

1 JONATHAN R. BASS (State Bar No. 75779)
CHARMAINE G. YU (State Bar No. 220579)
2 KATHARINE VAN DUSEN (State Bar No. 276021)
SARAH PETERSON (State Bar No. 309733)
3 COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
4 San Francisco, California 94104-5500
Telephone: 415.391.4800
5 Facsimile: 415.989.1663
Email: ef-jrb@cpdb.com
6 ef-cgy@cpdb.com
7 ef-ktv@cpdb.com
ef-sep@cpdb.com

8 Attorneys for Plaintiff
VALLCO PROPERTY OWNER LLC
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

13 VALLCO PROPERTY OWNER LLC,
14 Plaintiff/Petitioner,
15 v.
16 CITY OF CUPERTINO, and DOES 1-10,
17 Defendants/Respondents.

Case No. 19CV355457

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

19 Plaintiff and Petitioner Vallco Property Owner LLC (“VPO”), for its complaint and
20 petition for writ of mandamus against Defendant and Respondent City of Cupertino (the “City”)
21 and Does 1-10, alleges as follows:

22 **INTRODUCTION**

23 VPO is the owner of a 50.82-acre property (the “Vallco Site” or the “Site”) located in the
24 City of Cupertino. In August 2019, the City amended its General Plan to prohibit all office uses
25 on the Site, and to restrict the amount of housing that can be developed on the Site to only a
26 fraction of its previous capacity. These General Plan amendments and corresponding zoning
27 changes caused the City’s General Plan to be out of compliance with California housing law. In
28 adopting these changes, the City also violated the California Environmental Quality Act

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1 (“CEQA”). Furthermore, in its haste to amend the General Plan, the City failed to follow
2 procedures required before a general plan can be amended.

3 **PARTIES**

4 1. VPO is a limited liability company. VPO is the owner of the Site, which is located
5 between Interstate 280 and Stevens Creek Boulevard in Cupertino, California.

6 2. The City is a California municipality.

7 3. VPO is currently unaware of the names of the persons, entities and capacities sued
8 herein as Does 1-10, and therefore sues these defendants by fictitious names. VPO will amend
9 this complaint to state the true names and capacities of these fictitiously named defendants when
10 ascertained.

11 **GENERAL ALLEGATIONS**

12 4. The Site is located in the northeastern portion of the City of Cupertino. An indoor
13 shopping mall, known as the Vallco Fashion Mall, was constructed on the Site in the 1970s. Over
14 the subsequent decades, the mall’s business boomed, and then faded. By the mid-2000s, the mall
15 was in a precarious economic position; the City recognized that the Site could no longer sustain a
16 viable shopping mall, and needed to be redeveloped to some other use. In approximately 2012,
17 the City began to study a complete redevelopment of the mall to a mixed-use, “town-center” style
18 development, complete with office, residential, and retail uses. This concept was consistent with
19 the City’s General Plan as then written, which allowed for a variety of uses on the Site, including
20 office uses.

21 5. VPO acquired the Site in 2014, with the reasonable expectation of developing it as
22 a large, mixed-use office, residential, and retail project.

23 6. The City amended its General Plan, including provisions related to the Site, in late
24 2014 (the “2014 General Plan”), shortly after VPO acquired the Site. The 2014 General Plan
25 designated the Site for commercial, residential, and office uses. The 2014 General Plan allocated
26 two million square feet of office space to the Site; it also retained the existing retail square footage
27 of approximately 1.2 million square feet, and imposed a new requirement that any redevelopment
28 of the Site include at least 600,000 square feet of retail space.

