

APPENDIX V - UPDATED OBJECTIVE STANDARDS CONSISTENCY ANALYSIS

I. City's Prior Determination of Project Consistency with Objective Standards

Under SB 35, the Project is only subject to the objective standards that were in effect on the date of the original SB 35 submittal – March 27, 2018. (Gov. Code § 65913.4(a)(5).)¹ To assist with the City's review of the Project's consistency with applicable objective standards, the 2018 SB 35 Application included an *Appendix B - Objective Standards Consistency Analysis* summarizing the Project's consistency with General Plan standards and CMC standards. As reflected in the City's 2018 Approval Letter, dated September 21, 2018 (SB 35 Approval), the City concluded that the Project is consistent with all applicable objective standards.¹

II. Summary of Modification Request Updated Analysis

For purposes of modification requests, SB 35 establishes that the City's "review of a modification request [...] shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification." (§ 65913.4(g)(4); emphasis added.) Moreover, when determining consistency with objective standards, SB 35 establishes that the City shall find that the Project is consistent if there is substantial evidence that would allow a reasonable person to conclude that the Project is consistent with the applicable objective standards. (See Gov. Code § 65913.4(c)(3); see also HCD SB 35 Guidelines, § 301(a)(3).) The HCD Guidelines further provide that the City may only find that the Project is inconsistent with one or more of these objective standards upon finding that "no substantial evidence in favor of consistency and that, based on the entire record, no reasonable person could conclude that the development is consistent with the objective standards." (Id.)

To support the City's review of the modification request, this **Appendix V, Updated Objective Standards Consistency Analysis** analyzes the modification request as compared to the 2018 SB Approval based on the above legal framework and demonstrates that the Project, as reflected under this modification request, remains consistent with all applicable objective planning standards. Based on the City's prior confirmation that the applicable zoning designation for the project site is inconsistent with the General Plan land use designation, as with the original 2018 SB 35 Application, this updated analysis generally focuses on the consistency of this modification request with the General Plan, along with other CMC requirements. **Table B-1** summarizes consistency with General Plan objective standards, and **Table B-2** summarizes consistency with CMC objective standards.

This analysis utilizes much of the information included the 2018 SB 35 Application, Appendix B *Objective Standards Consistency Analysis*; where relevant, information from the City's 90-Day SB 35 Determination Letter dated June 22, 2018 (90-Day Letter) and SB 35 Approval was incorporated for reference regarding the City's prior determination on the Project's consistency with applicable objective standards.

¹ If objective zoning and design review standards are inconsistent with standards found in the General Plan, then "a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan." The City confirmed this in its June 22, 2018 letter (90-Day Letter), stating that "[t]here is a zoning designation for the project site which is inconsistent with the General Plan land use designation [t]herefore, under Government Code 65914.3(a)((5)(B), where there is a conflict between the General Plan and zoning, the standards in the General Plan prevail."

Additionally, the analysis includes a column analyzing whether the modification request modifies the Project consistency with the standard.

A. City Regulations, Standards, And Policies Applicable to Modification Request

This modification request generally remains subject only to the objective standards in effect on the date of the original SB 35 application submittal – March 27, 2018. (§ 65913.4(g)(1)(B).) Therefore, the below **Table B-1** and **Table B-2** reflect the General Plan and CMC standards as were in effect as of March 27, 2018. However, an exception to this general rule is triggered where an SB 35 modification is proposed that would yield a change in the “total number of residential units or total square footage of construction changes by 5 percent or more.” In that case, the City may impose new objective standards if “necessary” in order to mitigate or avoid a “specific, adverse impact,” as that term is narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is “no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)

As compared to the SB 35 Approval, this modification request results in an increase in total unit count of 11.12 percent and a decrease in total square footage of approximately 11.66 percent (i.e., both more than 5 percent), and therefore, the City may seek to impose such new objective standards that meet the strict requirements of Section 65913.4(g)(3)(b). Since the date of the original SB 35 application submittal, the only relevant new standards that have been adopted by the City are limited to Cupertino Municipal Code amendments to incorporate a new Chapter 17.04 (“Standard Environmental Protection Requirements”), as further described in subsection (B) below.

B. CMC Chapter 17.04 Requirements

In 2021, the City amended its Municipal Code to incorporate Chapter 17.04, which establishes new environmental review requirements for construction and development activity within the City, including requiring submission of certain new technical reports prior to project approvals. The majority of the Chapter 17.04 requirements are unrelated to the purpose of “mitigating or avoiding a “specific, adverse impact” on “public health or safety” as required under Section 65913.4(g)(3)(b), and therefore, are inapplicable to the modification request.² The only Chapter 17.04 requirements that are relevant to this modification request under Section 65913.4(g)(3)(b) are limited to the provisions regarding air quality, hazardous materials, and construction vibration. To the extent that those Chapter 17.04 requirements are relevant, **Table B-2** summarizes the Project’s consistency with those requirements.

² The 2021 CMC amendments also included a new Chapter 17.08 (“Evaluation of Transportation Impacts Under [CEQA]”) that establishes new vehicle miles traveled (VMT) standards. This Ch. 17.08 also does not apply to the modification request, as the Project remains not subject to CEQA pursuant to SB 35, and because VMT standards are not related to purpose of “mitigating or avoiding” a “specific, adverse impact” on “public health or safety” as required under Section 65913.4(g)(3)(b).

