

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/Petitioner
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

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE &
COMPLAINT FOR DECLARATORY
RELIEF**

18
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. VPO invested more than \$300 million in the acquisition of the Site in 2014,
25 and millions of dollars more over the course of the subsequent four years to obtain entitlements
26 and prepare to develop the Site in a manner consistent with the City’s General Plan, which at the
27 time provided for significant residential, retail, and office uses, a completely new “town center,” a
28 new street grid, and massive improvements throughout the Site.

1 In August 2019, the City reversed policy with respect to the Site. It amended its General
2 Plan to prohibit all office uses on the Site, and to restrict the amount of housing that can be
3 developed on the Site to only a fraction of its previous capacity. These General Plan amendments
4 and corresponding zoning changes were not enacted for any legitimate purpose, but in order to
5 extract concessions from VPO. The amendments also caused the City’s General Plan to be out of
6 compliance with California housing law. Furthermore, in its haste to amend the General Plan, the
7 City violated the California Environmental Quality Act (“CEQA”) and failed to follow procedures
8 required before a general plan can be amended.

9 **PARTIES**

- 10 1. VPO is a limited liability company. VPO is the owner of the Site, which is located
11 between Interstate 280 and Stevens Creek Boulevard in Cupertino, California.
- 12 2. The City is a California municipality.
- 13 3. VPO is currently unaware of the names of the persons, entities and capacities sued
14 herein as Does 1-10, and therefore sues these defendants by fictitious names. VPO will amend
15 this complaint to state the true names and capacities of these fictitiously named defendants when
16 ascertained.

17 **GENERAL ALLEGATIONS**

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

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

1 6. The City amended its General Plan, including provisions related to the Site, in late
2 2014 (the “2014 General Plan”), shortly after VPO acquired the Site. The 2014 General Plan
3 designated the Site for commercial, residential, and office uses. The 2014 General Plan allocated
4 two million square feet of office space to the Site; it also retained the existing retail square footage
5 of approximately 1.2 million square feet, and imposed a new requirement that any redevelopment
6 of the Site include at least 600,000 square feet of retail space.

7 7. The 2014 General Plan also established the number of residential units that could
8 be developed on the Site. Although it allocated 389 residential units to the Site, the General Plan
9 allowed the City to allocate residential units from other parts of the City to the Site without further
10 amendment to the General Plan. The only limit on the number of residential units was a density of
11 35 units per acre, a standard that had been in place since at least 2005. Because residential units
12 could be built anywhere across the approximately 51-acre Site, the number of residential units that
13 could be built on the Site under the 2014 General Plan was 1,778, which could be increased to a
14 maximum of 2,402 units pursuant to the State density bonus law.

15 8. The Housing Element of the 2014 General Plan identified the Site as a “Priority
16 Housing Site” on the City’s Regional Housing Needs Assessment (“RHNA”) housing inventory,
17 and allocated 389 residential units to the Site for RHNA purposes.

18 9. The 2014 General Plan set out two potential “scenarios” with respect to the Vallco
19 Site and compliance with the RHNA. Under “Scenario A,” which would apply if a specific plan
20 and rezoning were adopted for the Vallco Site by May 31, 2018, 389 units could be built on the
21 Site pursuant to a specific plan. Under “Scenario B,” which would apply if a specific plan and
22 rezoning were not adopted for the Vallco Site by May 31, 2018, the City would remove the Vallco
23 Site from the Priority Housing Site inventory, and replace it with other sites or increase the density
24 or allowable units on existing priority sites.

25 10. The Housing Element of the 2014 General Plan also required 15 percent of the
26 residential units built at the Site to be offered at low- or very-low below-market rates, or, if not
27 allowed by law, would require payment of the Housing Mitigation Fee.

28 11. In conjunction with the office, retail, and residential square footage allocated to the

- 1 Site, the 2014 General Plan additionally required “a complete redevelopment of the existing
2 Vallco Fashion Mall into a vibrant mixed-use town center,” including:
- 3 a. “high-quality office space arranged in a pedestrian-oriented street grid with
4 active uses on the ground floor, publicly-accessible streets and plazas/green
5 space”;
 - 6 b. “residential on upper floors . . . [with] a mix of units for young
7 professionals, couples and/or active seniors who like to live in an active
8 ‘town center’ environment”;
 - 9 c. “[h]igh-performing retail, restaurant and entertainment uses”;
 - 10 d. a “Town Center Layout” with “streets and blocks laid out using ‘transect
11 planning’ . . . , which includes a discernible center and edges, public space
12 at center, high quality public realm, and land uses appropriate to the street
13 and building typology”;
 - 14 e. “a newly configured complete street grid hierarchy of streets, boulevards
15 and alleys that is pedestrian-oriented, connects to existing streets, and
16 creates walkable urban blocks for buildings and open space” and
17 “incorporate[s] transit facilities, provide[s] connections to other transit
18 nodes and coordinate[s] with the potential expansion of Wolfe Road bridge
19 over Interstate 280 to continue the walkable, bikeable boulevard concept
20 along Wolfe Road”;
 - 21 f. “[i]mprove[ments]” to “Stevens Creek Boulevard and Wolfe Road to
22 become more bike and pedestrian-friendly with bike lanes, wide sidewalks,
23 street trees, improved pedestrian intersections to accommodate the
24 connections to Rosebowl and Main Street”;
 - 25 g. “[o]pen space in the form of a central town square on the west and east
26 sides of the district interspersed with plazas and ‘greens’ that create
27 community gathering spaces, locations for public art, and event space for
28 community events”; and

1 h. parking in surface lots, underground structures, and above-ground
2 structures.

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

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

12 14. From 2014 to 2018, the City developed a specific plan for the Site through an
13 intensive, community-based planning process. Thousands of Cupertino residents and other
14 interested parties participated in that process and gave input on how the Site should be re-zoned
15 and redeveloped. VPO contributed approximately \$4 million to the City to fund that community
16 planning process.

17 15. During that same period, an anti-growth and anti-housing group known as Better
18 Cupertino opposed redevelopment of the Site. Better Cupertino proposed no alternative
19 development plan for the Site, instead urging retention of the existing, infeasible mall uses, or
20 development of the Site in a far less intensive manner than the 2014 General Plan contemplated.

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

1 17. In 2017, the City commenced a new process to prepare a City-initiated specific
2 plan for the Site. After months of work, dozens of public meetings, including several before the
3 Planning Commission and City Council, and over the vocal objections of Better Cupertino, VPO
4 in the fall of 2018 obtained entitlements to proceed with two alternative redevelopment schemes
5 for the Site.

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

11 19. Second, VPO submitted an application to develop 1.8 million square feet of office
12 space, and 2,402 residential units (half of which are affordable), pursuant to Senate Bill 35 (“SB
13 35,” and the “SB 35 Project”). Under SB 35, a project application that meets certain objective
14 criteria (for example, at least two-thirds of the square footage must be dedicated to residential
15 uses) is subject only to ministerial processing, and a city may not exercise its discretionary
16 authority to reject it. In mid-2018, the City concluded that the SB 35 Project met the objective
17 criteria set forth in SB 35, and approved that alternative development scheme as well.

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

22 21. In 2018, Better Cupertino filed a lawsuit challenging the SB 35 Project and asking
23 the Court to set aside the City’s approval of the SB 35 Project (the “SB 35 Litigation”). The SB
24 35 Litigation is ongoing.

25 22. Liang Chao and John Willey—respectively, a co-founder of Better Cupertino, and a
26 long-time member and officer of Better Cupertino—were elected to the Cupertino City Council in
27 November 2018. Chao and Willey campaigned for office on their opposition to redevelopment of
28 the Site. For example, Chao’s campaign website contained a “roadmap” to defeating projects at

1 Vallco, and Chao and Willey personally organized and directed signature gathering to challenge
2 the Specific Plan Project.

3 23. When Chao and Willey were elected to the Council, they joined Steven Scharf—
4 another Better Cupertino member, who was elected to the Council in 2016—and Darcy Paul, a
5 Council member also affiliated with Better Cupertino, who has consistently voted in opposition to
6 redevelopment of the Site.

7 24. Following the November 2018 election, the City withdrew its support for the
8 Specific Plan Project and the SB 35 Project. On May 7, 2019, the City Council voted to repeal the
9 specific plan for the Site and to rescind the Specific Plan Project approvals (which had been the
10 subject of Better Cupertino’s referendum), rather than allow the citizens of Cupertino to vote on
11 them. In the SB 35 litigation, the City terminated its joint defense agreement with VPO, changed
12 its lead counsel, and filed a statement of “non-opposition” to Better Cupertino’s petition,
13 essentially consenting to a judgment that would overturn the SB 35 Project approval.

14 25. The City also withdrew its support for any redevelopment of the Site under the
15 2014 General Plan, and decided to amend the General Plan for the Site.

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

24 27. On July 30, 2019—after just one month of study by City staff—the Cupertino
25 Planning Commission held a public hearing regarding proposed General Plan amendments with
26 respect to the Site, and corresponding proposed zoning amendments (together, the
27 “Amendments”).

28 28. The Amendments proposed a number of significant and restrictive changes to the

1 General Plan provisions applicable to the Site, and to the Site’s zoning. Under the proposed
2 Amendments, the Site would be downzoned to remove the office allocation entirely—from two
3 million square feet to zero square feet. Residential development would be confined to a 13.1-acre
4 portion of the Site. Only 459 residential units (plus, potentially, a density bonus) could be
5 developed on that portion, and at least 15% of those units would have to be affordable in
6 accordance with the City’s below-market-rate housing program. Development of those units
7 would be by right, without any environmental review. City Staff made no recommendation before
8 or at the Planning Commission hearing for the location of the 13.1-acre portion (or portions) of the
9 Site.

10 29. Additionally, the Amendments would give the rest of the Site—approximately 38
11 acres—a “Regional Shopping” designation, restricting development to retail uses only. These 38
12 acres would be the only parcel in the entire City to receive that designation. The Amendments
13 would maintain the requirement to build a minimum of 600,000 square feet of retail structures.

14 30. The Amendments did not propose to modify portions of the General Plan that
15 impose significant burdens on development. The General Plan would continue to require:

- 16 • Fifteen percent of residential units to be offered at below-market rates;
- 17 • Major Site-wide improvements and a “complete redevelopment” of the Site,
18 including a “Town Center layout,” a “high quality public realm,” a new
19 “street grid” internal to the Site, transit facilities, off-site bicycle/pedestrian
20 connections and improvements, substantial open space, high-quality
21 architecture, gateway features, hidden parking, and neighborhood buffers;
- 22 • Major improvements to Stevens Creek Boulevard and Wolfe Road,
including bicycle lanes, widened sidewalks, new street trees, and improved
pedestrian intersections; and
- 23 • 600,000 square feet of retail use.

24 31. Nor did the Amendments propose to modify the 2014 General Plan Housing
25 Element. The Amendments did not change either of the two “scenarios” for RHNA compliance
26 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.