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- professionals, couples and/or active seniors who like to live in an active ‘town center’ environment”;
- c. “[h]igh-performing retail, restaurant and entertainment uses”;
- d. a “Town Center Layout” with “streets and blocks laid out using ‘transect planning’ . . . , which includes a discernible center and edges, public space at center, high quality public realm, and land uses appropriate to the street and building typology”;
- e. “a newly configured complete street grid hierarchy of streets, boulevards and alleys that is pedestrian-oriented, connects to existing streets, and creates walkable urban blocks for buildings and open space” and “incorporate[s] transit facilities, provide[s] connections to other transit nodes and coordinate[s] with the potential expansion of Wolfe Road bridge over Interstate 280 to continue the walkable, bikeable boulevard concept along Wolfe Road”;
- f. “[i]mprove[ments]” to “Stevens Creek Boulevard and Wolfe Road to become more bike and pedestrian-friendly with bike lanes, wide sidewalks, street trees, improved pedestrian intersections to accommodate the connections to Rosebowl and Main Street”;
- g. “[o]pen space in the form of a central town square on the west and east sides of the district interspersed with plazas and ‘greens’ that create community gathering spaces, locations for public art, and event space for community events”; and
- h. parking in surface lots, underground structures, and above-ground structures.

12. The 2014 General Plan provided that the Site would be developed pursuant to a specific plan to be adopted at a later date. The specific plan was to be tailored to some future, planned redevelopment of the Site that would be acceptable to VPO and the City, and consistent with the General Plan.

1 13. Prior to adopting the 2014 General Plan, the City prepared and certified an
2 Environmental Impact Report (EIR) for the 2014 General Plan amendments (the “2014 General
3 Plan EIR”). The 2014 General Plan EIR was a program EIR, prepared pursuant to section 15168
4 of the CEQA Guidelines. The 2014 General Plan EIR states that additional environmental review
5 would be needed when specific projects are proposed.

6 14. From 2014 to 2018, a community group known as Better Cupertino opposed VPO’s
7 plan to redevelop the Site. Better Cupertino proposed no alternative development plan for the
8 Site, instead urging retention of the existing, infeasible mall uses, or development of the Site in a
9 far less intensive manner than VPO (and the 2014 General Plan) contemplated.

10 15. In 2015, VPO submitted an application for a project, named “The Hills of Vallco,”
11 that proposed to include 2 million square feet of office, 800 residential units, and 600,000 square
12 feet of retail. In response, an affiliate of Better Cupertino circulated an initiative petition for a
13 General Plan amendment that, if passed, would have precluded The Hills of Vallco project.
14 Additionally, the initiative, known as Measure C, would have, among other things, restricted uses
15 at the Site to the existing 1.2 million square feet of retail and would have prohibited residential
16 and office uses. City Mayor Scharf, who was at that time a candidate for City Council, was one of
17 the sponsors of Measure C, which did not pass.

18 16. In 2017, the City commenced a new process to prepare a City-initiated specific
19 plan for the Site. After months of work, and dozens of public meetings, including several before
20 the Planning Commission and City Council, and over the strong objections of Better Cupertino, in
21 the fall of 2018, VPO obtained entitlements to proceed with two alternative redevelopment
22 schemes for the Site.

23 17. First, the City adopted a specific plan for the Site (the “Specific Plan Project”).
24 The Specific Plan Project contemplated a range of development densities, including up to 1.75
25 million square feet of office, 2,923 residential units, and 485,000 square feet of retail and civic
26 uses, as well as a number of community benefits and amenities. The City prepared and certified
27 an EIR for the Specific Plan Project, as contemplated by the 2014 General Plan EIR.

28 18. Second, VPO submitted an application to develop 1.8 million square feet of office

1 space, and 2,402 residential units (half of which are affordable), pursuant to Senate Bill 35 (“SB
2 35,” and the “SB 35 Project”). Under SB 35, a project application that meets certain objective
3 criteria (for example, at least two-thirds of the square footage must be dedicated to residential
4 uses) is subject only to ministerial processing, and a city may not exercise its discretionary
5 authority to reject it. In mid-2018, the City concluded that the SB 35 Project met the objective
6 criteria set forth in SB 35, and approved that alternative development scheme as well.

7 19. The Specific Plan Project became the subject of a referendum petition filed by
8 Better Cupertino, and VPO and the City were essentially prohibited from moving forward with
9 development of that project. As a consequence, the SB 35 Project became the only approved
10 development scheme for the Site.

11 20. In 2018, Better Cupertino filed a lawsuit challenging the SB 35 Project and asking
12 the Court to set aside the City’s approval of the SB 35 Project (the “SB 35 Litigation”). The SB
13 35 Litigation is ongoing.