Table B-1: Consistency with General Plan Objective Standards

Community Vision 2040 General Plan	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
Objective General Plan Standards (Applicable As Described)			
<p>Table LU-1: Citywide Development Allocation Between 2014-2020: Vallco Shopping District allocated a maximum 2,000,000 square feet of office space.</p>	<p>Applicable. The maximum square footage allocation for office space does not require subjective judgment and is based on uniformly verifiable criteria and thus is objective and applicable.</p>	<p>Consistent. Per the City’s 2018 Approval Letter, the City approved the Project as including a maximum of 1,981,447 square feet of office space, less than the General Plan’s maximum allocation of 2,000,000 square feet.</p>	<p>Consistent as modified. The modification request includes a maximum 1,954,613 square feet of office space, which remains less than the General Plan’s maximum allocation of 2,000,000 square feet.³</p>
<p>Figure LU-2: Community Form Diagram: Maximum residential density for Vallco Shopping District Special Area is 35 units per acre.</p>	<p>Applicable. The maximum residential density does not require subjective judgment and is based on uniformly verifiable criteria and thus is objective and applicable.</p>	<p>Consistent. The Project includes a residential “base” density of no more than 35 units per acre, with additional density allowed as a density bonus. Per the City’s 90-Day Letter, the City confirmed that, based on this density standard, the base maximum residential yield would be 1,779 units, and 2,402 units inclusive of the approved density bonus.</p>	<p>Consistent as modified. The modification request remains in compliance with the residential density standard. Based on changes in state Density Bonus Law, the maximum applicable density is 2,669 units as further described under HE-2.3.7 below. The modification request proposes 2,669 total residential units.</p>
<p>Figure LU-2: Community Form Diagram: Building Planes. Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines.</p>	<p>Applicable. The requirement to maintain primary building bulk below a 1:1 slope line does not require subjective judgment and is based on uniformly verifiable criteria and thus is objective and applicable.</p>	<p>Consistent. Per the City’s 90-Day Letter, the City confirmed that the Project meets the 1:1 slope line standard for all proposed buildings from the arterial/boulevard curb line.</p>	<p>Consistent as modified with requested Density Bonus Law waiver. The office buildings within Blocks 13, 14 and 15 and 6 of the residential/retail buildings within Blocks 1 through 12 located along N. Wolfe Road and Stevens Creek Boulevard pierce the 1:1 slope to accommodate the Project land use program, while avoiding the need for further</p>

³ Application utilizes a conservative approach by using the "Floor Area" definition for purposes of office allocation that includes a range of amenity space uses, even though the City has in the past recognized that certain amenity space is not included for General Plan office allocation purposes. This approach is only taken for purposes of this objective standards consistency checklist and, for purposes of office allocation, Applicant reserves the right to exclude amenity space that the City has historically excluded from similar projects.

Community Vision 2040 General Plan	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
			<p>increased building heights, particularly along neighboring properties that are developed with lower intensity residential uses. As such, pursuant to the State Density Bonus Law, the modification request includes a waiver request for relief from this requirement as further detailed in in Appendix III, Density Bonus Application Materials. With incorporation of this waiver request as authorized under the State Density Bonus Law, the modification remains consistent with this requirement.</p>
<p>Strategy LU-19.1.4: Land Use. The following uses are allowed on the site:</p> <ul style="list-style-type: none"> ▪ 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. ▪ Hotel: Encourage a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor. 	<p>Applicable objective standards included in this provision apply to the Project, such as the inclusion of retail, hotel, residential, and office uses; minimum square footage requirements; and the allowance of certain uses on upper or ground floors.</p> <p>Any standards that are not objective are not required. Such standards involve personal or subjective judgment by a public official and are not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p>Consistent. The City’s 2018 Approval Letter and attached <i>Attachment A – Approved Plans</i> the Project includes an approved mix of land uses. Per the City’s 2018 Approval Letter, the City also granted a concession pursuant to State Density Bonus Law, Gov. Code § 65915(d)(1) and CMC § 19.56 to allow 400,000 square feet of retail, a reduction of 200,000 square feet from the 600,000 square feet requirement. Under SB 35, consistency is determined “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in [Gov. Code] Section 65915.”</p>	<p>Consistent as modified with requested concession revision. The modification request includes a reduction in overall retail footprint to 226,386 square feet, pursuant to a request for a revised Density Bonus Law concession/incentive for relief from the General Plan standard regarding 600,000 minimum square feet of retail, as further described in Appendix III, Density Bonus Application Materials.</p>

Community Vision 2040 General Plan	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
<ul style="list-style-type: none"> ▪ 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. ▪ 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. 			
<p>HE-2.3.7: Density Bonus Ordinance. The City will encourage use of density bonuses and incentives, as applicable, for housing developments which include one of the following:</p> <ul style="list-style-type: none"> ▪ At least 5 percent of the housing units are restricted to very low income residents. ▪ At least 10 percent of the housing units are restricted to lower income residents ▪ At least 10 percent of the housing units in a for-sale common interest development are restricted to 	<p>Applicable. Standards to qualify for a density bonus and incentives do not require subjective judgment and are based on uniformly verifiable criteria and thus are objective and applicable.</p>	<p>Consistent. Per the City’s 2018 Approval Letter, the Project qualifies for utilization of the State Density Bonus Law (Gov. Code §§ 65915 et seq.) by providing 50% of the units affordable to at least 80% AMI households. The City granted three concessions pursuant to State Density Bonus Law, Gov. Code § 65915(d)(1) and CMC § 19.56.</p>	<p>Consistent as modified. This modification request also includes minor revisions to two of the previously granted concessions, as well as a new waiver request for relief from setback requirements along arterial/boulevard curb lines, as more fully set forth in Appendix III, Density Bonus Application Materials.</p> <p>Due to amendments to the State Density Bonus Law, the Project qualifies for a 50% density bonus, which is now reflected in the modification request unit count. Based on the Project’s base density of 1,779 units, a 50% bonus yields 890 additional market rate density bonus units, thereby totaling 2,669 units.</p>

Community Vision 2040 General Plan	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
<p>moderate income residents.</p> <ul style="list-style-type: none"> The project donates at least one acre of land to the city or county large enough for 40 very low income units; the land has the appropriate general plan designation, zoning, permits, approvals, and access to public facilities needed for such housing; funding has been identified; and other requirements are met. 			<p>To achieve a 50% density bonus, the modification request includes 267 Very Low Income (VLI) units, which represents 15% of the base density of 1,779. The State Density Bonus Law allows three incentives/concessions for projects with 15% of the "total units," where that term is defined to exclude units added by the density bonus, as well as unlimited waivers. As a result, the Project continues to qualify for the three concessions and unlimited waivers. Additional details are provided in Appendix III, Density Bonus Application Materials. Consistent with the SB 35 Approval, the Project's density bonus units remain geographically separate, as allowed under the state Density Bonus Law.</p>
<p>HE-4.1.2: Sustainable Practices. The City will continue to implement the Landscape Ordinance for water conservation and the Green Building Ordinance (adopted in 2013) that applies primarily to new residential and nonresidential development, additions, renovations, and tenant improvements of ten or more units. To further the objectives of the Green Building Ordinance, the City will evaluate the potential to</p>	<p>Applicable. Any objective standards contained in the Landscape Ordinance or Green Building Ordinance may apply to the Project.</p>	<p>Consistent. The Project includes sustainability strategies and infrastructure design guidelines with the intent of maximizing energy and water conservation. As set forth in SB 35 Approval Letter - <i>Attachment C: Standard Project Requirements and Project Implementation Requirements</i>, the Project shall obtain LEED Silver certification or an alternative reference standard in accordance with the Green Building Ordinance.</p>	<p>No change. The modification request maintains sustainable design strategies and will achieve at minimum LEED Silver certification or an alternative reference standard in accordance with the Green Building Ordinance.</p>

