



## MEMORANDUM

DATE: September 4, 2018

TO: Piu Ghosh, City of Cupertino

FROM: Judy Shanley and Kristy Weis

SUBJECT: Vallco Special Area Specific Plan Environmental Impact Report (EIR) – Late Comments Received between August 20 and September 3, 2018

A number of late comments on the Vallco Special Area (subsequently named the Vallco Town Center) Specific Plan EIR were received by the City between August 20, and September 3, 2018. The 45-day public comment period of the Draft EIR amendment ended on August 20, 2018. This memo covers comments received following publication of the Final EIR on August 27, 2018 through September 3, 2018.<sup>1</sup>

Late written comments on the EIR were received by the City from the City of Santa Clara and the following individuals:

- Kitty Moore
- Liana Crabtree
- Lisa Warren
- Thomas Leipelt
- Mona Schorow
- Carol and Norm Elison
- Liang-Fang Chao
- Adrienne Renner
- Rajeev Joshi
- Carol Wilser

Responses to the comments from the City of Santa Clara are provided below. Responses to comments submitted by the above individuals start on page 7 of this memo.

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<sup>1</sup> The Final EIR consists of the May 2018 Draft Environmental Impact Report (“Draft EIR”), the July 2018 Environmental Impact Report Amendment (“EIR Amendment”), and the August 2018 Final EIR.

## **CITY OF SANTA CLARA COMMENTS AND RESPONSES**

**Comment 1** Thank you for the City of Cupertino's response to comments made in the City of Santa Clara's (CSC) letter dated July 9, 2018, regarding the draft Environmental Impact Report (EIR) for the Vallco Special Area Specific Plan Project ("project"). The CSC and City of Cupertino also met to review the CSC's concerns with the EIR in terms of new sanitary sewer flows coming into CSC's system from the project.

As stated in the CSC July 9, 2018, comment letter, "[a]n evaluation of the sanitary sewer conveyance capacity impacts of this Project to the City of Santa Clara's sanitary sewer system is required and the results of the evaluation along with the mitigation measures need to be included in the EIR." The City of Cupertino has yet to conduct this requested evaluation. The CSC has reviewed the Response to Comments in the Final EIR, and because this complete evaluation of the sanitary sewer system has not been performed, the CSC still has concerns most notably the following:

- 1) The likelihood that future flows from the project entering the CSC will exceed the 13.8 million gallon per day (mgd) maximum instantaneous rate of flow set forth in the agreement between the CSC and the Cupertino Sanitation District (CuSD).

**Response 1:** It is the City's understanding that the CuSD disagrees with the City of Santa Clara that the peak flow should be based on instantaneous flow. The City recommends that the City of Santa Clara and CuSD coordinate to rectify this disagreement.

**Comment 2:** The potential that the project will be constructed without enforceable mitigation measures in place to address sanitary sewer flows that exceed the 13.8 mgd maximum instantaneous rate of flow.

**Response 2:** Mitigation Measure UTIL-2.3 in the EIR would prevent the issuance of any building permits that would result in the contractual limit through the City of Santa Clara system (13.8 MGD) being exceeded. The performance standard is adequate and enforceable.

**Comment 3:** Because of these shortcomings in the evaluation of the sewer systems, it is difficult to fully assess the sewer conveyance capacity impacts and we believe that there could be substantial impacts to the CSC's sanitary sewer system in the event of full project build out. The following comments are provided in response to the CSC's review of the Response to Comments in the Final EIR:

**Response 3:** Responses to the specific comments are provided below.

**Comment 4:** The Final EIR provides the following response to the sanitary sewer comments in CSC's July 9, 2018, comment letter:

Response C.2: The text of mitigation measure UTIL-2.3 has been revised to clarify the mitigation measures for sanitary sewer impacts downstream of the project, within the City of Santa Clara. Refer

to Section 5.0 (revisions to pages 389-390 of the Draft EIR) and Section 6.0 (revisions to pages 255-256 of the Draft EIR Amendment) for the text revisions.

The text revisions added (Draft EIR pages 389-390 and Draft EIR Amendment pages 255-256) still do not adequately address the potential impacts to the CSC's sanitary sewer system. The added text states that, "[t]he existing CuSD peak wet weather flow into the Santa Clara system is modeled at 10.7 mgd." However, the existing flow used in the model is not defined, it is not clear if it is based on any recent flow monitoring, and whether or not it includes flow from the recently occupied Apple Campus. The added text also states that, "Incorporating estimated sewer generation rates from the project and from other potential projects as established by the General Plan...", however the potential projects are not defined. Is there a list of these projects? What is the projected incoming sanitary sewer flow to the CSC system due to these potential projects? Does the modeled 10.7 mgd flow include the projected flow from these potential projects (i.e., cumulative impact) as well as inflow and infiltration projections?

**Response 4:** The CuSD Sewer Master Plan states that the Peak Wet Weather Flow of the existing CuSD system, with the General Plan buildout, would not exceed the contractual 13.8 MGD capacity limit within Santa Clara. The City used flow generation rates established by the San Jose/Santa Clara Water Pollution Control Plant and from the City of Santa Clara Sanitary Sewer Capacity Assessment to calculate flows from the remaining projects in the General Plan buildout, including the Housing Rich Alternative from the Vallco Specific Plan. The calculated sewer generation rate of the remaining projects were then multiplied by a conservative peaking factor of 4 (the CuSD Master Plan indicates that the measured peaking factor prior to entering the Santa Clara system is 1.697). This calculated peak flow generation rate was added to 10.7 MGD (the most current available peak wet weather flow value provided to the City by CuSD in August 2018) and resulted in a Peak Wet Weather Flow of 13.74 MGD, which is less than the 13.8 MGD contractual limit.

**Comment 5:** MM UTIL-2.2 states that future development under the proposed project shall install new mains of an adequate size determined by CuSD, or install a parallel pipe of adequate size to the existing 27-inch sewer main as determined by CuSD. However, determining whether or not upsizing these pipes are required should be evaluated during the EIR process, as it is a foreseeable consequence of the project. If impacts require up-sizing of these pipes, the flow to CSC will be altered. Furthermore, a full evaluation of the effects of the project on the CSC's sewer system should be finalized before completing the environmental review process so the extent of the impacts to the CSC sewer system and necessary mitigations are known.

**Response 5:** MM UTIL-2.3, as revised, ensures that no building permits will be issued that would result in the 13.8 MGD capacity limit being exceeded. As part of the City's for discretionary review for the Master Site Development Permit to implement the Specific Plan, additional calculations and sewer flow modeling will be performed based on the detailed development program for the project. The City of Cupertino will coordinate further modeling with Santa Clara and CuSD.

**Comment 6:** MM UTIL-2.3 states that, "no certificates of occupancy shall be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system being exceeded' . This language creates the potential that the entire project will be constructed prior to any necessary mitigation being planned, let alone installed. An EIR must provide fully enforceable mitigation measures through permit conditions, agreements, or other legally-binding instruments. A limitation tied to occupancy permits is inadequate and at a minimum, the text of MM UTIL-2.3 "no certificate of occupancy shall be issued' should be revised to "*no building permit shall be issued*". Connections should not be made into a sanitary sewer system unless the adequate capacity has been established. Using the potential withholding of a certificate of occupancy to delay flow that would exceed capacity is not an adequate mitigation measure.

**Response 6:** The text of MM-UTIL-2.3 has been revised to state that no building permit shall be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity of 13.8 MGD through the Santa Clara sanitary sewer system being exceeded. Refer to the Supplemental Text Revisions Memorandum. The mitigation measure is effective and enforceable, because it doesn't allow the project to exceed the capacity of Santa Clara's sewer system; it has a performance standard to prevent that. Additionally, the project would be built in phases.

**Comment 7:** Final EIR, page 938, revisions to Impact UTL-2; Project - Under the latest revisions to the EIR several assumptions were made regarding existing flows and capacity within the CSC sewer system. The section indicates that existing flows entering the CSC system are 10.7 mgd with an available capacity of 3.1 mgd. Due to the lack of information it is not clear on how any of these projections were arrived at and if they are accurate. Furthermore the section states that "*Because the needed capacity is less than the total available capacity there is adequate sewage capacity between CuSD and the City of Santa Clara to serve the project and the General Plan Buildout*". The CSC has not received any information from the City of Cupertino or the CuSD to support this statement so this conclusion lacks the requisite substantial evidence.