14 21. Liang Chao and John Willey—respectively, a co-founder of Better Cupertino, and a
15 long-time member and officer of Better Cupertino—were elected to the Cupertino City Council in
16 November 2018. When Chao and Willey were elected to the Council, they joined Steven
17 Scharf—another Better Cupertino member, who was elected to the Council in 2016—and Darcy
18 Paul, a Council member also affiliated with Better Cupertino, who has consistently voted in
19 opposition to redevelopment of the Site. Following the November 2018 election, the City
20 withdrew its support for both the Specific Plan Project and the SB 35 Project. On May 7, 2019,
21 the City Council voted to repeal the specific plan for the Site and to rescind the Specific Plan
22 Project approvals (which had been the subject of Better Cupertino’s referendum), rather than allow
23 the citizens of Cupertino to vote on them. In the SB 35 litigation, the City terminated its joint
24 defense agreement with VPO, changed its lead counsel, and filed a statement of “non-opposition”
25 to the petition, essentially consenting to a judgment that would overturn the SB 35 Project
26 approval.

27 22. The City also withdrew its support for any redevelopment of the Site under the
28 2014 General Plan, and decided to amend the General Plan for the Site.

1 23. On June 18, 2019, the City Council held a study session at which it instructed City
2 Staff to generate proposals to downzone the Site by removing the two million square feet of
3 allocated office use, and limiting the amount of residential allowed. However, due at least in part
4 to requirements that any development on the Site include affordable housing and substantial
5 infrastructural improvements (*see infra* ¶ 11), office use is a critical economic component of any
6 large-scale development of the Site. No significant redevelopment of the Site can occur without a
7 substantial office component. VPO submitted a letter prior to the study session objecting to the
8 potential amendments to the General Plan as violating Housing Element requirements.

9 24. Just over one month later, on July 30, 2019, the Cupertino Planning Commission
10 held a public hearing regarding proposed General Plan amendments with respect to the Site, and
11 corresponding proposed zoning amendments (the “Amendments”).

12 25. The Amendments proposed a number of significant and restrictive changes to the
13 General Plan provisions applicable to the Site, and to the Site’s zoning. Under the proposed
14 Amendments, the Site would be downzoned to remove the office allocation entirely—from two
15 million square feet to zero square feet. Residential development would be confined to a 13.1-acre
16 portion of the Site. Only 459 residential units (plus, potentially, a density bonus) could be
17 developed on that portion, and at least 15% of those units would have to be affordable in
18 accordance with the City’s below-market-rate housing program. Development of those units
19 would be by right, without any environmental review. City Staff made no recommendation before
20 or at the Planning Commission hearing for the location of the 13.1-acre portion (or portions) of the
21 Site. Additionally, the Amendments would restrict development on the rest of the Site—
22 approximately 38 acres—to retail uses only, and maintain the requirement to include a minimum
23 of 600,000 square feet of retail development.

24 26. The Amendments did not propose to modify portions of the General Plan that
25 impose significant burdens on development. The General Plan would continue to require:

- 26 • Fifteen percent of residential units to be offered at below-market rates;
27 • Major Site-wide improvements and a “complete redevelopment” of the Site,
28 including a “Town Center layout,” a “high quality public realm,” a new
“street grid” internal to the Site, transit facilities, off-site bicycle/pedestrian

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connections and improvements, substantial open space, high-quality architecture, gateway features, hidden parking, and neighborhood buffers;

- Major improvements to Stevens Creek Boulevard and Wolfe Road, including bicycle lanes, widened sidewalks, new street trees, and improved pedestrian intersections; and
- 600,000 square feet of retail use.

27. Nor did the Amendments propose to modify the 2014 General Plan Housing Element. The Amendments did not change either of the two “scenarios” for RHNA compliance with respect to the Site, nor did they change the Housing Element’s requirement that 15 percent of the residential units built at the Site to be offered at low- or very-low below-market rates.