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<p>provide incentives, such as waiving or reducing fees, for energy conservation improvements at affordable housing projects (existing or new) with fewer than ten units to exceed the minimum requirements of the California Green Building Code. This City will also implement the policies in its climate action plan to achieve residential-focused greenhouse gas emission reductions and further these community energy and water conservation goals</p>			
<p>Policy M-3.8: Bicycle f. Require new development and redevelopment to provide public and private bicycle parking.</p>	<p>Applicable. The requirement to include bicycle parking does not require subjective judgment and is based on uniformly verifiable criteria and thus is objective and applicable.</p>	<p>Consistent. As set forth in the SB 35 Approval Letter - <i>Attachment A: Approved Plans</i>, the Project incorporates 2,648 Class I bicycle parking spaces and 320 Class II bicycle parking spaces, as those terms are defined under CMC 19.124.0404.</p>	<p>Consistent as modified. The modification request incorporates 2,887 Class I bicycle parking spaces and 474 Class II bicycle parking spaces. Additionally, the modification request includes several bike hubs throughout the project, at which cyclists can store and repair bikes, creating convenient facilities to encourage bicycle commuting to and from the Project.</p>
<p>Policy RPC-1.2: Parkland Standards. Continue to implement a parkland acquisition and implementation program that provides a minimum of three acres per 1,000 residents.</p>	<p>Applicable. The parkland acquisition requirements do not require subjective judgment and are based on uniformly verifiable criteria and thus are objective and applicable.</p>	<p>Consistent. The Project exceeds the City’s park standards. Based on the City’s average household size of 2.83 in the proposed 2,400 units, the Project will generate the need for 12.96 acres of parkland.</p> <p>The Project includes up to 26 acres of publicly-accessible open space, including 4 acres</p>	<p>Consistent as modified. The modification request continues to exceed the City’s parkland standards. The modification request includes over 13 acres of programmed open space throughout the Project, in addition to landscaped areas.</p> <p>The required mandatory and optional elements for private open space credit under CMC</p>

Community Vision 2040 General Plan	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
		<p>of at-grade park space and two plazas, and 14 to 22 acres of publicly accessible green roofs on all blocks connected by bridges (final amount depends on tenant needs). As such, the Project complies with (and exceeds) the General Plan park standard.</p>	<p>§ 13.08.080 will be included in the open space program. See Appendix IV, Modification Request Plan Sets, P-0101 for details regarding open space areas.</p> <p>As with the 2022 Modification, the Tentative Map continues to not show any PAEs on the plazas, bike/ped facilities, or other public open space areas, as the intent of showing PAEs in those areas is to satisfy the Project’s parkland contribution requirements under the City’s Parkland Ordinance. At this time, the City has not confirmed that Parkland fee credit will be provided for these areas. If the City determines that credit should be given for those parkland areas, the Applicant would be willing to provide such PAEs where appropriate.</p>

Table B-2: Consistency with Cupertino Municipal Code Objective Standards

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
Health and Sanitation, Title 9			
Chapter 9.18: Stormwater Pollution Prevention and Watershed Protection			
<p>9.18.090 Stormwater Pollution Prevention Plan (SWPPP).</p> <p>A stormwater pollution prevention plan (SWPPP) shall be prepared and made available at any construction project that is subject to the State Construction Stormwater NPDES General permit. The SWPPP shall be written by a Qualified SWPPP Developer, as defined in the current State NPDES Stormwater Construction General permit. At minimum, the SWPPP shall address the following six BMP categories to implement year-round, seasonally appropriate control measures: (1) erosion control, (2) run-on and runoff control, (3) sediment control, (4) active treatment systems, (5) good site management, and (6) non-stormwater management.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project will have a “Qualified SWPPP Developer” prepare and make available a Stormwater Pollution Prevention Plan prior to construction activities. The SWPPP will be filed with the State Water Resources Control Board and remain active through the entire duration of construction. The original SB 35 Application Appendix C provides further information regarding water quality measures.</p>	<p>No change. The Project remains consistent with SWPPP and general NPDES requirements; Appendix X, Updated C.3 Data Sheets, Supporting NPDES Compliance Documentation, and Third-Party Compliance Letter provides further information regarding water quality measures.</p>
<p>9.18.100 Permanent Stormwater Measures Required for Development and Redevelopment Projects.</p> <p>A. All applicants for permits pertaining to the planning, design, and construction of new development and redevelopment projects</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by</p>	<p>Consistent. The Project will comply with all applicable objective standards. Permanent stormwater BMP measures will be sized and installed to meet C.3</p>	<p>No change. Appendix X, Updated C.3 Data Sheets, Supporting NPDES Compliance Documentation, and Third-Party Compliance Letter provides</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>shall design and incorporate treatment measures to minimize both soluble and insoluble stormwater runoff pollution and to prevent increases in runoff flows for the life of the project. Projects incorporating these permanent stormwater treatment measures (BMPs) shall utilize guidance and standards from the current SCVURPPP C.3. Stormwater Handbook. Permanent treatment measures (BMPs) shall be designed according to the numeric sizing criteria in Provision C.3.d of the Permit. Any new and redevelopment projects that are subject to the City’s review and approval shall meet all requirements in Provision C.3. of the City’s Municipal Regional Stormwater NPDES Permit.</p> <p>B. Site Design and Source Control BMP Requirements. All development and redevelopment projects shall include permanent site design and source control BMPs in order to reduce the water quality impacts of stormwater runoff from the site for the life of the project.</p> <p>C. Stormwater Treatment Requirements for Regulated Development and Redevelopment Projects. [detailed subdivisions omitted]</p>	<p>reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>requirements to ensure all of the stormwater runoff landing within the project boundary is treated prior to discharging to the City system. The stormwater BMP measures will include, but not limited to, rainwater harvesting, green roofs, and maximizing landscaped areas.</p>	<p>further information regarding water quality measures.</p>
<p>9.18.160 Agreement to Maintain Stormwater Treatment Systems and Best Management Practices.</p>	<p>Not required to the extent an agreement is negotiated and thus not verifiable against knowable and objective criteria.</p>	<p>Consistent. The project applicant will enter into a written Stormwater Treatment Systems</p>	<p>No change.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>A. Prior to the issuance of any building permit for a Regulated Project, the owner(s) of the site shall enter into a formal written Stormwater Treatment Systems Operation and Maintenance Agreement with the City. The City shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the stormwater treatment systems and best management practices.</p> <p>B. The Stormwater Treatment Systems Operation and Maintenance Agreement shall require that the stormwater treatment system(s) or HM Control (if any) BMPs not be modified and that maintenance activities not alter the designed function of the facility treatment system or HM Control (if any) from its original design unless the Public Works Director has provided written certification that the requirements of this chapter have been satisfied prior to the commencement of the proposed modification or maintenance activity.</p> <p>C. The Stormwater Treatment Systems Operation and Maintenance Agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater treatment facility becomes a danger to public health or safety, the City shall have the authority to perform maintenance and/or</p>		<p>Operation and Maintenance Agreement with the City. This agreement will be filed with the City of Cupertino and will ensure the regular maintenance and the effectiveness of the permanent stormwater treatment measures associated with the development.</p>	

