also likely have discretion to require a proportionate share of the Community Benefits listed in the General Plan, as amended, and the Specific Plan. This issue is discussed more fully in the next section of this Report.

Moreover, even under the Initiative's truncated "substantial conformance" review process, the City retains some discretion. Under the Specific Plan, the Director "may find that subsequent entitlements substantially conform with the Specific Plan when the proposed subsequent entitlement is evaluated in the context of the overall project, goals, and innovative features and vision of this Specific Plan."<sup>71</sup> Thus, the City will have to determine, based on the broad standards and guidelines contained in the Specific Plan, whether the particular project proposed conforms to the Specific Plan.

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<sup>68</sup> See *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 648-49.

<sup>69</sup> The Specific Plan appears to establish a different process for amending the design guidelines contained in Chapter 8: "When necessary, and as detailed more full[y] in Chapter 9 . . . , any modification to these guidelines [i.e., Town Center Guidelines] is expected to be an administrative process, undertaken by the property owner(s) in consultation with a range of stakeholders, including the City of Cupertino." As discussed above, these design guidelines are already largely flexible and non-mandatory.

<sup>70</sup> Initiative at 4-5, § 3 (Strategies LU-19.1.6, LU-19.1.15, and INF-2.5.4).

<sup>71</sup> Initiative at C-203, § 9.5.1.

The Specific Plan also acknowledges that the City may impose conditions on the MDSP and ASR, as long as they do not “limit or inhibit” the final “policy” determinations contained in the Specific Plan.<sup>72</sup> As a result, the City could impose conditions on the MDSP and ASR related to construction schedule and safety, as well as other conditions to ensure compliance with the Specific Plan under the Initiative.

### **c. Enforceability of Community Benefits and Environmental Design Features**

The Initiative requires a developer of the Vallco area to provide a number of substantial “community benefits,” including approximately \$40 million in facilities and other benefits for local schools<sup>73</sup> and approximately \$30 million for improvements at the I-280/Wolfe Road interchange and other I-280 segments.<sup>74</sup>

As discussed in more detail above in Section III.A, most of these community benefits, including the green roof, education, and transportation benefits, are required by the Initiative.<sup>75</sup> As a result, the City could not approve an application for MDSP or ASR if the proposed project did not provide these benefits.

This section of the Report analyzes whether the promised community benefits:

- Would be fully enforceable by the City
- Could be required if a developer proposes to develop only a portion of the Vallco area.

#### **(1) Community Benefits Likely Are Fully Enforceable by The City**

The Initiative provides that these benefits can be required either as conditions of approval or by entering a “development agreement.” Under state law, a development agreement is a voluntary agreement that developers and a city (or county) can enter into in order to provide certainty for future development approvals. As part of a development agreement, developers can, and frequently do, agree to provide community benefits beyond those that a city could legally require them to provide. Such agreements are fully enforceable, and a developer that enters into such an agreement generally cannot challenge commitments that they have voluntarily agreed to provide.<sup>76</sup>

However, the Initiative does not require a developer of the Vallco area to enter into such a development agreement, and neither does State law. If, for any reason, the City and the developer(s) of the Vallco area do not enter into such a development agreement, the City may need or wish to require the developer(s) to provide at least some of the community benefits specified in the Initiative through what are commonly referred to as “conditions of approval.”<sup>77</sup>

As summarized in the Section-by-Section analysis (Appendix 2 to this Report), federal and state laws limit the government’s ability to impose conditions of approval on development that “exact” financial or other commitments from property owners. Generally speaking, conditions or “exactions” that require a developer to provide money or pay

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<sup>72</sup> Initiative at C-199, § 9.3.2.

<sup>73</sup> Initiative at C-88, § 3.3.

<sup>74</sup> Initiative at 4 (LU-19.1.6); C-91, § 3.6.

<sup>75</sup> The main exceptions were for the community benefits that are specifically framed as “goals” (such as the LEED certification) or as something that could be provided as an option if the developer and the City agreed (such as the option for up to an additional 50,000 square feet civic building). See Chapter III.A.2(c) of this Report.

<sup>76</sup> See *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 443-44; Gov. Code § 65864(c).

<sup>77</sup> Some of the requirements that the Initiative identifies as a “community benefit” may more properly be characterized as part of the development project and thus required without the imposition of any additional “conditions.”

for certain improvements must bear a “reasonable relationship” to the impacts of the project and meet certain other requirements.

Under these standards, there is a question as to whether the City could legally compel the developer to provide at least one of the Initiative’s primary community benefits, if imposed as a condition of approval. Specifically, the Initiative states the community benefits for local schools “shall be 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.”<sup>78</sup> Requiring 10 times the “legally required amount,” on its face, requires more than the law permits a city to require and it also, by definition, does not appear to have a “reasonable relationship” between the fees set and the project’s impacts on schools.<sup>79</sup>

While a property owner ordinarily could challenge a condition of approval imposed by a city requiring the owner to pay “10 times the legally required amount” in school benefits, here, it is not clear that the Vallco owner would be able, or would want, to bring such a challenge. As the Vallco owner has already *voluntarily* entered into donation agreements with the school districts,<sup>80</sup> the owner may find it difficult to show an injury from a condition of approval requiring the same thing. Second, if the owner successfully challenged the Initiative requirements regarding school fees, a court would likely invalidate the entire Initiative, given how important the community benefits are to the Initiative as a whole.<sup>81</sup> It is also unclear whether anyone other than the property owners or applicants for projects within the Vallco area would have standing to legally challenge the legality of imposing such conditions of approval.

In short, the Initiative’s requirement for the owner/developer of the Vallco area to provide “10 times the legally-required amount” of funding for education benefits raises serious and potentially complex legal issues. As a practical matter, those legal issues ultimately may not affect the City’s ability to enforce these provisions. However, if a legal challenge was brought to these provisions, and a court determined that the challenger had standing to raise the issue (despite the existence of separate, voluntary donation agreements), a court would likely find this requirement legally invalid. As discussed in Appendix 2, a court that did so would likely find that this provision is not severable from the rest of the Initiative and therefore find the entire Initiative invalid.

## **(2) Community Benefits Required for Partial Redevelopment**

As explained above, the General Plan amendments proposed by the Initiative state that several of the most valuable community benefits shall be required for any project “that **fully redevelops** the existing mall.” The Specific Plan, on the other hand, does not contain any such caveats. Accordingly, if the City receives an application to develop only a portion of the Vallco area and if the City also determines that this proposal substantially conforms to the Specific Plan and is consistent with the General Plan, there remains a question of whether the developer will still be required to provide the community benefits set forth in the Initiative.

Given the number of provisions in both the General Plan and Specific Plan that focus on the complete redevelopment of the Vallco area, and the absence of any guidance in the Initiative on what would be required in the event of an application to redevelop only a portion of the Vallco area, the City would likely have broad discretion to require a partial development of the Vallco area to provide a proportionate share of the Community Benefits listed in the

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<sup>78</sup> Initiative at C-88, § 3.3.

<sup>79</sup> See *California Building Industry Assn.*, 61 Cal.4th at 456, fn. 10.

<sup>80</sup> See Appendix 6.

<sup>81</sup> This issue is discussed in more detail in the Section-by-Section Analysis/Summary of the Initiative (see Appendix 2 of this Report).

General Plan, as amended, and the Specific Plan. The City, acting within its police power, would likely also have broad discretion to determine what constitutes a proportionate share of these benefits.<sup>82</sup>

#### **d. Impacts on CEQA Review**

Under state law, the City would ordinarily be required to comply with CEQA and analyze the significant environmental effect of amending the General Plan, amending the Municipal Code, or adopting a specific plan. However, no such prior CEQA review is required for voter-sponsored initiatives, including initiatives that adopt a specific plan, or amend a general plan or municipal code.<sup>83</sup> Thus, no CEQA review is required or has been prepared for this Initiative.<sup>84</sup>

Pursuant to Elections Code section 9212 and the City Council's direction, the City's consultants have undertaken a high-level, primarily qualitative analysis of the types of site-specific environmental and infrastructure impacts that could occur from the development contemplated in the Specific Plan. This analysis also identifies mitigation measures and conditions of approval that the City might have required had it conducted environmental review under CEQA under the City's standard approval process.

As described in Appendix 2, the community benefits and environmental design features (EDFs) required by the Initiative are similar to what the City would likely have required under its standard approval process. In most cases, they are also consistent with or exceed the mitigation measures or conditions of approval that would have been required by the City for this level and type of development. However, with regard to transportation, some of the community benefits and EDFs required by the Initiative are not consistent with City requirements based on the methodology and assumptions used in the analysis performed for this report (See Appendix 5, Environmental Analysis.)

If the Initiative is adopted, the City will need to comply with CEQA prior to issuing subsequent discretionary development approvals required or anticipated in the Specific Plan, including the required MDSP and ASR, a development agreement and/or a CUP (if sought by developer). Pub. Resources Code § 21080(a) (environmental review required for "discretionary" decisions). During that environmental review, the City would likely address and adopt mitigation for any significant impacts that are not mitigated by the community benefits or EDFs, such as the potential intersection impacts discussed below.

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<sup>82</sup> "The police power is the authority to enact laws to promote the public health, safety, morals and general welfare. . . . Legislation is within the police power if it is reasonably related to a proper legislative goal. . . . Where a law is challenged as not being a valid exercise of the police power, all presumptions favor its validity, and it will be upheld unless its unconstitutionality clearly and unmistakably [sic] appears. . . ." *Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 206 (citations omitted).

<sup>83</sup> *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1036.

<sup>84</sup> The City prepared an EIR for the updated General Plan it adopted in 2014, and as part of that review it analyzed at a "programmatic level" the impacts of redeveloping the Vallco Area as envisioned under the General Plan. However, the 2014 General Plan EIR did not analyze the impacts of redeveloping the Vallco Area at the same level of detail as would typically be prepared for a proposed specific plan, and instead specifically anticipated that further environmental review would be required. The City did begin to prepare an EIR for the development application that Sand Hill Property Company and Vallco Property Owner, LLC submitted for the bulk of the Vallco Area in 2015 (The Hills at Vallco project). The City stopped work on the EIR at the request of the applicant in a letter dated December 21, 2015. The Initiative proponents have prepared a document titled *Vallco Town Center Specific Plan Environmental Assessment* (Kimley-Horn, April 2016), which analyzes the environmental impacts of the Specific Plan. This document is not part of the Initiative. The City has not conducted a detailed review of this analysis and thus takes no position on its accuracy. Rather, as discussed above, this report compares the EDFs with what the City would otherwise have required as a mitigation measure or condition of approval under its typical land use approval process, based upon the analysis to date.

The Initiative purports to limit the scope of environmental review that the City will conduct for these subsequent approvals. For example, the Initiative provides:

*No subsequent approval shall . . . place additional conditions of approval or environmental design features that may serve to limit or inhibit this final policy determination without a prior amendment to this Specific Plan. The City's discretion shall be limited to determining substantial conformance with the Specific Plan, in accordance with the procedures set forth in this Chapter. **Pursuant to existing authority, subsequent environmental review, if any, shall study project level impacts and only those issues over which the City has discretion.***<sup>85</sup>

The Initiative does not specify the section of the law being referenced regarding this “existing authority.” As far as the City’s attorneys are aware, no published case addresses a directly analogous situation (i.e., where a Specific Plan and “entitlements” are adopted by initiative without any prior CEQA review and the Initiative attempts to limit CEQA review for subsequent approvals).

The Initiative proponents may have been referring in this passage to a legal case, *San Diego Navy Complex Coalition v. City of San Diego*. However, the San Diego case involved a very different situation in which the original development approvals and plans for a project had undergone full CEQA review and the subsequent approvals were limited to a determination of whether the developer’s construction documents were consistent with the “aesthetic criteria” established in the earlier approvals.

After discussing CEQA’s general **prohibition** on requiring subsequent environmental review in such circumstances, the court noted in this case that the City’s limited discretionary review over the project’s aesthetic impacts did not mean the City was required to conduct subsequent CEQA review over the project’s asserted impacts on global warming. In this context, the court held that the discretion necessary to trigger CEQA review “must be of a certain kind; it must provide the agency with the ability and authority to ‘mitigate environmental damage’ to some degree.”<sup>86</sup>

As the Initiative itself appears to recognize, the City would likely have the ability and authority to undertake environmental review with respect to the required subsequent approvals. As detailed above, while the City must generally approve an MSDP or ASR that “substantially conforms” to the Specific Plan, the City retains considerable discretion in making that determination and in determining a host of other factors that would allow it to “‘mitigate environmental damage’ to some degree.”<sup>87</sup>

Given that no prior CEQA review for the development has been undertaken, the scope of the City’s CEQA review could be broader than the Initiative states. In the event that the City sought to require broader CEQA review for a specific development proposal than what is provided in the Initiative, the applicant could challenge the City’s decision. In that case, a court would have to decide whether the Initiative prohibits such review and, if so, whether that prohibition conflicts with CEQA itself and is therefore invalid.

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<sup>85</sup> Initiative at C-199, § 9.3.2 (emphasis added).

<sup>86</sup> *San Diego Navy Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 940.

<sup>87</sup> *Ibid.*

## 5. Voter Approval Requirements

Section 9 of the Initiative states that no provision of the Initiative, including the Specific Plan, may be amended without voter approval prior to January 1, 2027. After this date, both may be amended or repealed by any procedure authorized by law.<sup>88</sup> This “sunset” date will be tolled if a legal challenge is brought against the Initiative.<sup>89</sup>

Under state law, an initiative adopted by the voters cannot be amended without voter approval, unless the Initiative so authorizes. Thus, by allowing amendment of the Initiative after 2027 without voter approval, this Initiative makes it easier to amend its provisions after 2027 than would otherwise be allowed under state law.

Prior to January 1, 2027, however, any amendment of the Initiative—including the provisions added to the General Plan or the Municipal Code and the entire Specific Plan—would require voter approval. Under state law, there are two main ways to obtain voter approval:

- “Voter-sponsored” measures, which, like the Initiative itself, are placed on the ballot pursuant to the Initiative power described in the California constitution.
- “Council-sponsored measures,” which are placed on the ballot by the City Council.

Both procedures are governed by the Elections Code.

For a voter-sponsored measure to be placed on the ballot, the “proponents” of the measure must do the following:

- Submit a notice of intent to circulate the proposed initiative petition
- Request and obtain the official title and summary from the City Attorney.
- Gather and file with the City the requisite number of valid signatures within 180 days of receiving the official title and summary, after complying with various other requirements.<sup>90</sup>

The requisite number of valid signatures to qualify a measure for the ballot is ten percent (10 percent) of the registered voters of the City. Voter-sponsored measures are not subject to CEQA. However, the City Council could direct that a section 9212 Report be prepared on any such measure, if it so chose.

In addition, the City Council may submit a proposal to the voters if it chooses.<sup>91</sup> Council-sponsored measures are subject to CEQA and, accordingly, the Council would need to comply with CEQA prior to placing a measure on the ballot. Under the City’s current General Plan, property owners wishing to submit a development application that requires a General Plan amendment must first seek authorization from the City Council to process such amendments.<sup>92</sup> Under the Initiative, the City Council would retain the discretion to deny such authorization.

Given the complexity of this Initiative, one cannot predict how many elections would result from it. On the one hand, the Initiative appears designed to facilitate development of a particular redevelopment project, and thus no changes to the Initiative may be needed to implement that project. On the other hand, the Initiative requires voter approval for

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<sup>88</sup> Initiative at C-204, § 9.5.2.

<sup>89</sup> Initiative at C-204, § 9.5.2.

<sup>90</sup> Elections Code §§ 9200 – 9215.

<sup>91</sup> Elections Code § 9222.

<sup>92</sup> The City adopted this requirement in 2015, pursuant to Resolution No. 15-078, to create a procedure for the consideration of future General Plan amendments that would encourage orderly development of the City.



any change to its provisions, including the standards and guidelines contained in the nearly 300-page Specific Plan. As a result, the Initiative would likely require voter approval prior to approving a development project that:

- Does not substantially conform to these standards and guidelines, or,
- Does not contain the community benefits required by the Initiative and Specific Plan.

The City would be required to pay for the costs of any election required by the Initiative. The estimated costs for holding an election depend on whether the City places the measure(s) on the ballot under one of the two allowable types of elections:

- Stand-alone election, which is an election on a date that the County is not already conducting an election.
- Consolidated election, which is an election where some other matter is already on the ballot (e.g., a statewide primary or general election).

Based on the most recent information available from the County Registrar of Voters, a stand-alone election would include a “base charge” of \$377,600 plus an additional cost of roughly \$53,400 for an average length ballot measure, resulting in a total cost of approximately \$431,000.

For a consolidated election, the “base charge” would be \$52,900 and the additional \$53,400 per-measure costs would remain the same, resulting in a total cost of approximately \$106,300.

These costs are estimates only. The final costs will depend on the actual full costs for the County to conduct the election. These estimates do not include any staff time or other expenses that the City might incur. For instance, the City Council could decide—as it did in the case of the present Initiative—to prepare a report under Elections Code section 9212. The precise costs of a 9212 report depend on the nature of the initiative; however, the budget for the 9212 reports that the City Council has ordered in calendar year 2016 ranged from \$150,000 to \$180,000 per report.

In addition, Appendix 5 (Environmental Analysis) to this Report compares the EDFs included in the Initiative with the types and quantities of mitigation measures or conditions of approval that would typically be required for a development of this size, if the normal approval process were followed.

## **III.B. Development Patterns**

This section evaluates the Initiative’s potential impact on agricultural lands, uses of vacant parcels of land, and developed areas designated for revitalization and existing business districts. As described earlier, development envisioned by the Initiative upon adoption of the Specific Plan will take place entirely on the Vallco site and will result in development that is consistent with the Adopted General Plan. The Initiative will not significantly affect development patterns in the City as compared to what would occur without the Initiative, but it may facilitate new development to occur.