28. The purpose and effect of the proposed Amendments was to ensure that the Site could not be developed in an economically feasible manner. Under the restrictions imposed by the Amendments, no project could be designed that would allow VPO to realize a reasonable return on its investment. Indeed, developing the Site in the manner contemplated by the General Plan as amended would result in a loss of tens or hundreds of millions of dollars. The City did not prepare any economic analysis before the Planning Commission hearing of whether any project would be viable under the new land uses and development regulations.

29. At the Planning Commission hearing, Commissioner R. Wang—who supported the Amendments—admitted that the purpose of the Amendments was to gain “leverage” over VPO. In disallowing all economically feasible development of the Site, the City created a situation in which further amendment of the General Plan would be required in order for VPO to achieve any economically productive use of its property. In other words, the Amendments were not a legitimate planning exercise. Their purpose was to enable the City to extract concessions from VPO.

30. Two motions to recommend the Amendments failed before the Planning Commission. The two Planning Commissioners who voted against the motions expressed concern about the rushed nature of the proposals, and the fact that they would likely render any redevelopment of the Site economically infeasible. All Commissioners agreed that they lacked information sufficient to identify the 13.1-acre portion of the Site that should be designated for

1 residential use.

2 31. The Planning Commission recommended that the City Council adopt a General
3 Plan Amendment “solely to establish a height limit” for the Site, but subject to further study of
4 economic feasibility and additional public engagement. The Planning Commission did not
5 recommend removing the office allocation or limiting residential to only 13.1 acres of the Site, nor
6 did it endorse any of the other Amendments.

7 32. Despite not having any substantive Planning Commission recommendations
8 regarding the Amendments, on August 20, 2019, the City Council held a public hearing regarding
9 the Amendments. In an effort to address defects that were identified by VPO and the Planning
10 Commission, the City Council considered two new proposals that had not been presented to the
11 Planning Commission.

12 33. First, City Staff proposed four specific, potential alternative locations for the 13.1-
13 acre portion of the Site on which housing would be concentrated. The Staff Report contained only
14 a cursory explanation of the difference between the locations. No technical report or analysis of
15 these four locations was provided. City Staff did not recommend any of the locations. Rather, the
16 Staff Report simply stated that two of the locations would be preferable to the other two.

17 34. Second, City Staff proposed a “Tribal Coordination” process that would require
18 VPO to coordinate with “applicable Native American tribal representatives following approval of
19 development in the [Site] to ensure appropriate cultural sensitivity training is provided to all
20 contractors prior to the start of ground-disturbing activities.” The Staff Report did not explain
21 why this new language was added. Nor did it suggest that the Site has any higher likelihood of
22 containing tribal cultural resources than other areas of the City, so as to justify imposing this
23 unique restriction on the Site.

24 35. Three days before the City Council hearing, the City for the first time released a
25 cursory (four-page) economic report prepared by the City’s consultant (the “City Report”),
26 purporting to show that a 458-unit for-sale condominium residential project could feasibly be built
27 on the Site. The City Report, however, was flawed and relied on unsupportable assumptions. The
28 Planning Commission never reviewed the City Report.

1 36. In advance of both the Planning Commission and City Council meetings, VPO
2 submitted extensive comments, along with two technical reports showing that the redevelopment
3 contemplated by the Amendments and the City Report would be economically infeasible. The
4 conclusions in VPO’s report were consistent with findings in three other reports previously
5 commissioned, or accepted, by the City. VPO’s report also identified the significant flaws in the
6 City Report.

7 37. The City Council nevertheless approved the Amendments, which are now
8 embodied in Resolution Nos. 19-108, 19-109, and 19-110, and Ordinance Nos. 19-2187 and 19-
9 2188, attached hereto as **Exhibits A to E**.¹ The City Council selected one of the location options
10 proposed by City Staff for the 13.1-acre portion of the Site on which the 459 residential units can
11 be developed.² The only permissible development for the remaining 38 acres is now 600,000
12 square feet of retail. No office uses may be developed on any portion of the Site. The building
13 height for the entire Site is 60 feet.