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<p>repair work and to recover the costs from the owner.</p> <p>D. The owner shall provide the City with three signed copies of the recorded Stormwater Treatment System Operation and Maintenance Agreement.</p> <p>E. The agreement shall provide access to the extent allowable by law for representatives of City, the local vector control district, and the Regional Water Quality Control Board, strictly for the purposes of performing operation and maintenance inspections of the installed stormwater treatment systems and/or HM controls (if any).</p> <p>F. Any property owner party to a Stormwater Treatment Systems Operation and Maintenance Agreement shall, upon transferring ownership of such property, provide the new owner(s) with a current copy of this chapter, and shall inform the new owners in writing of their obligation to properly operate and maintain such facilities.</p>			
Title 10: Public Peace, Safety, and Morals			
Chapter 10.48: Community Noise Control			
<p>10.48.053 Grading, Construction and Demolition.</p> <p>A. Grading, construction and demolition activities shall be allowed to exceed the noise</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are</p>	<p>Consistent. The Project will adhere to construction noise limits. The original SB 35 Application Appendix C provides further information</p>	<p>No change. The Project will adhere to applicable construction noise limits.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>limits of Section 10.48.040 during daytime hours; provided, that the equipment utilized has high-quality noise muffler and abatement devices installed and in good condition, and the activity meets one of the following two criteria:</p> <ol style="list-style-type: none"> 1. No individual device produces a noise level more than eighty-seven dBA at a distance of twenty-five feet (7.5 meters); or 2. The noise level on any nearby property does not exceed eighty dBA. <p>B. Notwithstanding Section 10.48.053A, it is a violation of this chapter to engage in any grading, street construction, demolition or underground utility work within seven hundred fifty feet of a residential area on Saturdays, Sundays and holidays, and during the nighttime period, except as provided in Section 10.48.030.</p> <p>C. Construction, other than street construction, is prohibited on holidays, except as provided in Sections 10.48.029 and 10.48.030.</p> <p>D. Construction, other than street construction, is prohibited during nighttime periods unless it meets the nighttime standards of Section 10.48.040.</p> <p>E. The use of helicopters as a part of a construction and/or demolition activity shall be restricted to between the hours of nine a.m. and six thirty p.m. Monday through</p>	<p>not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>regarding noise reduction measures.</p>	

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Friday only, and prohibited on the weekends and holidays. The notice shall be given at least twenty-four hours in advance of said usage. In cases of emergency, the twenty-four hour period may be waived.			
<p>10.48.055 Motor Vehicle Idling. Motor vehicles, including automobiles, trucks, motorcycles, motor scooters and trailers or other equipment towed by a motor vehicle, shall not be allowed to remain in one location with the engine or auxiliary motors running for more than three minutes in any hour, in an area other than on a public right-of-way, unless:</p> <p>A. The regular noise limits of Section 10.48.040 are met while the engine and/or auxiliary motors are running; or</p> <p>B. The vehicle is in use for provision of police, fire, medical, or other emergency services.</p>	Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).	Consistent. The Project will comply with motor vehicle idling limitations during all construction activities.	No change.
Title 13: Parks			
Chapter 13.08 Park Land Dedication Fee			
<p>13.08.050 Park Land Dedication. A. Where the City determines that a park or recreational facility is to be located in</p>	Generally applicable objective standards. Such standards are not applicable to the extent that they	Consistent. The Project exceeds the City’s park land dedication standards. Based	Consistent as modified. The modification request continues to exceed the City’s park standards.

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>whole or in part within the proposed development, land sufficient in topography and size shall be dedicated per the formula below.</p> <p><i>Park land dedication/DU = (Average number of persons/DU) x (Park Acreage Standard)/1000 persons</i></p> <p>B. The Park Acreage Standard is three acres of property for each one thousand persons.</p> <p>C. Park land dedication based on development density: Table 13.08.050 indicates the average park land dedication required per dwelling unit based on development density per the formula above (Section 13.08.050.A).</p>	<p>involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>on the City’s average household size of 2.83 in the proposed 2400 units, the Project will generate the need for 12.96 acres of parkland. The Project includes up to 26 acres of publicly-accessible open space, including 4 acres of at-grade park space and two plazas, and 14 to 22 acres of publicly accessible green roofs on all blocks connected by bridges (final amount depends on tenant needs). As such, the Project complies with (and exceeds) the General Plan park standard.</p>	<p>The modification request includes over 13 acres of programmed open space throughout the Project. The required mandatory and optional elements for private open space credit under CMC § 13.08.080 are included in the open space program. See Appendix II, Project Description and Appendix IV, Modification Request Plan Sets, P-0101 for detail regarding open space areas.</p>
<p>13.08.100 General Procedures.</p> <p>A. At the time of approval of the dwelling units, the approval authority shall determine whether a park land dedication or a fee in lieu thereof is required unless a park land dedication or fee has already been provided.</p> <p>B. At the time of building permit application, land shall be dedicated to the City or the fee in lieu thereof shall be paid.</p> <p>C. Open space covenants for private park or recreational facilities shall be submitted to the City prior to approval of the building</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based</p>	<p>Consistent. The Project will satisfy procedural requirements, although any design review of the two plazas is inapplicable because such review is not based on objective standards.</p>	<p>Consistent as modified. As with the 2022 Modification, the Tentative Map continues to not show any PAEs on the plazas, bike/ped facilities, or other public open space areas, as the intent of showing PAEs in those areas is to satisfy the Project’s parkland contribution requirements under CMC Chapter 13.08 (Park Land Dedication Fee). At this time, the City has not confirmed that Parkland fee credit will be</p>