27 32. The purpose and effect of the proposed Amendments was to ensure that the Site
28 could not be developed in an economically feasible manner. Under the restrictions imposed by the

1 Amendments, no project could be designed that would allow VPO to realize a reasonable return on
2 its investment. Indeed, developing the Site in the manner contemplated by the General Plan as
3 amended would result in a loss of tens or hundreds of millions of dollars. The City did not prepare
4 any economic analysis before the Planning Commission hearing of whether any project would be
5 viable under the new land uses and development regulations.

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

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

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

24 36. Despite not having any substantive Planning Commission recommendations
25 regarding the Amendments, on August 20, 2019, the City Council held a public hearing regarding
26 the Amendments.

27 37. In an effort to address defects that were identified by VPO and the Planning
28 Commission, the City Council considered two new proposals that had not been presented to the

1 Planning Commission. First, City Staff proposed four alternative locations for the 13.1-acre
2 portion of the Site on which housing would be concentrated. The Staff Report contained only a
3 cursory explanation of the differences between the locations. No technical report or analysis of
4 these four locations was provided. City Staff did not recommend any of the locations.

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

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

17 40. In advance of both the Planning Commission and City Council meetings, VPO
18 submitted extensive comments, along with two technical reports showing that the redevelopment
19 contemplated by the Amendments and the City Report would be economically infeasible. The
20 conclusions in VPO’s report were consistent with findings in three other reports previously
21 commissioned, or accepted, by the City. VPO’s report also identified the significant flaws in the
22 City Report.

23 41. The City Council nevertheless approved the Amendments, which are now
24 embodied in Resolution Nos. 19-108, 19-109, and 19-110, and Ordinance Nos. 19-2187 and 19-
25 2188, attached hereto as **Exhibits A to E**.¹ The City Council selected one of the location options

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

1 proposed by City Staff for the 13.1-acre portion of the Site on which the 459 residential units can
2 be developed. The 13.1-acre area selected by the Council is encumbered by the only long-term
3 commercial leases remaining at the existing mall, making it the only location on the Site not
4 available for residential development. The other 38 acres on the Site are subject to no such
5 encumbrances.

6 42. The only permissible use of the remaining 38 acres, designated as Regional
7 Shopping, is now 600,000 square feet of retail development, which is infeasible.

8 43. No office uses may be developed on any portion of the Site.

9 44. The building height for the entire Site is 60 feet.

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

16 46. The City Council intended the Amendments as a discriminatory, illegitimate
17 planning exercise. At the time it adopted the Amendments containing the highly restrictive
18 Regional Shopping designation, the City Council articulated its “future intent” that the Site’s
19 General Plan and zoning be amended again, at some unspecified later time, to allow housing to be
20 built in the areas designated as Regional Shopping only.

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

24 48. Despite the fact that the Amendments did not change the two scenarios for RHNA
25 compliance set forth in the Housing Element, the Amendments state that the purpose of allowing
26 459 units to be built by-right is “to accommodate the City’s Regional Housing Need Allocation.”
27 The Amendments further state that the City considered removing the Vallco Site as a Priority
28 Housing Site, but decided instead to “retain” the Site.

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

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

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

26 51. Paragraphs 1 through 50 are incorporated as though set forth here in full.
27 52. California law requires municipalities to plan for, and to take concrete, affirmative
28 steps to facilitate, housing for all income levels, including affordable housing for low-income and

1 very-low-income residents. Approximately every eight years, each city is assigned its “fair share”
2 allocation of the housing need for the region, which is known as its RHNA. (Gov. Code §§ 65583
3 *et seq.*)

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

14 54. Cities must also take steps to remove local governmental constraints to affordable
15 housing development.

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

22 56. The Amendments did not modify the City’s Housing Element, and the Site remains
23 a Priority Housing Site. The Amendments did, however, render the Site unsuitable, and
24 unavailable, for development of 389 residential units. Following adoption of the Amendments,
25 the City’s General Plan requires that 15 percent of the residential units be affordable, restricts the
26 remaining 38 acres of the Site to infeasible retail use, requires massive Site-wide improvements,
27 but no longer permits the office uses that are an essential economic driver of the residential and
28 retail development. VPO’s economic feasibility expert concluded that any development scenario

1 would result in a “residual land value” of *negative* \$100 million or less. There is no longer a
2 realistic and demonstrated potential that 389 housing units can be developed on the Site during the
3 current RHNA cycle, and the Site should not be included on the City’s housing inventory.

4 57. VPO is beneficially interested in having the City comply with all applicable
5 provisions of the law, and with its duties, as set forth herein.

6 58. VPO has no plain, speedy, or adequate remedy at law for the violations alleged.

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

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

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

12 61. “[T]he general plan and elements and parts thereof” must “comprise an integrated,
13 internally consistent and compatible statement of policies for the adopting agency.” (Gov. Code
14 § 65300.5.) As required by law, the City’s General Plan is composed of nine elements, including
15 the Land Use and Community Design Element and the Housing Element. (Gov. Code
16 §§ 65302(a), (c).) The Amendments, which only modified the Land Use and Community Design
17 Element of the General Plan, caused the Housing Element of the General Plan to be inconsistent
18 with the Land Use and Community Design Element of the General Plan. This horizontal
19 inconsistency caused by the Amendments violates Section 65300.5 of the Government Code.

20 62. The City’s Housing Element continues to contemplate that the Site be developed
21 through a specific plan, or be removed from the Priority Housing List. The Housing Element of
22 the General Plan provides for two potential “scenarios” with respect to the Vallco Site and
23 compliance with the RHNA. Under “Scenario A,” which would apply if a specific plan and
24 rezoning were adopted for the Vallco Site by May 31, 2018, 389 units would be built on the Site
25 pursuant to a specific plan. Under “Scenario B,” which would apply if a specific plan and
26 rezoning were not adopted for the Vallco Site by May 31, 2018, the City would remove the Vallco
27 Site from the Priority Housing Site inventory and replace it with other sites or increase the density
28 or allowable units on existing priority sites.

63. Contrary to these provisions, the Land Use and Community Design Element as

1 modified by the Amendments now provides that the City will comply with RHNA, not through a
2 Vallco specific plan as contemplated in Scenario A, or by replacing the Vallco Site with other sites
3 as contemplated in Scenario B, but instead by allowing by-right development of 459 residential
4 units without a specific plan.

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

11 65. VPO is beneficially interested in having the City comply with all applicable
12 provisions of the law, and with its duties, as set forth herein.

13 66. VPO has no plain, speedy, or adequate remedy at law for the violations alleged.

14 67. VPO requests relief, as set forth below.

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

17 68. Paragraphs 1 through 67 are incorporated as though set forth here in full.

18 69. When a city council passes a zoning regulation, it is required to “consider the
19 effect” of the ordinance “on the housing needs of the region in which the local jurisdiction is
20 situated,” and to “balance these needs against the public service needs of its residents and
21 available fiscal and environmental resources.” (Gov. Code § 65863.6(a).) Whenever the number
22 of housing units that could be developed on a site is reduced, the law requires that the reduction be
23 based on findings that the limitation promotes “public health, safety, and welfare . . . which justify
24 reducing the housing opportunities of the region.” (Gov. Code § 65863.6(a).) The City violated
25 these requirements when it passed the Amendments.

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

1 71. The City made this reduction without conducting the balancing required under
2 Section 65863.6 of the Government Code, and without making any accompanying findings that
3 the reduction in housing opportunities is justified because it will promote public health, safety, and
4 welfare.

5 72. VPO is beneficially interested in having the City comply with all applicable
6 provisions of the law, and with its duties, as set forth herein.

7 73. VPO has no plain, speedy, or adequate remedy at law for the violations alleged.

8 74. VPO requests relief, as set forth below.

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

11 75. Paragraphs 1 through 74 are incorporated as though set forth here in full.

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

15 77. The 2014 General Plan EIR was a program EIR, prepared pursuant to Section
16 15168(a) of the CEQA Guidelines, that did “not evaluate the impacts of individual projects under
17 the General Plan.” The 2014 General Plan EIR states that “subsequent projects will require a
18 separate environmental review.”

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

21 79. Environmental review was required before adoption of the Amendments. It is
22 reasonably probable that the Amendments’ restriction of the residential units to a 13.1-acre portion
23 of the Site may give rise to significant environmental impacts that were not examined in the 2014
24 General Plan EIR. The 2014 General Plan EIR studied the allocation of 800 residential units on
25 the Vallco Site, presuming that the units could be dispersed throughout the Site. The 2014
26 General Plan EIR did not consider the traffic, air-quality, density, or noise impacts of confining
27 almost half of that number of units to only 25 percent of the Site. Nor did the 2014 General Plan
28 consider whether new mitigation measures would be required due to these potential effects.

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

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

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

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

24 84. An agency may prepare an addendum, rather than a Supplemental EIR, only if
25 solely “minor technical changes or additions are necessary or none of the conditions described in
26 [CEQA Guidelines] Section 15162 calling for the preparation of a subsequent EIR or negative
27 declaration have occurred.” (CEQA Guidelines § 15164(b).) A Supplemental EIR must be
28 prepared if “one or more of the following events occurs: (a) Substantial changes are proposed in

1 the project which will require major revisions of the environmental impact report. (b) Substantial
2 changes occur with respect to the circumstances under which the project is being undertaken
3 which will require major revisions in the environmental impact report. (c) New information,
4 which was not known and could not have been known at the time the environmental impact report
5 was certified as complete, becomes available.” (Pub. Res. Code § 21166.)

6 85. The City was required to prepare a Supplemental EIR because the 2014 General
7 Plan EIR does not adequately address the significant environmental impacts that may be caused by
8 the Amendments.

9 86. The Amendments’ elimination of all office space is a substantial change that
10 renders any Site development infeasible, meaning that the Site has been condemned to remain a
11 vacant, half-demolished mall, with no prospect of either redevelopment or future use. It is
12 reasonably foreseeable that this will lead to blight in the vicinity of the Site. The 2014 General
13 Plan EIR did not study that potential for blight.

14 87. In 2014, the Vallco Mall was 82 percent occupied. The General Plan proposed in
15 2014 was, in contrast to the Amendments, designed to facilitate and encourage redevelopment of
16 the Vallco Site to “create a new ‘downtown’ for Cupertino.” If left unmodified, the General Plan
17 would have permitted that level of development.

18 88. Today, the Vallco Mall is almost completely vacant, and a portion has been
19 demolished. The Amendments render redevelopment of the Site infeasible, and make protracted
20 vacancy of the property likely. A long period of vacancy at the Site is likely to give rise to urban
21 decay, dumping of refuse, graffiti, vandalism, and abandoned vehicles, both at the Site and at the
22 surrounding properties. Such blight would constitute a significant environmental impact.

23 89. The City was required to—but did not—study these reasonably foreseeable
24 environmental impacts before it adopted the Amendments.

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

28 91. VPO has performed any and all conditions precedent to filing this CEQA action,

1 and has exhausted any and all available administrative remedies to the extent required by law.