### **1. Agricultural Lands**

As the City has minimal land in agricultural uses and the Initiative does not propose any specific changes to policies that would affect agricultural land, the Initiative would not have a direct impact on agricultural uses.

### **2. Uses of Vacant Parcels of Land and Developed Areas Designated for Revitalization**

The Vallco Shopping Mall is currently built out as an enclosed mall surrounded by surface and structured parking. While there is no vacant undeveloped land at Vallco, the significant expanses of largely vacant parking and empty storefronts demonstrate the site’s current underutilization. As of April 2016, only 26 percent of the Mall is occupied<sup>93</sup>

Redevelopment of the Vallco area as proposed by the Initiative offers an opportunity to build additional office space, housing, and hotel rooms on the site consistent with the vision and objectives of the Adopted General Plan. The Specific Plan proposes to intensify development by allowing new residential and office development to occur along with the reconstruction and upgrade of the retail uses. The proposed mix of residential, office, commercial/retail, and hotel on the Vallco site will revitalize the area and bring critical mass and “around the clock” activity to the site.

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<sup>93</sup> Based on an analysis of 2015 occupancy data provided by the Applicant and the recent closures of department stores.

## **III.C. Economic Development**

This section evaluates the Initiative's potential impact on the community's ability to attract and retain business and employment. In summary, if the Initiative were to be adopted, it could provide a key incentive for a developer or property owner to undertake the mixed-use development of the Vallco Shopping Mall and deliver significant community benefits and infrastructure investments as part of the development process. As discussed below, this could expand the potential for economic development at the Vallco site in other ways as well.

### **1. Incentive to Develop Vallco Area**

The Adopted General Plan requires a Specific Plan to be adopted prior to the redevelopment of Vallco. The Initiative includes approval of the Vallco Town Center Specific Plan, which is intended to facilitate redevelopment of the Vallco site as a mixed-use development that will stimulate the local economy through construction, revitalization, and a diversity of uses.

### **2. Business Attraction and Retention – Office**

The Adopted General Plan provides for new office growth in the City to “support strong fiscal revenues and a stable tax base. In particular, policies focus on retaining and increasing the number of small, medium and major businesses in key sectors and provide flexible space for innovative startups that need non-traditional office environment.”

The Initiative envisions 2 million square feet of office space at Vallco Shopping Mall, as proposed in the Adopted General Plan and is consistent with the City goals of attracting and retaining businesses. If the Initiative is approved, expanded office space at Vallco is expected to increase the City's ability to attract and retain growing companies, consistent with the General Plan.

The Initiative specifically incorporates 100,000 square feet of incubator space within the proposed office space, directly responding to the General Plan's vision for a non-traditional office environment. The incubator space will provide room for smaller startup firms and encourage growing enterprises to locate and remain in Cupertino.

A very tight market for office space, combined with the high share of office space occupied by Apple, results in scarce leasing opportunities in the 20,000 to 100,000 square foot range in Cupertino. Although larger spaces are also in short supply, 20,000 to 100,000 square feet office spaces are in particularly high demand for growing companies such as midsize technology startups. As a result, many expanding midsize firms have opted to relocate to other nearby communities.<sup>94</sup>

The Initiative's provision of office space will help meet the General Plan's economic development goals for office and help retain and attract growing companies, particularly in the technology sector.

### **3. Business Attraction and Retention – Commercial / Retail**

The Adopted General Plan allows development of up to approximately 1.2 million square feet of retail, which is the existing square footage at Vallco, but requires a minimum of 600,000 square feet to be developed as part of the mixed-use redevelopment of the site. The Initiative seeks to redevelop the Vallco Shopping Mall with 640,000 square

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<sup>94</sup> Economic Development Strategic Plan Background Report, Revised Draft Report, Strategic Economics and MIG, January 2016, page 5.

feet of retail/dining/entertainment<sup>95</sup>. While the Initiative proposes significantly less commercial/retail space than the existing square footage, the Vallco Shopping Mall's high vacancy rate, declining sales and numerous historical changes in ownership, suggest that Vallco in its current state is not economically viable.

Vallco has been declining over the past decade, due to consumer purchasing trends, retailer restructuring, and the position of the mall in a very competitive retail trade area with strong alternatives for shoppers. Current retail trends point to Valley Fair, Santana Row, and Stanford Shopping Center continuing to dominate the retail market. The following major retail trends are affecting how Vallco is currently performing and would likely perform in the future without some form of redevelopment:<sup>96</sup>

- Mall retailers who do a better job of differentiating themselves from competitors are consolidating into fewer, high performing Class A regional malls, and an increasingly wide divide is developing between higher performing Class A malls and lower performing Class C malls, of which Vallco is an excellent example.
- Technology has changed shopping, particularly for commodity goods. Multiple retail “channels” now compete against traditional “bricks and mortar” retail.
- Retail must constantly reinvent itself to stay “fresh” and relevant to customers. Consumers are increasingly looking for well-designed and authentic destination retail environments where they not only can spend their free and recreational time, but where they can have a compelling “experience” while doing so. The addition of residential and office space in a redeveloped Vallco provides greater opportunities to create a dynamic environment and greater critical mass to support an active retail component.

The site's redevelopment, as proposed by the Initiative and allowed under the Adopted General Plan, presents an opportunity to reverse the decline of retail sales at Vallco, bring new retail businesses and jobs to Vallco and to the City as a whole, and create a modern, well-designed shopping and entertainment environment.

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<sup>95</sup> Vallco Fashion Park, Vallco Shopping Mall, Vallco Shopping Center and Vallco are all terms used to describe the retail shopping mall within the Vallco Shopping District.

<sup>96</sup> This analysis summarizes the findings by the retail specialist, Greensfelder Commercial Real Estate (Greensfelder) that was retained to prepare a technical analysis for the 9212 Report on the “Cupertino Citizens Sensible Growth Initiative”. Appendix 6 of that Report contains the Greensfelder analysis, which highlighted the viability issues of the existing Vallco Shopping Center and described why the proposed mixed-use development of the Vallco Shopping Center, as planned for in the General Plan, is a critical element to revitalizing the center.

## 4. Employment

Vallco's employment has been declining in recent years as the result of store closures. The revitalization of Vallco would result in the attraction of new retail businesses and employees that would reverse its decline. The proposed construction of new office space would create about 6,700 new jobs at Vallco, and the provision of about 640,000 square feet of retail space would retain and/or increase the number of retail and service jobs to about 1,400 jobs.<sup>97</sup>

## 5. Jobs-Housing Balance

The ratio of jobs to housing in the City is a measure that is used to evaluate how many jobs a City provides in comparison to housing units. Under the Adopted General Plan, the number of jobs in Cupertino per residential unit would be 2.22 (i.e., there would be 2.22 jobs within the City for every residential unit), and this overall ratio would stay the same with or without the Initiative, as development citywide will remain the same.

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<sup>97</sup> Based on one job per 300 square feet of office space and one job per 450 square feet of commercial space, per the General Plan EIR.

### III.D. Infrastructure and Environmental

State law does not require that a citizen-sponsored initiative comply with California Environmental Quality Act (CEQA). Nonetheless, this section provides a high-level analysis of the Initiative's Impact on transportation (traffic congestion), schools, parks and open space, other public services, and utility infrastructure, per section 9212 (b)(7). In addition, this section examines other environmental issues including aesthetics/community form, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, and noise.<sup>98</sup>

In addition, the Initiative incorporates a list of mandatory "environmental design features," which appear similar to "mitigation measures" that could be required to mitigate potentially significant environmental impacts. This Report analyzes how the EDFs differ from the conclusions of this 9212 Report based on available information and professional judgment.<sup>99</sup>

As allowable buildout citywide with and without the Initiative is the same (see Table II.1), the Initiative would not result in substantially different environmental impacts. The magnitude of development and impacts from citywide buildout under the General Plan with Initiative would be the same as under the adopted General Plan.<sup>100</sup>

This analysis assumes development of the Specific Plan will include 800 residential units (160 of which would be age restricted senior housing), 2.0 million square feet of office uses, 640,000 square feet of commercial uses, 339 hotel rooms, 50,000 square feet of public/civic space, two town squares totaling three acres, and a 30-acre green roof.<sup>101</sup> This site-specific environmental analysis, which is primarily qualitative and based on available information and the professional judgment of the City's environmental consultant:

- Identifies potential environmental impacts or constraints that could result from implementation of the Specific Plan

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<sup>98</sup> Timing and budgetary constraints also preclude a CEQA analysis.

<sup>99</sup> Following the Initiative sponsors' Notice of Intent to Circulate Petition for the Initiative, Steve Lynch, Director of Planning and Entitlements at Sand Hill Property Company, submitted the EA. The purpose stated in the EA is to disclose the potential environmental effects associated with implementation of the Specific Plan. Given the time constraints for completing the 9212 Report, the length of the EA, and the date the EA was submitted to the City, it was not possible for the City or its consultants to complete an adequate technical peer review of the entire EA.

<sup>100</sup> The impacts of the adopted General Plan were evaluated in the certified General Plan EIR (City of Cupertino. *General Plan Amendment, Housing Element Update and Associated Rezoning Environmental Impact Report*. State Clearinghouse No. 2014032007. Certified December 2014.) and General Plan Addendum (City of Cupertino. *General Plan Amendment, Housing Element Update and Associated Rezoning EIR Final Addendum*. Adopted October 2015.). The General Plan EIR and Addendum are the best resources available that evaluate the impacts of the adopted General Plan. The General Plan EIR, as amended by the Addendum, analyzed more intense development and greater citywide buildout than ultimately was approved by the City Council. As the General Plan EIR and Addendum analyzed more development than was approved, the General Plan EIR and Addendum provide a conservative analysis of the environmental impacts from the buildout of the adopted General Plan. The General Plan EIR assumed Vallco would be redeveloped with 800 residential units, 2.0 million square feet of office uses, 625,335 square feet of commercial uses, and 339 hotel rooms.

<sup>101</sup> The environmental analysis focuses on the environmental impacts with the Initiative under the scenario, **Amended General Plan and Specific Plan (800 Units)**, because this scenario assumes the most development at Vallco under the Initiative. Lesser development (i.e., development under the Amended General Plan and Specific Plan (389 Units)) would result in lesser impacts.

- Discusses the adequacy of the Specific Plan's Environmental Design Features (EDFs) to mitigate or avoid environmental impacts compared to the likely mitigation and conditions of approval the City would typically require for such impacts under the standard planning process.

Overall, the Specific Plan EDFs either exceed or are consistent (and sufficient) with what the City would typically require as mitigation or conditions of approval during the standard approval process. However, the transportation-related EDFs for intersection level of service and the amount of vehicle parking identified in the Specific Plan are insufficient compared to what the City would typically require. As discussed in Section A.4, the City would likely have the ability and authority to undertake environmental review with respect to the required subsequent approvals and require mitigation as appropriate. In addition, subsequent approvals would be subject to the Transportation Mitigation Fee Program discussed in Section III.E.1 when adopted. The consistency between the Specific Plan EDFs and what the City would typically require is discussed in the following sections and shown in Table III.1. Refer to Appendix 5 for the complete analysis.

**Table III.1**  
**Summary of Specific Plan EDF Consistency with City's Typical Mitigation or Conditions of Approval**

Environmental Resource	Compared to the City's typical mitigation or conditions of approval, the Specific Plan EDF(s) are:		
	In Excess	Consistent/Sufficient	Inconsistent**
<b>Infrastructure</b>			
<ul style="list-style-type: none"> <li>• Transportation</li> <li>– Intersection Level of Service</li> <li>– Freeway Level of Service</li> <li>– Transit Facilities</li> <li>– Bicycle and Pedestrian Facilities</li> <li>– Vehicle Parking*</li> <li>– Neighborhood Intrusion</li> <li>– Safety Hazards and Accessibility</li> <li>– Construction-Related</li> </ul>		<ul style="list-style-type: none"> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> <li></li> </ul>
• School Services	X		
• Parks/Open Space	X		
<b>Other Public Services</b>			
• Police Services	X		
• Fire Services	X		
• Library Services	X		
<b>Utilities and Service Systems</b>			
• Wastewater Treatment/ Sanitary Sewer System		X	
• Water		X	
• Energy	X		
<b>Other Environmental Issues</b>			
• Aesthetics/Community Form		X	
• Air Quality		X	
<ul style="list-style-type: none"> <li>• Biological Resources</li> <li>– Birds and Trees</li> <li>– Nitrogen Deposition</li> </ul>	X	X	
• Cultural Resources		X	
• Geology and Soils		X	
• Greenhouse Gas Emissions		X	
• Hazards and Hazardous Materials		X	
• Noise		X	
<p>Notes:</p> <p>* The consistency of the parking for the Specific Plan is based on the number of vehicle parking spaces identified in the Specific Plan, rather than an EDF. No EDF was identified for vehicle parking. No amount of standards for bicycle parking were specified in the Specific Plan.</p> <p>** As discussed in Section A.4, the City would likely have the ability and authority to undertake environmental review with respect to the required subsequent approvals and require mitigation as appropriate. In addition, subsequent approvals would be subject to the Transportation Mitigation Fee Program discussed in Section III.E.1 when adopted.</p>			



# 1. Transportation

Development of the Specific Plan is subject to General Plan policies that ensure adequate transportation facilities are available to the residents of Cupertino. The transportation impacts from development of the Specific Plan are discussed below and include the following:

- Intersection Level of Service Impacts;
- Freeway Level of Service Impacts;
- Impacts to Transit Facilities;
- Impacts to Bicycle and Pedestrian Facilities;
- Parking;
- Neighborhood Intrusion;
- Safety Hazards and Accessibility; and
- Construction-Related Traffic Impacts.

Additional details regarding the transportation analysis are included in Appendix 5 and in the transportation memo included as Attachment B to that appendix.

## a. Intersection Level of Service Impacts

Buildout of the General Plan (including redevelopment of Vallco with or without the Initiative) would result in significant congestion at intersections. New development would be subject to the City's Transportation Mitigation Fee Program (TMFP), which provides funding for roadway and infrastructure improvements that would mitigate impacts resulting from the buildout of the General Plan, once adopted. The TMFP is discussed in Section III.E.1 of this Report.

Based on preliminary analysis, it is likely that the Specific Plan development would significantly impact 15 intersections. The EA identified significant impacts on five intersections. The impacts identified by the City and the EA differ due to the differences in methodology and assumptions (including a difference in traffic scenarios analyzed, trip generation assumptions, and trip assignment assumptions) (refer to Appendix 5 and Attachment B in that appendix for more detail).

Table III.2 summarizes the significantly impacted intersections identified by the City based on preliminary analysis and intersections impacts identified in the EA. Additional details about the traffic impacts identified are included in Attachment B (specifically Table 6) of Appendix 5.

The mitigation the City would likely identify under the standard approval process and the EDFs included to reduce intersection impacts are also identified in Table III.2. The Specific Plan EDFs would reduce intersection level of service impacts and improve intersection operations by providing for: geometric and signal improvements and lengthening of left-turn pockets (EDFs 43, 45, 46, 55); \$2-\$3 million in funding toward software acquisition and implementation (EDF 45); a transportation demand management plan to reduce peak-hour office trips (EDF 52); and fair share contributions toward improvements on Lawrence Expressway at select intersections (EDF 56). Table III.2 identifies if the EDFs are:

- **Consistent and sufficient** (i.e., the EDFs are consistent with what the City would identify as mitigation or conditions of approval under the standard approval process and are sufficient to mitigate the impact);
- **Consistent but insufficient** (i.e., the EDFs are consistent with what the City would identify as mitigation or conditions of approval under the standard approval process but are insufficient to fully mitigate the impact and the City would require additional mitigation under the standard approval process);

- **Partially consistent but insufficient** (i.e., the EDFs are in part consistent with what the City would identify as mitigation or conditions of approval under the standard approval process but are insufficient to fully mitigate the impact and the City would require additional mitigation under the standard approval process); or
- **Inconsistent or insufficient** (i.e., the EDFs are inconsistent with what the City would require under the standard approval process OR no EDF was identified and the City would require mitigation under the standard approval process)

Overall, as shown in Table III.2, the Specific Plan EDFs are insufficient compared to what the City would likely require as mitigation or conditions of approval under the standard approval process. As discussed in Section A.4, the City would likely have the ability and authority to undertake environmental review with respect to the required subsequent approvals and require mitigation as appropriate. In addition, subsequent approvals would be subject to the Transportation Mitigation Fee Program discussed in Section III.E.1 when adopted. Additional detail about the consistency of the EDFs and the mitigation measures (or conditions of approval) the City would require under the standard approval process are included in Appendix 5 and Attachment B to that appendix.