14 38. At the City Council hearing, Councilmember Willey—who voted in favor of the
15 Amendments—echoed Commissioner Wang’s “leverage” comments regarding the purpose of the
16 Amendments. Councilmember Willey affirmed that the reason for restricting development at the
17 Vallco Site was to give the City “negotiation power” over VPO. By eliminating the office
18 allocation completely, Willey explained, the City was forcing VPO to approach the City Council
19 to ask for another General Plan amendment that would contain an office allocation.

20 39. When it adopted the Amendments, the City Council also adopted an addendum to
21 the 2014 General Plan EIR, which concluded that the Amendments warranted no further
22 environmental analysis.

23 40. Despite the fact that the Amendments did not change the two scenarios for RHNA

24 _____
25 ¹ The Amendments modify the “Land Use and Community Design” Element of the City’s General
Plan.

26 ² The 13.1-acre area selected by the Council is encumbered by the only long-term commercial
27 leases remaining at the existing mall. The other 38 acres on the Site have no such encumbrances,
and demolition thereon has already begun.

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1 compliance set forth in the Housing Element, the Amendments state that the purpose of allowing
2 459 units to be built by-right is “to accommodate the City’s Regional Housing Need Allocation.”
3 The Amendments further state that the City considered removing the Vallco Site as a Priority
4 Housing Site, but decided instead to “retain” the Site.

5 41. After the City adopted the Amendments, Mayor Scharf claimed that the
6 Amendments were necessary to meet the City’s RHNA obligations in light of concerns raised by
7 the California Department of Housing and Community Development (“HCD”) in a letter sent to
8 the City on August 2, 2019. Specifically, HCD wrote to warn the City of its “potential violation of
9 state housing element law.” HCD admonished the City that it must “look for opportunities to
10 support the development of new housing within the community,” and reminded the City of its
11 “responsibility to zone adequate sites to accommodate housing needs.” This letter was sent at
12 least a month *after* the City began its targeted effort to downzone the Site. The City’s effort to
13 downzone the Site was not a response to HCD’s concerns, as Mayor Scharf claimed.

14 42. The 2014 General Plan contemplated that, when a specific project was proposed for
15 the Site, the City would prepare and certify a project-level EIR. The Amendments changed that
16 scheme. Under the Amendments, VPO may develop 459 residential units on the 13.1-acre portion
17 of the Site by right, and without any further environmental review. The City’s exercise of its
18 discretion to make that residential development by right is, itself, a CEQA project that required
19 environmental analysis. But the City did not prepare and certify a project-specific EIR or a
20 supplemental EIR when it adopted the Amendments. Rather, it adopted an addendum to the 2014
21 General Plan EIR, concluding that “the proposed modifications would not result in new significant
22 environmental effects beyond those identified in the [2014 General Plan EIR], would not
23 substantially increase the severity of significant environmental effects identified in the [2014
24 General Plan EIR], and thus would not require major revisions to the [2014 General Plan EIR].”
25 The City concluded that “a subsequent EIR is not required and an addendum to the [2014 General
26 Plan EIR] is the appropriate CEQA document to address the proposed modifications to the
27 [General Plan] project.”

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FIRST CAUSE OF ACTION
**(Writ of Mandate to Compel Compliance with California’s Housing Element Law,
Government Code §§ 65580–65589.8; Code of Civil Procedure § 1085)**

43. Paragraphs 1 through 42 are incorporated as though set forth here in full.

44. California law requires municipalities to plan for, and to take concrete, affirmative steps to facilitate, housing for all income levels, including affordable housing for low-income and very-low-income residents. Approximately every eight years, each city is assigned its “fair share” allocation of the housing need for the region, which is known as its RHNA. (Gov. Code §§ 65583 *et seq.*)

45. The City must then prepare an inventory of land that is suitable and reasonably available for housing development sufficient to meet its RHNA allocation. That inventory must only include “land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality’s housing need for a designated income level[.]” (Gov. Code § 65583(a)(3).) “The inventory shall specify for each site the number of units that can realistically be accommodated on that site[.]” (Gov. Code §§ 65583.2(c), 65583.2(c)(2) (number of units listed for a particular site must be “adjusted” to account for “the realistic development capacity for the site”).) In other words, it must be physically and economically feasible to develop the allocated number of residential units on each designated site, within the relevant eight-year period.