2 **FIFTH CAUSE OF ACTION**
3 **(Writ of Mandate to Compel Compliance with Government Code § 65356; Code of Civil**
4 **Procedure § 1085)**

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

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

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

14 95. The Planning Commission made no recommendation with respect to almost all of
15 the Amendments approved by the City Council. The City Council is only authorized to adopt
16 amendments after recommendation from the Planning Commission. The City’s actions violate
17 this requirement.

18 96. VPO is beneficially interested in having the City comply with all applicable
19 provisions of the law, and with its duties, as set forth herein.

20 97. VPO has no plain, speedy, or adequate remedy at law for the violations alleged.

21 98. VPO requests relief, as set forth below.

22 **SIXTH CAUSE OF ACTION**
23 **(Writ of Mandate to Invalidate Arbitrary and Capricious Zoning; Code of Civil Procedure**
24 **§ 1085)**

24 99. Paragraphs 1 through 98 are incorporated as though set forth here in full.

25 100. The Amendments were not enacted for any legitimate governmental purpose.
26 Rather, they were rushed through the planning process with little consideration of their merits, for
27 the illegitimate purpose of gaining leverage over VPO in any future negotiations, by destroying
28 the economically productive use of the Site.

1 101. The Amendments single out 38 acres of the Site for an exceedingly restrictive,
2 unfavorable zoning designation: “Regional Shopping.” That designation is not applicable to any
3 other parcel in the entire City. The designation is irrational, discriminatory, and not supported by
4 any legitimate purpose. Development under the designation is infeasible.

5 102. The Amendments were enacted by public officials motivated by their hostility to
6 VPO in particular, and to any reasonably feasible redevelopment of the Site in general.

7 103. The rationale proffered by Mayor Scharf—that the Amendments were needed to
8 expedite construction of housing in the face of HCD’s warnings—is pretextual. The City Council
9 had directed City Staff to generate proposals for downzoning the Site well before the City received
10 HCD’s letter, and the Council designated for housing the only area of the Site on which housing
11 cannot be built, either currently or in the foreseeable future.

12 104. The Amendments are arbitrary and capricious, and they improperly discriminate
13 against VPO and the Vallico Site, for the purpose of defeating development at the Site.

14 105. VPO is beneficially interested in having the City comply with all applicable
15 provisions of the law, and with its duties, as set forth herein.

16 106. VPO has no plain, speedy, or adequate remedy at law for the violations alleged.

17 107. VPO requests relief, as set forth below.

18 **SEVENTH CAUSE OF ACTION**
19 **(Declaratory Relief; Code of Civil Procedure § 1060)**

20 108. Paragraphs 1 through 107 are incorporated as though set forth here in full.

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

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


PRAYER FOR RELIEF

Wherefore, Plaintiff and Petitioner prays for judgment against Defendants and Respondents 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: November 18, 2019

COBLENTZ PATCH DUFFY & BASS LLP

By: 

KATHARINE VAN DUSEN
Attorneys for Plaintiff/Petitioner
VALLCO PROPERTY OWNER LLC

EXHIBIT A

RESOLUTION NO. 19-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ADOPTING A SECOND ADDENDUM TO THE ENVIRONMENTAL IMPACT
REPORT FOR THE 2014 GENERAL PLAN AMENDMENT, HOUSING
ELEMENT UPDATE, AND ASSOCIATED REZONING PROJECT

SECTION I: PROJECT DESCRIPTION

Application No: GPA-2019-01, GPA-2019-02, MCA-2019-01, Z-2019-01

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095,
316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105,
316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, the City Council is considering General Plan Amendments and associated Zoning Ordinance Amendments relating to the Vallco Shopping District Special Area; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"), the City prepared a Final Environmental Impact Report (Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007), which was a program EIR prepared in compliance with California Environmental Quality Act Guidelines Section 15168; and

WHEREAS, the City Council certified the Final EIR on December 4, 2014, approved the General Plan Amendments and Associated Rezoning on December 4, 2014 and December 16, 2014, respectively, approved the Housing Element Update on May 19, 2015, and approved modifications to the text and figures of the General Plan on October 20, 2015 following adoption of an Addendum (together, the "Project"); and

WHEREAS, since certification of the Final EIR, the City has proposed modifications to the Project for the Vallco Shopping District Special Area consisting of amendments to the General Plan to reflect that office uses are not permitted within the Vallco Shopping District Special Area and remove the associated office development allocation, set height limits for the area, and make other conforming/clarifying text edits to create density

standards to permit up to 458 units with a minimum density of 29.7 units per acre (389 units) and a maximum density of 35 units per acre on designated parcels totaling 13.1 acres within the Vallco Shopping District Special Area; amendments to the Zoning Map to rezone the 13.1 acres of Vallco Shopping District Special Area to Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning (P(R3,CG)) and the remainder of the Special Area to General Commercial; and amendments to Municipal Code Title 19 to remove references to the former Vallco Town Center Specific Plan and identify development standards for the new P(R3,CG) zoning designation in Chapter 19.80; and

WHEREAS, the proposed modifications will not result in any of the conditions requiring preparation of a subsequent EIR as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, the City has caused to be prepared a Second Addendum to the Final EIR pursuant to CEQA Guidelines Section 15164; and

WHEREAS, the Second Addendum provides analysis and cites substantial evidence that supports the conclusion that no subsequent environmental review is required because there are no substantial changes in the Project or the circumstances under which the Project is to be undertaken that would result in new or substantially more severe environmental impacts requiring major revisions to the Final EIR, and there is no new information that involves new significant environmental effects or a substantial increase in the severity of previously identified environmental effects that would require preparation of a subsequent EIR pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162; and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Second Addendum and adopted Resolution No. 6884 recommending that the City Council adopt the Second Addendum to the Final EIR; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the modifications to the Project.

SECTION III: RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby takes the following actions:

1. Determines that the Second Addendum reflects the independent judgment of the City.
2. Adopts the Second Addendum to the Final EIR for the modifications to the Vallco Shopping District Special Area consisting of amendments to the General Plan, Zoning Map and Municipal Code Title 19.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The foregoing recitals are true and correct and are included herein by reference as findings.

PASSED AND ADOPTED this 20th day of August 2019, at a Regular Meeting of the City Council of the City of Cupertino by the following vote:

AYES: Scharf, Paul, Willey

NOES: Sinks

ABSTAIN: None

ABSENT: Chao (Recused)

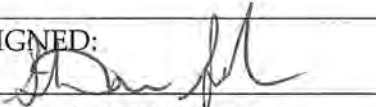
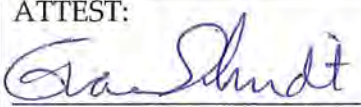
SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>9/6/19</u> Date
ATTEST:  Grace Schmidt, City Clerk	<u>9-6-19</u> Date

EXHIBIT B

RESOLUTION NO. 19-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE GENERAL PLAN TO REMOVE OFFICE AS A
PERMITTED USE FROM THE VALLCO SHOPPING DISTRICT SPECIAL
AREA AND REMOVE ASSOCIATED OFFICE ALLOCATIONS

SECTION I: PROJECT DESCRIPTION

Application No: GPA-2019-01

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095,
316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105,
316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units to be developed pursuant to a specific plan for the Special Area; and

WHEREAS, the City Council desires to improve the jobs/housing balance within Cupertino by decreasing the amount of future office uses to be developed relative to housing, which will reduce traffic congestion, reduce vehicle miles traveled (VMT), and contribute to a reduction in greenhouse gas emissions from commuting patterns that follow unbalanced office development without adequate residential opportunities; and

WHEREAS, this General Plan Amendment to remove office uses as a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation (the "General Plan Amendment") will allow for planning and development that is consistent with the community's vision for the Vallco Shopping District Special Area while the City continues its effort to develop a specific plan for the Special Area; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the General Plan Amendment; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019, upon due notice, the City Council held a public hearing to consider the General Plan Amendment; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution; and

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the modifications to the Project defined in Resolution No. 19-108.

SECTION III: RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby takes the following actions:

1. Adopts the amendments to the General Plan (Application No. GPA-2019-01) as shown in Exhibit GPA-01A and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published General Plan.
2. Adopts the amendments to the General Plan Land Use Map as shown in Exhibit GPA-01B.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The foregoing recitals are true and correct and are included herein by reference as findings.

The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA Guidelines.

PASSED AND ADOPTED this 20th day of August 2019, at a Regular Meeting of the City Council of the City of Cupertino by the following vote:

Vote Members of the City Council

AYES: Scharf, Paul, Willey

NOES: Sinks

ABSTAIN: None

ABSENT: Chao (Recused)

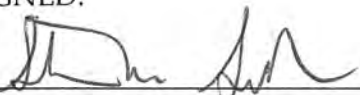

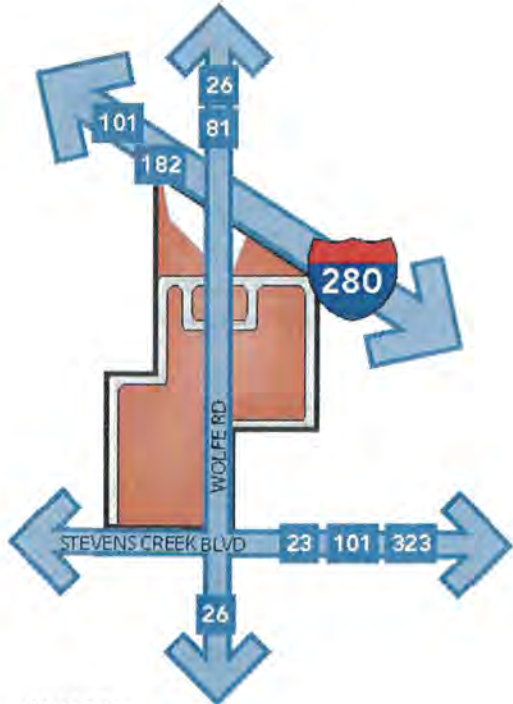
<p>SIGNED:</p>  _____ Steven Scharf, Mayor City of Cupertino	<p><u>9/6/19</u> Date</p>
<p>ATTEST:</p>  _____ Grace Schmidt, City Clerk	<p><u>9-6-19</u> Date</p>

EXHIBIT GPA-01A

Chapter 2, page PA-8



LEGEND

- Commercial/Residential
- Transit Route

Chapter 3, Page LU-13

Table LU-1: Citywide Development Allocation Between 2014-2040

	Commercial (s.f.)			Office (s.f.)			Hotel (rooms)			Residential (units)		
	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available

Vallco Shopping District**	1,207,774	1,207,774	-	-	2,000,000	2,000,000	148	339	191	-	389	389

Citywide	3,632,065	4,430,982	798,917	8,916,179	9,470,005	553,826	1,116	1,429	313	21,412	23,294	1,882

*** Buildout totals for Office and Residential allocation within the Vallco Shopping District are contingent upon a Specific Plan being adopted for this area by May 31, 2018. If a Specific Plan is not adopted by that date, City will consider the removal of the Office and Residential allocations for Vallco Shopping District. See the Housing Element (Chapter 4) for additional information and requirements within the Vallco Shopping District.*

Chapter 3, Pages LU-50 and LU-51

LU-19.1.2: Parcel Assembly.