**Table III.2**  
**Summary of Intersection Impacts and Improvements Identified by the City and in the EA**

Significantly Impacted Intersection	Identified by		Applicable Specific Plan EDFs <sup>a</sup>	Compared to the City's mitigation or conditions of approval under the standard approval process, the Specific Plan EDF(s) are: <sup>b</sup>				Comments <sup>b</sup>
	City	EA		Consistent and Sufficient	Consistent but Insufficient	Partially Consistent but Insufficient	Inconsistent or Insufficient	
1 De Anza Boulevard/Homestead Road		■	43				■	Intersection #1: The City would not identify an impact at this intersection, therefore, no mitigation would be required. In addition, the City would not support the improvement for this intersection in EDF 43.
2 De Anza Boulevard/Stevens Creek Boulevard	■	■	43, 45, 46			■		Intersections #2-5: The City would support the addition of a second southbound left turn lane and signal improvements at Wolfe Rd/Stevens Creek Boulevard (Intersection #5) but not the overlap signal phase improvements for the intersections in EDF 43. EDF 45 is consistent with what the City would require although the monetary contribution would typically be assessed to determine the appropriate fair share contribution and finalized in consultation with the City and other appropriate agencies under the standard approval process. Thus, the contribution amount could be different than what is identified in EDF 45.
3 De Anza Boulevard/McClellan Road	■	■	43, 45			■		EDF 46 is generally consistent with what the City would typically require; however, the City would require the evaluation of queue lengths and identification of necessary improvements prior to development approval rather than prior to issuance of final occupancy permits/certificates as identified in EDF 46.
4 De Anza Boulevard/Bollinger Road	■	■	43, 45			■		No comment
5 Wolfe Road/Stevens Creek Boulevard	■	■	43, 45			■		Refer to Appendix 5 for additional discussion.
6 Miller Avenue/Bollinger Road	■						■	Intersections 6 and 7: No EDFs addressing these intersections were included because no impacts were identified in the EA. Refer to Appendix 5 for additional discussion.
7 Stevens Creek Boulevard/Tantau Avenue	■						■	
8 Stevens Creek Boulevard/Calvert Drive I-280 Ramps (east)	■		43	■				No comment

**Table III.2**  
**Summary of Intersection Impacts and Improvements Identified by the City and in the EA**

Significantly Impacted Intersection	Identified by		Applicable Specific Plan EDFs <sup>a</sup>	Compared to the City's mitigation or conditions of approval under the standard approval process, the Specific Plan EDF(s) are: <sup>b</sup>				Comments <sup>b</sup>
	City	EA		Consistent and Sufficient	Consistent but Insufficient	Partially Consistent but Insufficient	Inconsistent or Insufficient	
9 Stevens Creek Boulevard/Lawrence Expressway Ramps (west)	■						■	Intersections 9-13: No EDFs addressing these intersections were included because no impacts were identified in the EA. The City would require payment of fair-share contributions to planned improvements at these intersections. Refer to Appendix 5 for additional discussion.
10 Lawrence Expressway/I-280 Southbound Ramps	■						■	
11 Lawrence Expressway/Mitty Way	■						■	
12 Lawrence Expressway/Bollinger Road	■						■	
13 Lawrence Expressway/Doyle Road	■						■	
14 Lawrence Expressway/Prospect Road	■		56		■			Intersections 14 and 15: VTCSP EDF 56 is consistent with what the City would typically require as a result of the standard approval process, but insufficient because fair share contributions would be based on a trip generation estimate approved by the City and for all significantly impacted intersections identified by the City on Lawrence Expressway.
15 Lawrence Expressway/Saratoga Avenue	■		55		■			EDF 55 is consistent with what the City would typically require. Refer to Appendix 5 for additional discussion.
16 SR 85 (north)/Saratoga Avenue	■						■	Intersection 16: No EDFs addressing these intersections were included because no impacts were identified in the EA. The City would require a fair-share contribution towards an improvement at this intersection. Refer to Appendix 5 for additional discussion.

- a. Specific Plan EDF 52, the preparation and implementation of a Transportation Demand Management Plan that would reduce peak-hour office trips, is applicable to all of the above intersections and is consistent with what the City would typically require to reduce intersection and freeway impacts under the standard approval process. Specific Plan EDF 52 alone would not fully mitigate impacts at any of the above intersections, however.
- b. As discussed in Section III.A.4.d, the City would likely have the ability and authority to undertake environmental review with respect to the required subsequent approvals and require mitigation as appropriate. In addition, subsequent approvals would be subject to the Transportation Mitigation Fee Program discussed in Section III.E.1 when adopted.

## **b. Freeway Level of Service Impacts**

Buildout of the General Plan (including the redevelopment of Vallco with or without the Initiative) would result in significant freeway impacts. Improvements to freeways are under the jurisdiction of the California Department of Transportation (Caltrans), not the City of Cupertino. The City will cooperate with Caltrans to identify improvements to the affected freeway segments and include identified freeway improvements as part of the City's TMFP (when adopted) so that proposed projects pay their fair-share towards mitigating improvements.<sup>102</sup> The City is currently in the initial stages of preparing the TMFP. The TMFP is discussed in Section III.E.1 of this Report.

Table III.3 below summarizes the freeway impacts likely identified by the City based on preliminary analysis and freeway impacts identified in the EA. Compared to the results of the City's preliminary analysis, the EA identified fewer impacted segments on SR 17, more impacted segments on SR 85, more impacted segments on I-280, and fewer impacted segments on I-880. The differences in freeway impacts identified by the City and in the EA are due to differences in trip generation assumptions, trip dispersion, and the volume of traffic assigned to HOV lanes (refer to Appendix 5 for more detail).

The Specific Plan EDF 22 would reduce freeway impacts by providing for a fair share contribution of \$30 million for freeway infrastructure improvements. Specifically, \$26 million would be provided for planned improvements at I-280 and Wolfe Road (EDF 54) and \$4 million would be provided for future I-280 and other freeway segment improvements (EDF 44). In addition, EDF 52 is the implementation of a transportation demand management plan that would reduce peak-hour office trips (including freeway trips).

The concept of fair share contributions towards improvements at impacted freeway segments in Specific Plan EDFs 22, 44, and 54 is consistent with what the City would typically require under the standard approval process, although the monetary contribution by the Specific Plan would be assessed to determine the appropriate fair share contribution for all impacted freeway segments identified by the City and finalized in consultation with the City and other appropriate agencies under the standard approval process. Thus, the contribution amounts could be different than what are identified in EDFs 22, 44, 54.

Specific Plan EDF 52 is consistent with what the City would typically require to reduce freeway impacts under the standard approval process, although it may be more difficult to implement in the context of the Specific Plan which does not have separate parking areas for office uses.

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<sup>102</sup> City of Cupertino. *General Plan Amendment, Housing Element Update and Associated Rezoning EIR*. State Clearinghouse No. 2014032007. Certified December 2014. Page 4.13-59.

**Table III.3**  
**Summary of Freeway Impacts Identified by the City and in the EA**

Freeway	Number of Significantly Impacted Freeway Segments Identified by	
	City	EA
<b>Existing with Specific Plan Conditions</b>		
SR 17	2	0
SR 85	5	14
I-280	10	16
I-880	3	0
<i>Total Segments Impacted</i>	20	30
<b>Cumulative with Specific Plan Conditions</b>		
SR 17	2	3
SR 85	5	18
I-280	15	18
I-880	4	0
<i>Total Segments Impacted</i>	26	39

### **c. Impacts to Transit Facilities**

The addition of traffic on roadways from the development of the Specific Plan could impact transit service and performance. The Specific Plan includes EDFs that would enhance transit service by providing funding for a free community shuttle (EDF 19); installing a transit center on the east side of Vallco (EDF 47); funding for a partnership with the City, VTA, local school districts, property owners, and/or corporate employers (EDF 47); and installing a transit center on the north side of Stevens Creek Boulevard (EDF 48). Specific Plan EDFs 19, 47, and 48 are consistent with what the City would typically require during the standard approval process.

### **d. Impacts to Bicycle and Pedestrian Facilities**

The development of the Specific Plan could impact bicycle and pedestrian quality of service. The Specific Plan includes EDFs that would improve bicycle and pedestrian facilities by implementing specific bicycle and pedestrian improvements on Tantau Avenue and Portal Avenue (EDF 49) and providing a \$6 million donation to the City for a bicycle/pedestrian trail along the southern edge of I-280 (EDF 50).

Specific Plan EDFs 49 and 50 are generally consistent with what the City would typically require during the standard approval process. Additionally, the City would likely require green or buffered bicycle lanes on Wolfe Road; Class IV bike lanes (i.e., separated bikeways) on Stevens Creek Boulevard; removal of pork chop islands at Stevens Creek Boulevard/Wolfe Road; and enhanced pedestrian crossings at the Stevens Creek Boulevard intersections with Perimeter Road and Wolfe Road, as well as the Vallco Parkway intersections with Wolfe Road and Perimeter Road. While EDFs 49 and 50 do not specifically require these additional improvements, the Specific Plan requires a developer to “construct and/or fund additional improvements to pedestrian and bike trail(s) throughout the Plan Area, including along the entirety of the existing Perimeter road, and in the Plan Area vicinity to improve Safe Routes to Schools and address both bike and pedestrian safety and traffic concerns.” (C-90.) Therefore, the Specific Plan contemplates that additional measures, like those the City would typically require, are required community benefits.

### **e. Parking**

Based on the City’s Municipal Code for mixed-use projects, the Specific Plan would be required to provide 10,413 vehicle parking spaces. However, under the Municipal Code, reduced parking could be allowed if supported by a parking study. The Specific Plan proposes 9,060 vehicle parking spaces. The proposed parking for the Specific Plan, therefore, would not meet the City’s parking standards for mixed-use development, but could meet an alternative parking standard if supported by a detailed parking study. Moreover, as discussed in Section A.4 of this Report, the

City will need to comply with CEQA prior to issuing subsequent discretionary development approvals required or anticipated in the Specific Plan, including the required MDSP and ASR, a development agreement and/or a CUP (if sought by developer). If that subsequent environmental review discloses significant environmental impacts resulting from the proposed number of parking spaces, the City likely could require appropriate mitigation, including additional parking, at that time.

Pursuant to the City's Municipal Code and based on the vehicle parking supply, the Specific Plan would be required to provide 1,022 Class I bicycle parking spaces and 128 Class II bicycle parking spaces. The EA identified a bicycle parking supply of 487 Class I facilities and 81 Class II facilities. However, the Specific Plan does not contain specific standards for bicycle parking. As a result, the standards in the Municipal Code would apply.

#### **f. Neighborhood Intrusion**

There is a potential for vehicles traveling to and from the Specific Plan to divert to Blaney Avenue, Portal Avenue, Finch Avenue, and Tantau Avenue to avoid potential congestion on Stevens Creek Boulevard, De Anza Boulevard, and Wolfe Road. Specific Plan EDF 53 would reduce neighborhood intrusion by funding traffic monitoring studies and providing up to \$300,000 for traffic calming improvements to minimize neighborhood traffic intrusion, if needed. The \$300,000 appears reasonable. Specific Plan EDF 53 is consistent with what the City would typically require during the standard approval process.

#### **g. Safety Hazards and Accessibility**

Under the standard approval process, the City would typically review a project for the potential to increase hazards due to a design feature or incompatible use. This process would still occur if the Initiative were approved. The City would review the potential for safety hazards (e.g., inadequate sight distance, inadequate emergency vehicle access, impacts of proposed programmable electronic signs on driver safety, etc.) and compatibility with Americans with Disabilities Act (ADA) requirements during subsequent City approvals for the Specific Plan.

#### **h. Construction-Related Traffic Impacts**

Construction-related traffic could result in temporary impacts. Specific Plan EDF 51 would reduce impacts from construction traffic by implementing a construction traffic management plan that includes flagmen, schedules of potential closures, a construction hotline, delineation layout, truck routes, delivery schedules, and alternative routes, per City industry standards and requirements. Specific Plan EDF 51 is consistent with what the City would require during the standard approval process.

## **2. School Services**

Vallco is located within the Cupertino Union School District (CUSD) and Fremont Union High School District (FUHSD). Based on CUSD projections, enrollment is projected to decrease by about 400 elementary and 500 middle school students over the next five years. FUHSD enrollment is expected to increase by about 600 students over the same five-year period, then either stabilize or begin to decline as fewer students move up from the younger grades.

Students generated from residential development at Vallco would likely attend Collins Elementary, Lawson Middle, and Cupertino High Schools. The development of 800 residential units (160 of which would be age-restricted senior

units) at Vallco would generate about 218 students (122 elementary school students, 58 middle school students, and 38 high school students).<sup>103</sup>

Pursuant to Senate Bill 50 (SB 50) and the adopted school fees, the Specific Plan development is required to pay school impact fees based on the square footage of the development. Under SB 50, payment of school impact fees provides full and complete school facilities mitigation for new development.

Specific Plan EDF 9 would reduce impacts to the local school districts. EDF 9 includes paying the SB 50 school fees and providing benefits to local schools totaling \$40 million within the CUSD and FUHSD. Specific Plan EDF 10 would enhance school services by requiring office and retail tenants to participate in learning-by-doing programs with FUSHD students. The CUSD and FUHSD recently approved educational facilities and donation agreements with the Vallco Property Owner, LLC regarding local school benefits. As they require a developer to provide more funding or facilities than required by state law, Specific Plan EDFs 9 and 10 exceed what the City would typically require as mitigation or as a condition of approval for the development of the Specific Plan under the standard approval process, although additional benefits could be provided through a development agreement.

### **3. Parks/Open Space**

The development of the Specific Plan is subject to the Quimby Act, General Plan policies, and the City's Municipal Code (which requires residential developers to dedicate park land or pay in-lieu fees to accommodate and offset their fair share of the provision of parks and recreational facilities).

Pursuant to the City's Municipal Code, development of the Specific Plan with 800 residential units would be required to provide about four acres of parkland.<sup>104</sup> The Specific Plan EDFs would reduce impacts to park and open space by providing three acres of publicly accessible open space (the town squares) (EDF 5) and a 30-acre rooftop Community Park & Nature Area that appears to include about 10 acres of publically accessible space (EDFs 1 and 2), for a total of about 13 acres. The Specific Plan EDFs, therefore, would exceed what the City would typically require as mitigation or as conditions of approval for the development of the Specific Plan under the standard approval process.

In addition, Specific Plan EDF 9 includes community benefits for local schools valued at approximately \$40 million, which may include improving and expanding the athletic and recreation facilities at the Nan Allan/Collins Elementary School location. The improvement of existing school fields, however, does not qualify as parkland mitigation under the City's Municipal Code.

### **4. Other Public Services**

#### **a. Police Services**

The City of Cupertino contracts with the Santa Clara County Sheriff's Office for police services. Development of the Specific Plan is subject to General Plan policies that ensure adequate police protection services in the City. The buildout of the General Plan would increase the number of calls for police services; however, buildout of the General Plan (with or without the Initiative) would not result in the need for expansion or addition of police facilities or

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<sup>103</sup> Under the General Plan with Initiative without CUP, 389 residential units (80 of which would be age-restricted senior units) would be developed at Vallco and generate approximately 105 students (59 elementary school students, 28 middle school students, and 19 high school students).

<sup>104</sup> Under the General Plan with Initiative without CUP, 389 residential units (80 of which would be senior units) would be developed at Vallco and require approximately two acres of parkland.



personnel. In addition, the increase in property tax revenue from buildout of the General Plan could offset additional costs incurred by the City to increase its service contract with the Sheriff's Department, if required.

Development of the Specific Plan would increase the property taxes collected from the site, compared to existing conditions, due to the resulting increase in property value. Specific Plan EDF 7 could potentially enhance police services by providing for at least 5,000 square feet of civic space that could be used or shared by local non-profits and civic organizations (such as the Sheriff's Department for a substation). The Santa Clara County Sheriff's Office expressed a desire to explore locating a new substation at Vallco during the planning process for The Hills at Vallco. The City would not likely require new or expansion of existing police facilities to serve the Specific Plan, however, given the analysis and conclusion in the General Plan EIR. Specific Plan EDF 7, therefore, exceeds what the City would typically require as mitigation or as a condition of approval for the development of the Specific Plan under the standard approval process.

## **b. Fire Services**

Development of the Specific Plan is subject to General Plan policies that ensure adequate fire protection in the City and the City's Fire Code. The existing fire protection facilities, equipment, and staff are adequate to accommodate growth anticipated from buildout of the General Plan (with or without the Initiative). The increase in property tax revenue from buildout of the General Plan would result in additional funding available to the Santa Clara County Fire Department for future growth, if needed.

Development of the Specific Plan would result in an increase in property taxes collected from the site, compared to existing conditions, due to its increase in property value. Specific Plan EDF 7 could potentially enhance fire services by providing for at least 5,000 square feet of civic space that could be used or shared by local non-profits and civic organizations (such as the Santa Clara County Fire Department for a substation). The Santa Clara County Fire Department expressed a desire to explore locating a new substation at Vallco during the planning process for The Hills at Vallco. The City would not likely require new or expansion of existing fire facilities to serve the Specific Plan, however, given the analysis and conclusion in the General Plan EIR. Specific Plan EDF 7, therefore, exceeds what the City would typically require as mitigation or as a condition of approval for the development of the Specific Plan under the standard approval process.

## **c. Library Service**

The existing employees and library facilities in the Santa Clara County Library system are sufficient to accommodate the increased demand in library services from buildout of the General Plan (with or without the Initiative) and no physical expansion of library facilities is required. Library services are primarily funded by County property taxes.

Development of the Specific Plan would result in an increase in property taxes collected from the site, compared to existing conditions, due to its increase in property value. Specific Plan EDF 7 could potentially enhance library services by providing at least 5,000 square feet of civic space that could be used or shared by local non-profits and civic organizations (such as the Cupertino Library for a materials pick-up and/or return annex). Specific Plan EDF 7 exceeds what the City would be required as mitigation or as a condition of approval for the development of the Specific Plan under the standard approval process.

# **5. Utilities and Service Systems**

## **a. Wastewater Treatment/Sanitary Sewer System**

The City has sufficient wastewater treatment capacity at the plants to serve the buildout of the General Plan (with or without the Initiative). Specific Plan EDF 57 requires Specific Plan applicant(s) to demonstrate (to the satisfaction of the Public Works Director) that adequate sewer services are available to serve the development prior to issuance of occupancy permit(s). Specific Plan EDF 57 is consistent with what the City would typically require to ensure adequate sewer service under the standard approval process. The City would require any necessary utility improvements to be constructed concurrent with the development and be financed by the developer.

## **b. Water**

There is sufficient water supply from San Jose Water Company and Cal Water to serve buildout of the adopted General Plan (with or without the Initiative). No new or expanded entitlements are required.

The Specific Plan includes the EDFs that would reduce impacts to water service by:

- Achieving LEED Platinum certification (or its equivalency) by providing recycled water service to the site (EDF 3);
- Demonstrating (to the satisfaction of the Public Works Director) that adequate water facilities are available to serve the development prior to issuance of grading permits or improvement plans (EDF 58);
- Including the design public water facilities that would serve the site in project improvements prior to issuance of grading permits or improvement plans (EDF 59);
- Designing landscape and irrigation plans for recycled water to meet all non-potable water demands (EDF 60); and
- Initiating the design, permitting, and construction of the recycled water line extension to the site (EDF 61).