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<p>permits and shall be recorded simultaneously with the issuance of final occupancy.</p> <p>D. If park land dedication is required, the design of the park shall be reviewed and approved and construction shall be completed prior to occupancy of the development.</p>	<p>on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		<p>provided for these areas. If the City determines that credit should be given for those parkland areas, the Applicant would be willing to provide such PAEs where appropriate.</p>
<p>Title 14: Streets, Sidewalks and Landscaping</p>			
<p>Chapter 14.02: Transportation Impact Fee (TIF) Program</p>			
<p>14.02.040 Applicability.</p> <p>Except as otherwise expressly provided by this chapter, the TIF required hereunder shall be payable prior to building permit issuance, for all new development, additions to existing structures, changes in land use within the city for which building permits or other entitlements are required, consistent with the authority provided under this chapter.</p> <p>Any increase in square footage and/or change in land use or development type shall pay the established applicable fee rate on the new use based on the net increase.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project applicant will pay any required fee pursuant to Chapter 14.02.</p>	<p>No change, subject to the existing dispute regarding the scope of the amount owed.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
Chapter 14.04: Street Improvements			
<p>14.04.020 Application.</p> <p>14.04.030 General purpose and intent.</p> <p>14.04.040 Requirements–General.</p> <p>14.04.050 Dedication–Time–Purpose.</p> <p>14.04.060 In-lieu payments and deferred agreements.</p> <p>14.04.070 In-lieu payments–Purpose Deferral of payments by the City.</p> <p>14.04.080 Deferred agreements–Purpose–Deferral of improvements by the City.</p> <p>14.04.090 Interim street improvement–Certain areas–Purpose.</p> <p>14.04.100 Credit–Purpose.</p> <p>14.04.110 Improvements installed prior to permit–Imposition of street improvement reimbursement charges, cost of land and interest.</p> <p>14.04.120 Rules and regulations.</p> <p>14.04.125 Rules and regulations for installation, modification or removal of traffic diverters.</p> <p>14.04.130 Dedication–Requirements.</p> <p>14.04.140 Required improvement and dedication as determined by class of street.</p> <p>14.04.150 Credits–Prior improvements.</p> <p>14.04.160 Preceding permit–Conditions.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project will comply with all applicable street improvement requirements in Chapter 14.04.</p>	<p>No change.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>14.04.170 Installation agreement–Bond–Other security</p> <p>14.04.175 Reimbursement agreement.</p> <p>14.04.176 Disposition of street improvement reimbursement charge revenues.</p> <p>14.04.180 Payment in lieu of improvement–Schedule.</p> <p>14.04.190 Checking, inspection and other fees.</p> <p>14.04.200 Standard specifications.</p> <p>14.04.210 Street and highway widths.</p> <p>14.04.220 Legal description required.</p> <p>14.04.230 Exceptions.</p>			
Chapter 14.12: Trees			
<p>14.12.030 Responsibility.</p> <p>14.12.040 Enforcement.</p> <p>14.12.050 Master street tree list.</p> <p>14.12.060 Planting specifications.</p> <p>14.12.070 Public tree management.</p> <p>14.12.080 Prohibited acts.</p> <p>14.12.090 Public utilities–Tree trimming permit.</p> <p>14.12.100 Replacement tree–Deposit.</p> <p>14.12.110 Nuisance–Liability.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based</p>	<p>Consistent. The Project will comply with all applicable requirements regarding trees in Chapter 14.12.</p>	<p>No change.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>14.12.120 Condition for development or building permit.</p> <p>14.12.130 New street tree costs and public tree damage or removal fee schedules.</p>	<p>on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		
Chapter 14.15: Landscape Ordinance			
<p>14.15.010. Intent.</p> <p>14.15.020. Applicability.</p> <p>14.15.030. Definitions.</p> <p>14.15.040. Prescriptive Compliance Option.</p> <p>14.15.050. Landscape Documentation Package.</p> <p>14.15.060. Water-Efficient Design Elements.</p> <p>14.15.070. Water Budget Calculation.</p> <p>14.15.080. Soil Analysis.</p> <p>14.15.090. Recycled Water.</p> <p>14.15.100. Graywater Systems.</p> <p>14.15.110. Irrigation Schedule.</p> <p>14.15.120. Landscape and Irrigation Maintenance Schedule.</p> <p>14.15.130. Landscape and Irrigation Installation Report.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project will comply with all applicable Landscape Ordinance requirements in Chapter 14.15.</p>	<p>No change.</p>

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<p>14.15.140. Landscape Maintenance Agreement.</p> <p>14.15.150. Audit of Existing Landscapes Larger Than One Acre.</p>			
Chapter 14.18: Protected Trees			
<p>14.18.030 Actions Prohibited</p> <p>14.18.050 Protected Trees</p> <p>14.18.060 Plan of Protection</p> <p>14.18.100 Recordation</p> <p>14.18.110 Application and Approval Authority for Tree Removal Permit</p> <p>14.18.120 Action by Director</p> <p>14.18.130 Notice and Posting</p> <p>14.18.140 Tree Management Plan</p> <p>14.18.150 Exemptions</p> <p>14.18.160 Tree Replacement</p> <p>Table 14.18.160A - Replacement Tree Guidelines</p> <p>14.18.180 Review, Determination and Findings</p> <p>14.18.200 Protection During Construction</p> <p>14.18.210 Protection Plan Before Demolition, Grading or Building Permit Granted</p>	<p>Mix of objective and subjective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project will comply with protected tree requirements. As set forth in its SB 35 Approval Letter, and as modified in its Technical Corrections Letter dated October 11, 2018, the City approved a Tree Removal Permit for removal of 467 trees on site. (See Condition No. 30.)</p> <p>As described in Appendix E – Arborist Report, the tree population percentages of coast redwood and Shamel ash are far too high for a stable urban forest situation, which would typically include using a larger number of tree genera and species to guard against pest and disease outbreaks (and abiotic issues such as</p>	<p>Consistent as modified. The modification request will continue to comply with the applicable CMC protected tree requirements.</p> <p>A Tree Removal Permit amendment will be required to account for removal of additional on-site tree removals, consistent with the requirements of Condition 30, which states that a Tree Removal Permit is required for removal of additional on-site protected trees. The tree removals are required due to ongoing degrading tree condition, location of Project building footprints, driveways and loading areas along N. Wolfe Road and Stevens Creek Boulevard, as well as Project grade requirements, as shown in the tree disposition plan in Appendix IV, Modification Request Plan Sets, and as further described in the</p>