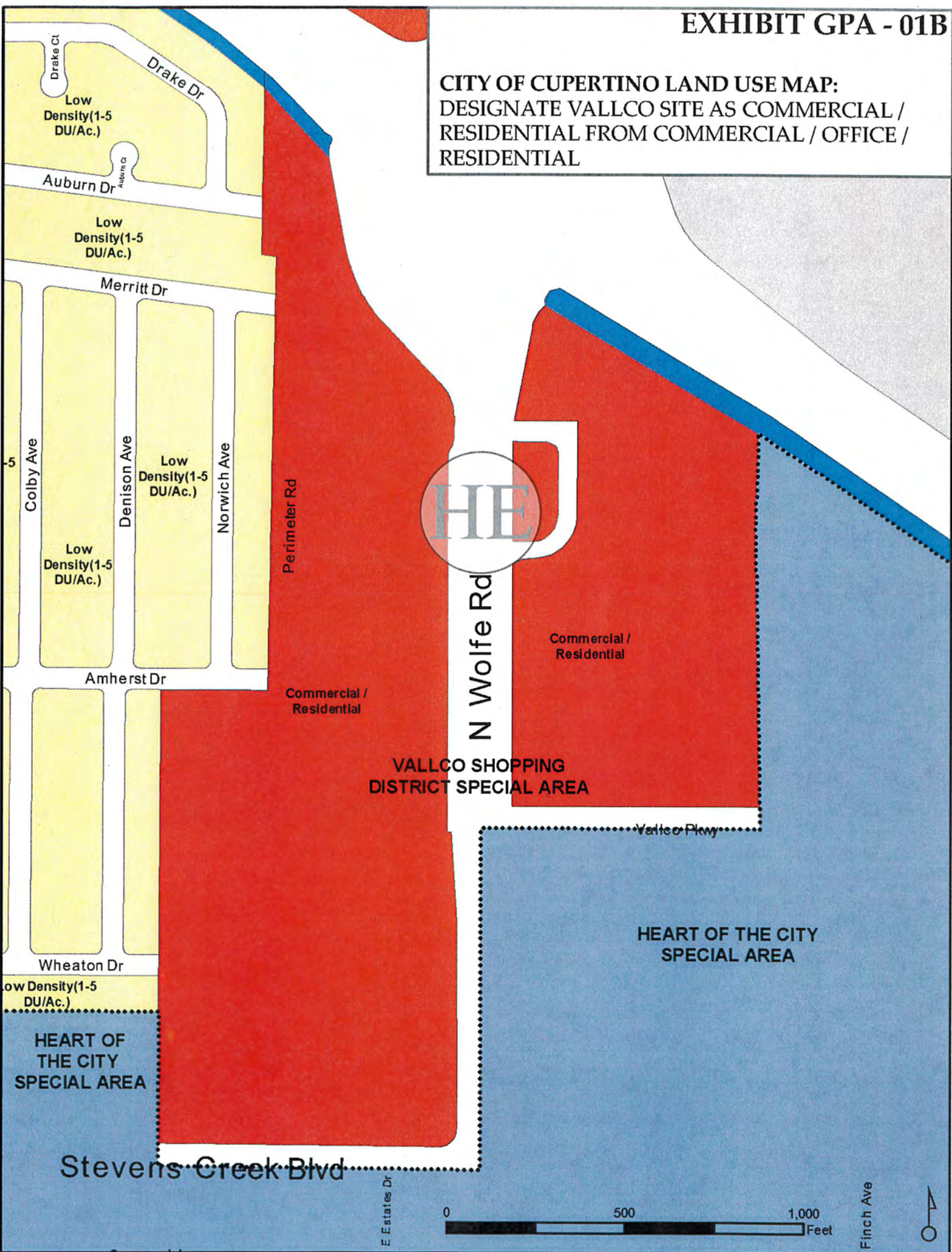
Parcel assembly and a plan for complete redevelopment of the site is required prior to adding residential ~~and office~~ uses. Parcelization is highly discouraged in order to preserve the site for redevelopment in the future.

LU-19.1.4: Land Use.

The following uses are allowed on the site (see Figure LU-2 for residential densities and criteria):

1. Retail: High-performing retail, restaurant and entertainment uses. Maintain a minimum of 600,000 square feet of retail that provide a good source of sales tax for the City. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.
2. Hotel: Encourage a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor.
3. Residential: Allow residential on upper floors with retail and active uses on the ground floor. Encourage a mix of units for young professionals, couples and/or active seniors who like to live in an active "town center" environment.
4. Office: ~~Encourage high quality office space arranged in a pedestrian oriented street grid with active uses on the ground floor, publicly accessible streets and plazas/green space.~~

CITY OF CUPERTINO LAND USE MAP:
DESIGNATE VALLCO SITE AS COMMERCIAL /
RESIDENTIAL FROM COMMERCIAL / OFFICE /
RESIDENTIAL



N Wolfe Rd

VALLCO SHOPPING
DISTRICT SPECIAL AREA

HEART OF THE CITY
SPECIAL AREA

HEART OF THE CITY
SPECIAL AREA

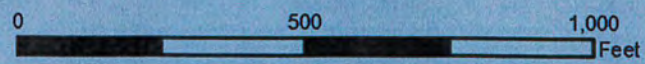


EXHIBIT C

RESOLUTION NO. 19-110

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE GENERAL PLAN AND GENERAL PLAN LAND USE MAP
TO ESTABLISH HEIGHT LIMITS AND ENACT DEVELOPMENT STANDARDS
FOR RESIDENTIAL USES WITHIN THE VALLCO SHOPPING DISTRICT
SPECIAL AREA AND IDENTIFYING A RECOMMENDED LOCATION FOR
FUTURE RESIDENTIAL DEVELOPMENT ON 13.1 ACRES OF THE SPECIAL
AREA

SECTION I: PROJECT DESCRIPTION

Application No: GPA-2019-02

Applicant: City of Cupertino

Location: 10101 to 10333 N Wolfe Rd

APN#s: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095,
316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105,
316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and with Government Code Section 65863; and

WHEREAS, the proposed General Plan amendment would establish a minimum density of 29.7 units per acre and a maximum density of 35 units per acre to permit residential uses by right on 13.1 acres of the Vallco Shopping District Special Area, which would

accommodate between 389 and 458 residential units, consistent with the Housing Element's requirements for the Special Area as a Priority Housing Site; and

WHEREAS, the proposed General Plan amendment is not a reduction in density as defined by Government Code Section 65863 and the City has adequate sites to accommodate its RHNA, so no additional findings are required to comply with Government Code Section 65863; and

WHEREAS, this General Plan Amendment establishes height limits and enacts development standards for residential uses within the Vallco Shopping District Special Area (the "General Plan Amendment") to ensure that the policies and strategies contained in the City's Housing Element are implemented and will allow for planning and development that is consistent with the community's vision for the Vallco Shopping District Special Area while the City continues its effort to develop a specific plan for the Special Area; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the General Plan Amendment; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019, upon due notice, the City Council held a public hearing to consider the General Plan Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Resolution;

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the General Plan amendment to establish height limits and enact development standards for residential uses in the Vallco Shopping District Special Area.

SECTION III: RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby finds that the proposed amendments are consistent with the City's Comprehensive General Plan (Community Vision 2040), including the Housing Element. The Housing Element of the General Plan identifies the Vallco Shopping District Special Area as a "Priority Housing Site," that can accommodate a portion of its Regional Housing Need Allocation (RHNA) by permitting 389 units "by right" at a minimum density of 20 units per acre and a maximum density of 35 units per acre. The amendments define development standards for the Vallco Shopping District Special Area that will allow residential development by right on 13.1 acres at a minimum density of 29.7 units per acre maximum density of 35 units per acre, which provides for development of at least the 389 units called for in the Housing Element. The City Council determined to retain the Vallco Special Area as a Priority Housing Site, and the proposed amendments implement Housing Element Strategy 1 and related actions to enable the development of at least 389 units by right within the Vallco Shopping District Special Area to meet the City's RHNA, and therefore, they are consistent with the Housing Element.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, and based on the preceding findings, the City Council hereby adopts:

1. Amendments to the General Plan (Application No. GPA-2019-02) as shown in Exhibit GPA-02A and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published General Plan; and
2. Changes to the Land Use Map as shown in Exhibit GPA-02B.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The foregoing recitals are true and correct and are included herein by reference as findings.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The City Council directs staff to initiate a Specific Planning process for the portion of the site designated "Regional Shopping." Consider as part of that process a plan that would: include a maximum of 1,500 units of housing for the entirety of the Vallco Shopping District Special Area inclusive of any and all housing and density bonuses, including added incentives for features such as housing for extremely low income households and housing for persons with disabilities (including developmental disabilities), and reduce the amount of retail required within the Vallco Shopping District Special Area to 400,000 square feet exclusive of the parcel known colloquially as the Simeon Property.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA Guidelines.

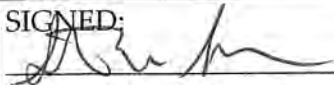
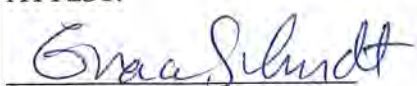
PASSED AND ADOPTED this 20th day of August 2019, at a Regular Meeting of the City Council of the City of Cupertino by the following vote:

AYES: Scharf, Paul, Willey

NOES: Sinks

ABSTAIN: None

ABSENT: Chao (Recused)

<p>SIGNED:  Steven Scharf, Mayor City of Cupertino</p>	<p><u>9/6/19</u> Date</p>
<p>ATTEST:  Grace Schmidt, City Clerk</p>	<p><u>9-6-19</u> Date</p>

Chapter 2, page PA-8

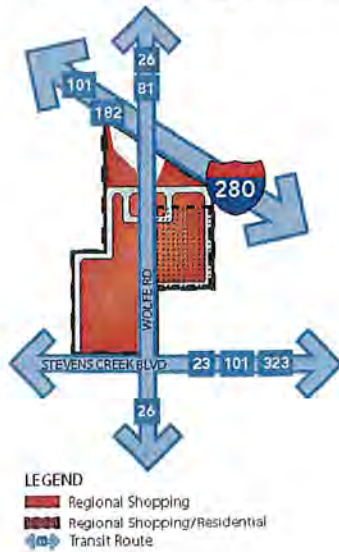
CONTEXT

The Vallco Shopping District Special Area encompasses Cupertino's most significant commercial center, formerly known as the Vallco Fashion Park. This Special Area is located between Interstate 280 and Stevens Creek Boulevard in the eastern part of the city. The North Blaney neighborhood, an established single-family area, is adjacent on the west side of the Vallco Shopping District. Wolfe Road bisects the area in a north-south direction, and divides Vallco Shopping District into distinct subareas: ~~Vallco Shopping District Gateway West and Vallco Shopping District Gateway East~~. In recent years there has been some façade improvement to the Vallco Fashion Mall; however, there has been no major reinvestment in the mall for decades. Reinvestment is needed to upgrade or replace older buildings and make other improvements so that this commercial center is more competitive and better serves the community. ~~Currently, the major tenants of the mall include a movie theater, bowling alley and three national retailers.~~ The Vallco Shopping District is identified as a separate Special Area given its prominence as a regional commercial destination and its importance to future planning/redevelopment efforts expected over the life of the General Plan.