**Response 7:** Refer to response 4 and 5. It is acknowledged that Santa Clara has requested that additional modeling information be provided to address concerns that the contractual limit would be exceeded. Both Santa Clara and Cupertino have requested CuSD update it's modeling to include, among other updates, the specific information requested by Santa Clara. The City of Cupertino has provided funds to Santa Clara to aid in the integration of this information into their model. There is no information indicating that there will be an exceedance in the contracted capacity, and to suggest otherwise would be speculation. As part of the City's discretionary review for the proposed Master Site Development Permit to implement the Specific Plan, additional calculations and sewer flow modeling will be performed based on the detailed development program for the project. .

**Comment 8:** This section also states that "*If additional hydraulic modeling is performed on the CuSD system and the model indicates that the 13.8 mgd contractual limit through the City of Santa Clara would be surpassed by the project, the future developer(s) would not be permitted to occupy*

*any structures or units that result in the contractual limit being exceeded until additional capacity is available through the City of Santa Clara's sewer system."* This defers the necessary hydraulic modeling to evaluate the impacts, and does not commit the City of Cupertino or the Developer to conducting the hydraulic modeling at any specific time. In addition, as discussed previously, any such modeling should not be tied to occupancy permits, and at a minimum, this section should be revised to read, *"the future developer(s) would not be granted building permits ..."*.

**Response 8:** The CuSD system was modeled in the 2018 CuSD Master Plan. Refer to response 4.

The text of MM-UTIL-2.3 has been revised to state that no building permit shall be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity of 13.8 MGD through the Santa Clara sanitary sewer system being exceeded. Refer to the Supplemental Text Revisions Memorandum and response . The mitigation measure is effective and enforceable, because it doesn't allow the project to exceed the capacity of Santa Clara's sewer system; it has a performance standard to prevent that. Additionally, the project would be built in phases. There is no additional available information that suggest that there will be an exceedance in the contracted capacity and to suggest otherwise would be speculation. As future development projects implementing the Specific Plan are submitted to the City for discretionary review through the proposed Master Site Development Permit process, additional calculations and sewer flow modeling will be performed to address any remaining issues or identify what sewer capacity issues, if any, need to be addressed.

**Comment 9:** Finally, in the second paragraph on page 939 of the Final EIR, construction impacts are discussed. However, without an evaluation of the impacts from the proposed development to the CSC's sanitary sewer system, the need for improvements cannot be determined. Without this assessment it is not clear what the construction impacts would be, how they would be addressed as well as what the necessary mitigations would be.

**Response 9:** The most recent sewer flow information provided by the CuSD does not indicate that the contractual limit of the Santa Clara sanitary sewer system is being exceeded or would be exceeded by development of the Specific Plan; therefore, no improvements to Santa Clara's system are needed and no construction impacts are anticipated. As part of the City's for discretionary review for the Master Site Development Permit to implement the Specific Plan, additional calculations and sewer flow modeling will be performed based on the detailed development program for the project.

**Comment 10:** The CSC maintains that a full sanitary sewer impact analysis is needed to determine whether or not there are any sanitary sewer conveyance capacity impacts to the CSC's sanitary sewer system with the buildout of the project. The Final EIR contains detailed and full analyses related to traffic/transportation, and water services, but falls short in terms of a full analysis of the sanitary sewer impacts to the CSC system. As the CSC stated in the July 9 comment letter and on several other occasions, a full analysis of the potential impacts and mitigations to the CSC sanitary system is necessary as the potential for sanitary sewer overflows cannot be left unresolved. Additionally the CSC has requested that the total sanitary sewer discharge information, including the flow generated

from the project, be provided as CSC has offered to work with an on-call engineering sanitary sewer hydraulic modeling consultant to perform an analysis. To date, the requested information has not been provided to CSC.

The City is requesting that the comments noted above be addressed as part of the environmental process for the project, and that the City of Cupertino defer consideration and certification of the EIR until these issues have been addressed. The CSC is available to meet with the City of Cupertino and discuss these items further.

**Response 10:** The CuSD system was modeled in the 2018 CuSD Master Plan. Refer to responses 4 and 7. As noted previously, the EIR mitigation (MM-UTIL-2.3) has been revised. Refer to response 6.

## SUMMARY OF OTHER WRITTEN COMMENTS AND RESPONSES

The written comments from the above individuals pertaining to the adequacy of the EIR are summarized by topic below with responses. Copies of the comment letters are included in Attachment A. Comments regarding the merits of the project are not included in the summary below and do not warrant responses under CEQA.

### **Process and Documentation Comments**

- Location of the responses to comments on the EIR
- Process for approving zoning changes
- Request for ERC meeting recording and presentation slides
- Request for copies of the NOP comments
- Project description in the NOP and adequacy of the NOP
- Request for copies of notes and responses to public comments made at the August 9, 2018 public meeting
- Process for amending the General Plan
- Noticing of City Council June 4, 2018 Study Session

**Response:** Responses to public agency comments on the EIR were sent to the commenting agencies on August 27, 2018. The Final EIR/Responses to Comments document was also posted on the City's website ([www.cupertino.org/valco](http://www.cupertino.org/valco)) on August 27, 2018, which is more than 72 hours before the scheduled Environmental Review Committee (ERC) meeting. The other comments do not raise any issues about the adequacy of the EIR.

Adopted zoning changes require a second reading by the City Council, 30 days after the first approval.

A link to a video recording of the ERC meeting (including presentation slides) was posted on the City's website on Saturday, September 1, 2018.

The EIR Notice of Preparation (NOP) and responses received by the City on the NOP are included in Appendix A of the Draft EIR. The NOP provided both public agencies and members of the public with notice that the City intended to prepare an EIR to analyze the environmental effects of the project as proposed at the time (as discussed in more detail in Master Response 4, Section 5.1 of the Final EIR). CEQA does not require the City to adopt a project precisely as it was conceived when it was first proposed. The CEQA process contemplates that a project will evolve over time to reduce impacts or better meet project objectives, so long as the actions the City approves are covered by the analysis in the EIR. The proposed Specific Plan's environmental effects, including any environmental effects associated with amending the development allocation in the General Plan to authorize the program proposed in the Specific Plan, were fully disclosed in the EIR's analysis of the project and the reasonable range of alternatives included in the EIR. A full discussion of the Revised Project, including necessary General Plan Amendments, is included in Section 2.1 of the Final EIR. Therefore, the Notice of Preparation is adequate for disclosing potential

environmental effects associated with the Vallco Town Center Specific Plan as currently proposed.

No public meeting was held on August 9, 2018 for the EIR. A summary of the public comments made during the August 7, 2018 Public Comment Meeting on the EIR Amendment and responses to those comments are included in the Final EIR (pages 812-820).

Government Code section 65358 authorizes the City Council to amend the General Plan if it finds that the amendments are in the public interest. State law further requires that: the Planning Commission must consider a General Plan amendment in a noticed hearing and make written recommendation to the City Council; City Council must hold a noticed hearing to approve, disapprove or modify the Planning Commission recommendations regarding the General Plan amendment; and the City may amend the General Plan no more than four times per year (though multiple changes can be included in a single amendment). Aside from the minimum requirements imposed by the Government Code, state law defers to cities to determine process for initiating General Plan amendments. Once established, cities must follow their own General Plan amendment process. In 2015, the City Council adopted Resolution 15-078 to establish local procedures for General Plan amendments. The policy adopted by Resolution 15-078 enables the City to initiate General Plan amendments at any time that it deems necessary, such as to ensure consistency between the General Plan and a specific plan. Although Resolution 15-078 establishes specific procedures for private applicants to initiate General Plan amendments, it does not require the same process for City-initiated General Plan amendments.

### **Project Description Comments**

- Confirmation on the name of the Specific Plan area Explanation for the revised project and inclusion of the 30-acre green roof
- BMR requirements
- Confirmation whether unit square footage in the Development Agreement includes parking areas
- Confirmation on the maximum allowed retail space and building heights
- Confirmation on project need and authorization for General Plan amendments and compliance with the General Plan

**Response:** Subsequent to the preparation of the Final EIR, the City renamed the Vallco Special Area Specific Plan to the Vallco Town Center Specific Plan.

The revised project is described in Section 2.1 of the Final EIR. The city's initial market study indicated that the site could accommodate between 400,000 -600,000 square feet of commercial/retail under current market conditions. Therefore, when developed as a mixed-use site, the alternatives studied in the EIR were developed with a maximum of 600,000 s.f. commercial allocation. The revised project was based on 460,000 s.f. of commercial allocation based on the lower end of the spectrum of economic feasibility, that in order to be able to afford all the community benefits indicated by the City Council including, increased affordable housing, development of a City Hall, development of a Performing Arts Center



and increased contributions toward transportation choices (e.g. a fixed route community shuttle.)