Specific Plan EDFs 58 and 59 are consistent with what the City would typically require of a proposed development to ensure adequate water supply and service under the standard approval process. The City would require any necessary utility improvements to be constructed concurrent with the development and be financed by the developer.

The Hills at Vallco proposed a similar development with landscaping (including a 30-acre green roof) as is included in the Specific Plan. A Water Supply Assessment (WSA) was completed for The Hills at Vallco development project. The WSA concluded there were adequate water supplies to meet projected demands of The Hills at Vallco project and those of all existing customers and other anticipated future customers for normal, single dry year, and multiple dry year conditions. Therefore, there is likely sufficient water supply to serve the development of the Specific Plan. In addition, the WSA did not account for future use of recycled water at Vallco, which could reduce potable water demand by 33 percent according to the EA.

Specific Plan EDF 61 is the extension of the Wolfe Road Recycled Water Facilities project from the Apple Campus 2 to serve the Specific Plan site. Specific Plan EDF 61 is in excess of what the City would typically require during the standard approval process. Existing constraints may affect the availability of the recycled water including the amount of recycled water able to be produced, the supply available to Cupertino users, and the demand of upstream-recycled water users from the Specific Plan site.

The City would typically require environmental analysis of utility improvements (such as the extension of the recycled water line) proposed to serve a development prior to development approval. As the pipeline extension would occur within existing road rights-of-way, it is likely that environmental impacts associated with its construction could be mitigated or avoided with the implementation of standard practices and measures (e.g., standard tree replacement requirements and standard construction-related noise and air quality best management practices).

Pursuant to the City's Green Building Ordinance, a development such as Specific Plan would be required to achieve LEED Silver. Specific Plan EDF 3, therefore, exceeds what the City would typically require of a development such as Specific Plan under the City's Green Building Ordinance.

## **c. Energy**

No new energy supply facilities or distribution infrastructure or capacity-enhancing alterations to existing facilities are required to serve buildout of the General Plan (with or without the Initiative). The development of the Specific Plan is subject to General Plan policies that ensure efficient use of energy resources, as well as the Cal Green Building Code and the City's Green Building Ordinance. Pursuant to the City's Green Building Ordinance, a development project such as Specific Plan would be required to achieve LEED Silver.

Specific Plan EDF 3 minimizes energy use by achieving LEED Platinum certification (or its equivalency). Specific Plan EDF 3, therefore, exceeds what the City would typically require of a development such as Specific Plan under the City's Green Building Ordinance.

## 6. Other Environmental Issues

### a. Aesthetics/Community Form

The development of Specific Plan could result in the aesthetic impacts discussed below.

- **Change in visual character** – The development of the Specific Plan would not result in a significant change in visual character for the following reasons:
  - The development of the Specific Plan is consistent with the development envisioned for the site in the adopted General Plan;
  - The Specific Plan maximum building heights are lower than what was assumed for the site in the General Plan EIR and the General Plan EIR concluded development of Vallco as envisioned by the General Plan would not result in a significant change in visual character;<sup>105</sup> and
  - The Specific Plan requires:
    - A 35-foot minimum setback from the eastern and western site boundaries,
    - A 20-foot minimum setback from North Wolfe Road and Vallco Parkway,
    - A minimum building plane of 1:1 on the western edge, and
    - Privacy measures (including Specific Plan EDF 16, Residential-Area Plan Sensitivity: Protect adjacent residential property owners by retaining healthy trees and existing walls and encouraging inactive and/or generously set-back building facades along the Plan Area's western property line.).
- **Scenic highway viewshed** – Vallco is not within the viewshed of an officially designated state scenic highway. The segment of I-280 adjacent to Vallco is, however, an eligible state scenic highway. Existing, mature trees obscure views of Vallco from I-280. While greater in mass and scale than the existing development on-site, the development of the Specific Plan would not result in substantial adverse impacts to the existing I-280 viewshed, because the Specific Plan includes the preservation of most of the existing trees along the site's perimeter and there are intermittent views of urban development from I-280 within the same viewshed.

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<sup>105</sup> The Specific Plan identifies a maximum building height of 95 feet (four to six stories tall) on the east side of North Wolfe Road. The maximum building height on the west side of North Wolfe would be 80 feet with a maximum building height of 65 feet for buildings along the western edge of the site. The top of the roofs, which would include mechanical equipment, would be up to 25 feet above the maximum building height. Rooftop pavilions would be no greater than 24 feet in height.

The General Plan EIR assumed that the redevelopment of Vallco would include buildings with a maximum height of 160 feet on the east side of North Wolfe Road and a maximum building height of 85 feet on the west side of North Wolfe Road. The General Plan EIR also assumed that the redevelopment of Vallco would include "suitable building setbacks from public rights of way" and "appropriate buffers and/or height transitions for buildings adjacent to low-density residential development." The General Plan EIR concluded that redevelopment of Vallco as envisioned in the General Plan would not result in a significant change in visual character (Source: City of Cupertino. *General Plan Amendment, Housing Element Update and Associated Rezoning EIR*. State Clearinghouse No. 2014032007. Certified December 2014. Page 4.1-31.)

- **Light and glare** – The Specific Plan includes EDFs that would reduce light and glare impacts by requiring development to comply with the Specific Plan lighting guidelines which avoid light trespass across property lines (EDF 24) and using low-reflectivity glass (EDF 27). Specific Plan EDFs 24 and 27 are consistent with what the City would typically require of a project under the standard approval process.

## b. Air Quality

Development of the Specific Plan is subject to applicable General Plan policies to minimize air quality impacts. The development of the Specific Plan could result in the air quality impacts discussed below.

- **Clean Air Plan consistency** – Based on preliminary analysis, it appears that the Specific Plan is consistent with the Bay Area 2010 Clean Air Plan. The Specific Plan would result in a reduction in vehicle miles traveled per capita citywide and includes EDFs 1, 3, 18-21, 26, 47, and 48 that are consistent with applicable mobile, transportation, and energy control measures in the Climate Action Plan.
- **Construction-related emissions** – The development proposed under the Specific Plan exceeds the Bay Area Air Quality Management District (BAAQMD) construction criteria pollutant screening criteria and, therefore, it is possible that the construction of the Specific Plan could exceed BAAQMD thresholds of significance.
  - Specific Plan EDF 25 would reduce fugitive dust emissions during construction by requiring all construction activities to implement BAAQMD best management practices for dust control and EDF 26 that would reduce construction-related exhaust emissions (specifically NOx) by requiring off-road equipment meet Tier 4 standard where commercially available, limiting idling time for equipment, and requiring construction operators properly maintain and tune equipment.
  - Specific Plan EDFs 25 and 26 are consistent with what the City would typically require to reduce significant construction-related fugitive dust and exhaust emissions impacts under the standard approval process.
- **Operation-related emissions** – The development proposed under the Specific Plan exceeds the BAAQMD operational criteria pollutant screening criteria and, therefore, it is possible that the operation of the Specific Plan could exceed BAAQMD thresholds of significance.

Specific Plan EDF 18 reduces operation-related emissions by implementing a Transportation Demand Management Plan that would reduce office-generated weekday peak hour trips. Specific Plan EDF 18 is consistent with what the City would typically require to reduce operation-related emissions under the standard approval process.

- **Community risk** – There is a potential for community risk impacts to nearby sensitive receptors from construction-related toxic air contaminants (TACs). Specific Plan EDF 26 would reduce community risk to nearby sensitive receptors from project construction by requiring off-road equipment to meet Tier 4 standard where commercially available, limiting idling time for equipment, and requiring construction operators properly maintain and tune equipment. Specific Plan EDF 26 is consistent with the mitigation identified in the General Plan EIR and with what the City would typically require to reduce significant community risk to nearby sensitive receptors under the standard approval process.

Based on BAAQMD screening tools, future residences at Vallco could be exposed to substantial community risk from existing, surrounding sources of TACs (i.e., I-280, Stevens Creek Boulevard, North Wolfe Road, and stationary sources). The EA includes site-specific modeling and a risk assessment, which concludes that the community risk to future residents on-site from TAC sources is below the BAAQMD thresholds of significance. Given the time constraints for the 9212 Report, the air quality analysis and conclusions in the EA were not peer reviewed. Typically, to reduce significant community risk to future residents on-site from surrounding TAC sources, projects could be required to install air filtration for residential units that have predicted risk above BAAQMD thresholds of significance.

### c. Biological Resources

Development of the Specific Plan is subject to applicable General Plan policies to protect the City's urban ecosystem. The primary biological resources at Vallco are trees. There is also a potential for nesting birds to be present in trees on or adjacent to Vallco. Nesting birds are protected under provisions of the Migratory Bird Treaty Act and Fish and Game Code Sections. The development of the Specific Plan may also impact migratory birds depending on the building materials used.

The Specific Plan includes EDFs that would reduce impacts to birds and trees by requiring development to use low-reflectivity glass (EDF 27); preparing a Tree Management Plan in compliance with the Municipal Code (EDF 28); and completing preconstruction nesting bird surveys (EDF 29). The Specific Plan EDFs 27, 28, and 29 are consistent with the mitigation identified in the General Plan EIR and what the City would typically require under the standard approval process.

The City of Cupertino, including the Vallco site, is not located within an adopted Habitat Conservation Plan or Natural Community Conservation Plan. The redevelopment of Vallco, therefore, would not be subject to fees in the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan. Specific Plan EDF 30 requires future development under the Specific Plan pay the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan Nitrogen Deposition Fee. Specific Plan EDF 30 exceeds what the City would require as mitigation or as a condition of approval for the development of the Specific Plan under the standard approval process.

### d. Cultural Resources

Development of the Specific Plan would be subject to General Plan policies and Municipal Code 19.104.210 regarding cultural resources. The development of Specific Plan could result in the cultural resources impacts discussed below.

- **Historical Resources** – The Vallco Shopping District is designated as a City Community Landmark in the City's General Plan. The General Plan EIR concluded that the redevelopment of the Vallco site would not result in significant impacts to historic resources, if redevelopment were consistent with General Plan Policy LU-6.3. The Specific Plan would provide a plaque, reader board and/or other educational tools on the site to explain the historic significance of the resource, consistent with General Plan Policy LU-6.3.
- **Paleontological Resources and Unique Geologic Features** – There are no recorded paleontological resources in the Vallco area. No unique geologic features are located on-site. Specific Plan EDF 33 would reduce impacts to paleontological resources, if found on-site during construction, by retaining a paleontological monitor to respond if paleontological resources are discovered. Specific Plan EDF 33 is consistent with what the City would typically require to reduce impacts to paleontological resources (if discovered on-site) under the standard approval process.
- **Archaeological Resources** – The general vicinity of the Vallco area has a low to moderate potential for containing archaeological resources. Specific Plan EDF 32 would minimize impacts to archaeological resources, if discovered on-site during construction, by retaining an archaeological monitor to inspect the ground surface at the completion of demolition activities. Specific Plan EDF 32 is consistent with what the City would typically require to reduce impacts to unknown buried archaeological resources (if present on-site) under the standard approval process.

### e. Geology and Soils

Vallco is located in an area that is considered to have a relatively low level of geologic hazard risk, although all of the San Francisco Bay Area is seismically active. The Specific Plan EDFs 34 and 35 would reduce impacts from geology and soils by requiring the recommendations in the site-specific geotechnical investigation completed for the project be incorporated. The Specific Plan EDFs 34 and 35 are consistent with what the City would typically require to

reduce adverse geology and soils effects, as well as to ensure structurally sound development, under the standard approval process.

#### **f. Greenhouse Gas Emissions**

Pursuant to the BAAQMD CEQA Air Quality Guidelines, development (other than stationary sources) consistent with the City's adopted Climate Action Plan is considered to have a less than significant greenhouse gas impact. Based on preliminary review, it appears that development of the Specific Plan (excluding stationary sources) would be consistent with the City's CAP, because it would be required to comply with existing plans, policies, and regulations (including the City's Construction and Demolition Recycling Diversion Requirements) and includes EDFs consistent with the CAP's goals and measures for reducing energy use, promoting alternative transportation, conserving water, reducing solid waste, expanding green infrastructure. Applicable EDFs include 1 (green roof and community park), 3 (sustainability leadership/recycled water), 18 (transportation demand management plan), 19 (free community shuttle), 20 (bike-pedestrian trails funding), 21 (bike-pedestrian improvements), 26 (construction emissions minimization), 47 (transit/east side transit center and community shuttle), and 48 (transit/mobility hub).

The Specific Plan includes a central plant (a stationary source), which would provide heating, ventilation, and air conditioning for most buildings. It is possible that operation of the central plant would produce greenhouse gas emissions that exceed the BAAQMD greenhouse gas threshold of significance for stationary sources. Specific Plan EDF 36 would reduce greenhouse gas emission impacts from the central plant by requiring the applicant(s) purchase voluntary carbon credits in the amount sufficient to offset the operational emissions above BAAQMD's significance threshold. Specific Plan EDF 36 is consistent with what the City would typically require to mitigate greenhouse gas emissions from stationary sources under the standard approval process.

#### **g. Hazards and Hazardous Materials**

Development of the Specific Plan would be subject to applicable plans, policies, and regulations pertaining to the use, handling, storage, and disposal of hazards and hazardous materials including General Plan policies. Hazards and hazardous materials planning considerations are discussed below.

- **Potential sources of on-site contamination** – Surface soils may contain elevated levels of residual pesticides and other chemicals of concern related to past and present use and operations at the site.

Specific Plan EDF 39 would reduce adverse effects from possible on-site soil contamination by requiring a Soil Management Plan be prepared and implemented. Specific Plan EDF 39 is consistent with mitigation identified in the General Plan EIR and with what the City would typically require to reduce impacts from on-site soil contamination under the standard approval process.

- **Building demolition waste** – The demolition of buildings and existing improvements would generate waste that could include hazardous materials, including lead-based paint and asbestos-containing materials (ACMs).

Specific Plan EDF 38 would reduce adverse effects from building demolition waste by complying with the operations and maintenance plan for management and abatement of ACMs and proper handling and disposal of fluorescent and mercury vapor light fixtures, and complying with applicable requirements regarding lead-based paint. Specific Plan EDF 38 is consistent with what the City and other regulatory agencies would typically require under the standard approval process.

- **Proposed use of hazardous materials** – Development of the Specific Plan could include uses that generate, store, use, distribute, or dispose of hazardous materials. Specific Plan EDF 37 would reduce adverse effects from on-site use of hazardous materials by requiring preparation of Hazardous Materials Business Plans as necessary. Specific Plan EDF 37 is consistent with what the County of Santa Clara would typically require under the standard approval process.

## h. Noise

Development of the Specific Plan would be subject to applicable noise policies and regulations including those in the General Plan, Municipal Code, and Zoning Ordinance. The development of the Specific Plan could result in the noise and vibration impacts discussed below.

- **Construction-related noise** – Noise generated from construction activities associated with the development of the Specific Plan would likely result in significant, temporary noise impacts at adjacent residences. The Specific Plan includes EDFs that would reduce construction-related noise impacts by requiring prompt demolition (EDF 14), adhering to the construction noise limits in the Municipal Code and implementing standard construction-noise abatement measures (EDF 40), and requiring haul truck travel at low speeds when operating on or adjacent to the site (EDF 41). Specific Plan EDFs 14, 40, and 41 are consistent with what the City would typically require to reduce construction-related noise under the standard approval process.
- **Construction-related vibration** – Given the fact that the adjacent residences are not historic resources, the identified minimum building setback of 35 feet from the property line with adjacent residences (thereby setting back building construction activity and sources of vibration from adjacent residences), and pile driving is not proposed, it is unlikely that the development of the Specific Plan would result in significant construction-related vibration impacts.
- **Operation-related noise** – Operation of the uses at Vallco under the Specific Plan could result in significant noise increases at adjacent sensitive receptors. To mitigate operation-related noise impacts at adjacent sensitive receptors, the City requires compliance with the noise standards in the Municipal Code, and could require measures that limit or attenuate noise such as sound barriers, limitations on hours of operations, and orientation of stages and speakers away from sensitive receptors.

Operation of the Specific Plan would result in an increase in traffic to and from the site, which could increase noise levels at adjacent sensitive receptors. In general, for traffic noise to increase noticeably (i.e., by a minimum of three dBA), existing traffic volumes must double. Based on preliminary traffic calculations, the estimated trips from the Specific Plan would not double existing traffic volumes.

- **Other noise effects**

The noise and land use compatibility of the proposed uses in the Specific Plan with the existing ambient noise environment could be an issue. Exterior and interior noise levels at future uses at Vallco under the Specific Plan would exceed the City's noise standards in the General Plan and Municipal Code. To mitigate exterior noise levels above the City's standard, the City could require measures that limit or attenuate noise, such as sound barriers. Specific Plan EDF 42 would require future residential units prepare acoustical assessments to demonstrate how the State and City interior noise standard would be met. Specific Plan EDF 42 is consistent with what the City would typically require of proposed residential projects to meet interior noise standards under the standard approval process.

There could also be noise compatibility issues between proposed uses on-site. The interfaces between different uses would typically be evaluated by the City when specific development projects are proposed. Noise attenuation measures (such as enclosing trash compactors and loading docks, limiting cleaning activities in parking lots/garages, and limiting commercial deliveries) could be required.

## III.E. Infrastructure Funding

As described in the prior section, the buildout of the Adopted General Plan with and without the Initiative could affect transportation, schools and parks/open space, which are the main categories to be evaluated according to Election Code 9212. This section analyzes the potential impact on funding on these three types of infrastructure. As described in Section III.A, if the Initiative were to be adopted, a developer could enter into a Development Agreement to undertake the mixed-use development of the Vallco Shopping Center and commit to provide significant community benefits and infrastructure investments as part of the Development Agreement, or these benefits may be required pursuant to conditions of approval.