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<p>Appendix A - Standards for the Protection of Trees During Grading and Construction Operations</p>		<p>drought conditions) that could potentially wipe out a large percentage of the tree population.</p> <p>Notwithstanding, the Project will retain most of the existing trees located on North Wolfe Road, Stevens Creek Boulevard, and the landscaped buffer along the western perimeter of the project site. The Project will also incorporate more than 1,000 new trees (more than 2 for every 1 removed), all of which will be native or drought tolerant species. For trees that will be retained, the standards for protection of trees during grading and construction operations will be followed.</p>	<p>Appendix VIII, Updated Arborist Report.</p> <p>In total, the Project will include 812 onsite trees at buildout, inclusive of new, relocated and retained trees; the total number of trees on the Project site have been reduced compared to the SB 35 Approval but tree replacements on the Project site will continue to exceed the CMC replacement requirements.</p> <p>Additionally, street tree removals will be required in connection with Project implementation, subject to a separate street tree removal process pursuant to the CMC.</p>
<p>Chapter 14.24: Underground Utilities – New Developments</p>			
<p>14.24.030 Required.</p> <p>A. All utility distribution facilities, including but not limited to electric communication and cable television lines, installed in and for the purpose of supplying service to any new development area within the City, shall be placed underground from the date the</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion</p>	<p>Consistent. All utility distribution facilities for the Project will be installed underground.</p>	<p>No change.</p>

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<p>ordinance codified herein takes effect; except in cases specified in Sections 14.24.040 through 14.24.080.</p> <p>B. The developer shall be responsible for complying with the requirements of this chapter and other related ordinances and regulations of the City, and shall make the necessary arrangements with the utility companies involved for the installation of said facilities.</p>	<p>available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		
<p>Title 16: Buildings and Construction</p>			
<p>Chapter 16.72: Recycling and Diversion of Construction and Demolition Waste</p>			
<p>16.72.040 Diversion Requirement.</p> <p>A. Applicants for any covered project are required to recycle or divert at least sixty-five percent (65%), or meet the amounts, criteria and requirements specified in the applicable California Green Building Standards Code, whichever is more restrictive, of all materials generated for discard by the project.</p> <p>B. If an Applicant for a Covered Project experiences circumstances that the Applicant believes make it impossible to comply with the Diversion Requirement, the Applicant shall submit written justification with the Waste Management Plan. The Director of Public Works will determine, in writing, whether any diversion requirements shall be</p>	<p>Applicable objective standard.</p>	<p>Consistent. The Project will divert at least 65% of all materials generated for discard during demolition and construction activities.</p>	<p>No change.</p>

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<p>waived in whole or in part on grounds of impracticability or impossibility.</p>			
<p>16.72.050 Information Required Before Issuance of Permit. Every applicant shall submit a properly completed “Waste Management Plan” on a form approved by the Public Works Director, as a portion of the building or demolition permit application process for a covered project.</p> <p>A. The vendor that the applicant proposes to use to haul the materials must be consistent with the franchise currently in effect pursuant to the provisions of Chapter 6.24;</p> <p>B. Approval by the Director of Public Works, or designee, of the Waste Management Plan as complying with the applicable California Green Building Standards Code shall be a condition precedent to the issuance of any building or demolition permit for a covered project.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project applicant will submit a Waste Management Plan pursuant to the applicable requirements.</p>	<p>Consistent as modified. The modification request includes an Appendix IX, Updated Preliminary Waste Management Plan.</p>
<p>16.72.060 Administrative Fee. As a condition precedent to the issuance of any building or demolition permit for a covered project, the applicant shall pay to the City any required deposit and any required application fee as set forth in the municipal fee schedule.</p>	<p>Applicable objective standard.</p>	<p>Consistent. The Project applicant will pay any required deposit and application fee.</p>	<p>No change.</p>

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<p>16.72.070 Reporting.</p> <p>Within 60 days after the completion of any covered project, the applicant shall submit to the Public Works Director or designee a construction and demolition debris recycling report, demonstrating that the applicant has met the diversion requirement for the project. Failure to comply with the reporting requirement may delay approval of the final inspection or the recovery of any bond or deposit held by the city.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project applicant will submit a demolition debris recycling report within 60 days of the completion of any covered project.</p>	<p>No change.</p>
<p>Title 17: Environmental Regulations</p>			
<p>Chapter 17.04: Standard Environmental Protection Requirements</p>			
<p>17.04.040(A) - Air Quality Technical Report Submittal Requirements</p> <ul style="list-style-type: none"> ● 17.04.040(A)(1) Control Diesel Particulate Matter from Non-Residential Projects During Operation ● 17.04.040(A)(2) Manage Indoor Air Quality 	<p>Applicable to the extent the requirements are “necessary” to mitigate or avoid a “specific, adverse impact,” as narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is</p>	<p>N/A – CMC Ch. 17.04 adopted after SB 35 Approval.</p>	<p>Consistent. In connection with this modification request, an <i>Operational Health Risk Assessment (HRA)</i> was prepared to document the Project’s potential air quality health risk impacts; this report satisfies the applicable requirements of CMC</p>

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	<p>“no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)</p>		<p>17.04.040(A)(1). See Appendix XIII, Operational Health Risk Assessment.</p> <p>As further detailed in Appendix XIII, the HRA concludes that the modification request remains below the applicable Bay Area Air Quality Management District (BAAQMD) thresholds, as those thresholds are reflected in CMC 17.04.040(A)(2). Specifically, the HRA concludes that the estimated potential incremental and cumulative excess cancer risks, chronic non-cancer health impacts, and PM2.5 concentrations are all below the BAAQMD and CMC thresholds at both existing offsite residential areas and future residential areas proposed as part of the Project.</p> <p>Separately, CMC section 17.04.040(A)(2)(b) sets forth additional requirements regarding implementation of certain best practices identified in the <i>BAAQMD Planning Healthy Places Guidebook</i> that are inapplicable to the Project. Those requirements are intended to avoid air quality</p>

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			related health impacts when siting new sensitive receptors (such as residents) near existing emissions sources (such as high volume roadways). However, according to the HRA, existing sources, such as roadway emissions from Stevens Creek Boulevard, when combined with future sources are well below the cumulative threshold of significance. Therefore, without an impact, application of such measures are not required in order to “mitigat[e] or avoid[e] a “specific, adverse impact” on “public health or safety” as required under Gov. Code. Section 65913.4(g)(3)(b).