This concept is reflected in the draft Vallco Town Center Specific Plan and the Development Agreement. Accordingly, the EIR analyzes a "revised project" alternative with reduced commercial allocations and increased housing and office allocations to ensure that the City studied the potential environmental effects of the range of program alternatives that could feasibly be developed while meeting the project objectives and maximizing community benefits. The inclusion of a 30-acre green roof as part of the project is explained in footnote 9 on page 11 of the Draft EIR.

The City's BMR Program requires that 15% of new rental housing be developed as below market rate (BMR) housing, with 60% of that reserved for very low income households and 40% reserved for low income households. Projects developed pursuant to the Specific Plan would be consistent with, or exceed, the City's standard requirements. For example, Vallco Property Owner LLC could develop up to 1,779 units on their property at the maximum base density allowed under the proposed Specific Plan could as a "Tier 1" project. This project would be required to reserve 267 units for BMR housing, including 161 units for very low income households (about 9% of the base density) and 106 units for low income households (about 6% of the base density). A Tier 1 project would satisfy the City's standard BMR requirements. If the same applicant applied for a community development density bonus as a "Tier 2" project, 196 units would be required for very low income households, which equals 11% of the base density. Under the proposed Development Agreement, 205 units would be required for low income households (about 12% of the base density) and 133 additional units would be required for moderate income households. Therefore, a Tier 2 project would exceed the City's standard BMR requirements.

As described in Section 2.1 of the Final EIR, the revised project includes 460,000 square feet of commercial uses. The maximum building heights are as described for the previous project in the Draft EIR. Also refer to Section 5.2 Response II.E.12.

Refer to Section 5.2 Response II.E.3 for the project's need for General Plan amendments. General Plan Policy LU-19.1 directs the City to prepare a specific plan to regulate future development on the Vallco site. This direction inherently includes authority for the City to consider any General Plan amendments that are necessary to ensure the General Plan and the proposed Vallco Town Center Specific Plan are consistent, which is required by Government Code section 65454. In 2015, the City Council adopted Resolution 15-078 to establish local procedures for General Plan amendments. The policy adopted by Resolution 15-078 enables the City to initiate General Plan amendments at any time that it deems necessary, such as to ensure consistency between the General Plan and a specific plan. Although Resolution 15-078 establishes specific procedures for private applicants to initiate General Plan amendments, it does not require the same process for City-initiated General Plan amendments. As explained in the EIR, the City is required to amend the General Plan to authorize development contemplated under the Vallco Town Center Specific Plan. With the Vallco Specific Plan, it was always contemplated that the development allocation and heights would be revised to reflect the adopted Specific Plan. Once public input was gathered through the charrette and outreach process, the study session provided that information as

part of the Specific Plan. As required by Government Code section 65358, the Planning Commission will consider the proposed General Plan amendments at a duly-noticed hearing on September 4, 2018, and Planning Commission's recommendation will be considered by the City Council when it takes action on the project as a whole, including the General Plan amendments.

On June 4, 2018, the City Council held a study session to review the direction on the specific plan following the public charrette process conducted by the City and its planning team. The agenda item for the study session read: "Conduct study session regarding Vallco Specific Plan and provide direction to staff," which provides sufficient notice to the general public about the subject matter that was discussed at the study session. No formal action was taken at the meeting, as is evidenced in the meeting minutes and in the recording of the meeting available online at [www.cupertino.org/agenda](http://www.cupertino.org/agenda). A presentation was made to the City Council on progress on the Draft specific plan and the public had the opportunity to comment on the presentation. In addition, comments and general direction were received by the City staff from the City Council after public testimony.

#### **Air Quality Comments**

- Amount of air pollutants produced by the project during operation and construction
- Air quality impacts from the freeway and proposed green roof

**Response:** The air quality impacts of the revised project are described in the Final EIR, pages 5-12. CEQA does not generally require an analysis of the effects of the environment on the project. The exposure of on-site sensitive receptors to toxic air contaminants (including those from Interstate 280) is discussed in the Draft EIR (pages 72-80) and in the EIR Amendment (pages 40-47). Future development implementing the Specific Plan would be designed to reduce significant exposures to below thresholds identified by the Bay Area Air Quality Management District (BAAQMD). Refer to Section 5.2 Response II.E.54 and II.E.56 regarding air quality impacts of the green roof.

#### **Hazardous Materials Comments**

- Request for a copy of previous Phase II report(s)
- Request for completion of a Phase II prior to project approval
- Lack of completion of the environmental questionnaire by the property owner
- Request to include all records at the Fire Department for the site as part of the Phase I report
- Investigation and proper closure of USTs on-site
- PCE use on-site

**Response:** At the ERC meeting, the City's CEQA consultant did not state there had been a comprehensive Phase II ESA previously prepared at Vallco. The consultant noted that soil and groundwater sampling was done as part of some of the automotive facility tank removals and closures, which is summarized in the Phase I (Draft EIR Appendix E, page 10-12). Soil and groundwater sampling was conducted between 1989 and 1992 as part of the UST removals at the JC Penney Automotive Center. Soil sampling was completed as part of UST removals at the Sears Automotive Center in 1985 and 1994. Additionally soil sampling was

done in the vicinity of the JC Penney Automotive Center 750-gallon oil-water separator that was steam cleaned and closed in place in 1994 by filling it with cement grout under SCCFD oversight.

The Phase I referenced in the EIR (Appendix E) does identify Recognized Environmental Conditions (Appendix E, Section 9.16), which are the basis of the EIR discussion of potential impacts and identification of mitigation measures. Implementation of mitigation measures MM HAZ-1.1 through -1.4 in the Draft EIR (page 140-142, and as amended in the Final EIR) will ensure all USTs are properly removed and closed.

Refer to Section 5.3 Response AAA.12 regarding the need for a Phase II, completed environmental questionnaire, and all records in the Phase I.

Fire Department files were reviewed during the Phase I ESA and are summarized in Table 4 of the Phase I ESA. As noted, a variety of hazardous materials historically were used on-site. No spills of PCE were documented within the records reviewed during the Phase I ESA. Mitigation measures identified in the Final EIR (MM HAZ-1.1) include the preparation of a Site Management Plan (SMP) to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater or other materials that may potentially be encountered during construction activities, especially in areas of former hazardous materials storage and use. Regulatory agency approval of the SMP also is stipulated in MM HAZ-1.1. Furthermore, Mitigation Measure MM HAZ-1.2 requires sampling at identified remaining potential contaminant source locations.

### **Land Use Comments**

- Confirmation on maximum amount of retail space on-site allowed by the General Plan

**Response:** The General Plan EIR studied a maximum development program of 625,335 s.f. of commercial, 800 housing units, 2,000,000 s.f. of office and 489 hotel rooms for the Vallco Special Area. The City Council adopted a General Plan Amendment to allow 2,000,000 s.f. of office space and 339 residential units in conjunction with the existing hotel allocation of 339 rooms while recognizing the existing mall as an existing use at 1,207,774 s.f. to ensure it would not become a legal non-conforming use if the commercial allocation was reduced on the site to below the existing conditions. However, the City Council did not authorize the existing commercial allocation of the mall in addition to the 2,000,000 s.f. of office, 339 hotel rooms and 389 residential units. Therefore, the maximum commercial allocation on the site as a standalone use is 1,207,774 s.f. which was studied in the Occupied/Re-Tenanted mall Alternative in the Vallco Town Center Specific Plan EIR. The city's initial market study indicated that the site could accommodate between 400,000 -600,000 square feet of commercial/retail under current market conditions. Therefore, when developed as a mixed-use site, the alternatives studied in the EIR were developed with a maximum of 600,000 s.f. commercial allocation. The revised project was based on 460,000 s.f. of commercial allocation based on the lower end of the spectrum of economic feasibility, that in order to be able to afford all the community benefits indicated by the City Council including, increased affordable housing, development of a City Hall, development of a Performing Arts Center

and increased contributions toward transportation choices (e.g. a fixed route community shuttle.)

### **Parkland Comments**

- General Plan parkland requirements of the project

**Response:** As discussed in the Final EIR (page 41), the revised project residents would require approximately 15.8 acres of parkland. The revised project includes 10.5 to 14 acres of common open space, landscaping, and town squares, as well as a 30-acre green roof. The proposed on-site open space would offset the revised project's demand on park facilities. In addition, as a standard permit condition, future development under the revised project shall comply with Municipal Code Chapter 13.08 and Title 18 (see standard permit condition on page 41 of the Final EIR).