VISION

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

Vallco Shopping District Special Area Diagram:



Chapter 3, Page LU-13

Table LU-1: citywide Development Allocation Between 2014-2040

	Commercial (s.f.)			Office (s.f.)			Hotel (rooms)			Residential (units)		
	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available	Current Built (Oct. 7, 2014)	Buildout	Available

Vallco Shopping District**	1,207,774	1,207,774	-	-	-	-	148	339	191	-	389	389

** Buildout totals for Residential allocation within the Vallco Shopping District are available by-right as defined in Government Code Section 65583.2.

Chapter 3, Pages LU-16 and 17

Figure LU-2: Community Form Diagram

Vallco Shopping District Special Area

<p><u>West of Wolfe Rd Regional Shopping / Residential</u> Maximum Residential Density <u>35 units per acre in areas identified in Figure LU-4</u> Minimum Residential Density <u>29.7 units per acre in areas identified in Figure LU-4</u> Maximum Height <u>Per Specific Plan</u> <u>Up to 60 feet</u></p>	<p>Regional Shopping East of Wolfe Rd Maximum Residential Density <u>35 units per acre N/A - residential is not a permitted use</u> Maximum Height <u>Per Specific Plan Up to 60 feet</u></p>
---	--

[Amended Diagram to show the approximate location for the Regional Shopping/Residential portion of the site]



Building Planes:

- Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area.
- For the Crossroads area, see the Crossroads Streetscape Plan.
- For projects outside of the Vallco Shopping District Special Area that are adjacent to residential areas: Heights and setbacks adjacent to residential areas will be determined during project review.
- For projects within the Vallco Shopping District Special Area that are adjacent to the North Blaney/Portal neighborhood: Maintain the primary building bulk below a 2:1 slope line drawn from the adjacent residential property line.
- For the North and South Vallco Park areas (~~except for the Vallco Shopping District Special Area~~): Maintain the primary building bulk below a 1.5:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.

Priority Housing Sites: Notwithstanding the heights and densities shown above, the maximum heights and densities for Priority Housing Site identified in the adopted Housing Element other than the Vallco Shopping District Special Area shall be as reflected in the Housing Element. The Vallco Shopping District Special Area shall be subject to the heights and densities shown above, with residential uses permitted in the Regional Shopping/Residential designation as shown in Figure LU-4.

Chapter 3, Page LU-18

4. Uses. Include a substantial viable, retail component. Retail and active uses such as restaurants, outdoor dining, and entries are required along the ground floor of main street frontages, and such uses are optional on the ground floor of residential buildings within the Regional Shopping/Residential designation. Mix of units for young professionals, couples and/or active seniors who like to live in an active “mixed-use village” environment. Office uses, if allowed, should provide active uses on the ground floor street frontage, including restaurants, cafes, entries, lobbies, etc.

Chapter 3, Pages LU-50 and LU-51

VALLCO SHOPPING DISTRICT SPECIAL AREA

The City envisions a complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use “town center” that is a focal point for regional visitors and the community. This new Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley.

POLICY LU-19.1: ALLOWED LAND USES

The following uses are allowed in the Vallco Shopping District Special Area (see Figure LU-2 for residential densities and criteria and Figure LU-4 for location of allowable land uses):

1. Residential: Permit residential and ground floor commercial development within the portion of the site designated for Regional Shopping/Residential uses in advance of creating a specific plan, at a maximum density of 35 dwelling units per acre and a minimum density of 29.7 dwelling units per acre by right, with maximum heights as shown in Figure LU-2. Limited ground floor commercial uses are permitted, but not required, in connection with residential development.
2. Non-Residential: Permit commercial uses consistent with the Regional Shopping/Residential and Regional Shopping designation. Maintain a minimum of 600,000 square feet of retail that provide a good source of sales tax for the City. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.

POLICY LU-19.2: DEVELOPMENT STANDARDS

New development within the Vallco Shopping District Special Area shall be required to comply with the following standards:

LU-19.2.1: “Town Center” Layout. (formerly LU-19.1.5)

Create streets and blocks laid out using “transect planning” (appropriate street and building types for each area), 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. Private streets must be open to the sky. Connections between buildings are permitted at levels above the third floor for public serving uses or for limited walkways (no wider than 10 feet) which may be private.

LU-19.2.2: Existing Streets. (formerly LU-19.1.7)

Improve 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~~ Nineteen800, and Main Street, and the surrounding areas.

LU-19.2.3: Tribal Coordination.

The City of Cupertino shall coordinate with applicable Native American tribal representatives following approval of development in the Vallco Shopping District Special Area to ensure appropriate cultural sensitivity training is provided to all contractors prior to the start of ground-disturbing activities.

POLICY ~~LU-19.1~~ LU-19.3: SPECIFIC PLAN

Create a Vallco Shopping District Specific Plan prior to any development on the ~~site~~ portion of the site with the Regional Shopping designation that lays out the land uses, design standards and guidelines, and infrastructure improvements required. The Specific Plan will be based on the following strategies:

STRATEGIES:

LU-19.3.1 ~~LU-19.1.1~~: Master Developer.

Redevelopment of the portion of the site with the Regional Shopping designation pursuant to the specific plan will require a master developer in order to remove the obstacles to the development of a cohesive district with the highest levels of urban design.

LU-19.3.2 ~~LU-19.1.2~~: Parcel Assembly.

Parcel assembly and a plan for complete redevelopment of the site is required prior to designating any additional area for residential uses ~~adding residential and office uses~~. Parcelization is highly discouraged in order to preserve the site for redevelopment in the future.

LU-19.3.3 ~~LU-19.1.3~~: Complete Redevelopment.

The "town center" plan should be based on complete redevelopment of the site in order to ensure that the site can be planned to carry out the community vision.

LU-19.1.4: Land Use.

The following uses are allowed on the site (see Figure LU-2 for residential densities and criteria):

1. Retail: High performing retail, restaurant and entertainment uses. Maintain a minimum of 600,000 square feet of retail that provide a good source of sales tax for the City. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.
2. Hotel: Encourage a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor.
3. Residential: Allow residential on upper floors with retail and active uses on the ground floor. Encourage a mix of units for young professionals, couples and/or active seniors who like to live in an active "town center" environment.

LU-19.1.5: "Town Center" Layout. (now LU-19.2.1)

Create streets and blocks laid out using "transect planning" (appropriate street and building types for each area), 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.

LU-19.3.4 LU-19.1.6: Connectivity.

Provide 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. It should also incorporate transit facilities, provide connections to other transit nodes and coordinate with the potential expansion of Wolfe Road bridge over Interstate 280 to continue the walkable, bikeable boulevard concept along Wolfe Road. The project should also contribute towards a study and improvements to a potential Interstate 280 trail along the drainage channel south of the freeway and provide pedestrian and bicycle connections from the project sites to the trail.

LU-19.1.7: Existing Streets. (Now LU-19.2.2)

Improve 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.

[Renumber LU-19.1.8 through LU-19.1.14 as LU-19.3.5 through LU-19.3.11.]

[New, more detailed Figure LU-4]

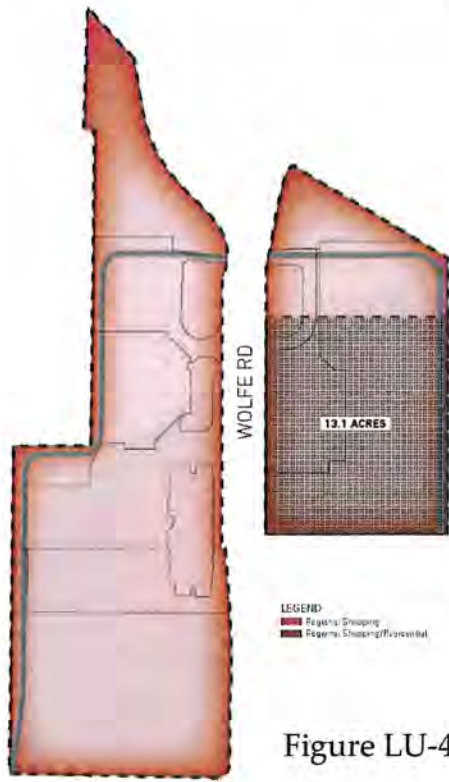


Figure LU-4

Appendix A, page A-6

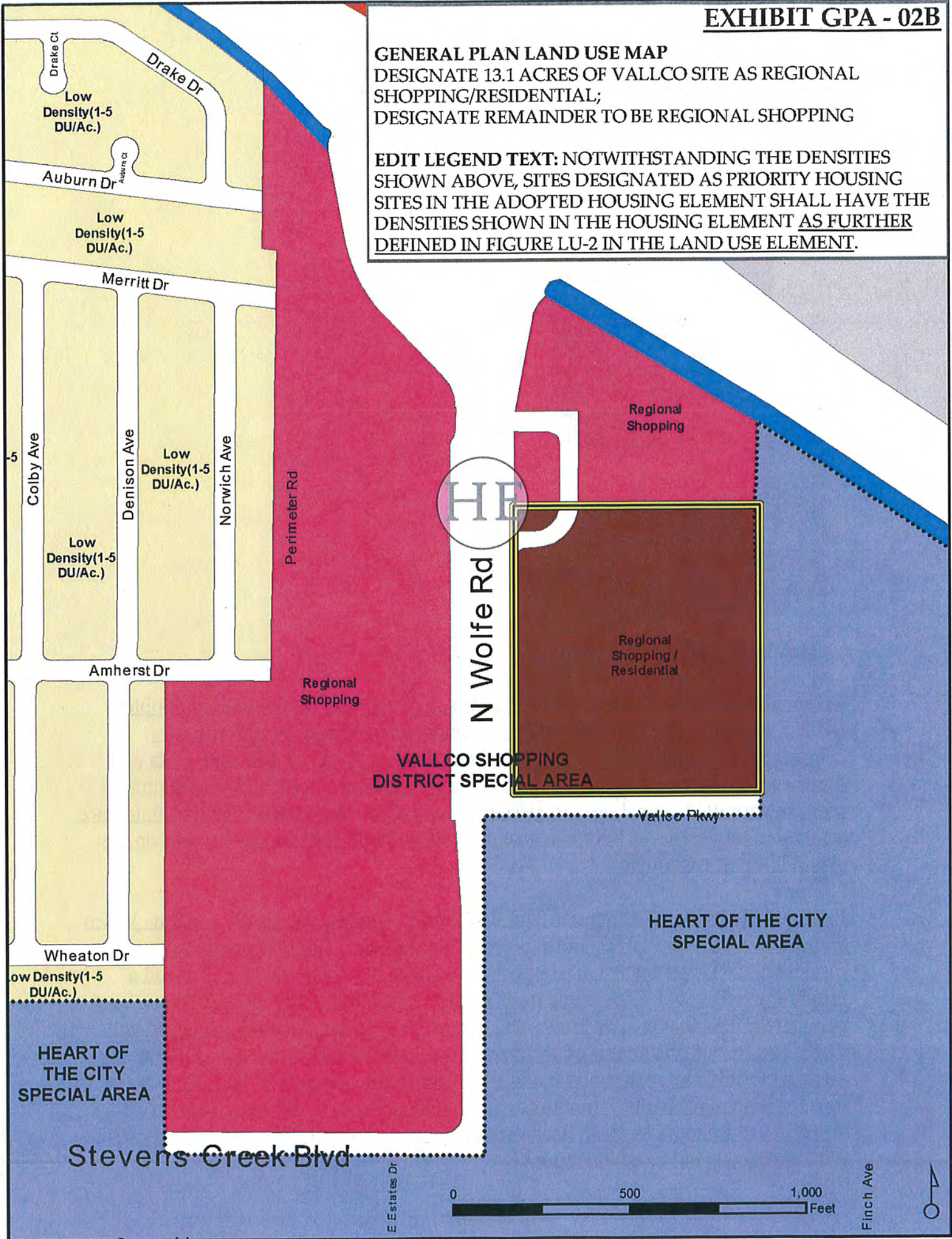
Regional Shopping: This designation applies to the portions of the Vallco Shopping District Special Area that do not allow residential uses. This designation allows commercial uses that include retail sales, businesses, and service establishments with direct contact with customers. High-performing retail, restaurant and entertainment uses are permitted. Hotel uses are permitted, and a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor is encouraged.