46. Cities must also take steps to remove local governmental constraints to affordable housing development.

47. The Housing Element of the 2014 General Plan identified the Vallco Shopping District Special Area as a “Priority Housing Site” on the City’s RHNA housing inventory, and allocated 389 residential units to the Site. Those units are necessary for the City to fulfill its RHNA allocation. The Housing Element of the 2014 General Plan also required 15 percent of the units to be offered at low- or very-low below-market rates, or, if an on-site requirement is unlawful, to pay a housing mitigation fee.

48. The Amendments did not modify the City’s Housing Element, and the Site remains a Priority Housing Site. The Amendments did, however, render the Site unsuitable, and

1 unavailable, for development of 389 residential units. Following adoption of the Amendments,
2 the City’s General Plan requires that 15 percent of the residential units be affordable, restricts the
3 remaining 38 acres of the Site to infeasible retail use, requires massive Site-wide improvements,
4 but no longer permits the office uses that are an essential economic driver of the residential and
5 retail development. VPO’s economic feasibility expert concluded that any development scenario
6 would result in a “residual land value” of *negative* \$100 million or less. There is no longer a
7 realistic and demonstrated potential that 389 housing units can be developed on the Site during the
8 current RHNA cycle, and the Site should not be included on the City’s housing inventory.

9 49. VPO is beneficially interested in having the City comply with all applicable
10 provisions of the law and their legal duties, as set forth herein.

11 50. VPO has no plain, speedy, or adequate legal remedy for the violations alleged.

12 51. VPO requests relief, as set forth below.

13 **SECOND CAUSE OF ACTION**
14 **(Writ of Mandate to Compel Compliance with Government Code § 65300.5; Code of Civil
Procedure § 1085)**

15 52. Paragraphs 1 through 51 are incorporated as though set forth here in full.

16 53. “[T]he general plan and elements and parts thereof” must “comprise an integrated,
17 internally consistent and compatible statement of policies for the adopting agency.” (Gov. Code
18 § 65300.5.) As required by law, the City’s General Plan is composed of nine elements, including
19 the Land Use and Community Design Element and the Housing Element. (Gov. Code
20 §§ 65302(a), (c).) The Amendments, which only modified the Land Use and Community Design
21 Element of the General Plan, caused the Housing Element of the General Plan to be inconsistent
22 with the Land Use and Community Design Element of the General Plan. This horizontal
23 inconsistency caused by the Amendments violates Section 65300.5 of the Government Code.

24 54. The City’s Housing Element continues to contemplate that the Site be developed
25 through a specific plan, or be removed from the Priority Housing List. The Housing Element of
26 the General Plan provides for two potential “scenarios” with respect to the Vallco Site and
27 compliance with the RHNA. Under “Scenario A,” which would apply if a specific plan and
28 rezoning were adopted for the Vallco Site by May 31, 2018, 389 units would be built on the Site

1 pursuant to a specific plan. Under “Scenario B,” which would apply if a specific plan and
2 rezoning were not adopted for the Vallco Site by May 31, 2018, the City would remove the Vallco
3 Site from the Priority Housing Site inventory and replace it with other sites or increase the density
4 or allowable units on existing priority sites.

5 55. Contrary to these provisions, the Land Use and Community Design Element as
6 modified by the Amendments now provides that the City will comply with RHNA, not through a
7 Vallco specific plan as contemplated in Scenario A, or by replacing the Vallco Site with other sites
8 as contemplated in Scenario B, but instead by allowing by-right development of 459 residential
9 units without a specific plan.

10 56. The City created an inconsistency when it failed to amend the Housing Element to
11 reflect the General Plan Amendments. This change to the Housing Element would have required
12 the City to circulate the amendment to HCD for review and comment for a 60-day period. The
13 City did not follow this required process; instead, the provisions in the Land Use and Community
14 Design Element for satisfying the City’s RHNA obligation using the Vallco Site are now
15 inconsistent with the provisions in the Housing Element on the same subject.

16 57. VPO is beneficially interested in having the City comply with all applicable
17 provisions of the law and their legal duties, as set forth herein.