### **Project Alternatives Comments**

- Alternatives not described in the NOP
- Study of all alternatives identified by the public

**Response:** Refer to Master Response 3 in the Final EIR (pages 89-90).

CEQA requires the EIR to analyze a “reasonable” range of alternatives to a proposed project. Here, the City considered alternatives suggested by various parties, including buildout under the existing General Plan, increased residential capacity, retail and residential mixed use, and re-tenanting the mall, but it is not feasible to analyze every alternative. The General Plan currently allows 2,000,000 square feet of office space and 339 residential units in conjunction with the existing hotel allocation of 339 rooms and a reduced commercial allocation at the Valco Special Area for future development, while permitting existing commercial uses as legal, conforming uses. The “General Plan Buildout with Maximum Residential Alternative” in the EIR analyzes this development allocation, plus housing at 35 dwelling units/acre without a development allocation limit.

The EIR also studied the maximum commercial allocation currently permitted in the Valco Town Center area in the Specific Plan EIR as the Occupied/Re-Tenanted Mall Alternative, plus other alternatives identified by the public and public officials.

### **Transportation Comments**

- Increased vehicular congestion

**Response:** The transportation impacts of the revised project are discussed in Section 2.3.17 of the Final EIR (pages 42-54).

### **Other Comments**

- Jobs/housing balance
- Adequacy of previous Phase I reports by the property owner

**Response:** The project's affect on the City's jobs/housing ratio is not considered an impact under CEQA. The revised project's impact on population and housing are discussed in Section 2.3.14 of the Final EIR (pages 38-39) and the revised project's growth inducing impacts are discussed in Section 2.3.19 of the Final EIR (pages 58-59).

Refer to Master Response 5 regarding the scope of the EIR, which does not include verification or validation of the previous Phase I reports by the property owner.

**Attachment: Copies of Late Comment Letters**



August 30, 2018

City of Cupertino  
Attn: Amy Chan, Interim City Manager  
10300 Torre Avenue  
Cupertino, CA 95014

Re: Final Environmental Impact Report (EIR) (Draft and Response to  
Comments) for the Vallco Special Area Specific Plan Project (File Number  
EA-2017-05)

Dear Ms. Chan:

Thank you for the City of Cupertino's response to comments made in the City of Santa Clara's (CSC) letter dated July 9, 2018, regarding the draft Environmental Impact Report (EIR) for the Vallco Special Area Specific Plan Project ("project"). The CSC and City of Cupertino also met to review the CSC's concerns with the EIR in terms of new sanitary sewer flows coming into CSC's system from the project.

As stated in the CSC July 9, 2018, comment letter, "[a]n evaluation of the sanitary sewer conveyance capacity impacts of this Project to the City of Santa Clara's sanitary sewer system is required and the results of the evaluation along with the mitigation measures need to be included in the EIR." The City of Cupertino has yet to conduct this requested evaluation. The CSC has reviewed the Response to Comments in the Final EIR, and because this complete evaluation of the sanitary sewer system has not been performed, the CSC still has concerns most notably the following:

- 1) The likelihood that future flows from the project entering the CSC will exceed the 13.8 million gallon per day (mgd) maximum instantaneous rate of flow set forth in the agreement between the CSC and the Cupertino Sanitation District (CuSD).
- 2) The potential that the project will be constructed without enforceable mitigation measures in place to address sanitary sewer flows that exceed the 13.8 mgd maximum instantaneous rate of flow.

Because of these shortcomings in the evaluation of the sewer systems, it is difficult to fully assess the sewer conveyance capacity impacts and we believe that there could be substantial impacts to the CSC's sanitary sewer system in the event of full project build out. The following comments are provided in response to the CSC's review of the Response to Comments in the Final EIR:

Comment 1: The Final EIR provides the following response to the sanitary sewer comments in CSC's July 9, 2018, comment letter:

**Response C.2:** *The text of mitigation measure UTIL-2.3 has been revised to clarify the mitigation measures for sanitary sewer impacts downstream of the project, within the City of Santa Clara. Refer to Section 5.0 (revisions to pages 389-390 of the Draft EIR) and Section 6.0 (revisions to pages 255-256 of the Draft EIR Amendment) for the text revisions.*

The text revisions added (Draft EIR pages 389-390 and Draft EIR Amendment pages 255-256) still do not adequately address the potential impacts to the CSC's sanitary sewer system. The added text states that, "[t]he existing CuSD peak wet weather flow into the Santa Clara system is modeled at 10.7 mgd." However, the existing flow used in the model is not defined, it is not clear if it is based on any recent flow monitoring, and whether or not it includes flow from the recently occupied Apple Campus. The added text also states that, "Incorporating estimated sewer generation rates from the project and from other potential projects as established by the General Plan...", however the potential projects are not defined. Is there a list of these projects? What is the projected incoming sanitary sewer flow to the CSC system due to these potential projects? Does the modeled 10.7 mgd flow include the projected flow from these potential projects (i.e., cumulative impact) as well as inflow and infiltration projections?

Comment 2: MM UTIL-2.2 states that future development under the proposed project shall install new mains of an adequate size determined by CuSD, or install a parallel pipe of adequate size to the existing 27-inch sewer main as determined by CuSD. However, determining whether or not upsizing these pipes are required should be evaluated during the EIR process, as it is a foreseeable consequence of the project. If impacts require up-sizing of these pipes, the flow to CSC will be altered. Furthermore, a full evaluation of the effects of the project on the CSC's sewer system should be finalized before completing the environmental review process so the extent of the impacts to the CSC sewer system and necessary mitigations are known.

Comment 3: MM UTIL-2.3 states that, "no certificates of occupancy shall be issued by the City for structures or units that would result in the permitted peak wet weather flow capacity of 13.8 mgd through the Santa Clara sanitary sewer system being exceeded". This language creates the potential that the entire project will be constructed prior to any necessary mitigation being planned, let alone installed. An EIR must provide fully enforceable mitigation measures through permit conditions, agreements, or other legally-binding instruments. A limitation tied to occupancy permits is inadequate and at a minimum, the text of MM UTIL-2.3 "no certificate of occupancy shall be issued" should be revised to



*"no building permit shall be issued"*. Connections should not be made into a sanitary sewer system unless the adequate capacity has been established. Using the potential withholding of a certificate of occupancy to delay flow that would exceed capacity is not an adequate mitigation measure.

Comment 4: Final EIR, page 938, revisions to Impact UTL-2; Project – Under the latest revisions to the EIR several assumptions were made regarding existing flows and capacity within the CSC sewer system. The section indicates that existing flows entering the CSC system are 10.7 mgd with an available capacity of 3.1 mgd. Due to the lack of information it is not clear on how any of these projections were arrived at and if they are accurate. Furthermore the section states that *"Because the needed capacity is less than the total available capacity there is adequate sewage capacity between CuSD and the City of Santa Clara to serve the project and the General Plan Buildout"*. The CSC has not received any information from the City of Cupertino or the CuSD to support this statement so this conclusion lacks the requisite substantial evidence.

This section also states that *"If additional hydraulic modeling is performed on the CuSD system and the model indicates that the 13.8 mgd contractual limit through the City of Santa Clara would be surpassed by the project, the future developer(s) would not be permitted to occupy any structures or units that result in the contractual limit being exceeded until additional capacity is available through the City of Santa Clara's sewer system."* This defers the necessary hydraulic modeling to evaluate the impacts, and does not commit the City of Cupertino or the Developer to conducting the hydraulic modeling at any specific time. In addition, as discussed previously, any such modeling should not be tied to occupancy permits, and at a minimum, this section should be revised to read, *"the future developer(s) would not be granted building permits..."*.

Comment 5: Finally, in the second paragraph on page 939 of the Final EIR, construction impacts are discussed. However, without an evaluation of the impacts from the proposed development to the CSC's sanitary sewer system, the need for improvements cannot be determined. Without this assessment it is not clear what the construction impacts would be, how they would be addressed as well as what the necessary mitigations would be.

The CSC maintains that a full sanitary sewer impact analysis is needed to determine whether or not there are any sanitary sewer conveyance capacity impacts to the CSC's sanitary sewer system with the buildout of the project. The Final EIR contains detailed and full analyses related to traffic/transportation, and water services, but falls short in terms of a full analysis of the sanitary sewer impacts to the CSC system. As the CSC stated in the July 9 comment letter and on several other occasions, a full analysis of the potential impacts and mitigations to the CSC sanitary system is necessary

Amy Chan, City Manager  
August 30, 2018  
Page 4

as the potential for sanitary sewer overflows cannot be left unresolved. Additionally the CSC has requested that the total sanitary sewer discharge information, including the flow generated from the project, be provided as CSC has offered to work with an on-call engineering sanitary sewer hydraulic modeling consultant to perform an analysis. To date, the requested information has not been provided to CSC.

