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CITY COUNCIL STAFF REPORT

September 7, 2021

Subject

Status Report on the Vallco Town Center SB 35 Development Project

Recommended Action

Accept report.

Background

The original Vallco Mall, constructed during the late 1970s, was located on both sides of N. Wolfe Road between Stevens Creek Boulevard and Interstate 280. The mall occupied approximately 50 acres and had over 1 million square feet of retail space with approximately 100 tenant spaces anchored by Macy's, Sears and JCPenny, including two automotive centers. Approximately 13 acres of the original mall property was divested between 2007 and 2012, including the Hyatt House Hotel, the 19800 (Rosebowl) development, and an unused parking lot. The mall was acquired by the current owners in 2014.

Several proposals for redeveloping the Vallco Mall site have been created and considered since 2015. A Vallco Specific Plan was adopted by the City Council in September 2018, which was then subject to three separate voter-initiated referenda petitions, ultimately leading to City Council repeal of the Specific Plan in May 2019.

California State Senate Bill (SB) 35 went into effect on January 1, 2018. The State law provides for a streamlined, ministerial local review process for certain residential and mixed-use developments that meet certain conditions. The intent of the legislation is to increase California's housing supply and to accelerate the development of affordable housing projects. SB 35 eligible projects are not required to go through the California Environmental Quality Act (CEQA) review process typically used for other developments to assess and mitigate impacts to air quality, traffic, noise, land uses, water resources, recreation, greenhouse gas emissions and other elements. Further, SB 35 projects require ministerial review to be completed within no more than 180 days. A decision to approve or deny a project under SB 35 must be based on objective standards only, without the usual public hearings conducted for other developments before Planning Commissions and City Councils.

Even though there was a pending Vallco Specific Plan for the site, the Vallco property owner submitted an SB 35 project proposal on March 27, 2018. The application was among the first and largest SB 35 project applications submitted state-wide and was administratively approved by the City on September 21, 2018.

As approved under SB 35, the Vallco Project (Project) will consist of up to 2,402 residential units (half of them affordable), up to 485,912 square feet of retail uses, and up to 1,981,447 square feet of office. While the Project was approved under the State's SB 35 process intended to increase housing supply and affordable housing, this massive mixed-use project results in far greater housing demand than the number of housing units being provided within the project. Specifically, Vallco's own estimates predict that the Project would bring over 8,700 new jobs to the City of Cupertino, thereby creating a need for nearly 6,000 more housing units, while only providing 2,402 of those new housing units. As a result, the Project results in the need for 3,410 more housing units than it provides, further exacerbating the Bay Area housing crisis, and seemingly in opposition to the goals of SB 35

The purpose of this report is not to revisit the City's decision to approve the project—a process that would be time-consuming, distracting from other issues at hand, and extremely unlikely to have any tangible impacts on the approved project—but rather, to provide the City Council and community with an update on the progress the project has made to date, as well as ongoing challenges arising from application of SB 35 to a project of this scale.

Additional information on prior Vallco development proposals, SB 35, and the approved Vallco SB 35 Development Project can be found on the City's website at Cupertino.org/vallco.

Discussion

Attachment A provides extensive documentation and information regarding the current status of the Vallco SB 35 Development Project. Key highlights are summarized below.

Extensive Progress to Date

- **Soil Investigation/Remediation Underway** – Due to additional review and requirements by the City, contaminated soils and soil vapor have been identified on the project site. The Project developer has entered into a voluntary clean-up agreement with the Santa Clara County Department of Environmental Health (SCCDEH). SCCDEH now has regulatory jurisdiction over continuing site investigation and remediation, and is prohibiting soil disturbance until it can validate that it is safe to do so. The Vallco Project anticipates that SCCDEH's oversight will continue until Spring 2022, although recent testing has revealed even greater contamination issues than previously identified, including some measures beyond permissible residential thresholds.