### 1. Transportation Mitigation Fee Program

In 2014, the City adopted an updated General Plan governing development in Cupertino, which was amended in 2016 (General Plan: Community Vision 2015 - 2040). The environmental impact report for Community Vision 2015-2040 ("GP EIR") found that development under the Plan would significantly impact traffic at a number of intersections within the City. To mitigate these impacts, the City adopted and incorporated into the General Plan Mitigation Measure TRAF-1, which commits the City to adopting a Transportation Mitigation Fee Program ("TMFP") that will require new development to pay its fair share of traffic improvements needed to address the impacts of their development on City streets. Per Mitigation Measure TRAF-1:

*The City of Cupertino shall commit to preparing and implementing a Transportation Mitigation Fee Program to guarantee funding for roadway and infrastructure improvements that are necessary to mitigate impacts from future projects based on the then current City standards. As part of the preparation of the Transportation Mitigation Fee Program, the City shall also commit to preparing a 'nexus' study that will serve as the basis for requiring development impact fees under AB 1600 legislation, as codified by California Code Government Section 66000 et seq., to support implementation of the proposed Project. The established procedures under AB 1600 require that a 'reasonable relationship' or nexus exist between the traffic improvements and facilities required to mitigate the traffic impacts of new development pursuant to the proposed Project.<sup>106</sup>*

The Mitigation Measure TRAF-1 contains a list of traffic improvements that would reduce impacts from development, including adding additional lanes at the Wolfe Road/I-280 and Lawrence Expressway/Stevens Creek Boulevard intersections, and could be included in the nexus study for the TMFP.<sup>107</sup> Mitigation Measure TRAF-1 also describes how and when the fee should be applied to a new development:

*The fees shall be assessed when there is new construction, an increase in square footage in an existing building, or the conversion of existing square footage to a more intensive use. The fees collected shall be applied toward circulation improvements and right-of-way acquisition. The fees shall be calculated by multiplying the proposed square footage, dwelling unit, or hotel room by the appropriate rate. Transportation mitigation fees shall be included with any other applicable fees payable at the time the building permit is issued.<sup>108</sup>*

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<sup>106</sup> GP EIR Mitigation Monitoring and Reporting Program (MMRP), page 7.

<sup>107</sup> Ibid, pages 7-11.

<sup>108</sup> Ibid, pages 11-12.



The requirement to enact a transportation fee program is also required by General Plan Policy M-10.2:

*Transportation Impact Fee. Ensure sustainable funding levels for the Transportation Improvement Plan by enacting a transportation impact fee for new development.*

Consistent with General Plan Policy M-10.2 and Mitigation Measure TRAF-1, the City Public Works Department is currently undertaking the preparation of a nexus study and citywide TMFP for consideration by the City Council. At this time, however, there is no TMFP in place. If the City adopts a TMFP before a developer applies for building permits to develop the Vallco Town Center Specific Plan area, the applicant would pay the amount of the fee applicable to the project. Payment of the fee could either be required as a condition of project approval or with issuance of permits, or as a term of a development agreement if one is entered.

As the Initiative also requires substantial contributions to some of the same traffic improvements that may be included in the program of improvements funded by the TMFP, the developer's contribution under the future TMFP could be offset by the contributions and improvements required by the Initiative to the extent that the fees payable pursuant to the TMFP are intended to fund project's fair share of the same improvements. If, on the other hand, the City has not adopted a TMFP before issuance of building permits, the developer will still be required to contribute those funds and improvements described in the Initiative including, for example, \$30 million for freeway infrastructure<sup>109</sup> to address traffic congestion, as well as any other transportation mitigation measures identified pursuant to CEQA review for subsequent approvals.

Given all of the above, neither the amount of potential TMFP fee payments nor the potential cost of transportation mitigation improvements related to the proposed redevelopment of Vallco can be quantified. Therefore, it is not possible to determine how much funding for transportation improvements may be available with the Initiative other than to indicate the cost of specific transportation improvements that were quantified in the Initiative:

*If approved by the City, provide a \$6 million cash donation to the City for the express purpose of analyzing and constructing an approximately 2-mile bicycle/ pedestrian trail along the southern edge of 1-280 between De Anza Boulevard and Wolfe Road....Consistent with the Plan Area's environmental design features, provide a fair share financial contribution of \$30 million for freeway infrastructure, specifically the build-out of the roadway improvements planned for North Wolfe Road and 1-280 overpass and interchange and future 1-280 freeway segment improvements, to address traffic congestion.<sup>110</sup>*

## 2. Schools

As required by California Senate Bill 50 (SB 50), all new development (including both residential and non-residential development) is required to pay school impact fees based on a development's square footage.<sup>111</sup> As described in Section III.D above, EDF 9 in the Specific Plan includes both the payment of SB 50 school fees and the provision of specific community benefits to local schools within CUSD and FUHSD. In addition, Specific Plan EDF 10 would enhance school services by requiring office and retail tenants to participate in learning-by-doing programs with FUSHD students.

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<sup>109</sup> These improvements are specifically identified as build-out of the roadway improvements planned for North Wolfe Road and 1-280 overpass and interchange and future 1-280 freeway segment improvements.

<sup>110</sup> As specified in Exhibit C, Specific Plan Section 3.6, of the Initiative.

<sup>111</sup> Under SB 50, the payment of school impact fees provides full and complete school facilities mitigation for new development associated with the buildout of the General Plan.

Cupertino Union School District and FUHSD recently approved educational facilities and donation agreements with the current owner of the Vallco site (Vallco Property Owner, LLC) regarding local school benefits, which binds the owner to undertake these improvements if they develop the property as provided for in the Initiative. Under these agreements, and consistent with the requirements in the Initiative, the following community benefits (valued at \$40 million) would be provided to the two school districts:

Cupertino Union School District (CUSD)

- A one-time donation of \$19 million or donation of school facilities in lieu of payment.
- A one-time donation of \$1.0 million for the Yosemite Science Program serving middle school students; and
- Pay an amount equivalent to Measure A parcel tax for each unrestricted apartment unit as long as the parcel tax remains in effect.

Fremont Union High School District (FUHSD)

- A 10,000-square foot High School “Innovation Center” at Vallco that would be available to the District for rent for 34 years (at a rate of \$1 per year);
- A 5,000-square foot Adult Education Center, which would also be available to the District to rent for 34 years (also at a rate of \$1 per year); and
- Pay an amount equivalent to Measure J parcel tax for each unrestricted apartment unit (up to 680 units) less any parcel taxes owner has to pay, as long as the parcel tax remains in effect.

Table III.4 projects and compares the amount of impact fees that would be payable without and with the Initiative based on an analysis of the four development scenarios described in Chapter II. The projections indicate that school impact fees would be approximately \$9 million for all scenarios.<sup>112</sup> Recent information provided by the Applicant indicates that the average unit size for the Vallco development would be 1,000 square feet— lower than the typical average citywide. As such, fee generation from residential units at Vallco would likely be less than if units were developed elsewhere within the City. Thus, the scenarios with 389 units at Vallco show slightly higher school fee generation as compared to the scenarios with 800 units at Vallco. Per the Initiative, the community benefits for schools would be provided even if the development were to contain only 389 units.

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<sup>112</sup> Developer impact fees to CUSD and FUHSD are based on the State Allocation Board’s most recent 2016 update to Assessment for Development Fees (as of February 24, 2016).

**Table III.4  
School Funding and Infrastructure**

		Without Initiative		With Initiative	
		Adopted General Plan (389 Units)	Adopted General Plan Assuming Sand Hill Proposal (800 Units)	Amended General Plan and Specific Plan (389 Units)	Amended General Plan and Specific Plan (800 Units)
<b>Students from Net Increase in Potential Development<sup>b</sup></b>	<b>Assumptions<sup>a</sup></b>	735	735	735	735
<b>Net Increase in Potential Development</b>					
New Residential (Sq.Ft.)	See Appendix 7				
Vallco (Non- Senior)	1,000 sq.ft./unit	389,000	760,000	309,000	640,000
Vallco (Senior)	1,000 sq.ft./unit	0	40,000	80,000	160,000
<u>Other Residential</u>	1,200 sq.ft./unit	<u>1,791,600</u>	<u>1,298,400</u>	<u>1,791,600</u>	<u>1,298,400</u>
Citywide Total		2,180,600	2,098,400	2,180,600	2,098,400
New Non-Residential (Sq.Ft.)	See Appendix 7				
Vallco		2,100,000	1,550,000	1,540,000	1,540,000
<u>Other Residential</u>		<u>1,410,000</u>	<u>1,960,000</u>	<u>1,970,000</u>	<u>1,970,000</u>
Citywide Total	See Appendix 7	3,510,000	3,510,000	3,510,000	3,510,000
<b>Citywide Development Impact Fee (Maximum Fees)</b>					
New Residential (Excluding Vallco Senior)	\$3.48 /sq.ft.	\$7,590,000	\$7,160,000	\$7,310,000	\$6,750,000
Vallco Senior	\$0.56 /sq.ft.	\$0	\$20,000	\$40,000	\$90,000
<u>New Non-Residential</u>	\$0.56 /sq.ft.	<u>\$1,970,000</u>	<u>\$1,970,000</u>	<u>\$1,970,000</u>	<u>\$1,970,000</u>
<b>Total Development Impact Fee</b>		<b>\$9,560,000</b>	<b>\$9,150,000</b>	<b>\$9,320,000</b>	<b>\$8,810,000</b>
<i>Vallco Only</i>		<i>\$2,530,000</i>	<i>\$3,530,000</i>	<i>\$1,980,000</i>	<i>\$3,180,000</i>
<b>Cupertino Unified School District (CUSD) Share</b>	60%				
New Residential (Non-Senior)	\$2.09 /sq.ft.	\$4,550,000	\$4,300,000	\$4,390,000	\$4,050,000
<u>New Non-Residential and Senior</u>	\$0.34 /sq.ft.	<u>\$1,180,000</u>	<u>\$1,190,000</u>	<u>\$1,210,000</u>	<u>\$1,230,000</u>
<i>Citywide Development Impact Fee to CUSD</i>		<i>\$5,730,000</i>	<i>\$5,490,000</i>	<i>\$5,600,000</i>	<i>\$5,280,000</i>
<i>Vallco Only</i>		<i>\$1,520,000</i>	<i>\$2,120,000</i>	<i>\$1,190,000</i>	<i>\$1,910,000</i>
<b>Fremont Union High School District (FUHSD) Share</b>	40%				
New Residential (Non-Senior)	\$1.39 /sq.ft.	\$3,040,000	\$2,870,000	\$2,920,000	\$2,700,000
<u>New Non-Residential and Senior</u>	\$0.22 /sq.ft.	<u>\$790,000</u>	<u>\$800,000</u>	<u>\$800,000</u>	<u>\$820,000</u>
<i>Citywide Development Impact Fee to FUHSD</i>		<i>\$3,830,000</i>	<i>\$3,670,000</i>	<i>\$3,720,000</i>	<i>\$3,520,000</i>
<i>Vallco Only</i>		<i>\$1,010,000</i>	<i>\$1,410,000</i>	<i>\$790,000</i>	<i>\$1,270,000</i>
<b>Additional Infrastructure Benefits</b>		N/A	Described in Report		

Note: Projected fees rounded to the nearest ten thousand. Numbers may not add up precisely due to rounding.

a. Development impact fee revenues are calculated based on net increase in potential development, as shown in Appendix 7, Table 1.

b. Based on General Plan EIR.

Source: State Allocation Board, Cupertino Unified School District, Fremont Union High School District, Seifel Consulting Inc.

### 3. Parkland Dedication Fees

The City currently requires any new residential development to either dedicate parkland to the City or pay a fee in lieu of this dedication. The purpose of this requirement is to ensure that any new development that places increased demands on the City's parks and recreational facilities also contributes to the acquisition and development of new parks. The City may choose whether to accept dedicated parkland or require payment of the in-lieu fee.<sup>113</sup>

The Municipal Code sets out a method for calculating the amount of parkland or fee required, based on the number of units proposed and the density (dwelling units per acre) of the development. The Municipal Code also contains provisions for reducing the amount of the in-lieu fee when private open space is provided for use by the residents of the new development.<sup>114</sup>

The City applies these provisions "at the time of approval of the dwelling units." The developer must either dedicate the parkland or pay an in-lieu fee "at the time of building permit application." Although "park" is not defined within the Park Land Dedication Fee chapter of the Municipal Code, it is defined elsewhere as "a park, reservation, playground, swimming pool, recreation center or any other area in the City, owned or used by the City or county and devoted to active or passive recreations." ("Park" means any open space, reservation, playground, swimming pool, golf course, recreation center, or any other area in the City owned or used by the City or County and devoted to active or passive recreations.).<sup>115</sup>

Nothing in the Initiative exempts a developer of the Vallco Town Center Specific Plan area from compliance with the City's Park Land Dedication Fee Program. In fact, the Initiative specifically acknowledges that the City has "development impact fees" and these fees are one source of financing for some of the improvements required in the Plan. Thus, when a developer applies to the City for the required permits to develop a project consistent with the Specific Plan, the City would calculate the total amount of park land or fees required under the Municipal Code and determine whether the parks, town centers, and other public open space proposed would qualify to offset, in whole or in part, the fees. The City's determination as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive. Exhibit III.2 calculates the land dedication amount based on Table 13.08.050 in the City's Municipal Code.

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<sup>113</sup> Refer to Municipal Code Sections 13.080.030 and 13.080.70.

<sup>114</sup> See Municipal Code Section 13.080.080.

<sup>115</sup> See Municipal Code Sections 13.04.020 and 19.08.030.

**Exhibit III.2  
Parkland Dedication**

Relevant Fee Categories		Units With Initiative		Parkland Requirement	
Density	Parkland/DU	Base	With CUP	Base	With CUP
Multifamily 5-10 or 10-20 Du/Acre	0.0060	309	N/A	1.854	N/A
Multifamily 20+ Du/Acre	0.0054	N/A	640	N/A	3.456
Senior Citizen Housing	0.0030	80	160	0.24	0.48
Total	N/A	389	800	2.094	3.936

Under the Initiative, any project developed within the Specific Plan area must include “a publicly accessible green roof” at least 30-acres in size, a minimum of 3.8 miles of publicly accessible trails, and two “town squares,” totaling an additional three acres of outdoor space “programmed to accommodate civic, cultural, community, and school events, performances and celebrations.” Park and park facilities acreage proposed by Vallco include:

- The trails (on the roof) – 3.68 Acres
- Play Space (on the roof) – 1.33 Acres
- Flexible Passive Lawn (on the roof) – 1.24 Acres
- Bocce Court and Social Area (on the roof) – 0.34 Acres
- Amphitheater (on the roof) – 0.37 Acres
- Town Square East (at grade) – 1.18 Acres
- Town Square West (at grade) – 1.83 Acres

These facilities combined add up to 9.97 Acres—more than the required 3.936 acres for the Park Dedication, if the developer sought to develop 800 units, 160 of which are senior apartments.

The town squares are proposed to be built on top of privately owned parking garages, and the green roof is proposed to be built on top of privately owned buildings. However, if use of the park area is dedicated to the City through an easement or other agreement, and the City agrees to accept the park land instead of requiring payment of the in-lieu fee, the proposed provision of the publicly accessible open space and recreation improvements would likely satisfy the Municipal Code’s Park Land Fee Dedication requirements for the development, and no park land dedication fees would need to be paid.<sup>116</sup>

Table III.5 shows the amount of park fee revenues that would be paid if developers across the city did not provide park land but rather paid the fees and compares the potential fee generation that would be payable without and with the Initiative based on an analysis of the four development scenarios.<sup>117</sup> The projections indicate that park land

<sup>116</sup> Section 13.08.070(A) provides that the City shall determine whether to accept parkland dedication or require payment of the in-lieu fee by considering: (1) “topography, geology, access and location of land in the development available for dedication; (2) Size and shape of the development and land available for dedication; (3) Feasibility of dedication; (4) Availability of previously acquired park property.” Section 13.08.070(B) provides that “[t]he determination of the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination thereof, shall be final and conclusive.”

<sup>117</sup> Fees are based on the City’s current rates as of FY 2015/16, which will increase in July 2016.

dedication fees would range between \$39 million to \$42 million for development citywide across the scenarios, with the variations being attributable to the proportion of units that are higher density and senior units, as these types of residential units are required to dedicate less parkland and pay proportionately less fees according to the Municipal Code.

Given the substantial amount of parks and open space that would be provided at Vallco with the Initiative, the City would not likely receive or only receive a portion of the park land dedication in-lieu fees from the Vallco development. However, the provision of the proposed parks and open space would result in an equivalent or greater economic benefit to the City.

**Table III.5  
Park Impact Summary**

		Without Initiative		With Initiative	
		Adopted General Plan (389 Units)	Adopted General Plan Assuming Sand Hill Proposal (800 Units)	Amended General Plan and Specific Plan (389 Units)	Amended General Plan and Specific Plan (800 Units)
Assumptions <sup>a</sup>					
Vallco					
Non-Age Restricted					
Multifamily 5-10 or 10-20 Du/Acre					
New Residential (units)	See Appendix 7 Table 1	389	0	309	0
Park Dedication In-Lieu Fee <sup>b</sup>	\$24,000 per unit average	\$9,340,000	\$0	\$7,420,000	\$0
Multifamily 20+ Du/Acre					
New Residential (units)	See Appendix 7 Table 1	0	760	0	640
Park Dedication In-Lieu Fee <sup>b</sup>	\$21,600 per unit average	\$0	\$16,420,000	\$0	\$13,820,000
Senior					
New Residential (units)	See Appendix 7 Table 1	0	40	80	160
Park Dedication In-Lieu Fee <sup>b</sup>	\$12,000 per unit average	\$0	\$480,000	\$960,000	\$1,920,000
Other Residential (units)					
New Residential (units)	See Appendix 7 Table 1	1,493	1,082	1,493	1,082
Park Dedication In-Lieu Fee <sup>b</sup>	\$21,600 per unit average	\$32,250,000	\$23,370,000	\$32,250,000	\$23,370,000
Citywide Park Dedication In-Lieu Fee		\$41,590,000	\$40,270,000	\$40,630,000	\$39,110,000
Vallco Only		\$9,340,000	\$16,900,000	\$8,380,000	\$15,740,000
Park Dedication In-Lieu Fee without Vallco		\$32,250,000	\$23,370,000	\$32,250,000	\$23,370,000
Additional Infrastructure Benefits		N/A	Described in Report		

Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

a. These fees are subject to change based on appraised value of land in the City of Cupertino.

b. Any proposed BMR units would reduce final Park Dedication In-Lieu Fee totals, as BMR units are not subject to this fee.