18 58. VPO has no plain, speedy, or adequate legal remedy for the violations alleged.

19 59. VPO requests relief, as set forth below.

20 **THIRD CAUSE OF ACTION**
21 **(Writ of Mandate to Compel Compliance with Government Code § 65863.6; Code of Civil
22 Procedure § 1085)**

22 60. Paragraphs 1 through 59 are incorporated as though set forth here in full.

23 61. When a city council passes a zoning regulation, it is required to “consider the
24 effect” of the ordinance “on the housing needs of the region in which the local jurisdiction is
25 situated,” and to “balance these needs against the public service needs of its residents and
26 available fiscal and environmental resources.” (Gov. Code § 65863.6(a).) Whenever the number
27 of housing units that could be developed on a site is reduced, the law requires that the reduction be
28 based on findings that the limitation promotes “public health, safety, and welfare . . . which justify

1 reducing the housing opportunities of the region.” (Gov. Code § 65863.6(a).) The City violated
2 these requirements when it passed the Amendments.

3 62. The Amendments facially reduced the number of residential units that could be
4 developed on the Site, from 1,778 to 459. As a practical matter, they reduced the number to zero
5 by rendering any development on the Site infeasible.

6 63. The City made this reduction without conducting the balancing required under
7 Section 65863.6 of the Government Code, and without making any accompanying findings that
8 the reduction in housing opportunities is justified because it will promote public health, safety, and
9 welfare.

10 64. VPO is beneficially interested in having the City comply with all applicable
11 provisions of the law and their legal duties, as set forth herein.

12 65. VPO has no plain, speedy, or adequate legal remedy for the violations alleged.

13 66. VPO requests relief, as set forth below.

14 **FOURTH CAUSE OF ACTION**
15 **(Writ of Mandate to Compel Compliance with the California Environmental Quality Act;
Code of Civil Procedure §§ 1085, 1094.5)**

16 67. Paragraphs 1 through 66 are incorporated as though set forth here in full.

17 68. Approval of the Amendments violated CEQA, in that the City was required to, but
18 did not, prepare a project-specific analysis. The City’s reliance on an addendum to the 2014
19 General Plan EIR was improper.

20 69. The 2014 General Plan EIR was a program EIR, prepared pursuant to Section
21 15168(a) of the CEQA Guidelines, that did “not evaluate the impacts of individual projects under
22 the General Plan.” The 2014 General Plan EIR states that “subsequent projects will require a
23 separate environmental review.”

24 70. The Amendments authorize a subsequent project on the Vallco Site—development
25 of 459 residential units— by right, and without separate environmental review.

26 71. Environmental review was required before adoption of the Amendments. It is
27 reasonably probable that the Amendments’ restriction of the residential units to a 13.1-acre portion
28 of the Site may give rise to significant environmental impacts that were not examined in the 2014

1 General Plan EIR. The 2014 General Plan EIR studied the allocation of 800 residential units on
2 the Vallco Site, presuming that the units could be dispersed throughout the Site. The 2014
3 General Plan EIR did not consider the traffic, air-quality, density, or noise impacts of confining
4 almost half of that number of units to only 25 percent of the Site. Nor did the 2014 General Plan
5 consider whether new mitigation measures would be required due to these potential effects.

6 72. The 2014 General Plan EIR also did not study the comparative traffic, air quality,
7 density, or noise impacts of the various alternative locations for the 13.1-acre residential portion of
8 the Site. Locating the residential units in one area, versus another, will cause significant
9 environmental impacts that will vary in type and magnitude. For example, the residential
10 developments will cause outsized impacts on intersections that are directly adjacent to the
11 development. Differences arising from the different proposed locations—and any potential
12 mitigation—were required to be studied.

13 73. Because the Amendments made residential development at the Site by right, there
14 will be no opportunity for the City to conduct environmental review of those impacts, impose
15 additional conditions of approval, or impose any mitigation measures on the development. The
16 City was therefore required to, but did not, conduct a project-specific analysis before adopting the
17 Amendments.