The City is requesting that the comments noted above be addressed as part of the environmental process for the project, and that the City of Cupertino defer consideration and certification of the EIR until these issues have been addressed. The CSC is available to meet with the City of Cupertino and discuss these items further.

Should you have any questions regarding this letter, please contact Andrew Crabtree, Director of Community Development, via email at [acrabtree@santaclaraca.gov](mailto:acrabtree@santaclaraca.gov) or by phone at 408-615-2450.

Sincerely,



Deanna J. Santana  
City Manager  
City of Santa Clara

cc: Santa Clara City Council  
Piu Ghosh  
Timm Borden

**From:** [Piu Ghosh](#)  
**To:** [Judy Shanley](#); [Kristy Weis](#)  
**Cc:** ["Ellen J. Garber \(Garber@smwlaw.com\)"](#)  
**Subject:** FW: Vallco Specific Plan - Comments  
**Date:** Thursday, August 30, 2018 11:40:55 AM

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FYI...

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**From:** City of Cupertino Planning Dept.

**Sent:** Thursday, August 30, 2018 9:22 AM

**To:** Aarti Shrivastava <[AartiS@cupertino.org](mailto:AartiS@cupertino.org)>; Abby Ayende <[AbigailA@cupertino.org](mailto:AbigailA@cupertino.org)>; Angela Tsui <[AngelaT@cupertino.org](mailto:AngelaT@cupertino.org)>; Benjamin Fu <[BenjaminF@cupertino.org](mailto:BenjaminF@cupertino.org)>; Catarina Kidd <[CatarinaK@cupertino.org](mailto:CatarinaK@cupertino.org)>; Colin Jung <[ColinJ@cupertino.org](mailto:ColinJ@cupertino.org)>; Ellen Yau <[EllenY@cupertino.org](mailto:EllenY@cupertino.org)>; Erick Serrano <[ErickS@cupertino.org](mailto:ErickS@cupertino.org)>; Erika Poveda <[ErikaP@cupertino.org](mailto:ErikaP@cupertino.org)>; Gian Martire <[GianM@cupertino.org](mailto:GianM@cupertino.org)>; Jeff Tsumura <[JeffreyMT@cupertino.org](mailto:JeffreyMT@cupertino.org)>; Kerri Heusler <[KerriH@cupertino.org](mailto:KerriH@cupertino.org)>; Piu Ghosh <[PiuG@cupertino.org](mailto:PiuG@cupertino.org)>; Rosanne Meza <[RosanneM@cupertino.org](mailto:RosanneM@cupertino.org)>; Samuel Lai <[saml@cupertino.org](mailto:saml@cupertino.org)>

**Subject:** FW: Vallco Specific Plan - Comments

[From the Planning department's general mailbox:](#)

---

**From:** Thomas Leipelt [<mailto:tleipelt@ymail.com>]

**Sent:** Thursday, August 30, 2018 9:04 AM

**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>

**Subject:** Vallco Specific Plan - Comments

Hello,

As a resident of Cupertino, I would like to provide you with my comments regarding this massive project which will impact and shape the city.

I recently was contacted by Costco which expressed interest in being part of this project.

I completely SUPPORT Costco's interest in building a warehouse store and gas station at Vallco. There are many reasons why I support having a Costco at Vallco, but I will make it brief. Many Cupertino residents shop at Costco and this revenue source is being given to Mountain View, Sunnyvale and Santa Clara. Secondly Cupertino residents have to drive out of the city to Costco, so why not provide them with a shorter trip to a Costco in Cupertino and reduce the number of trips outside the city.

I hope the city leaders see the benefits of having a Costco in Cupertino.

Thomas Leipelt  
10371 Johnson Avenue

Cupertino, CA 95014

**Subject:** FW: anticipated review timeline for the Vallco Specific Plan?  
**Attachments:** ERC Agenda 8-31-18.pdf

**From:** Liana Crabtree [mailto:lianacrabtree@yahoo.com]  
**Sent:** Thursday, August 30, 2018 9:03 AM  
**To:** City of Cupertino Planning Dept. <planning@cupertino.org>  
**Subject:** anticipated review timeline for the Vallco Specific Plan?

Dear Planning Department:

I notice from information provided on the City of Cupertino Web site that Tuesday, 9/18/2018 has been set aside for a special Council meeting to:

“Consider adoption of the Vallco Specific Plan and a Development Agreement proposed by the Vallco Property Owner, LLC. In addition, an Environmental Impact Report prepared to evaluate the environmental effects of the proposed project will also be considered. Adoption of the Plan will require General Plan Amendments, and Zoning Actions, all of which will also be considered concurrently.”

It is my understanding that General Plan amendments may be approved upon the first reading, but that zoning changes (Municipal Code) require a second reading. Is my understanding correct?

What is the minimum time duration, if any, required between the first and second reading of a proposed zoning change?

Does the Planning Department anticipate that Council will finish all required decisions regarding the Vallco Specific Plan before the conclusion of the special Council meeting scheduled for Wednesday, 9/19/2018?

Thank you,

Liana Crabtree  
Cupertino resident

Sent from Yahoo Mail for iPhone

**Judy Shanley**

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**Subject:** FW: Vallco  
**Attachments:** image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png; image008.png; image017.png; image018.png; image019.png; image020.png; image021.png; image022.png; image023.png; image024.png

From: Mort & Eli [mailto:mortandeli@comcast.net]  
Sent: Friday, August 31, 2018 5:32 PM  
To: Sandy James <sandy@vallcovision.com<mailto:sandy@vallcovision.com>>; City Council <CityCouncil@cupertino.org<mailto:CityCouncil@cupertino.org>>  
Subject: Re: Vallco

On August 31, 2018 at 5:27 PM Mort & Eli  
<mortandeli@comcast.net<mailto:mortandeli@comcast.net>> wrote:

Please support the revitalization of Vallco through this specific plan and through the SB 35 application. We live very close to Vallco and do not want to continue to live next to a "ghost Mall".

Carol & Norm Eliason

10276 Richwood Dr.

Cupertino, Ca 95014

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**Judy Shanley**

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**Subject:** FW: 1,250 SF per Residential Unit Vallco Number  
**Attachments:** image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png; image008.png; image017.png; image018.png; image019.png; image020.png; image021.png; image022.png; image023.png; image024.png

From: Kitty Moore [mailto:ckittymoore@gmail.com]  
Sent: Friday, August 31, 2018 5:58 PM  
To: Piu Ghosh <PiuG@cupertino.org<mailto:PiuG@cupertino.org>>; Darcy Paul <DPaul@cupertino.org<mailto:DPaul@cupertino.org>>; Cupertino City Manager's Office <manager@cupertino.org<mailto:manager@cupertino.org>>  
Subject: 1,250 SF per Residential Unit Vallco Number

Greetings,

Quick question, the Developer Agreement for Vallco has 1,250 gross SF per unit. Is that assuming the same parking configuration with the internal parking garages included in the SF? Or is Parking underground, and not counted?

Measure D ended up being about gross 1,100 SF per unit and they didn't count the parking garages even though they were internal.

Thanks!

Best regards,

Kitty Moore

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**Judy Shanley**

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**Subject:** FW: Keep Cupertino Vital  
**Attachments:** image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png; image008.png; image017.png; image018.png; image019.png; image020.png; image021.png; image022.png; image023.png; image024.png

From: Mona Schorow [mailto:monaschorow@sbcglobal.net]  
Sent: Friday, August 31, 2018 5:25 PM  
To: City Council <CityCouncil@cupertino.org<mailto:CityCouncil@cupertino.org>>  
Subject: Keep Cupertino Vital

Please maintain control over the Sand Hills development; keep Cupertino a vital place to live by minimizing Vallco development. We're counting on you, our elected officials, to represent your constituency in this balance.