Source: City of Cupertino, Seifel Consulting Inc.

## 4. Affordable Housing

While affordable housing is not infrastructure, the City has significant affordable housing needs, as described in the General Plan. The City requires all new development to pay a Housing Mitigation Fee or build affordable housing:

- Developments with seven or more ownership housing units must provide at least 15 percent of the ownership units as BMR units (fifty percent of which are affordable to median-income households and fifty percent to moderate-income income households).
- Developments with rental units are required to pay the Housing Mitigation Fee but can provide BMR units on site as an alternative (sixty percent of which are affordable to very low-income households and forty percent to low income households).

The Initiative does not specify how many of the proposed units will be ownership or rental units, but it does use the term senior apartments and senior housing units interchangeably, indicating that senior housing would likely be rental units.

Table III.6 summarizes the potential Housing Mitigation Fee revenue to the City that would be payable without and with the Initiative based on an analysis of the four development scenarios assuming that no BMR units are provided on-site. Potential fee revenue is projected to range between \$100 million to \$102 million for development citywide across the scenarios, with the differences in fee generation directly attributable to the proportion of smaller sized units proposed at Vallco.

As described in Section III.A, the Housing Benefits section of the Specific Plan includes a provision that strongly encourages new development at Vallco to comply with the City's BMR Housing Mitigation Program by providing affordable units on-site rather than paying the City's in-lieu fee. Thus, the City would not likely receive, or would only receive a portion of, the housing mitigation fees that could be payable from the Vallco development. However, the provision of units would likely result in an equivalent or greater economic benefit to the City.

**Table III.6  
Housing Mitigation Fee Revenue**

		Without Initiative		With Initiative	
		Adopted General Plan (389 Units)	Adopted General Plan Assuming Sand Hill Proposal (800 Units)	Amended General Plan and Specific Plan (389 Units)	Amended General Plan and Specific Plan (800 Units)
Assumptions <sup>a</sup>					
Housing Mitigation Fee <sup>b</sup>					
Residential					
Vallco					
Market Rate <sup>c</sup>	\$20,000 per unit average <sup>d</sup>	\$7,000,000	\$14,400,000	\$7,780,000	\$16,000,000
BMR	(No fee paid)	\$0	\$0	\$0	\$0
Other Residential					
Market Rate <sup>c</sup>	\$24,000 per unit average	\$34,030,000	\$24,670,000	\$34,030,000	\$24,670,000
BMR	(No fee paid)	\$0	\$0	\$0	\$0
Citywide Total		\$41,030,000	\$39,070,000	\$41,810,000	\$40,670,000
Non-Residential					
Office					
Vallco	\$20 per sq.ft. of Office	\$40,000,000	\$40,000,000	\$40,000,000	\$40,000,000
Other Office	\$20 per sq.ft. of Office	\$11,080,000	\$11,080,000	\$11,080,000	\$11,080,000
Citywide Total		\$51,080,000	\$51,080,000	\$51,080,000	\$51,080,000
Retail/Commercial					
Vallco Potential Fee Credits <sup>e</sup>	\$10 per sq.ft. of Retail/Commercial	\$0	(\$5,500,000)	(\$5,600,000)	(\$5,600,000)
Other Retail/Commercial	\$10 per sq.ft. of Retail/Commercial	\$7,990,000	\$13,490,000	\$13,590,000	\$13,590,000
Citywide Total		\$7,990,000	\$7,990,000	\$7,990,000	\$7,990,000
Hotel <sup>f</sup>					
Vallco	\$10 per sq.ft. of Hotel	\$960,000	\$960,000	\$960,000	\$960,000
Other Hotel	\$10 per sq.ft. of Hotel	\$610,000	\$610,000	\$610,000	\$610,000
Citywide Total		\$1,570,000	\$1,570,000	\$1,570,000	\$1,570,000
Subtotal-Non-Residential		\$60,640,000	\$60,640,000	\$60,640,000	\$60,640,000
Citywide Housing Mitigation Fee After Potential Fee Credits		\$101,670,000	\$99,710,000	\$102,450,000	\$101,310,000
Vallco Only		\$47,960,000	\$49,860,000	\$43,140,000	\$51,360,000

Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

a. Development impact fee revenues are calculated based on net increase in potential development, as shown in Appendix 7, Table 1.

b. Estimated based on the City's fee schedule for residential development of Multi-family Attached Townhome, Apartment or Condo at \$20 per sq.ft.

c. The fee will be paid based on actual unit sizes. For purpose of this report, the average size of residential units at Vallco assumed to be 1,000 sq.ft. per unit per Applicant. See "Fiscal and Economic Impacts Analysis for Vallco Town Center Specific Plan," prepared by Keyser Marston Associates, Inc. (KMA) in May 2016. The average size of residential units citywide is assumed to be 1,200 sq.ft. per unit per "City of Cupertino, Residential Below Market Rate Housing Nexus Analysis" prepared by KMA in April 2015.

d. Given the smaller unit size assumption for Vallco, the per unit fee generation is less for Vallco as compared to other residential areas.

e. Given that Vallco Shopping Center consists of 1.2 million sq.ft., the development would be potentially eligible for a fee credit for existing retail that is no longer included in the new development.

f. Average size of a hotel room assumed to be 500 sq.ft. per Nexus Analysis.

Source: City of Cupertino, Keyser Marston Associates, Inc., Seifel Consulting Inc.



## 5. Financing and Maintenance of Public Improvements

Section 9.7 of the proposed Vallco Town Center Specific Plan in the Initiative describes the approach to financing and maintaining the infrastructure and community facilities that would be used to implement the Specific Plan, stating the following:

*Implementation of the Specific Plan requires the Specific Plan applicant(s), property owner(s) or their designee(s) to assure that all on- and off-site infrastructure, facilities, and services (improvements) required by this Specific Plan are installed, constructed, and completed prior to or concurrent with need. The improvements include, among others, enhancement, and ongoing maintenance of open space/green roof designated on the Land Use Plan of the Specific Plan.*

*The improvements contemplated for the Plan Area may consist of elements for use by the general public, as well as for exclusive use of the property owner, tenants, or occupants. Once constructed, long-term maintenance of improvements will be required, and the party responsible for maintaining those improvements may vary depending on whether they are dedicated for general public use or privately owned within the Plan Area.*

*While a variety of financing techniques are available, Specific Plan development components will be installed or constructed using private financing for the great majority of the development costs. Certain elements of the improvements, however, may use assessments or community facility district mechanisms. If used to fund improvements, the assessment or community facility district will only apply to the Plan Area and only be assessed against the property owner, tenants, or occupants thereof. No resident or property owner outside of the Plan Area will be included in any proposed assessment or community facility district. These provisions ensure that the Specific Plan pays its own way.<sup>118</sup>*

As further stated in the Specific Plan, this section identifies potential financing mechanisms that could be used in the Vallco area, “individually, collectively, or in combination to fund implementation and maintenance of various improvements identified in the Specific Plan,” and to “ensure that the Specific Plan pays its own way.” In particular, it discusses the use of four primary financing mechanisms:

- **Community Facilities District (CFD)** – The Mello-Roos Community Facilities Act of 1982<sup>119</sup> authorizes the City of Cupertino (or another designated local agency) to establish community facilities districts (CFD) and to levy approved special taxes within the boundaries of the CFD to fund a variety of public improvements (facilities) and services, some of which would be required by the Specific Plan and therefore eligible for funding. CFDs can provide funding for the purchase, construction, expansion, rehabilitation and/or maintenance of open space, parks, recreation programs, flood protection, storm water and drainage systems, streets, roads, parkways, police and fire protection, and ambulance and paramedic services.
- **Landowner Funding Agreement**– A private funding agreement, in the form of covenants, conditions and restrictions (CC&Rs), would provide for an assessment or obligation of one property owner for the benefit of another property. The recording of CC&Rs against the burdened property creates a permanent obligation that can be enforced against the burdened property owner by a party holding an interest in the benefited property.

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<sup>118</sup> Initiative, Exhibit C, Specific Plan, Section 9.7, page 9-11.

<sup>119</sup> Govt. Code § 53311 et seq. (“Mello-Roos Act”).

- **Development Impact Fees**– The City of Cupertino, like many cities, requires payments of impact or development fees to finance public improvements. These fees represent new development’s fair share of the additional costs of providing public improvements and facilities to serve new development. As described earlier, the City of Cupertino is in the process of establishing a Transportation Mitigation Fee Program that will require new development to pay its fair share of transportation improvements to mitigate traffic impacts due to General Plan buildout.
- **Private Financing**– This financing mechanism would allow a property owner to agree to privately finance certain improvements within the Plan Area. For example, the annual operation and maintenance fee could be charged to commercial owners or occupants to fund the green roof/open space and recreation amenities within the Plan Area.

While the City of Cupertino has park land dedication and housing mitigation fee programs, and the City has worked with developers on private financing strategies, it has never before formed a CFD. The following section briefly describes key requirements and considerations related to the formation of a CFD, as well as how it might impact the City.

#### a) **Mello-Roos Community Facilities District (CFD)**

A Mello-Roos CFD must be created by an authorized local agency.<sup>120</sup> The Initiative indicates that the City would most likely be the local agency that would form any such CFD. Before the City can undertake any proceeding to form a CFD, it must adopt its own “Local Goals and Policies” that specify the following:<sup>121</sup>

- Priority to be given to the various types of public improvements that might be financed.
- Required credit quality for any bonds to be issued and what standards will be used to measure their quality, such as the ratio between the value of the property that will be the security for the special tax and the amount of bonds to be sold.
- Necessary steps to ensure that prospective purchasers of property will be properly informed of the special tax before they enter into a contract to purchase.
- Criteria to be used to evaluate the equity of the proposed special tax formulas and desirable and maximum limits on the special tax;
- Definitions, standards and assumptions to be used for appraisals of the taxable property that will be the security for the bonds.

The formation of a CFD can be initiated in one of two ways. The City can initiate proceedings to form a CFD. Alternatively, the City can be presented with a petition by two members of the legislative body (in this case the City Council), the owners of at least 10 percent of the land area within the proposed CFD, or at least 10 percent of the registered voters within the CFD. In either case, the City has complete discretion to decide whether to form the CFD.

Forming a CFD and levying the special tax requires approval by two-thirds of the registered voters living within the proposed boundaries, or a vote of the landowners if there are fewer than 12 registered voters within these

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<sup>120</sup> Govt. Code § 53317(h) (“local agency” includes cities, counties, special districts, school districts, joint powers agencies, and other agencies).

<sup>121</sup> Govt. Code § 53312.7. For more information refer to *Introduction to California Mello-Roos Community Facilities Districts*, Orrick, Daniel C. Bort, which was a significant resource document for this section.

boundaries. In the case of a landowner vote, each landowner has one vote for each acre or portion of an acre owned, and a two-thirds vote in favor of forming the CFD is required.<sup>122</sup> In some CFDs, only a single landowner is involved.

The calculation of the special tax for each parcel (rate and method of apportionment) is determined at the time the legislative body adopts its resolution of intention, which starts the formation process. Considerations may include the size of the property, property characteristics (such as land use on the property), and square footage of existing structures.

After approval of the CFD, a special tax lien is recorded on all properties subject to the special tax, which is collected at the same time as the owner's property tax. The special tax may only be collected for the period of time specified in the formation documents. If CFD bonds are issued, payments on these bonds are ultimately secured by real property through this special tax lien. The special taxes continue at least until the infrastructure or service obligation is paid for and/or bonds are repaid. At such a point, the taxes will either be discontinued or lowered and solely used to maintain improvements.

CFD special taxes are levied in addition to the basic property tax rate (1.00 percent of assessed value, by California law) plus any additional taxes and assessments approved by the voters for special purposes such as libraries, parks, or enhanced services. During the formation of the CFD, the purposes for which the special tax may be levied must be specified. Special taxes may be used as a direct payment source for facilities or services (often referred to as "pay as you go") or to pay debt service on bonds or other forms of debt used to finance facilities. In Cupertino, the overall tax rate ranges between about 1.14 to 1.18 percent of each property's assessed value. In California, the recommended threshold for the special tax rate is that the combination of the basic property tax rate plus existing bond overrides plus the addition of the special taxes do not exceed 2 percent.

### **Potential Impact on the City**

The formation and adoption process, as well as the potential issuance of CFD bonds, will require substantial investment of time by City staff, oversight by specialized legal counsel, and the retention of experienced technical specialists. While many of these costs may be able to be reimbursed as administrative costs of the CFD, the City will likely incur financial costs, particularly up front. In addition, the City has a long-term fiduciary responsibility to oversee the CFD and assure that all of the proper notifications and annual reporting is done in accordance with State Law and per the terms of any future debt issuances. However, the City has the ability to decide whether or not to move forward with a CFD.

### **b) Other Financing Mechanisms**

The Specific Plan also indicates that other financing mechanisms may be utilized in order to implement the Specific Plan:

*Allowable Specific Plan financing mechanisms may also include offers of dedication, fee dedications, and/or easements; assessment districts; infrastructure financing districts (e.g., open space management/maintenance, lighting and landscaping, bridge and thoroughfares); exactions; and reimbursement*

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<sup>122</sup> The Mello-Roos Act places restrictions on the type and level of services and facilities that may be authorized by a landowner vote. In particular, it provides that the CFD "may only finance the services authorized by this section to the extent that they are in addition to those provided . . . before the district was created," and "additional services may not supplant services already available within that territory when the district was created." Govt. Code § 53313.

*agreements. In addition, the Specific Plan contemplates possible use of emerging financing mechanisms, such as payment in lieu of tax (PILOT) assessments.*<sup>123</sup>

Two of these other potential financing mechanisms that would utilize the City's public financing powers are briefly described here, as they would also require City action to be utilized, and each has a different mechanism for raising funds:

- Assessment Districts enable a local agency to levy special benefit assessments on real property within designated areas in order to finance improvements that directly benefit the properties assessed. The assessment of any given parcel must be in proportion to the benefit conferred on that parcel. An assessment district can only be formed following a vote of the owners of the property that will be assessed. Each ballot is weighted according to the proportional financial obligation of the affected property. If a majority of the weighted votes is in favor of the assessment, the City may form the assessment district. The assessment may only be collected for the period of time specified in the formation documents. Bonds may be issued to finance the authorized improvements, which may include but are not limited to streets, sidewalks, parking facilities, and utilities. Typically, an assessment district is formed to undertake a particular public improvement, and bonds are issued under one of two major assessment acts: the Improvement Act of 1911 and the Improvement Bond Act of 1915. Upon the issuance of bonds, the local agency (the City of Cupertino) has the power to assess all property owners included in the district in order to repay the borrowed funds.
- Infrastructure Financing Districts (IFDs)<sup>124</sup> can be formed by a city to pay for infrastructure and public facilities from a dedicated stream of future property tax revenue that the city receives from a designated area of the city. As property tax revenues increase from this specified area, this incremental growth in property tax revenues (referred to as tax increment or TI) can be used to pay for improvements directly or to repay bonds for up to thirty years pursuant to an infrastructure financing plan. IFD funds can be used to pay for highways, transit, water and sewer systems, flood control systems, childcare facilities, libraries, parks, and solid waste facilities. Facilities financed through an IFD may not replace existing facilities or services, but they may supplement existing facilities and services as necessary to serve new development. Similar to the CFD formation process described above, an IFD formation requires two-thirds voter approval of registered voters if there are at least 12 registered voters within the proposed district. If there are fewer than 12 registered voters within the proposed district, a two-thirds vote of property owners is required. Two-thirds voter approval is also needed for bond issuance. Any IFD that constructs housing is required to set aside at least 20 percent of those units for low- and moderate-income housing.

### **Potential Impact on the City**

As with a CFD, the formation, adoption and potential bond issuance for an assessment district or IFD will likely require substantial investment of time by City staff and outside technical resources. While many of these costs may be able to be reimbursed as administrative costs of the assessment district or IFD, the City will likely incur financial costs, particularly up front. In addition, the City has a long-term fiduciary responsibility to oversee these public financing tools and assure that all is done in accordance with State Law and per the terms of any future bond issuances. In addition, the use of an IFD would require the City to dedicate all or a portion of the City's future property tax revenue from the designated IFD area to pay for capital facilities. The City of Cupertino General Fund collects property taxes based on a citywide average of 5.6 percent of the 1 percent basic tax rate, and all or a portion of these

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<sup>123</sup> Initiative, Exhibit C, Specific Plan, Section 9.7, page 9-11.

<sup>124</sup> Govt. Code § 53395 et.seq.

funds would be diverted to an IFD for up to 30 years if an IFD were formed. However, as noted above, the City has discretion whether or not to move forward with any of these financing mechanisms.

## **6. Summary of Infrastructure Funding Impact**

Overall, the Initiative would have a positive impact on infrastructure funding and the potential provision of infrastructure for transportation, schools and parks in the City. As shown in Table III.7, potential fee generation from development citywide is essentially the same with or without the Initiative if the same number of units would be developed at Vallco. This is because fee generation from residential units at Vallco will be less than if units were developed elsewhere in the City given the smaller size of units at Vallco compared to typical new development citywide.

As the Initiative contemplates the provision of a substantial amount of parkland and open space at Vallco, which is in excess of what the City would typically require, no parkland dedication fees would likely need to be paid. In addition, the Initiative strongly encourages the provision of on-site affordable housing, which could result in a substantial reduction in the amount of housing mitigation fees that would be paid.