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<p>17.04.050(A) – Air Quality Permit Submittal Requirements</p> <ul style="list-style-type: none"> ● 17.04.050(A)(1) Control Fugitive Dust During Construction. ● 17.04.050(A)(2) Control Construction Exhaust. ● 17.04.050(A)(3) Control Volatile Organic Compound Emissions from Paint. 	<p>Applicable to the extent the requirements are “necessary” to mitigate or avoid a “specific, adverse impact,” as narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is “no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)</p>	<p>N/A – CMC Ch. 17.04 adopted after SB 35 Approval.</p>	<p>Consistent. CMC 17.04.050(A) establishes certain air quality related requirements prior to “issuance of permits” for qualifying projects, unless such requirements “are not applicable to the project as demonstrated by a written explanation[...].” (See CMC 17.04.050.) In connection with issuance of permits for the Project, Applicant will meet the applicable requirements of CMC 17.04.050(A), to the extent those requirements are required to “mitigat[e] or avoid[e] a “specific, adverse impact” on “public health or safety” as required under Gov. Code. Section 65913.4(g)(3)(b).</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>17.04.040(B); Hazardous Materials Technical Report Submittal Requirements Manage Soil and/or Groundwater Contamination. Projects that involve tree removal only are not subject to this Section B. For projects that involve a change of land use (e.g., commercial to residential), development of uses that will be occupied or used by sensitive receptors, development of a net new residential unit (not including a Junior Accessory Dwelling unit or Accessory Dwelling unit), new construction of non-residential and/or mixed-use development, or subdivisions, except as provided for in Section B.3, the project applicant shall complete Section B.1 and B.2, as required, prior to approval of the project.</p> <ul style="list-style-type: none"> ● 17.04.040(B)(1) Phase I ESA. ● 17.04.040(B)(2) Phase II ESA. ● 17.04.040(B)(3) Focused Phase I and II ESAs. 	<p>Applicable to the extent the requirements are necessary to mitigate or avoid a “specific, adverse impact,” as narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is “no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)</p>	<p>N/A – CMC Ch. 17.04 adopted after SB 35 Approval.</p>	<p>Consistent. The modification request meets the applicable requirements of CMC 17.04.040(B). The Project has undergone extensive environmental assessments to identify the potential presence of Recognized Environmental Conditions. Although not required by the SB 35 Approval or any other legal obligation at that time, the Applicant voluntarily entered into Remediation Action Agreements regarding soil management on the Project site with the Santa Clara County Department of Environmental Health (“SCCDEH”) on June 23, 2021 and November 16, 2022, for the west and east sides, respectively, and continues to proactively work with SCCDEH to further characterize the Project site and identify the protocols necessary to fully remediate the Project site in a way that protects the public, workers and future residents from any historic soil and soil vapor contamination.</p>

<p>17.04.050(B) Hazardous Materials Permit Submittal Requirements</p> <p>Soil Remediation Required. If a Focused or other Phase II ESA, as required pursuant to Section 17.04.040(B)(1), identifies an unacceptable or a potentially unacceptable health risk, the project applicant shall, depending on the contaminant, contact either the Environmental Protection Agency (EPA), Department of Toxic Substances Control (DTSC), Regional Water Quality Control Board (RWQCB) or local Certified Unified Program Agency (CUPA). The project applicant shall enter into a regulatory agency oversight program with an appropriate regulatory agency, or an established voluntary oversight program alternative with an appropriate regulatory agency, as determined by the City, and follow the regulatory agency’s recommended response actions until the agency reaches a no further action determination, prior to issuance of any permit for a project that allows ground disturbing activity.</p>			<p>Consistent. The modification request meets the applicable requirements of CMC 17.04.050(B). The Applicant has prepared a Site Management Plan (SMP) for the west side of the Project site that characterizes the Project site and identifies the protocols necessary to fully remediate the Project site by excavating and removing contaminated soil from the site. In December 2022, SCCDEH approved the SMP, the scope of which anticipated the planned mass excavation of the Project site, including the construction activities necessary to remove contaminated soil within the west parcel of the Project site. An updated SMP will be submitted shortly to DEH to reflect the updates set forth in this modification request. Additionally, a Soil Remediation Action Completion Report will also be submitted to DEH to document the soil removal activity undertaken to date.</p> <p>In connection with oversight on the east side of the Project site, pursuant to the Remedial Action Agreement, Applicant will work with DEH to conduct testing, monitoring, and analysis to determine the nature, extent, and</p>
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Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
			risk of contamination, potential remedial action or mitigation measures to be taken, and cleanup goals.
<p>17.04.040(D) – Vibration Technical Report Requirements</p> <p>1. Manage Vibration During Construction. The project applicant shall provide a vibration study to determine vibration levels due to construction to the City, prior to approval of the project, when the following activities would occur within the screening distance to buildings or structures: pile driving within 100 feet, vibratory roller within 25 feet, or other heavy equipment (e.g., bulldozer) within 15 feet; and for historical structures: pile driving within 135 feet, vibratory roller within 40 feet, or other heavy equipment within 20 feet. If vibration levels due to construction activities exceeds 0.2 inches per second peak particle velocity (in/sec PPV) at nearby buildings or structures, or 0.12 in/sec PPV at historical structures, the project shall implement the following alternative methods/equipment: [...]</p>	<p>Applicable to the extent the requirements are necessary to mitigate or avoid a “specific, adverse impact,” as narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is “no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)</p>	<p>N/A – CMC Ch. 17.04 adopted after SB 35 Approval.</p>	<p>Consistent. The modification request will not include construction activities within the screening distances specified under Section 17.04.040(D)(1), so nothing further is required. To the extent that construction activity would occur within those screening distances, the Applicant would provide any such necessary vibration study prior to commencing any activity within one of the screening distances.</p>