Respectfully,

Mona Schorow  
Fumi Matsumoto  
22182 Bitter Oak Street  
Cupertino, CA

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**From:** [Liang-Fang Chao](#)  
**To:** [City Council](#); [City Attorney's Office](#); [City of Cupertino Planning Dept.](#); [Cupertino City Manager's Office](#)  
**Subject:** "Vallco Shopping District", not "Vallco Town Center".  
**Date:** Friday, August 31, 2018 7:31:58 PM

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Dear Mayor Paul, Councilmembers, and City Attorney,

As I've pointed out previously in public comments for the Opticos process and the EIR and this morning at the Environmental Review committee and here again, **the retail space allocation for Vallco Shopping District is maximum 1.2 million square feet, not maximum 600,000 square feet.** Since the maximum allocated amount is listed for other allocations, like office and residential, for transparency and consistency, please list the maximum allowed amount for retail space also.

Otherwise, the public might be misled to believe that the Council has somehow changed the General Plan to reduce the retail space from max 1.2 million sqft to max 600,000 sqft. Please do not mislead the public.

Why are we so afraid to clearly state that the allowed retail space in the current General Plan is 1.2 million sqft? That's the fact. Why not just state it plainly?

I've pointed this out earlier too. **The formal name for the Vallco area in the General Plan is "Vallco Shopping District"** in the General Plan. Not "Vallco Town Center". There are also Vallco North Park and Vallco South Park. A member of the public might be confused if the formal name is not used to address the area in the General Plan to be considered. Until the General Plan is amended, the Vallco area is called "Vallco Shopping District."

Again. Why are we so afraid to clearly state that the area under consideration is called "Vallco Shopping District"?  
That's the fact. Why not just state it plainly?

Unless there was any GPA to change the name of the area, please call it as it is currently stated in the General Plan for transparency and consistency.

Thanks.

Liang Chao  
Cupertino resident

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From: lfchao@gmail.com

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**From:** [Liang-Fang Chao](#)  
**To:** [City Council](#); [City Attorney's Office](#); [City of Cupertino Planning Dept.](#); [Cupertino City Manager's Office](#)  
**Subject:** "Vallco Shopping District", not "Vallco Town Center".  
**Date:** Friday, August 31, 2018 7:31:58 PM

---

Dear Mayor Paul, Councilmembers, and City Attorney,

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Thanks.

Liang Chao  
Cupertino resident

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**From:** [Liang-Fang Chao](#)  
**To:** [City Council](#); [City Attorney's Office](#); [City of Cupertino Planning Dept.](#); [Cupertino City Manager's Office](#)  
**Subject:** Re: "Vallco Shopping District", not "Vallco Town Center".  
**Date:** Friday, August 31, 2018 7:45:51 PM

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The agenda item for the Sep. 4 Planning Commission is  
"Consider adoption of the **Vallco Town Center Specific Plan** and associated amendments to the General Plan, Zoning Map, Municipal Code, to modify development standards, including heights, density, and residential, commercial, office, and hotel development allocations within the **Vallco Town Center Special Area** and related actions for environmental review to consider the effects of the project; and consideration of a Development Agreement with Vallco Property Owner, LLC for..."

In the General Plan, there is no such thing called "Vallco Town Center" or "Vallco Town Center Special Area".

There are "Vallco Shopping District", "North Vallco Park", "South Vallco Park".

The agenda item should use the exact term used in the current General Plan. Otherwise, people might confuse those with

You are welcome to verify the term used here:

<https://www.cupertino.org/our-city/departments/community-development/planning/general-plan/general-plan>

Liang

On Fri, Aug 31, 2018 at 7:31 PM, Liang-Fang Chao <[lfchao@gmail.com](mailto:lfchao@gmail.com)> wrote:

Dear Mayor Paul, Councilmembers, and City Attorney,

As I've pointed out previously in public comments for the Opticos process and the EIR and this morning at the Environmental Review committee and here again, **the retail space allocation for Vallco Shopping District is maximum 1.2 million square feet, not maximum 600,000 square feet**. Since the maximum allocated amount is listed for other allocations, like office and residential, for transparency and consistency, please list the maximum allowed amount for retail space also.

Otherwise, the public might be misled to believe that the Council has somehow changed the General Plan to reduce the retail space from max 1.2 million sqft to max 600,000 sqft. Please do not mislead the public.

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I've pointed this out earlier too. **The formal name for the Vallco area in the General Plan is "Vallco Shopping District"** in the General Plan. Not "Vallco Town Center". There are also Vallco North Park and Vallco South Park. A member of the public might be confused if the formal name is not used to address the area in the General Plan to be considered. Until the General Plan is amended, the Vallco area is called "Vallco Shopping District."

Again. Why are we so afraid to clearly state that the area under consideration is called "Vallco Shopping District"?

That's the fact. Why not just state it plainly?

Unless there was any GPA to change the name of the area, please call it as it is currently stated in the General Plan for transparency and consistency.

Thanks.

Liang Chao  
Cupertino resident

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**From:** [Piu Ghosh](#)  
**To:** [Kristy Weis](#); [Judy Shanley](#); [Franziska Church](#); [Ellen Garber](#)  
**Subject:** Fwd: Comments for FEIR  
**Date:** Sunday, September 02, 2018 5:37:53 PM

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FYL...

Sent from my iPhone

Begin forwarded message:

From: Liang-Fang Chao <lfchao@gmail.com<<mailto:lfchao@gmail.com>>>  
Date: September 1, 2018 at 12:15:15 PM PDT  
To: City of Cupertino Planning Dept. <planning@cupertino.org<<mailto:planning@cupertino.org>>>, Piu Ghosh <piug@cupertino.org<<mailto:piug@cupertino.org>>>  
Subject: Comments for FEIR  
Reply-To: <lfchao@gmail.com<<mailto:lfchao@gmail.com>>>

Where do I find all comments for the NOP fo Vallco? They are not included in the DEIR.

Master Response 3 states:

"Comments were received requesting that the Notice of Preparation (NOP) for the project be revised and recirculated to identify the proposed 30-acre green roof, civic spaces, and project alternatives."

"The revised project would result in 5,846 new residents on-site.<sup>10</sup> According to General Plan Policy RPC-1.2, the revised project residents would require approximately 15.8 acres of parkland."

Please state why none of the alternative considers 15.8 acres of ground-level parkland, as required by the General Plan?

There were many comments made for NOP. Please justify why some comments were included as a part of "Revised Project", not even just one alternative, and some were simply ignored?

Who made the decisions on which comment of the NOP to include as a part of the "Revised Project"? When was such a decision made?

I would like to make a Public Records request of all documents and communications contributing to adding 30-acre of green roof as a part of the "project" considered in the EIR, instead of just an alternative.

The project as specified in the NOP should not be modified merely because of one or two comments of the NOP. If that's case, please list all comments of the NOP and state why some of them are simply ignored.

Liang Chao  
Cupertino resident

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**Judy Shanley**

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**Subject:** FW: The Vallco Plan  
**Attachments:** image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png; image008.png; image017.png; image018.png; image019.png; image020.png; image021.png; image022.png; image023.png; image024.png

From: Adrienne Renner [mailto:arenner318@gmail.com]  
Sent: Saturday, September 01, 2018 10:30 AM  
To: City Council <CityCouncil@cupertino.org<mailto:CityCouncil@cupertino.org>>  
Subject: The Vallco Plan

I just read the statement from Mr. Moulds in an email. I hope that the project really will have a park at the street level. I think I remember the promises for a park setting at Main Street which didn't happen. I hope that you keep this developer to its promises.

Also, I hope that what I have heard about Costco is just a rumor. We don't need the traffic increased because of a Costco at this location.

Also, I hope that you listen to the comments from San Jose residents who pay Cupertino school taxes and who live much closer to Vallco than most of the Cupertino residents. I have lived off Miller Avenue for over 40 years and spend lots of money at the retailers in Cupertino. Please do not ignore those of us who live so close and who consider themselves Cupertino residents, not San Jose residents.

Adrienne Renner

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**Judy Shanley**

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**Subject:** FW: Vallco Rezoning Meeting - Sept 4

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**From:** Rajeev Joshi [<mailto:pvrjoshi@yahoo.com>]  
**Sent:** Monday, September 03, 2018 1:01 PM  
**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>  
**Cc:** City Council <[CityCouncil@cupertino.org](mailto:CityCouncil@cupertino.org)>  
**Subject:** Vallco Rezoning Meeting - Sept 4

To: The Planning Commission, City of Cupertino

From: Rajeev Joshi

As a long-term resident of Cupertino (>25 years) residing in the Vallco Mall neighborhood, I am especially affected by the changes that are proposed to that area – in that respect I believe the opinions of the neighbors NEED to be considered FIRST. Let me share some observations.