On the other hand, with the Initiative, the City would benefit from the provision of infrastructure and facilities as part of the community benefits portion of the Specific Plan, as described in Sections III.A. and III.E., including:

- Transportation improvements valued at \$36 million or more.
- Education improvements valued at \$40 million or more.
- Provision of parks and open space land and improvements that are significantly in excess of what would be required if fees were to be paid.
- Potential provision of affordable housing units on-site, as encouraged by the Initiative

In order to accomplish the mixed use development and provide these community benefits in the Vallco area, the Initiative identifies potential public and private financing mechanisms that could be used to fund the implementation and maintenance of various improvements identified in the Specific Plan. The use of public financing to accomplish the Specific Plan could require substantial investment of time by City staff, oversight by specialized legal counsel and the retention of experienced technical specialists. While many of these costs may be able to be reimbursed as administrative costs, the City would likely incur financial costs, particularly up front. In addition, the City has a long-term fiduciary responsibility to oversee these public financing mechanisms and to assure that all of the proper notifications and annual reporting is done in accordance with State Law and according to the terms of any future debt issuances. However, the City has the ability to decide whether to move forward with these public financing mechanisms. If the City does not approve their use, the developer would finance these improvements privately.

**Table III.7  
Infrastructure Funding Summary**

	Without Initiative		With Initiative	
	Adopted General Plan (389 Units)	Adopted General Plan Assuming Sand Hill Proposal (800 Units)	Amended General Plan and Specific Plan (389 Units)	Amended General Plan and Specific Plan (800 Units)
<b>Net Increase in Infrastructure Funding</b>				
<b>School Impact Fees</b>				
Cupertino Unified School District	\$5,730,000	\$5,490,000	\$5,600,000	\$5,280,000
Fremont Union High School District	<u>\$3,830,000</u>	<u>\$3,670,000</u>	<u>\$3,720,000</u>	<u>\$3,520,000</u>
<b>Total</b>	<b>\$9,560,000</b>	<b>\$9,150,000</b>	<b>\$9,320,000</b>	<b>\$8,810,000</b>
<b>Park Dedication In-Lieu Fee</b>				
<b>Residential</b>	<b>\$41,590,000</b>	<b>\$40,270,000</b>	<b>\$40,630,000</b>	<b>\$39,110,000</b>
<b>Housing Mitigation Fee</b>				
Residential (Market Rate) <sup>a</sup>	\$41,030,000	\$39,070,000	\$41,810,000	\$40,670,000
Non-Residential				
Office	\$51,080,000	\$51,080,000	\$51,080,000	\$51,080,000
Retail/Commercial	\$7,990,000	\$7,990,000	\$7,990,000	\$7,990,000
Hotel	<u>\$1,570,000</u>	<u>\$1,570,000</u>	<u>\$1,570,000</u>	<u>\$1,570,000</u>
Subtotal-Non-Residential	\$60,640,000	\$60,640,000	\$60,640,000	\$60,640,000
<b>All Land Uses (After Fee Credits)</b>	<b>\$101,670,000</b>	<b>\$99,710,000</b>	<b>\$102,450,000</b>	<b>\$101,310,000</b>
<b>Total Impact Fee Revenues</b>	<b>\$152,820,000</b>	<b>\$149,130,000</b>	<b>\$152,400,000</b>	<b>\$149,230,000</b>
<i><b>Vallco Only</b></i>	<i><b>\$59,830,000</b></i>	<i><b>\$70,290,000</b></i>	<i><b>\$53,500,000</b></i>	<i><b>\$70,280,000</b></i>
<b>Comparison of Infrastructure Funding of Various Scenarios to Adopted General Plan</b>				
<b>Citywide Difference in GF Revenues</b>	N/A	<b>(\$3,690,000)</b>	<b>(\$420,000)</b>	<b>(\$3,590,000)</b>
<i><b>Vallco Only</b></i>	<i>N/A</i>	<i><b>\$10,460,000</b></i>	<i><b>(\$6,330,000)</b></i>	<i><b>\$10,450,000</b></i>

Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

a. Given the smaller unit size assumption for Vallco, the per unit fee generation is less for Vallco as compared to other residential areas.

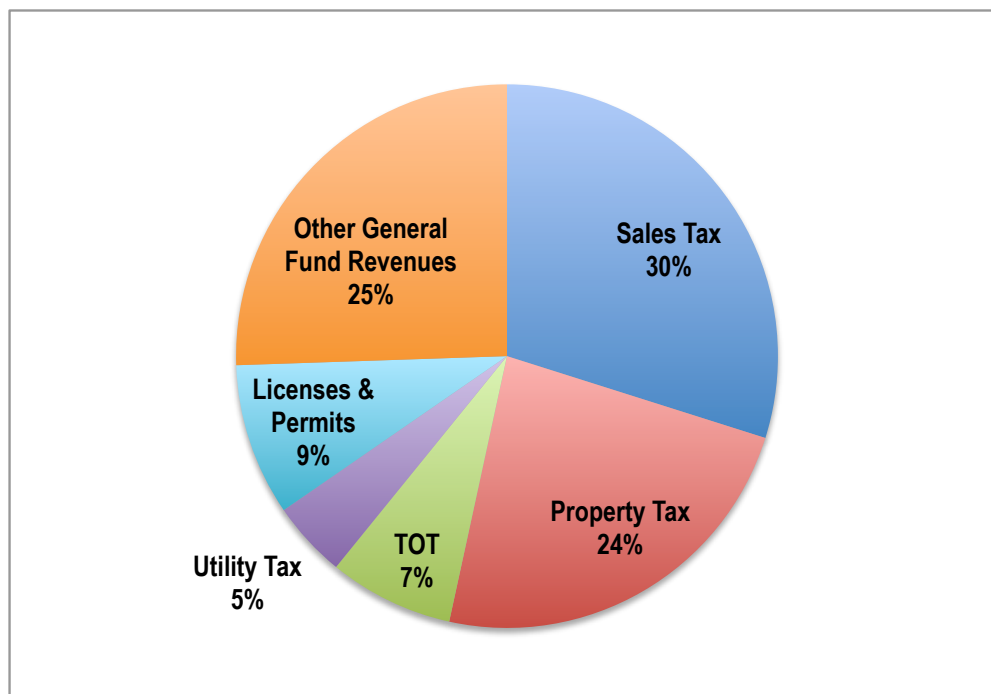
Source: City of Cupertino, Seifel Consulting Inc.

### III.F. Fiscal

This section of the report evaluates the potential fiscal impact from the Initiative. It describes each of the major sources of revenue that the City receives, and it analyzes and compares what the City would receive without and with the Initiative under the various development scenarios described in Chapter II. This analysis utilizes and builds upon the fiscal data and analysis performed as part of the 9212 Report on the “Cupertino Citizens Sensible Growth Initiative.”

According to the City’s FY 2015/16 budget, the City generates about \$68 million in General Fund revenues. The General Fund pays for basic services such as public safety, public works, planning and development, park maintenance, code enforcement, and the administrative services required to support them. As shown in Figure III.1, more than half of the City’s revenues are generated from sales tax (30 percent of total) and property tax (24 percent). Transient occupancy taxes (TOT) are another major source of revenue that is generated by new hotel development in the City.

**Figure III.1**  
**Distribution of City’s Fiscal Revenues**



The City's General Fund revenue is projected to increase as new development occurs. As defined in Chapter II, the Net Increase in Potential Development is the difference between what is Current Built/Approved and Development Buildout according to the General Plan.<sup>125</sup> The fiscal analysis evaluates the potential difference in fiscal revenues that would be generated from the Net Increase in Potential Development from each scenario. (Please refer to Appendix 7 for the detailed tables accompanying the fiscal analysis, which includes the supporting calculations for the projections of new development. Appendix 7 Table 1 shows the development assumptions for each of the scenarios.)

The fiscal revenue projections and assumptions and methodology for projections are further described in the following section.<sup>126</sup>

## **1. Sales Tax**

Sales Tax revenues are based on taxable sales of goods and services either to retail consumers or other businesses that occur in Cupertino. The City's tax revenues are generated from four principal economic categories: business-to-business, 71.8 percent (includes electronic equipment and software manufacturers and distributors); general retail, 9.3 percent; food products, 8.6 percent; and construction, 5.9 percent.

Sales tax is an excise tax imposed on retailers for the privilege of selling tangible personal property. The Use Tax is an excise tax imposed on a person for the storage, use, or other consumption of tangible personal property purchased from any retailer. The proceeds of sales and use taxes imposed within the boundaries of Cupertino are distributed by the State to various agencies, with the City of Cupertino receiving one percent (1 percent) of the collected revenue.

The projection of future sales tax revenues from new development under each scenario is based on 1 percent of taxable sales attributable to the Net Increase in Potential Development for Commercial/Retail uses and Office uses.

### **a. Sales Tax from Retail Consumers**

Consumers shopping at local retail establishments typically generate sales tax. While all scenarios have the same potential amount of allowable Commercial/Retail space citywide, the amount of retail sales tax will vary depending on the performance and occupancy of the retail establishments, particularly on the Vallco site, which is the focus of the Initiative.

As of December 2014, the occupancy at Vallco was about 66 percent. With the closure of all three department stores, the occupancy as of April 2016 is about 26 percent. As described previously, the proposed redevelopment of Vallco as a mixed-use development, which is allowable without or with the Initiative, is anticipated to have a much higher likelihood of retail success than if 1.2 million square feet of retail remains in the Vallco area.

Based on consultation with Greensfelder, a 92 percent occupancy rate is considered to be a fair occupancy assumption for retail development across the City and for typical shopping centers. This level of occupancy would be

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<sup>125</sup> Refer to Section II.B for further detail on these definitions.

<sup>126</sup> While Seifel has made extensive efforts to substantiate this information, Seifel does not guarantee the accuracy of third party data and assumes no responsibility for inaccuracies in the provided information or analysis. Any estimated revenue projections are based on the best available project-specific data as well as the experiences of similar projects. They are not intended to be projections of the future for the specific project, and no warranty or representation is made that any of the estimates or projections will actually materialize.



expected for a successful mall, so it is used in the analysis, with the caveat that this level of occupancy is not likely attainable if 1.2 million square feet of retail remains the sole use on the Vallco site.<sup>127</sup>

Vallco has significantly underperformed relative to its two nearest competitive regional malls. Both within a 20-minute drive from Vallco, the Westfield Valley Fair Mall (Valley Fair) in Santa Clara and the Stanford Shopping Center in Palo Alto are the Vallco Shopping District's most immediate mall competitors. The historical poor performance of Vallco in comparison with these nearby malls is shown clearly by historical reports of taxable sales volumes, using retail sales tax data from MuniServices.

Figure III.2 shows taxable sales volume of these three malls from 2006-2015, which reflects sales before and during the most recent economic recession. In addition to their close geographic proximity, the three malls are also similar in size: Vallco is 1.2 million sq. ft., Valley Fair is 1.48 million sq. ft.<sup>128</sup> and Stanford Shopping Center is 1.36 million sq. ft.<sup>129</sup>

According to these square footages, while Stanford Shopping Center is only 14 percent larger than Vallco, it brings in more than six times the taxable sales volume of Vallco. Valley Fair, only 23 percent larger than Vallco, brings in more than five times the taxable sales volume of Vallco. The Stanford Shopping Center shows slightly decreasing sales over the past two years, but its sales volume remains substantially higher than Vallco. Due to the imminent closure of JC Penney's in addition to the closures of Sear's and Macy's, Vallco's sales are anticipated to continue to decline, projected at about 60 percent of 2014 levels during next fiscal year based on reduced occupancy and the fact that about half of the remaining uses are entertainment and fitness uses that do not generate significant taxable sales.

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<sup>127</sup> Greensfelder Commercial Real Estate (Greensfelder), a retail specialist that advised the City on the General Plan, was retained to prepare a technical analysis for the 9212 Report on the "Cupertino Citizens Sensible Growth Initiative." Appendix 6 of that Report contains the Greensfelder analysis.

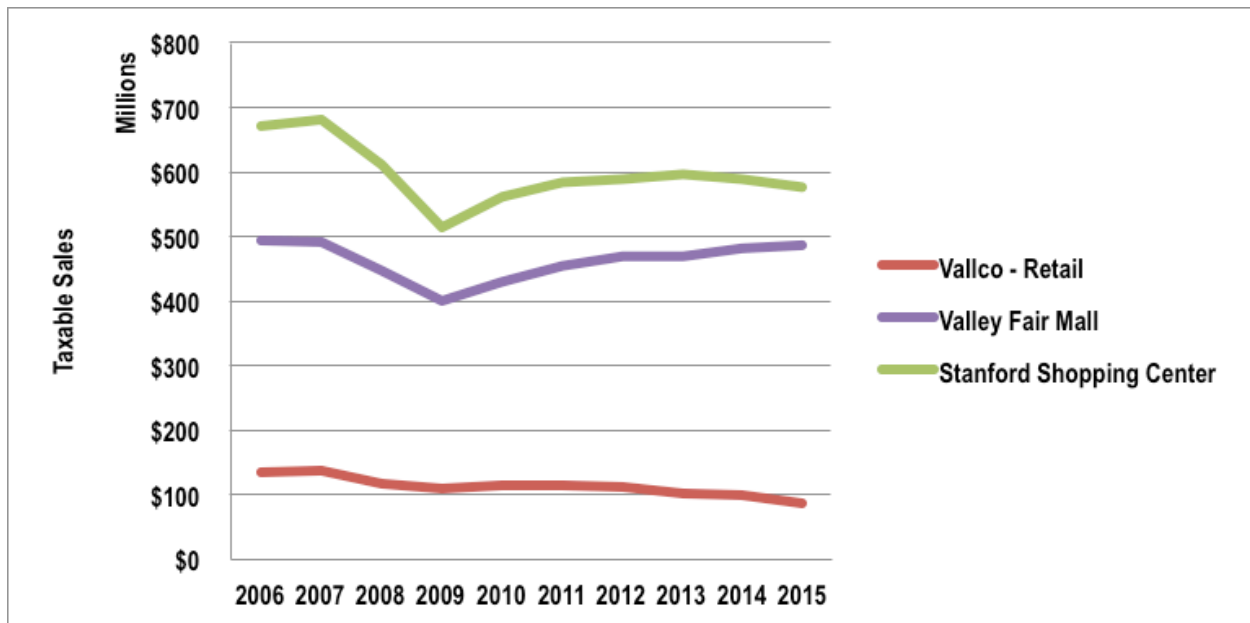
<sup>128</sup> Gross leasable area.

<<http://www.westfieldcorp.com/centre/westfield-valley-fair/>> Retrieved 2016-03-21.

<sup>129</sup> Gross leasable area.

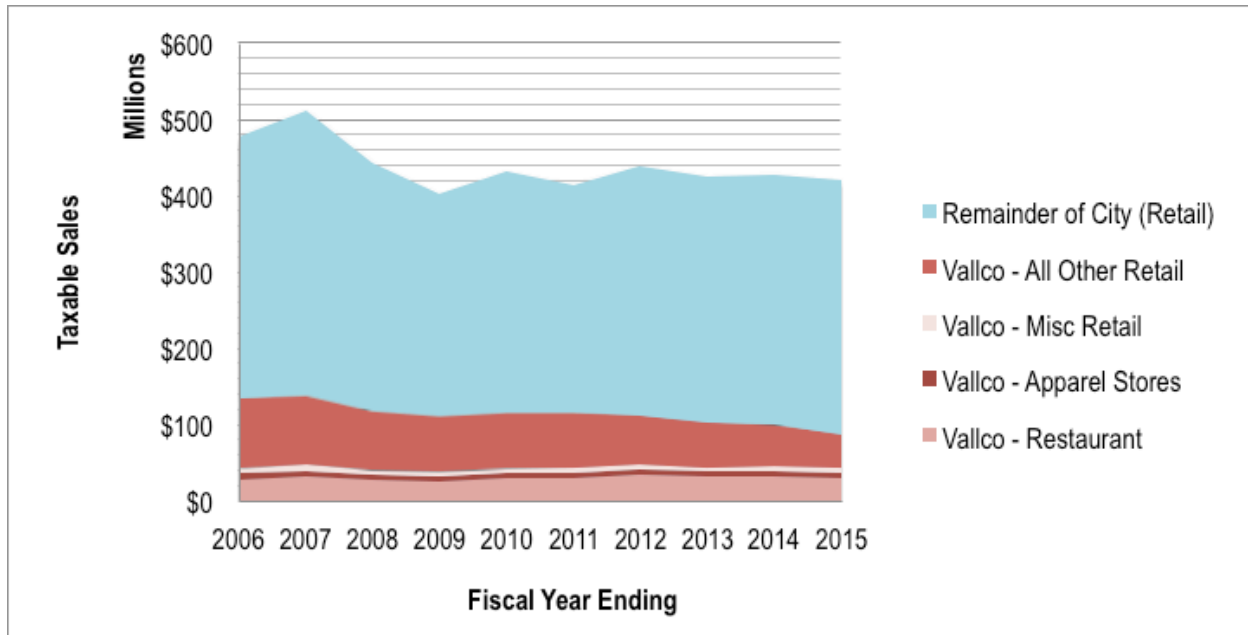
<<http://business.simon.com/leasing/stanford-shopping-center/>> Retrieved 2016-03-21.

**Figure III.2**  
**Historical Trend of Taxable Sales of**  
**Comparable Shopping Centers (In 2015 Constant Dollars)**



The City's overall sales tax performance has been influenced by the decline of retail sales from Vallco. Figure III.3 provides an historical perspective on Cupertino's taxable retail sales from 2006-2015, comparing sales revenues from key retail categories at Vallco to other retail stores in the remainder of the City. While taxable sales from retail stores in the remainder of the City have increased since 2013, Vallco has shown a consistent decline.