- **Fire Station Location Identified** - The City, in consultation with the Santa Clara County Fire Department, has reached conceptual agreement with the Vallco Project on the location, size and egress for the new fire station required to maintain response times and health and safety with the new Vallco development. The agreement between the County and the Vallco project regarding the fire station is being prepared and will be presented to the County Board of Supervisors for approval.
- **Building Permit Application Review**– As is typical with large development projects, phased building permits are being submitted for regulatory review as the detailed designs progress. These permits are reviewed by both partner agencies (e.g., Fire Department, utilities), consulting experts (e.g., traffic engineers), and City staff in Planning, Building, Engineering, and Housing, with legal and management support and oversight. No discretionary review is allowed by any appointed or elected body for these permits. To date, two building permits have been issued. One building permit is for site utility work which is underway primarily within the public right-of-way, and the other is an excavation/shoring permit. The commencement of the excavation/shoring scope is on hold pending DEH approval. Three other building permits are also in the iterative review and comment process, but at least two of those will also likely be held pending DEH approval. Status on building permits has been available online since December 2018 at <https://www.cupertino.org/our-city/departments/community-development/building/faqs-permit-activity-vallco-town-center>.
- **CalWater** – City communications with the water utility service provider and the Vallco Project has eliminated a hold on required progress for the documentation of water supply and a service delivery system for the Project.
- **Agreements** – As noted in Attachment A, several agreements will be required for continued progress on the Vallco Project, including a Subdivision Improvement Agreement for improvements to City facilities within and adjacent to the project and a Below Market Rate (BMR) Housing Agreement to ensure the ongoing preservation of the required affordable units. These draft agreements are still under review.

Challenging Issues Remain

- **Green Roof** – Relatively little is known about the 30-acre “green roof” proposed on top of most of the buildings, spanning Wolfe Road, and connecting to the ground. This public and private accessible space as described in the approved project will directly impact structural considerations, emergency services, water supply, and stormwater management, and may also impact the amount of impact fees due. The City has requested an all-hands meeting with the Vallco Project to better understand the plans and design for this facility to facilitate current and subsequent permit review and processing.
- **Project Modifications** – As part of the City’s review of all permit submissions, staff is working to ensure conformance with the previously approved SB 35

Project. Potential modifications in the submitted plans have already been identified. The City will need to review any modifications to the Project for conformance with the approved permit, applicable objective standards, and SB 35.

- **Impact Fees** – The City has calculated using the City’s standard impact fees that the Vallco Project would be required to pay over \$125 million in Traffic, Parkland and Housing Impact Fees. However, the applicant for the Vallco Project believes most of these fees should be waived or significantly reduced. Payment of the fees in full or City Council approval of any reduction or waiver of these fees will be required before certain permitting and other approvals are possible, prior to the commencement of construction.

SB 35 Development Project Extension

- SB 35 stipulates that the approval of a project lasts for three years, by which time “vertical construction” must commence.
- SB 35 also provides that a one-year extension of the approval be granted if there is evidence of substantial progress on the project. This approval must be processed at the staff level, without a public hearing.
- The three-year project approval expires on September 21, 2021, and a one-year extension of the approval would expire September 21, 2022. However, the Vallco Project applicant and the California Housing and Community Development Department have argued that the three-year deadline has been “tolled,” or extended, due to prior litigation. This argument is based on a misreading of the statutory provisions governing the term of SB 35 project approvals and is incorrect.
- Regardless, the Vallco Project’s work to date (e.g., soil remediation, demolition, preliminary utility work) and submission of permits and draft agreements will likely constitute substantial progress on the project as required for approval of a one-year extension.

Recommendation

Accept the report.

Sustainability Impact

The acceptance of this report will have no sustainability impact. The City is actively seeking measures such as transit improvements that will improve the sustainability of the Vallco Project, but as previously indicated, the City was prohibited from conducting a full environmental review of that project under SB 35.

Fiscal Impact

Direct City costs for plan review and inspections will be covered by fees collected from the Project. City required impact fees will be collected related to parkland, traffic, and housing, although the developer contends that it should not pay those impact fees.

General municipal revenues and expenditures likely to result from the Project are unknown given the limited scope of the City's review of the Project under SB 35.

Prepared by: Greg Larson, Interim City Manager

Approved for Submission by: Greg Larson, Interim City Manager

Attachments:

A - Detailed Status Report on the Vallco SB 35 Development Project