

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 1, 2021

Greg Larson, Interim City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

RE: Vallco Town Center Project – Letter of Technical Assistance

Dear Greg Larson:

The purpose of this letter is to provide technical assistance to the City of Cupertino (City) regarding the Vallco Town Center Project (Project) and applicable provisions of Government Code section 65913.4. This assistance is based in part upon conversations with then-City Manager Deborah Feng and the Project applicant Sand Hill Property Company. The California Department of Housing and Community Development (HCD) understands that this Project is in the ministerial permit phase with the City. Further, HCD is aware of the City's letter, dated August 30, 2021, to Reed Moulds, Managing Director of Vallco Property Owner LLC that states that the Project entitlement "shall expire on September 21, 2021." This letter of technical assistance provides HCD's interpretation regarding the timing of the expiration of this Project's entitlements and the approval of subsequent permits.

In September 2018, the City approved the Vallco Town Center project on the Vallco Mall site for 2,402 units of which 361 are for very low-income households and 840 are for low-income households. The City made this approval under the State's Streamlined Ministerial Approval Process (SB 35: Chapter 366, Statutes of 2017).

Based on the City's August 30, 2021 letter, HCD understands there may be some confusion over the timing of the expiration of the entitlements granted for the Project. The statute provides two timelines for initial expiration of entitlements obtained via the Streamlined Ministerial Approval Process:

1. No expiration and the entitlements exist in perpetuity (Gov. Code, § 65913.4, subd. (f)(1); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines¹, § 301 (d)(1)); and

¹ HCD's Updated Streamlined Ministerial Approval Process Guidelines, dated March 30, 2021: <https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf>.

2. Three years (Gov. Code, § 65913.4, subd. (f)(2); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines, § 301 (d)(2)).

Where the former does not apply, the latter three-year period applies. (Gov. Code, § 65913.4, subd. (f)(2); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines, § 301(d)(2).)

Absent additional factors, the three-year entitlement remains "valid for three years from the date of the final action establishing that approval." (Gov. Code, § 65913.4, subd. (f)(3); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines, dated March 30, 2021, § 301(d)(2).) Government Code section 65913.4 effectively extends that period in two circumstances. First, projects on three-year entitlement timelines are granted additional time to account for litigation challenges. (Gov. Code, § 65913.4, subd. (f)(2)(A); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines, § 301(d)(2).) In such a case, approval remains valid for three years, counting from the date of the final judgment upholding that approval. (*Ibid.*) Second, regardless of whether the three-year period commences on project approval or final judgment, the timeline is extended once vertical construction commences. (Gov. Code, § 65913.4, subd. (f)(3); see also HCD's Updated Streamlined Ministerial Approval Process Guidelines, §301(d)(2).) Specifically, the statute provides that once vertical construction commences, the entitlement remains valid so long as such construction is in progress. (*Ibid.*)

To clarify, HCD interprets Government Code section 65913.4, subdivision (f)(3), as a provision that informs the interpretation of subdivision (f)(2), rather than as one creating a separate, third timeline for the expiration of entitlements. (See HCD's Updated Streamlined Ministerial Approval Process Guidelines, § 301(d)(2).) This interpretation is consistent with the statutory directive to interpret and implement Government Code section 65913.4 "in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply." (Gov. Code, § 65913.4, subd. (n).)

It is HCD's determination based upon the statute and referenced in the HCD's Updated Streamlined Ministerial Approval Process Guidelines, that the Valco Town Center Project is subject to the three-year entitlement expiration and qualifies for an extension due to litigation. Thus, the three-year life for the Project's entitlements would not commence until final judgment upholding that approval and would remain live until three years thereafter.

Commencement of vertical construction would extend the life of the entitlements further, as noted above. The City is obligated under Government Code section 65913.4, subdivision (h)(2), to approve in a timely manner without unreasonable delay the subsequent permits associated with construction of the approved project, including permits necessary to commence vertical construction. The legislature provided: "Upon

receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development.” (Gov. Code, § 65913.4, subd. (h)(2).)

HCD is looking forward to the successful completion of the Vallco Town Center Project, with its critically needed units affordable to lower-income households, and the approval of subsequent permits. Please feel free to contact Fidel Herrera, of our staff, at fidel.herrera@hcd.ca.gov with any questions.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Land Use & Planning Unit Chief