- Vallco owners knew at the time of purchase that the area was zoned as a retail so now a few years later I see NO reason to rezone it otherwise.
- Eminent domains are precedent sets which will lead this city down a path that is going to be regrettable. WE DO NOT SUPPORT THIS.- the area needs to be developed and the mall owners have not considered many viable retail options. Even keeping the old options would have been a better fit for Cupertino, there were shopping options which were systematically driven out so that the mall owner could build mega complexes that don't fit with the city image.
- The planning commission went about hiring consultants who Cherry Picked respondents on their vision for the Vallco mall- if the respondent gave inputs which was not in sync with theirs- it was ignored. (I have evidence of this and should things get to a point where it becomes necessary to submit this in any kind of a formal legal challenge, I will make it available.)
- The commission themselves, do not respond to any inputs that suggest that the area be not zoned- again there are email trails about the same which have been ignored.
- If indeed, the area is zoned- this would be in conflict with the existing city laws on height- so are you going to make exceptions? If so, as a resident, I will also want to build a tower on my property- are you going to allow that?
- The envisioned plan will add to the congestion in that neighborhood – and this been empirically shown with the current Apple campus with its 10000 employees. Take a look at the street cameras that are aimed at the intersections and see for yourself.

Lastly, I would like this communication to be entered into the records so that when called upon, a citizen of the city can see it is there. There is a lack of trust of the way the city (council + commission) has operated. There are three voting members of the household whose 3 votes need to be heard.

**From:** [City of Cupertino Planning Dept.](#)  
**To:** [Ellen J. Garber \(Garber@smwlaw.com\)](#); [Murphy, Karen W. \(KMurphy@bwslaw.com\)](#); [Gerald Ramiza \(jramiza@bwslaw.com\)](#); [Eric Phillips](#); [Barbara E. Kautz - Goldfarb & Lipman LLP \(Bkautz@goldfarblipman.com\)](#); [Rocio Fierro](#)  
**Cc:** [Aarti Shrivastava](#); [Catarina Kidd](#); [Piu Ghosh](#); [Judy Shanley](#); [Kristy Weis](#)  
**Subject:** FW: Comments for planning meeting Sept 4, 2018  
**Date:** Monday, September 03, 2018 6:52:28 PM

---

FYI...

---

**From:** CAROL WILSER [mailto:wilserc@icloud.com]  
**Sent:** Monday, September 03, 2018 5:54 PM  
**To:** City of Cupertino Planning Dept. <planning@cupertino.org>  
**Subject:** Comments for planning meeting Sept 4, 2018

Why do we need more offices?

I can understand the need for more housing, however, I don't understand why there is need for more offices in Cupertino. Adding more offices just maintains an imbalance between housing and workers needing housing. I understand that is a way for the developers to squeeze maximum profits out of Vallco but does not solve housing imbalances in Cupertino.

Excessive Building Height

Do we really want to see towers much higher than those in the City Center on Stevens Creek Blvd?. As far as I know there are no buildings in Cupertino that are 150 feet tall.

Traffic

Traffic is already very congested during commute times. I walk a lot for short shopping trips and to other places in Cupertino and I don't see a lot of others walking except between Apple buildings. Those I see on bicycles are those who are fit enough and willing to use their bicycles for transportation. Most people do not fall into those categories. So more cars and more congestion will be caused by the proposed density increases.

Affordability

I suspect that there will be no units that will be considered "affordable to all income levels" by the time they are available.

I don't expect Cupertino to stay the same but the Vallco Project, as presented in the lovely "Vallco Town Center Specific Plan", will likely make living in Cupertino an unpleasant life. The planners and council members of today will probably be living somewhere nicer by the time the project is completed.

Carol L Wilser



From: Liang-Fang Chao <[lfchao@gmail.com](mailto:lfchao@gmail.com)<<mailto:lfchao@gmail.com>>>  
Date: August 31, 2018 at 8:18:22 PM PDT  
To: City Clerk <[CityClerk@cupertino.org](mailto:CityClerk@cupertino.org)<<mailto:CityClerk@cupertino.org>>>, City Attorney's Office  
<[CityAttorney@cupertino.org](mailto:CityAttorney@cupertino.org)<<mailto:CityAttorney@cupertino.org>>>  
Cc: City Council <[citycouncil@cupertino.org](mailto:citycouncil@cupertino.org)<<mailto:citycouncil@cupertino.org>>>, <[manager@cupertino.org](mailto:manager@cupertino.org)<<mailto:manager@cupertino.org>>>, "City of Cupertino Planning Dept." <[planning@cupertino.org](mailto:planning@cupertino.org)<<mailto:planning@cupertino.org>>>  
Subject: Unlawful "action" taken on June 4. 2018 during a study session  
Reply-To: <[lfchao@gmail.com](mailto:lfchao@gmail.com)<<mailto:lfchao@gmail.com>>>

Dear Mayor Paul, Councilmembers, and City Attorney,

The Vallco EIR refers to a "Revised Project", which is inconsistent with the "Proposed Project" described in the NOP of the EIR, dated Feb. 8, 2018: "Consistent with the adopted General Plan, the Specific Plan would facilitate the development of 600,000 square feet of commercial uses, 2.0 million square feet of office uses, 339 hotel rooms, and 800 residential dwelling units onsite."

The many public comments submitted during the commenting area, which ends on March 12, 2018, were based on the "Proposed Project", described in the NOP.

Yet, the FEIR states

"Based on input from City Council at its June 4, 2018 Study Session on the Vallco Specific Plan, the City has identified another alternative to the proposed project that would achieve all the goals expressed by the different councilmembers at that meeting, including the desire to have a more balanced jobs and housing community. This alternative is the "revised project," which consists of revisions to the project analyzed in the Draft EIR (referred to, below, as the "previous project").

The revised project includes 460,000 square feet of commercial uses (including a 60,000 square foot performing arts theater), 1,750,000 square feet of office uses, 339 hotel rooms, 2,923 residential units, 35,000 square feet of civic uses (including 10,000 square foot of governmental use and 35,000 square feet of education space), and a 30-acre green roof."

On June 4, 2018, the agenda item description is "Conduct study session regarding Vallco Specific Plan and provide direction to staff"

No where does it mention that the "Proposed Project" will be revised to be beyond what the General Plan would allow.

No where does it mention that any direction might involve an amendment to the General Plan beyond the original stated bound for the Vallco Specific Plan and the EIR.

Any member of the public would interpret the agenda item to mean the direction to staff would be among options ALL comply with the current General Plan.

There is no way any member of the public, just reading the agenda description, could be alerted that the General Plan will be amended or that the number of housing units could be tripled or more.

Apparently the Council took "action" on a study session item beyond the description of the item.

That violates the Brown Act.

Thus, any "action" taken on June 4, 2018 should be voided since there is no proper notice to the public who might wish to comment on the item.

Please cease and desist any future action on GPA or EIR, which might result from the unlawful "action" taken on June 4, 2018 during the study session limited to Vallco Specific Plan, which is supposed to comply with the current General Plan.

I do expect a written response from the City Attorney on the action taken by the City to address this cease-and-desist request.

Sincerely,

Liang Chao  
Cupertino resident

**From:** [Piu Ghosh](#)  
**To:** "[Ellen J. Garber \(Garber@smwlaw.com\)](#)"; [Rocio Fierro](#); "[Murphy, Karen W. \(KMurphy@bwslaw.com\)](#)"; "[Gerald Ramiza \(jramiza@bwslaw.com\)](#)"; "[Eric Phillips](#)"  
**Cc:** [Judy Shanley](#); [Kristy Weis](#); [Aarti Shrivastava](#); [Catarina Kidd](#)  
**Subject:** FW: No Phase II ESA - Oppose the Vallco GPA and Final EIR, Investigate USTs  
**Date:** Monday, September 03, 2018 6:49:48 PM

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FYI....

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**From:** Kitty Moore [mailto:ckittymoore@gmail.com]  
**Sent:** Monday, September 03, 2018 6:20 PM  
**To:** City Council <CityCouncil@cupertino.org>; City of Cupertino Planning Dept. <planning@cupertino.org>; Piu Ghosh <PiuG@cupertino.org>; City Attorney's Office <CityAttorney@cupertino.org>; Geoff Paulsen <GPaulsen@cupertino.org>; Alan Takahashi <ATakahashi@cupertino.org>; David Fung <DFung@cupertino.org>; Jerry Liu <JLiu@cupertino.org>; Don Sun <DSun@cupertino.org>  
**Cc:** Esq. Bern Steves <bernsteves@californiabizlaw.com>  
**Subject:** No Phase II ESA - Oppose the Vallco GPA and Final EIR, Investigate USTs

Greetings,

First, the obvious conclusion from the Environmental Review Committee meeting Friday, is that Vallco is not compliant with SB35 due to the environmental problems on the site.