**Figure III.3**  
**Historical Trend of Taxable Retail Sales in City of Cupertino (in Constant 2015 Dollars)**



Retail sales tax data from MuniServices was used to estimate the taxable retail sales per square foot for Vallco and for other retail locations citywide as of the end of December 2014, when the General Plan was amended. According to this data, taxable retail sales for Vallco averaged less on a per square foot basis (\$124/sq.ft.) than other retail developments citywide (\$149/sq.ft.). Average sales performance for Valley Fair and Stanford Shopping Center are significantly higher on a per square foot basis than Vallco, and their average sales performance was used to estimate the sales tax potential for a revitalized shopping center at Vallco (\$300/sq.ft.). As shown in Appendix 7, Table 2, this historical taxable retail sales data is used to evaluate the likely changes in sales tax revenues to the City under the various development scenarios. The analysis in this table evaluates and compares the potential differences in taxable retail sales from Vallco and from other parts of the City without and with the Initiative.<sup>130</sup>

#### **b. Business-to-Business Sales Tax**

Business-to-business (or B-to-B) sales tax revenue is generated from sales activity between companies (rather than between a company and individual consumers) for goods and services. Historically, B-to-B transactions have generated a high proportion of the City's sales tax revenue. This sales tax revenue currently constitutes about 72 percent of the City's total sales tax revenue compared to 17 percent statewide.

<sup>130</sup> Historical data on taxable retail sales was reviewed for Vallco and other establishments throughout the City. The estimates used in the analysis are based on actual performance from 2014, adjusted as necessary to appropriately reflect each retail area and scenario and to reflect 2015 dollars. Taxable sales at Vallco in 2014 were used alongside occupancy data of the mall to estimate the average retail sales per square foot of occupied space. The same type of analysis was done for the areas located outside of Vallco. In addition, historical sales performance of Valley Fair and Stanford Shopping Center were used to develop an assumption of average sales tax generation per square foot for a revitalized Vallco shopping center. Please refer to Appendix 7 Table 6 and Table 7 for the supporting calculations and retail sales tax information used to develop the sales tax estimates for Vallco.

Recent B-to-B sales tax revenues from MuniServices along with data on existing office space was analyzed in order to estimate typical B-to-B sales for Office space in Cupertino. Based on information provided by City staff and MuniServices, the average B-to-B sales tax generation from Office space citywide is about \$0.40 per square foot, as shown in Appendix 7, Table 3. While B-to-B sales tax revenue from office space for this site is estimated to be significant based on the above analysis, future B-to-B sales tax generation would depend on the type of business activity that could potentially occur on this site. As a result, actual B-to-B sales tax generation could be significantly higher or lower than what is estimated. As the amount of allowable office space does not change under the General Plan with or without the Initiative, the total B-to-B sales tax generation is the same under all of the scenarios.

### **c. Overall Sales Tax Revenue Generation**

With the Initiative, the projected annual sales tax revenues to the City are projected to be higher than under the Adopted General Plan due to the anticipated lower sales tax generation per square foot that is anticipated to occur if Vallco continued to have 1.2 million square feet of retail space. Sales tax revenues with the Initiative and under the Adopted General Plan Assuming Sand Hill Proposal are approximately the same because these scenarios have about the same amount of retail square feet at Vallco (640,000–650,000 square feet) and the amount of office square feet remains the same among all scenarios.

## **2. Property Tax**

Under current law, property is assessed at actual full cash value with the maximum levy being 1 percent of the assessed valuation. The City of Cupertino receives 5.6 percent of the basic 1 percent property tax revenues on average, and new development will generate additional property tax revenue from growth in assessed value multiplied by the City's tax rate.<sup>131</sup> For this analysis, the incremental growth in assessed value from new development is estimated by land use category, as presented in Appendix 7 Table 4.<sup>132</sup>

- The incremental growth in assessed value from residential is estimated to be \$560,000 per market rate unit and \$273,000 for a below market rate unit for a typical residential development. To provide a conservative estimate of potential assessed value and property tax generation from Vallco, the City's affordable housing policies are assumed to potentially result in approximately 10 percent of the units at Vallco being affordable as BMR units.
- This analysis does not reflect growth or reductions in assessed value at commercial/retail space at Vallco, although it could likely increase or decrease under different development scenarios. Assessed value would most likely increase under Adopted General Plan With 2015 Sand Hill Proposal or under the Initiative due to substantial redevelopment and infill of the property. However, as about 550,000 square feet of allowable retail could potentially relocate citywide under these scenarios, assessed value from this new space is projected to increase assessed value citywide, along with the additional retail allowed to be built through General Plan buildout at an average net increase in value of \$480/sq.ft.
- The incremental growth in assessed value from office is estimated at \$520/sq.ft. (inclusive of personal property).

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<sup>131</sup> The City's property tax share varies across the City because the City's property tax share is based on a specified amount in each "tax rate area" associated with a particular geography. The City's average property tax share is used to represent

<sup>132</sup> Incremental growth in assessed value is based on the difference between the value of potential new development and the existing value of the site, based on recent market values for land in Cupertino. For more detail, please refer to Appendix 7 Table 4

- The incremental growth in assessed value from hotel is estimated based on \$300,000/room. As the number of hotel rooms does not vary with or without the Initiative, the estimated assessed value and commensurate annual property tax revenues are the same in all scenarios.

Under the General Plan With Initiative, projected annual property tax revenues to the City from development citywide are about the same as under the Adopted General Plan scenarios, with the small differences in property tax revenue generation attributable to the differences in proposed land use and housing (including potential provision of onsite BMR units) at Vallco. The annual property tax revenues estimated at buildout are shown by development scenario in Appendix 7 Table 4.

### **3. Transient Occupancy Tax**

New hotel developments would generate Transient Occupancy Tax (TOT) revenues based on the City's current 12 percent TOT rate on hotel and motel room revenues. About seven percent of the General Fund revenue is generated by TOT. Together with Sales and Property taxes, these revenues comprise about 60 percent of the General Fund. This analysis assumes the average daily room rate of \$215 and an occupancy rate of 80 percent based on the City's TOT data.

### **4. Utility User Tax and Other Revenues**

Cupertino charges a Utility User Tax (UUT) on gas, electricity and telecommunication services provided within the City's jurisdiction at a rate of 2.4 percent of billed charges. Revenues generated from this tax can be used for general City purposes. Revenue from UUT has been declining or flat in recent years despite major development in the City. This is primarily due to lower electricity usage resulting from large investments in solar and other energy generation infrastructure. Since new development is meeting increasing energy-efficiency standards, future development is likely to decrease rather than increase city revenues. For this reason, and because UUT comprises less than 5 percent of the 2015/16 budget, this revenue category is not analyzed in the Report.

A variety of other, smaller revenue sources contribute the remainder of General Fund revenues. In consultation with City staff, no other revenues are projected in this analysis because they correlate less specifically with new development, are dedicated funds for a particular service or function (such as planning fees), or comprise very small portions of the 2015/16 budget.

### **5. Summary of Fiscal Impact**

As shown in Table III.8 below, the Initiative would likely increase revenues to the City's General Fund as compared to the Adopted General Plan because retail sales tax is expected to increase from Vallco with its proposed revitalization and mixed use development. However, the projected increase in revenues to the General Fund with the Initiative, is about the same as what would be expected without the Initiative should development proceed when comparing the scenarios with the same level of housing units at Vallco (389 units vs. 800 units). The small differences in projected revenues to the City among the development scenarios are attributable to the minor differences in proposed land use and housing at Vallco. As the Adopted General Plan would allow more development to occur at Vallco than is proposed by the Initiative or was proposed by Sand Hill in 2015, the projected increase in revenues to the City's General Fund varies by scenario when compared to the Adopted General Plan.

**Table III.8  
Summary of General Fund Annual Revenues**

	Without Initiative		With Initiative	
	Adopted General Plan (389 Units)	Adopted General Plan Assuming Sand Hill Proposal (800 Units)	Amended General Plan and Specific Plan (389 Units)	Amended General Plan and Specific Plan (800 Units)
<b>Net Increase in General Fund (GF) Annual Revenues</b>				
<b>Citywide</b>				
Sales Tax				
From Retail Space <sup>a</sup>	\$1,750,000	\$2,650,000	\$2,640,000	\$2,640,000
<u>From Business-to-Business (B-to-B) Transactions<sup>b</sup></u>	<u>\$1,020,000</u>	<u>\$1,020,000</u>	<u>\$1,020,000</u>	<u>\$1,020,000</u>
Sales Tax Subtotal	\$2,770,000	\$3,670,000	\$3,660,000	\$3,660,000
Property Tax <sup>c</sup>	\$1,900,000	\$1,850,000	\$1,850,000	\$1,850,000
Transient Occupancy Tax (TOT) <sup>d</sup>	\$2,360,000	\$2,360,000	\$2,360,000	\$2,360,000
<b>Citywide Net Increase in GF Revenues</b>	<b>\$7,030,000</b>	<b>\$7,880,000</b>	<b>\$7,870,000</b>	<b>\$7,870,000</b>
<b>Vallco</b>				
Sales Tax				
From Retail Space <sup>a</sup>	\$650,000	\$800,000	\$780,000	\$780,000
<u>From Business-to-Business (B-to-B) Transactions<sup>b</sup></u>	<u>\$800,000</u>	<u>\$800,000</u>	<u>\$800,000</u>	<u>\$800,000</u>
Sales Tax Subtotal	\$1,450,000	\$1,600,000	\$1,580,000	\$1,580,000
Property Tax <sup>c</sup>	\$1,050,000	\$980,000	\$850,000	\$970,000
Transient Occupancy Tax (TOT) <sup>d</sup>	\$1,440,000	\$1,440,000	\$1,440,000	\$1,440,000
<b>Net Increase in GF Revenues from Vallco</b>	<b>\$3,940,000</b>	<b>\$4,020,000</b>	<b>\$3,870,000</b>	<b>\$3,990,000</b>
<b>Comparison of Fiscal Impact of Various Scenarios to Adopted General Plan</b>				
<b>Citywide Difference in GF Revenues</b>	<b>N/A</b>	<b>\$850,000</b>	<b>\$840,000</b>	<b>\$840,000</b>
<b><i>Vallco Only</i></b>	<b><i>N/A</i></b>	<b><i>\$80,000</i></b>	<b><i>(\$70,000)</i></b>	<b><i>\$50,000</i></b>

a. See Appendix 7, Table 2.

b. See Appendix 7, Table 3.

c. See Appendix 7, Table 4.

d. See Appendix 7, Table 5.

Source: City of Cupertino, Seifel Consulting Inc.

As previously described, the amount of allowable future development citywide with the Initiative is the same as what would be allowed without the Initiative. With the Initiative, a minimum of 80 units or 20 percent of all units would be senior apartments, and these units would likely have a smaller than average household size, which could reduce the demand for services to residents. Otherwise, all of the City's service costs and the Sheriff's provision of police services would likely remain proportionately the same among scenarios.

Based on a review of the City's budget and the recent fiscal impact analysis done for the Apple Campus,<sup>133</sup> as well as discussions with City staff, the typical annual net fiscal impact (fiscal revenues compared to fiscal costs) on the City's General Fund with the Initiative would likely be higher than the Adopted General Plan, particularly in the upcoming years if development moves forward, due to the following:

- If development is incentivized to proceed with the Initiative and the decline in retail sales at Vallco is more quickly reversed, Vallco is much more likely to be successful and generate a higher level of taxable retail sales per square foot, which would result in a higher ratio of fiscal revenues compared to fiscal costs,
- Similarly, if new residential, office and hotel development is incentivized to move forward at Vallco, this new mixed-use development will produce a broad range of fiscal revenues to the City.
- The increased allocation to senior apartments with the Initiative could reduce the cost of City services to residential units as the result of smaller household sizes typically associated with senior housing.

Nevertheless, with the Initiative, the City would potentially need to pay for stand-alone or consolidated elections if the landowner, City, or voters desire to change the provisions of the Initiative before 2027. The cost of such elections would range from approximately \$106,000 to \$431,000 for each election in direct election related costs, plus the City's staff time to conduct the election. In addition, the City Council could decide to order preparation of a report under Elections Code section 9212. The precise costs of a 9212 report depend on the nature of the initiative but could cost about \$150,000 per report based on recent experience. The City could incur greater City Attorney and outside counsel costs in order to interpret and implement this proposed Initiative, as well as any future Initiatives that might occur as the result of this Initiative.

In addition, the potential use of public financing to accomplish the Specific Plan could similarly require the City to retain outside experts and spend considerable staff time. While many of these costs may be reimbursable, the City will likely incur financial costs, particularly in the early years of project implementation. As the City would have a long-term fiduciary responsibility to oversee these potential public financing mechanisms, their use could result in annual oversight costs.

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<sup>133</sup> Economic and Fiscal Impacts Generated by Apple in Cupertino – Current Facilities and Apple Campus 2, Keyser Marston Associates, May 2013.

## IV. Conclusion

The principal effect of the Initiative will be to adopt a Specific Plan for the complete redevelopment of the Vallco Town Center. While these standards and guidelines are consistent with the existing General Plan goals and policies for the area, the adoption of the Specific Plan will more precisely establish what can and cannot be developed in the Vallco area. The Initiative establishes development guidelines, including required community benefits and environmental design features, and makes commitments to senior housing beyond those required in the General Plan.

In addition to adopting the Specific Plan for the Vallco area, the Initiative also changes the City's typical development approval process and limits the City's discretion and authority as follows:

- Modifies the standard City approval process for development projects in areas governed by the Specific Plan.
- Limits the City's discretion to approve, disapprove or modify proposed development applications in the Vallco area.
- Limits the City's ability to deny a conditional use permit for additional residential development in the Vallco area up to the maximum available residential allocation in the General Plan (approximately 800 units).
- As with most Initiatives, requires voter approval for any changes to its provisions, including changes required for a proposed project that does not comply with the provisions of the Initiative prior to its "sunset" date of 2027.<sup>134</sup>

The City of Cupertino has the stated goals of attracting and retaining businesses. By including a 100,000 square foot business incubator space within the 2 million square feet of office space at Vallco, the Initiative directly responds to the General Plan's vision for a non-traditional office that will provide room for smaller startup firms and encourage growing enterprises to locate in Cupertino.

The site's redevelopment, as proposed by the Initiative and allowed under the adopted General Plan, has the potential to reverse the decline of retail sales at Vallco, bring new retail businesses and jobs to Vallco and to the City as a whole, and create a modern, well-designed shopping environment.

The magnitude of impacts on infrastructure and the environment from citywide buildout under the General Plan with Initiative would be the same as for citywide buildout under the adopted General Plan, without the Initiative. The Initiative, thus, would not result in substantially different environmental impacts citywide.

Since the proposed development at Vallco with the Initiative is also consistent with the General Plan, it would also not result in substantially different environmental impacts than those in the General Plan EIR. Overall, the environmental design features in the Specific Plan either exceed or are consistent with what the City would typically require as mitigation or conditions of approval under the standard approval process. However, the transportation-related environmental design features for intersection level of service and the amount of parking are insufficient compared to what the City would typically require. Nevertheless, the City's Transportation Mitigation Fee Program and subsequent permit approvals for the project can address these mitigation insufficiencies.

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<sup>134</sup> The Initiative could require subsequent voter approvals in order to enable future development to occur if significant modifications are needed prior to 2027. For example, the Initiative could restrict the City's ability to make substantive changes to building and to urban design standards without voter approval, including any increase in the specified maximum (or decrease in the specified minimum) standards in the Specific Plan, "other than those mandated by state law." This could restrict the City's capacity to modify development at Vallco to respond to changing City priorities or economic conditions.



Overall, the Initiative would have a positive impact on infrastructure funding and the potential provision of infrastructure for transportation, schools and parks in the City, as well as affordable housing. With the Initiative, the City would benefit from the provision of infrastructure and facilities as part of the community benefits portion of the Specific Plan, including:

- Transportation improvements valued at \$36 million or more.
- Education improvements valued at \$40 million or more.
- Provision of parks and open space land and improvements that are significantly in excess of what would be required if fees were to be paid.
- Potential provision of affordable housing units on-site, as encouraged by the Initiative.

If the City chooses to pursue public financing to accomplish the Specific Plan, these financing mechanisms could require substantial investment of time by City staff, oversight by specialized legal counsel, and the retention of experienced technical specialists. While many of these costs may be able to be reimbursed as administrative costs, the City will likely incur financial costs, particularly up front. In addition, the City has a long-term fiduciary responsibility to oversee these public financing mechanisms and assure that all of the proper notifications and annual reporting is done in accordance with State Law and according to the terms of any future debt issuances.

The typical annual net fiscal impact to the City's General Fund with the Initiative would likely be higher than the Adopted General Plan. However, as is the case for all initiatives, the City would potentially need to pay for the continued cost of stand-alone or consolidated elections with the Initiative, which would range from approximately \$106,000 to \$431,000 for each election in direct election related costs, plus the City's staff time to conduct the election. The City Council could also decide to order preparation of a report under Elections Code section 9212, which could represent a substantial cost. Furthermore, the City would likely incur greater City Attorney and outside counsel costs in order to interpret and implement this proposed Initiative, as well as any future Initiatives that might occur as the result of this Initiative.

In conclusion, this Report analyzes the topics described in Election Code section 9212 and finds that the Initiative, if adopted by the voters or the City Council, would have varied impacts on the topic areas described in Section 9212.

## **Appendices**

- 1. Text of Proposed Initiative**  
**City Attorney's Official Title and Summary**  
**Notice of Intent to Circulate Petition**
- 2. Section-by-Section Description and Summary of Initiative**
- 3. California Elections Code, Section 9212**
- 4. City Council Resolution (authorizing this Report)**
- 5. DJPA Environmental Analysis**
- 6. Donation Agreements Between Vallco Property Owner, LLC and School Districts (CUSD, FUHSD)**
- 7. Fiscal Analysis Tables**
- 8. Sand Hill Development Company, The Hills at Vallco Project Description**  
**The Hills at Vallco Draft EIR Project Description**  
**Referenced General Plan Policies**