Regional Shopping / Residential: This designation applies to the portions of the Vallco Shopping District Special Area that allow residential uses. This designation allows residential development at a maximum density of 35 dwelling units per acre and a minimum density of 29.7 dwelling units per acre by right. Limited, supporting commercial uses that include retail sales, businesses, and service establishments with direct contact with customers on the ground level are permitted but not required. High-performing retail, restaurant and entertainment uses are permitted. The development may result in structures with up to five levels in residential only structures or up to six levels in structures that include ground-floor commercial uses with the heights indicated in Figure LU-1.

GENERAL PLAN LAND USE MAP

DESIGNATE 13.1 ACRES OF VALLCO SITE AS REGIONAL SHOPPING/RESIDENTIAL;
DESIGNATE REMAINDER TO BE REGIONAL SHOPPING

EDIT LEGEND TEXT: NOTWITHSTANDING THE DENSITIES SHOWN ABOVE, SITES DESIGNATED AS PRIORITY HOUSING SITES IN THE ADOPTED HOUSING ELEMENT SHALL HAVE THE DENSITIES SHOWN IN THE HOUSING ELEMENT AS FURTHER DEFINED IN FIGURE LU-2 IN THE LAND USE ELEMENT.



VALLCO SHOPPING DISTRICT SPECIAL AREA

HEART OF THE CITY SPECIAL AREA

EXHIBIT D

ORDINANCE NO. 19-2187

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ELIMINATING REFERENCES IN THE MUNICIPAL CODE TO THE
VALLCO TOWN CENTER SPECIFIC PLAN AND ADDING LANGUAGE
ESTABLISHING DEVELOPMENT STANDARDS FOR A NEW MIXED USE
PLANNED DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL
AND GENERAL COMMERCIAL ZONING DESIGNATION (P(R3,CG))**

SECTION I: PROJECT DESCRIPTION

Application No: MCA-2019-01
Applicant: City of Cupertino
Location: 10101 to 10333 N Wolfe Rd
APN#: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council's consideration of the Municipal Code amendments, the Council adopted Resolution No. 19-109, approving a General Plan Amendment to remove office uses as

a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. 19-110, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Municipal Code to add a new zoning category, Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)), to the text of the Municipal Code that includes development standards enabling the mixed use or residential-only development contemplated for the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and September 3, 2019, upon due notice, the City Council has held at least two public hearings to consider the Municipal Code Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Municipal Code Amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Municipal Code amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. 19-109 and 19-110) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which

concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

4. The proposed zoning will promote orderly development of the City.

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves the Amendments to the Municipal Code (Application No. MCA-2019-01) as shown in Exhibit A and authorizes the staff to make grammatical, typographical, numbering, and formatting changes necessary to assist in production of the final published Municipal Code.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or

circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of August, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 3rd day of September, 2019 by the following vote:

AYES: Scharf, Paul, Willey

NOES: Sinks

ABSTAIN: None

ABSENT: Chao (Recused)

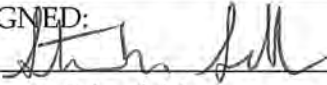
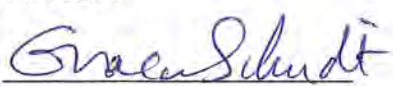
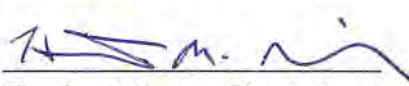
SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	<u>9/6/19</u> Date
ATTEST:  _____ Grace Schmidt, City Clerk	<u>9-6-19</u> Date
APPROVED AS TO FORM:  _____ Heather Minner, City Attorney	<u>9-6-19</u> Date

Exhibit A

19.12.030 Approval Authority.

Table 19.12.030 shows the approval authority, Noticing Radius, Expiration Date and Extension Dates for different types of Permits.

Table 19.12.030 - Approval Authority									
Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
General Plan Amendment									
Major ^F	-	-	R	F	PH	CA. Govt. Code 65350-65362	Yes	-	CA. Govt. Code 65350-65362
Minor ^G	-	-	R	F	PH		Yes	-	
Zoning Map Amendments									
Major ^F	-	-	R	F	PH	CA. Govt. Code 65853-65857	Yes	-	19.152.020
Minor ^G	-	-	R	F	PH		Yes	-	
Zoning Text Amendments	-	-	R	F	PH	CA. Govt. Code 65853-65857	-	-	19.152.030
Specific Plans	-	-	R	F	PH	CA. Govt. Code 65350-65362	-	-	20.04.030
Development Agreements	-	-	R	F	PH	CA. Govt. Code 65867	Yes	-	19.144.120
Development Permits									
Major ^{F, H}	-	-	F/R	A ¹ /F	PM	19.12.110/300'	Yes	2 years	19.156.050
Minor ^G	F	-	A ¹	A ²	PM		Yes	2 years	

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Conditional Use Permits									
Major ^{F, H, I}	F	-	A ¹ /F/R	A ¹ / A ² /F	PH	CA. Govt. Code 65905	Yes	2 years	19.156.050
Minor ^{G, I}	F	-	A ¹ /F/R	A ¹ / A ² /F	PH		Yes	2 years	
Temporary	F	-	A ¹	A ²	-	None	No	1 year	None 19.160.030
Density Bonus (Residential)			R	F	Based on concurrent application	19.52			
Adult-Oriented Commercial Activity (CUP)		-	R	F	PH	CA. Govt. Code 65905/300'	Yes	2 years	19.128.030 & 19.128.040
Architectural and Site Approval									
Major ^J	F	-	A ¹	A ²	PM	19.12.110/	Yes	2 years	19.168.030
Minor ^K	F	-	A ¹	A ²	PM		Yes	2 years	
Amendment									
Major ^{F, H}	-	-	F	A ¹	Varies ^L	Depends on permit being amended ^L	Yes	2 years	19.44, 19.144, 19.156, 19.164
Minor ^G	F	-	A ¹	A ²	Varies ^L		Yes	2 years	
Minor Modification	F	-	A ¹	A ²	-	None	No	2 years	19.164
Hillside Exception/ Height Exception/	-	-	F	A ¹	PH	19.12.110/300'	Yes	2 years	19.40.080, 19.24.070,

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Heart of the City Exception ^I									19.136.090
Variance	F	-	A ¹	A ²	PH	CA. Govt. Code 65905	Yes	2 years	19.156.060
Status of non-conforming Use	-	-	F	A ¹	PH	19.12.110/300'	Yes	-	19.140.110
Wireless Antennas ^I	F	-	F/A ¹	A ²	Varies ^I	Depends on application type	Yes	2 years	19.136.090
Signs									
Permits	F	-	A ¹	A ²	-	None	No	1 year	19.104
Neon, Reader board & Freeway Oriented Signs ^I	-	F	F	A ^{1M}	PM	19.12.110/300'	No	1 year	19.104
Programs	F	-	A ¹	A ²	-	None	No	1 year	19.104
Exceptions ^I	-	F	-	A ^{1M}	PM	19.12.110/ Adjacent	Yes	1 year	19.104.290
Parking Exceptions ^I	F	F	A ¹	A ^{1M} / A ²	Varies ^N	19.12.110/ Adjacent/ 300' ^O	Yes	1 year	19.124.050
Fence Exceptions	-	F	-	A ^{1L}	PM	19.12.110/ Adjacent	Yes	1 year	19.48.060

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Front Yard Interpretation	F	-	A ¹	A ²	PM	19.12.110/ Adjacent	Yes	1 year	19.08
R-1 Ordinance Permits									
Two-story ^I	F	F	F/A ¹	A ^{1L} / A ²	Varies ^I	19.12.110/ Adjacent	Yes	1 year	19.28.140
Minor Residential	F	-	A ¹	A ²	CP		No	1 year	
Exceptions ^I	-	F	-	A ^{1M}	PM		Yes	1 year	
Protected Trees									
Tree Removal	F	-	A ¹	A ²	CP	Adjacent unless exempt	Yes	1 year	14.18.180
Heritage Tree Designation & Removal	-	-	F	A ¹	PM	19.12.110/ 300'	Yes	-	14.18
Tree Management Plan	F	-	A ¹	A ²	-	None	No	-	14.18
Retroactive Tree Removal	F	-	A ¹	A ²	-	None	No	-	14.18
Reasonable Accommodation	F	-	A ¹	A ²	-	None	No	1 year	19.52.050
Extensions ^P									
Parking, Fence & Sign Exceptions & Front Yard Interpretations	F	-	A ¹	A ²	-	None	No	1 year	
Neon, Reader board	F		A ¹	A ²	-	None	No	1 year	

Table 19.12.030 - Approval Authority

Type of Permit or Decision ^{A, B}	Administrative Review	Design Review Committee	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing/ Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
& Freeway Oriented Signs									
Two Story Permits, Minor Residential Permits and Exceptions	F		A ¹	A ²	-	None	No	1 year	
Tree Removals	F	-	A ¹	A ²	-	-	No	1 year	
All other projects	F	-	A ¹	A ²	-	19.12.110/ None	No	2 years	
For permits within the Vallco Town Center Zone – see Vallco Town Center Specific Plan									
KEY:									
R—Review and recommendation body					F—Final decision-making body unless appealed				
A ¹ —Appeal Body on first appeal					A ² —Appeal body on second appeal				
PH—Public Hearing					PM—Public Meeting				
CP—Comment Period									

Notes:

A. Permits can be processed concurrently with other applications, at the discretion of the Director of Community Development.