During the ERC Meeting, the consultant demonstrated knowledge of various "Recognized Environmental Concerns" such as Underground Storage Tanks at Vallco and stated that she 'thought there had been a couple of Phase II Environmental Site Assessments' done at Vallco. I have already requested that the city provide me with these alleged documents, but I do not believe you will find any because of how the previous Phase I ESAs were conducted (extremely limited records search and site recon) and if a Phase II ESA was ever performed, it has not been publicly disclosed, ever and was not included in any Vallco EIR documentation or appendices.

See ERC Meeting consultant in Youtube recording at 1:21:59 <https://youtu.be/1yPBDr6wYWY>

Finding Recognized Environmental Concerns is one of the prime reasons a Phase II Environmental Site Assessment is performed to assist in all sorts of decision-making, especially decisions regarding people's health. The EIR consultant ***could only guess*** at what was on the site, and the EIR was not complete in their review of documentation at the SCCFD missing PCE use, for example, which is dry cleaning fluid. ***The city is failing to protect the residents and failing to provide full disclosure to the public*** and anyone who may be financing the project or investing in it.  
[https://www.epa.gov/sites/production/files/2017-07/documents/aai\\_factsheet\\_lender\\_liability\\_epa\\_560\\_f\\_17\\_192\\_508.pdf](https://www.epa.gov/sites/production/files/2017-07/documents/aai_factsheet_lender_liability_epa_560_f_17_192_508.pdf)

***The city is in such a hurry to force this project onto the residents that you refuse to inform and protect us.***

***A Phase II Environmental Site Assessment will take a brief amount of time, and it may***

*indicate that onsite air monitors during construction are necessary and extra precautionary steps are needed.* That is the right way to take care of people.

The previous Phase I ESAs made claims that there either were no records at the SCCFD or did not even go to look. There were NO Phase II ESAs presented to the city by the Vallco owner, the Vallco and Hyatt House owners did not fill out Cornerstone Earth Group's environmental questionnaire.

In order to look at the Fire Department records you have to fill out a public records request and go to the Los Gatos Office where they give you a quick tutorial on how to look up the records. I did this with some assistants over three visits and 8 hours. I brought in the stack of records to the public comment period for the Amended EIR August 7. Cornerstone Earth Group could very easily link their PDFs of these documents.

The City, City Manager, and City Attorney, are now on the hook for the Underground Storage Tank issue along with the developer because this is your jurisdiction and your documentation would have all hazardous materials sites within the city. Sears apparently was allowed by the city to not be properly closed three years ago and the city did not do anything about that while the site groundwater drains into the storm drain system and the photograph of one of the 'alleged' USTs 'allegedly' been at the location since 1969 so it has had a good long time to rot while it sits 'allegedly' 2 feet from a storm drain inlet. How many more years do you plan to allow this to go on? The city must report this and have it cleaned up. Vallco could sit another 10 years before the developer does anything.

The CA Gov. Code statute for Underground Storage Tanks is thus:

[https://www.waterboards.ca.gov/ust/regulatory/docs/hs6\\_7.pdf](https://www.waterboards.ca.gov/ust/regulatory/docs/hs6_7.pdf)

#### **25299. Violations; Civil and Criminal Penalties**

(a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Violation of any applicable requirement of the permit issued for operation of the underground tank system. CALIFORNIA CODES HEALTH & SAFETY CODES 25280 – 25299.8 54 (5) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(6) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(7) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d)

(1) Any person who violates any corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(2) A civil penalty under this subdivision may be imposed in a civil action under this chapter, or may be administratively imposed by the board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(e) Any person who violates Section 25292.3 is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation.

(f)

(1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(g) In determining both the civil and criminal penalties imposed pursuant to this section, the board, a regional board or the court, as the case may be, shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(h)

(1) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision

(d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the unified program agency, the

participating agency, or the state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action.

(2) Any penalties or fines paid to a uniform program agency or a participating agency pursuant to paragraph (1) shall be deposited into a special account and shall be expended only to fund the activities of the unified program agency or participating agency in enforcing this chapter within that jurisdiction pursuant, to the uniform program specified in Chapter 6.11 (commencing with Section 25404).

(3) All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code. (i) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

Additionally, the air quality impacts are terrible at Vallco, both during construction and when operational. Air doesn't have borders.

**TABLE 2 2029 Operational Air Pollutant Emissions – Program Alternative**

Scenario	ROG	NO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
Existing Operational Emissions (tons)	2.65 tons	5.29 tons	5.82 tons	1.58 tons
<b>Unmitigated Project</b>				
Proposed Project – non-mobile (tons)	27.09 tons	4.08 tons	0.42 tons	0.42 tons
Proposed Project –mobile (tons)	9.99 tons	41.98 tons	52.46 tons	14.25 tons
Net Proposed Project (tons)	34.43 tons	40.77 tons	47.06 tons	13.09 tons
BAAQMD Thresholds (tons per year)	10 tons	10 tons	15 tons	10 tons
Exceed Threshold?	Yes	Yes	Yes	Yes
Net Proposed Project (pounds per day)	188.6	223.4 lbs.	257.8 lbs.	71.7 lbs.
BAAQMD Thresholds (pounds per day)	54 lbs.	54 lbs.	82 lbs.	54 lbs.
Exceed Threshold?	Yes	Yes	Yes	Yes

**TABLE 1 Construction Period Emissions**

Scenario	ROG	NO <sub>x</sub>	PM <sub>10</sub> Exhaust	PM <sub>2.5</sub> Exhaust
Program Alternative Construction Emissions (tons)	58.43 tons	215.58 tons	1.79 tons	1.67 tons
Average daily emissions (pounds) <sup>1</sup>	44.9 lbs.	165.8 lbs.	1.4 lbs.	1.3 lbs.
BAAQMD Thresholds (pounds per day)	54 lbs.	54 lbs.	82 lbs.	54 lbs.
Exceed Threshold?	No	Yes	No	No

<sup>1</sup> Based on an average of 2,600 construction days.

Lastly, no study was ever conducted to indicate the safety of putting a 30 acre lid over streets next to a 200,000 vehicle per day freeway which has a potential added freeway cap being looked at. That is completely irresponsible.

I respectfully request that the USTs be investigated at Vallco.

I request that the EIR and all associated Development Agreement and General Plan Amendment documents NOT be approved for submittal to the City Council.

I believe the Vallco GPA requested is so far out of alignment, and not in accordance with the city legislated General Plan Authorization Process, or with the actual General Plan policies (such as noise, air quality) that an entire new General Plan with a new city-wide EIR needs to be performed.

Sincerely,

Kitty Moore

**From:** [City of Cupertino Planning Dept.](#)  
**To:** [Ellen J. Garber \(Garber@smwlaw.com\)](#); [Rocio Fierro](#); [Gerald Ramiza \(jramiza@bwsllaw.com\)](#); [Murphy, Karen W. \(KMurphy@bwsllaw.com\)](#); [Eric Phillips](#); [Barbara E. Kautz - Goldfarb & Lipman LLP \(Bkautz@goldfarblipman.com\)](#)  
**Cc:** [Aarti Shrivastava](#); [Catarina Kidd](#); [Kristy Weis](#); [Judy Shanley](#)  
**Subject:** FW: Incomplete FEIR Postings for Vallco Specific Plan  
**Date:** Monday, September 03, 2018 6:56:08 PM

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FYI...

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**From:** Kitty Moore [mailto:ckittymoore@gmail.com]  
**Sent:** Sunday, September 02, 2018 3:09 PM  
**To:** City of Cupertino Planning Dept. <planning@cupertino.org>; City Attorney's Office <CityAttorney@cupertino.org>; City Council <CityCouncil@cupertino.org>  
**Cc:** Esq. Bern Steves <bernsteves@californiabizlaw.com>  
**Subject:** Incomplete FEIR Postings for Vallco Specific Plan

All,

I have found several mangled PDFs posted for the Vallco Specific Plan related to the FEIR comments.

Here is an example where only the cover letters were posted:

<https://www.cupertino.org/Home/ShowDocument?id=22264>

Additionally, two representatives of the EIR team took notes during the public comment meeting August 9 and I have not seen their notes and responses to public comments.

That is a requirement of the EIR process, so it is available somewhere.

Please let me know where.

Thank you,

Kitty Moore