18 74. Approval of the Amendments also violated CEQA because the City was required
19 to, but did not, prepare and certify a Supplemental EIR. The City’s reliance on an addendum to
20 the 2014 General Plan EIR was improper.

21 75. CEQA requires analysis and disclosure of the environmental impacts that a
22 “project” may cause. A project for CEQA purposes is “an activity which may cause either a direct
23 physical change in the environment, or a reasonably foreseeable indirect physical change in the
24 environment, and which is any of the following: (a) An activity directly undertaken by any public
25 agency. (b) An activity undertaken by a person which is supported, in whole or in part, through
26 contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
27 (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other
28 entitlement for use by one or more public agencies.” (Pub. Res. Code § 21065.)

1 environmental impacts before it adopted the Amendments.

2 82. VPO has provided written notice of the commencement of this action to the City, in
3 compliance with Public Resources Code section 21167.5. A true and correct copy of that notice
4 and proof of service is attached hereto as **Exhibit F**.

5 83. VPO has performed any and all conditions precedent to filing this CEQA action,
6 and has exhausted any and all available administrative remedies to the extent required by law.

7 **FIFTH CAUSE OF ACTION**
8 **(Writ of Mandate to Compel Compliance with Government Code § 65356; Code of Civil**
9 **Procedure § 1085)**

9 84. Paragraphs 1 through 83 are incorporated as though set forth here in full.

10 85. “[A]ny substantial modification [to the General Plan] proposed by the legislative
11 body not previously considered by the commission during its hearings, shall first be referred to the
12 planning commission for its recommendation.” (Gov. Code § 65356.) Remand to the planning
13 commission is also required before the city council makes modifications to zoning not previously
14 considered by the planning commission. (Gov. Code § 65857.)

15 86. The City Council violated these requirements when it adopted General Plan and
16 zoning amendments that were never presented to the Planning Commission: the specific location
17 for the 13.1-acre residential portion of the Site, and the “Tribal Coordination” process that had not
18 been presented to the Planning Commission.

19 87. The Planning Commission made no recommendation with respect to almost all of
20 the Amendments approved by the City Council. The City Council is only authorized to adopt
21 amendments after recommendation from the Planning Commission. The City’s actions violate
22 this requirement.

23 88. VPO is beneficially interested in having the City comply with all applicable
24 provisions of the law and their legal duties, as set forth herein.

25 89. VPO has no plain, speedy, or adequate legal remedy for the violations alleged.

26 90. VPO requests relief, as set forth below.

27
28

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

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SIXTH CAUSE OF ACTION
(Declaratory Relief; Code of Civil Procedure § 1060)

91. Paragraphs 1 through 90 are incorporated as though set forth here in full.

92. An actual controversy has arisen and now exists between VPO and the City concerning the obligations and duties of the City under California law. As set forth above, VPO contends that the Amendments violate various provisions of California law. VPO is informed and believes, and on that basis alleges, that the City contends in all respects to the contrary. A judicial determination and declaration as to the applicability of the foregoing statutes and the legal obligations of the City thereunder are therefore necessary and appropriate in order to determine the duties of the City and the rights of VPO.

PRAYER FOR RELIEF

Wherefore, Plaintiff and Petitioner prays for judgment against Defendant and Respondent as follows:

1. that the Court issue a writ of mandate compelling the City to set aside the Amendments;
2. that the Court issue a declaration that the Amendments are unlawful and invalid;
3. for costs of suit, including reasonable attorneys' fees; and
4. for such further relief as the Court may deem just and proper.

DATED: September 20, 2019 COBLENTZ PATCH DUFFY & BASS LLP

By: 
JONATHAN R. BASS
Attorneys for Plaintiff/Petitioner
VALCO PROPERTY OWNER LLC

VERIFICATION

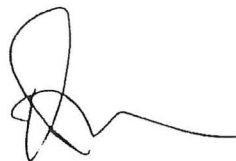
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I, the undersigned, declare:

I am the Managing Director of Sand Hill Property Company. I am authorized to sign this verification on behalf of Vallco Property Owner LLC. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and know its contents. All facts alleged therein are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration was executed on September 20, 2019, at Palo Alto, California.



Reed Moulds