B. Projects with combined applications shall be processed at the highest level of approval in conformance with Section 19.04.090.

C. Public Hearing: Projects types that need noticing pursuant to the CA Government Code; Public Meeting: Project types that need only a mailed notice and no newspaper notices; Comment Period: Project types that need only a mailed notice and do not need a public hearing or public meeting.

D. Noticing Radius of an application in a combined application shall correspond to the maximum noticing radius required for any one of the applications.

E. Expiration date of an application in a combined application shall correspond to the maximum expiration date allowed for any one of the development applications (not including Subdivision Map Act applications, General Plan Amendments and Zoning Map or Text Amendments.)

F. Major General Plan Amendment, Conditional Use Permit, Development Permit application - for more than ten thousand square feet of commercial and/or industrial and/or office and/or other non-residential use, or greater than six residential units.

- G. Minor General Plan Amendment, Conditional Use Permit, Development Permit application - for ten thousand square feet or less of commercial and/or industrial and/or office and/or other non-residential use, or six or less residential units.
- H. City Council review for applications with new development greater than fifty thousand square feet of commercial, and/or greater than one hundred thousand square feet of industrial and/or office and/or other non-residential use, and/or greater than fifty residential units.
 - Planning Commission review for all other applications.
- I. Please see specific zoning district regulations or chapters in this title that apply to the subject property or project for approval authority.
- J. Major Architectural and Site Approval application - architectural and site approval for all projects that are not a Minor Architectural and Site Approval application.
- K. Minor Architectural and Site Approval application - single family home in a planned development zoning district, minor building architectural modifications, landscaping, signs and lighting for new development, redevelopment or modification in such zones where review is required and minor modifications of duplex and multi-family buildings.
- L. Meeting type and noticing are dependent on the underlying permit being modified.
- M. Appeals of Design Review Committee decisions shall be heard by the City Council.
- N. Parking Exceptions approved by the Director of Community Development need a comment period.
 - Parking Exceptions approved by the Design Review Committee need a public meeting.
- O. Parking Exceptions in Single-family residential (R1) zones and Duplex (R2) zones need adjacent noticing.
 - All other Parking Exceptions need notices within three hundred feet of the exterior boundary of the subject property.
- P. Application must be filed prior to expiration date of permit. Permit is extended until decision of the Approval Body on the extension.

19.16.010 Zoning Districts Designated.

B. In addition to the zones identified in Table 19.16.010A, the City may establish separate zoning districts in individual specific plans adopted to promote the orderly development of the plan area. These zoning districts are identified in Table 19.16.010B below:

Table 19.16.010B - Specific Plan Districts	
Zoning Map Designation	Specific Plan Name
Heart of the City	Heart of the City
VTC Vallecito Town Center	Vallecito Town Center

Land uses and development standards within a specific plan zone shall be as prescribed in the specific plan.

19.16.030 Zoning Map and District Boundaries.

A. The boundaries of districts established by this title shall be shown upon the zoning map. The zoning map, and all amendments, changes, and extensions thereof, and all legends, symbols, notations, references, and other matters shown thereon shall be a part of this title.

B. The zoning map, as currently effective, and a record of all amendments, changes and extensions thereof, shall be maintained as a public record in the office of the Director of Community Development.

C. The boundaries of each district as shown upon the zoning map, or amendments thereto, are adopted by the ordinance codified in this title, and the specific regulations established by this title for each general district and all other regulations applicable therein as set forth in this title are established and declared to be in effect upon all portions of lands included within the boundaries of each and every district as shown upon the zoning map.

19.16.060 Application of Regulation to Sites Divided by Zone Boundaries.

Whenever it is found, pursuant to Section 19.28.050, that a lot or site is divided by a boundary between districts, the provisions of the zoning regulations applicable within each district shall apply only to ~~each~~ the portion of this site situated in each a separate district.

19.80.030 Establishment of Districts—Permitted and Conditional Uses and Development Standards.

A. Planned development zoning districts may be established, modified or removed from the zoning map, and the regulations applicable to any planned development district may be established, modified or deleted in accord with the procedures described in this chapter.

B. All P districts shall be identified on the zoning map with the letter coding "P" followed by a specific reference to the general type of use allowed in the particular planning development zoning district. For example, a planned development zoning district in which the uses are to be general commercial in nature, would be designated "P(CG)." A planned development zoning district in which the uses are intended to be a mix of general commercial and residential would be designated "P(CG/Res)."

C. Permitted uses in a P zoning district shall consist of all uses which are permitted in the zoning district which constitutes the designation following the letter coding "P." For example, the permitted uses in a P(CG) zoning district are the same uses

which are permitted in a CG zoning district for sites with a mixed-use residential designation, Section 19.80.030F shall apply.

D. Conditional uses in a P zoning district shall consist of all uses which require the issuance of a conditional use permit in the zoning district which constitutes the designation following the letter coding "P." For example, the conditional uses in a P(CG) zoning district are the same uses which require a conditional use permit in CG zoning district. Each conditional use in a P zoning district requires a separate conditional use permit for sites with a mixed-use residential designation, Section 19.80.030F shall apply.

E. The general category of uses in a P zone shall be defined at the time of the conceptual plan, and shall be consistent with the adopted General Plan relative to the property in the application. The development standards and regulations of the permitted and conditional uses shall be established in conjunction with the approval of the conceptual and definitive plans, unless specifically identified in Section 19.80.030F below. Developments which are not subject to discretionary approval by the City must comply with the development standards of the underlying zoning district.

F. For sites with a mixed-use residential designation the following shall apply:

1. For sites in the Monta Vista Village Special Area, residential shall be a permitted use.

2. If a site is listed as a Priority Housing Site in the City's adopted Housing Element of the General Plan, then residential development that does not exceed the number of units designated for the site in the Housing Element shall be a permitted use.

3. Residential development on sites not designated as Priority Housing Sites in the City's adopted Housing Element of the General Plan and residential development on a Priority Housing Site that exceeds the number of units designated for that Priority Housing Site shall be a conditional use.

4. Priority Housing Sites shall be shown on the City's zoning map.

5. For sites zoned P(R3, CG), no conceptual or definitive plans shall be required to establish permitted and conditional uses. Multifamily residential use is the primary permitted use. Commercial uses may be incorporated into the development on the ground floor but shall not be the primary permitted use.

G. For sites which require a specific plan prior to development approval, the permitted and conditional uses and all development regulations shall be as shown in the specific plan.

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 19-2187, which was enacted on September 3, 2019, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of September, 2019.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California

EXHIBIT E

ORDINANCE NO. 19-2188

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE ZONING MAP TO REZONE 13.1 ACRES WITHIN THE
VALLCO SHOPPING DISTRICT SPECIAL AREA TO MIXED USE PLANNED
DEVELOPMENT WITH MULTIFAMILY (R3) RESIDENTIAL ZONING
P(R3,CG) AND GENERAL COMMERCIAL USES AND THE REMAINDER OF
THE SPECIAL AREA TO GENERAL COMMERCIAL (CG)

SECTION I: PROJECT DESCRIPTION

Application No: Z-2019-01
Applicant: City of Cupertino
Location: 10101 to 10333 N Wolfe Rd
APN#: 316-20-080, 316-20-081, 316-20-088, 316-20-092, 316-20-094, 316-20-095, 316-20-099, 316-20-100, 316-20-101, 316-20-103, 316-20-104, 316-20-105, 316-20-106, 316-20-107

SECTION II: RECITALS

WHEREAS, Strategy 1 in the Housing Element of the Cupertino General Plan identifies the Vallco Shopping District Special Area as being appropriate to accommodate at least 389 dwelling units at a minimum density of 20 units per acre and a maximum density of 35 units per acre and provides that if a specific plan is not adopted by May 31, 2018, the City will consider removing the Special Area as a Priority Housing Site; and

WHEREAS, as required by Housing Element Strategy 1, at a study session on June 18, 2019 the City Council considered removing the Vallco Shopping District Special Area as a Priority Housing Site; and

WHEREAS, after consideration of its options at the June 18, 2019 study session, the City Council provided direction to staff to retain the Vallco Shopping District Special Area as a Priority Housing Site, and City Council directed staff to prepare a General Plan Amendment for its consideration to permit 389 residential units by right within the Vallco Shopping District Special Area to accommodate the City's Regional Housing Need Allocation (RHNA) consistent with the Housing Element and Government Code Section 65863; and

WHEREAS, following a duly noticed public hearing on August 20, 2019, and prior to the Council's consideration of the Master Zoning Map amendments, the Council adopted Resolution No. 19-109, approving a General Plan Amendment to remove office

uses as a permitted land use within the Vallco Shopping District Special Area and remove the associated office development allocation, and Resolution No. 19-110, approving a General Plan Amendment to establish height limits and enact development standards for residential uses within the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance amends the City's Master Zoning Map apply the new Mixed Use Planned Development with Multifamily (R3) Residential and General Commercial zoning designation (P(R3,CG)) created in MCA-2019-01 to the Vallco Shopping District Special Area; and

WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare, and the amendments herein are necessary to implement the Housing Element of the General Plan as adopted; and

WHEREAS, the City has prepared a Second Addendum ("Second Addendum") to the Final Environmental Impact Report ("Final EIR") for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project (State Clearinghouse No. 2014032007) for modifications to the General Plan and zoning affecting the Vallco Shopping District Special Area in compliance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) (hereinafter, "CEQA Guidelines"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on July 30, 2019 to consider the Ordinance; and

WHEREAS, on July 30, 2019, the Second Addendum was presented to the Planning Commission; and

WHEREAS, on July 30, 2019, by Resolution 6884, the Planning Commission recommended on a 4-0 vote (Commissioner Moore recused) that the City Council adopt a General Plan Amendment solely to impose height limitations within the Vallco Shopping District Special Area subject to certain conditions and recommended that the City Council adopt the Second Addendum for modifications to the Project (as defined in Resolution No. 19-108) affecting the Vallco Shopping District Special Area; and

WHEREAS, on August 20, 2019 and September 3, 2019, upon due notice, the City Council has held at least two public hearings to consider the Master Zoning Map Amendment; and

WHEREAS, on August 20, 2019, by Resolution No. 19-108, the City Council adopted the Second Addendum to the Final EIR (EA-2013-03); and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which concludes that no further environmental review is required for the Master Zoning Map amendments included in the Ordinance.

SECTION III

NOW, THEREFORE, BE IT ORDAINED:

After careful consideration of the, maps, facts, exhibits, testimony and other evidence submitted in this matter, the City Council hereby adopts the Master Zoning Map amendments based on the findings described above, the public hearing record, subject to the conditions specified below:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council finds the following as set forth by Municipal Code 19.152.020.C:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.

The Housing Element of the General Plan calls for the City to permit at least 389 dwelling units in the Vallco Shopping District Special Area. The General Plan Amendments (adopted at the August 20, 2019 City Council meeting with Resolution Nos. 19-109 and 19-110) modify the Land Use Element of the General Plan to remove office as a permitted use within the Vallco Shopping District Special Area and define development standards that will allow residential development by right on 13.1 acres at a maximum density of 35 dwelling units per acre. The proposed municipal code amendments would rezone the properties within the Vallco Shopping District Special Area for consistency with the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, and other relevant portions of the Municipal Code.

2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The City has prepared a Second Addendum Final EIR for the General Plan Amendment, Housing Element Update, and Associated Rezoning Project that analyzes the potential environmental effects of the proposed zoning amendments. The City Council has exercised its independent judgment and reviewed and considered the information in the Second Addendum, which

concludes that no further environmental review is required for the proposed zoning amendments to comply with CEQA.

3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).

The sites being rezoned have access to utilities and are compatible with adjoining land uses. To the extent that there are deficient utilities, the City has adopted mitigation measures to ensure that any future development would need to provide the appropriate utilities to accommodate the development. The proposed zoning would implement the Housing Element and the Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02, which include development standards to permit at least 389 residential units and complementary commercial uses on the site, which are compatible with anticipated land use development in the area.

4. The proposed zoning will promote orderly development of the City.

The sites being rezoned will promote orderly development in the City by allowing a critical mass of development to be proposed along the City's Priority Development Area (PDA) in which future development is anticipated without exceeding the vision for housing and complementary commercial development required in the Housing Element and Land Use Element of the General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02.

5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.

The proposed zoning is not detrimental to the health, safety, peace, morals and general welfare since these are conforming changes that are necessary to implement the Housing Element and Land Use Element of the City's General Plan, as amended by General Plan Amendments GPA-2019-01 and GPA-2019-02. Additionally, where health or safety impacts have been identified in the Final EIR, mitigation measures have been identified which would be applicable to any development on these sites.

Section 3. The City Council approves amendments to the Master Zoning Map as shown in Exhibit A.

Section 4. If any portion of this Ordinance or its application is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more

other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA and the CEQA guidelines.

Section 6 This Ordinance shall not take effect unless and until General Plan Amendment GPA-2019-02 becomes effective.



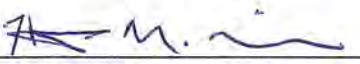
INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 20th day of August, 2019 and ENACTED at a regular meeting of the City Council of the City of Cupertino the 3rd day of September, 2019 by the following vote:

AYES: Scharf, Paul, Willey

NOES: Sinks

ABSTAIN: None

ABSENT: Chao (Recused)

SIGNED:  Steven Scharf, Mayor City of Cupertino	<u>9/6/19</u> Date
ATTEST:  Grace Schmidt, City Clerk	<u>9-6-19</u> Date
APPROVED AS TO FORM:  Heather Minner, City Attorney	<u>9-6-19</u> Date

REZONE 13.1 ACRES OF THE SITE AS P(R3, CG) AND REMAINDER OF SITE AS CG

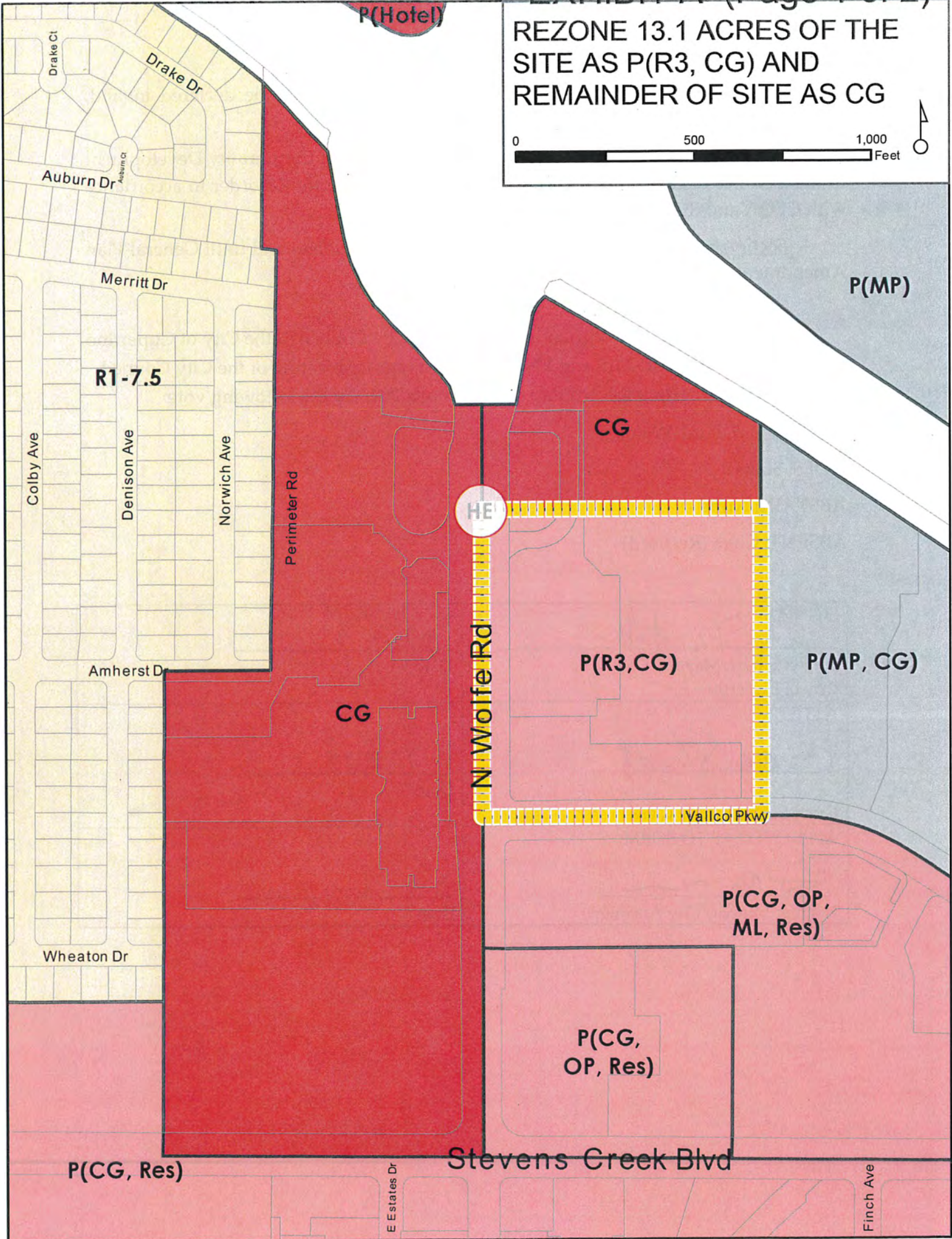
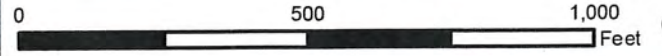


EXHIBIT A (Page 2 of 2)

APN	Zoning Prior to Ord. Z-2018-2178 Adoption	Zoning Proposed by Ord. Z-2018-2178 ¹	New Zoning
316-20-080	P(CG)	Vallco Town Center	CG
316-20-081	P(CG)	Vallco Town Center	CG
316-20-088	P(Regional Shopping)	Vallco Town Center	CG
316-20-092	P(Regional Shopping)	Vallco Town Center	CG
316-20-094	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-095	P(Regional Shopping)	Vallco Town Center	P(R3, CG)
316-20-099	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-100	P(Regional Shopping)	Vallco Town Center	CG and P(R3, CG) as indicated on map above
316-20-101	P(Regional Shopping)	Vallco Town Center	CG
316-20-104	P(Regional Shopping)	Vallco Town Center	CG
316-20-105	P(Regional Shopping)	Vallco Town Center	CG
316-20-106	P(Regional Shopping)	Vallco Town Center	CG
316-20-107	P(Regional Shopping)	Vallco Town Center	CG

¹ The zoning on assessors' parcels in the table below was amended in September 2018 (Ord. Z-2018-2178) in connection with the City's approval of the Vallco Specific Plan. The adoption of that Zoning Ordinance has been challenged and thus the validity of the zoning code amendments therein is uncertain. *See, e.g., Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765. The table shows the zoning as adopted in September 2018, and the parcels' zoning as existing before that date.

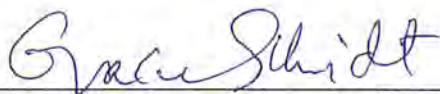
STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 19-2188, which was enacted on September 3, 2019, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of September, 2019.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California

EXHIBIT F

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/Petitioner
VALLCO PROPERTY OWNER LLC

9

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

12

13 VALLCO PROPERTY OWNER LLC,

14 Plaintiff/Petitioner,

15 v.

16 CITY OF CUPERTINO, and DOES 1-10,

17 Defendants/Respondents.

18

19 **TO THE CITY OF CUPERTINO:**

20 **PLEASE TAKE NOTICE**, under Public Resources Code §21167.5, that Petitioner,
21 Vallco Property Owner ("Petitioner"), intends to file a petition under the provisions of the
22 California Environmental Quality Act against respondent, City of Cupertino (the "City"), on the
23 grounds that the City was required to, but did not, prepare a project-specific analysis and was
24 required to, but did not, prepare and certify a Supplemental EIR before enacting Resolution
25 Nos. 19-108, 19-109, and 19-110, and Ordinance Nos. 19-2187 and 19-2188. The City's
26 reliance on an addendum to the 2014 General Plan EIR was improper.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attached to this Notice is a copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory Relief, which will shortly be filed in Santa Clara County Superior Court. The Petition sets forth the relief Petitioner seeks.

DATED: September 20, 2019

COBLENTZ PATCH DUFFY & BASS LLP

By: *Sarah Peterson*

SARAH E. PETERSON

Attorneys for Plaintiff/Petitioner

VALLCO PROPERTY OWNER LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On September 20, 2019, I served true copies of the following document(s) described as

NOTICE OF INTENT TO FILE CEQA PETITION

on the interested parties in this action as follows:

Grace Schmidt
Cupertino Office of the City Clerk
10300 Torre Avenue
Cupertino, CA 95014

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Coblentz Patch Duffy & Bass LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on September 20, 2019, at San Francisco, California.



Marlene Lopez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

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 First Amended Verified Petition for Writ of Mandate & 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 November 18, 2019, at Cupertino, California.



Reed Moulds

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Vallco Property Owner LLC v. City of Cupertino
Case No. 19CV355475

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On November 18, 2019, I served true copies of the following document(s) described as

FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE & COMPLAINT FOR DECLARATORY RELIEF

on the interested parties in this action as follows:

Heather M. Minner, Esq.
Robert S. Perlmutter, Esq.
SHUTE, MIHALY & WEINBERGER LLP 396
Hayes Street
San Francisco, California 94102
Tel: (415) 552-7272
Fax: (415) 552-5816
Email: Minner@smwlaw.com
Perlmutter@smwlaw.com

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the Express Network system. Participants in the case who are registered users will be served by the Express Network system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

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

Executed on November 18, 2019, at San Francisco, California.


Francie L. Skaggs