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<p>17.04.050(G) – Noise & Vibration Permit Requirements 3. Manage Vibrations During Construction</p>	<p>Applicable to the extent the requirements are necessary to mitigate or avoid a “specific, adverse impact,” as narrowly defined under the Housing Accountability Act (Gov. Code. 65589.5(j)(1)(A)), on “public health or safety” and only where there is “no feasible alternative method to satisfactorily mitigate or avoid the adverse impact[.]” (See § 65913.4(g)(3)(b).)</p>	<p>N/A – CMC Ch. 17.04 adopted after SB 35 Approval.</p>	<p>Consistent. Section 17.04.040(G)(3) requirements are applicable only in the event that pile driving is required. The modification request will not include pile driving so nothing further is required. To the extent that construction activity would include pile driving, the Applicant would comply with the applicable requirements prior to issuance of the permit authorizing that activity.</p>
<p>Title 18: Subdivisions</p>			
<p>Chapter 18.16: Subdivision Maps, Article I: Tentative Subdivision Maps</p>			
<p>18.16.010 Form and Contents. The tentative map shall be prepared in a manner acceptable to the Department of Community Development, shall be prepared by a registered civil engineer or licensed surveyor, and shall be accompanied by those data and reports required by the Department of Community Development.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based</p>	<p>Consistent. As set forth in its SB 35 Approval Letter, the City approved a Tentative Subdivision Map for Condominium Purposes. The tentative map for the Project has been prepared by a registered civil engineer and contains the data and reports normally required by the Department of Community Development. To the extent the form or</p>	<p>Consistent as modified. The Tentative Map amendments are proposed to increase the number of total parcels within the Project site to generally establish a parcel per building, as is typical for large multi-building developments, as well as the right to create up to 2,700 condos, as further described in Appendix II, Modification Request Project Description and as</p>

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	<p>on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>data requested by the City are not published and adopted by ordinance or resolution, such requirements are not objective standards.</p>	<p>shown in the Appendix IV, Modification Request Plan Sets. Such parcelization facilitates financing and more efficient operation of building services, amenities, and parking. Common parcels are included throughout the Project site that are anticipated to be owned and managed by a master association entity.</p> <p>The Tentative Map amendment would retain the option to file multiple phased Final Maps as allowed under the California Subdivision Map Act (§ 66456.1).</p>
<p>Zoning, Title 19</p>			
<p>Chapter 19.48: Fences</p>			
<p>19.48.020 Fence Location and Height for Zones Requiring Design Review. 19.48.030 Fence Location and Height for Zones Not Requiring Design Review. Table 19.48.030 sets forth the rules and regulations pertaining to fences in zones where design review is not required. [specific height, location, and other regulations omitted]</p>	<p>Most of the standards relating to fences are subjective because they require the exercise of subjective judgment. For example, Table 19.48.030 requires heightened requirements “if the Director of Community Development determines that a proposed fence for is widely visible to public view and has the potential to create impacts on the visual character of an area.” Other examples include</p>	<p>Consistent. The green roof will include fences to ensure the safety of the public and residents accessing the roof. All fences will be designed to satisfy all applicable objective standards relating to fences.</p>	<p>Consistent as Modified. The Project will comply with all applicable objective standards relating to fences.</p> <p>Appendix IV, Modification Request Plan Sets does not include location of fences (i.e., structures that would be used for property protection or privacy), as those design details will be determined subsequently on a building-by-building basis, details of which</p>

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	<p>requirements in Section 19.48.020 to “acoustically isolate” noise and “ensure privacy,” without providing any objective criteria. To the extent Table 19.48.030 applies and includes some objective standards, those standards apply to the project.</p> <p>However, any standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		<p>would be reviewed by the City in connection with building permit issuances. Details regarding Project fencing do not impact its consistency with any applicable objective subdivision standards.</p>
Chapter 19.56: Density Bonus			
<p>19.56.010 Purpose. 19.56.020 Eligibility for density bonus.</p>	<p>Applicable objective standards, to the extent that the CMC density bonus requirements are based on</p>	<p>Consistent. The Project will satisfy all applicable objective standards relating</p>	<p>Consistent as modified. This modification request also includes minor revisions to two of the</p>

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<p>19.56.030 Density bonus.</p> <p>19.56.040 Incentives or concessions, waivers and reduction of parking standards.</p> <p>19.56.050 General requirements.</p> <p>A. Affordable rental low and very low income units must remain affordable to low or very low income households, as applicable, for fifty-five (55) years or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Affordable for-sale moderate income units must remain affordable to moderate-income households for the duration required by Chapter 19.172, Below Market Rate Housing Program and implementing procedures and policies adopted by the City Council, or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or subsidy program. Sales price for for-sale affordable very low, low, and moderate income units shall be set at affordable housing cost. Rents for affordable low and very low income rental units shall be set at an affordable level.</p> <p>B. The affordable dwelling units and land dedication that qualify a housing development for a density bonus may also be used to meet the below-market-rate housing provisions of the City's Residential Housing</p>	<p>objective standards pursuant to Gov. Code § 65913.4(a)(5), (c) and do not exceed the State Density Bonus Law requirements described in Gov. Code § 65915 et seq., including Gov. Code § 65919(a)(2) (“A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law”).</p>	<p>to qualification for a density bonus and concessions, as described in Section 7 of the Project Description.</p> <p>By providing 15% of the base density units to very low income households, the Project qualifies for a 35% density bonus and three concessions. Affordable units will be restricted via a recorded agreement with a term of at least 55 years. As described in Section 6 of the Project Description, the requested concessions will result in identifiable cost reductions, do not create any health or safety impacts, and are not contrary to state or federal law. No waivers of development standards are requested and, under SB 35, there are no minimum parking requirements.</p> <p>The Project has been designed to comply with the dispersal requirement, as affordable units are located throughout the Project. (The one area that is an exception</p>	<p>previously granted concessions, as well as a new waiver request for relief from setback requirements along arterial/boulevard curb lines, as more fully set forth in Appendix III, Density Bonus Application Materials.</p> <p>The modification request now incorporates the 50% density bonus, yielding 890 additional market rate density bonus units in addition to the base density of 1,779 units, thereby totaling 2,669 units.</p> <p>Consistent with the SB 35 Approval, the Project’s density bonus units remain geographically separate, as allowed under the state Density Bonus Law.</p> <p>The modification request includes 267 Very Low Income (VLI) units, which represents 15% of the base density of 1,779. The State Density Bonus Law allows three incentives/concessions for projects with 15% of the "total units," where that term is defined to exclude units added by the density bonus. As a result, the Project continues to qualify for the three</p>

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<p>Mitigation Program, provided that the affordable units and land dedication comply with the requirements of both Chapter 19.56, Density Bonus, Chapter 19.172, Below Market Rate Housing Program; and implementing procedures and policies adopted by the City Council regarding the required number of affordable units, required level of affordability, and term of affordability so as to provide the greatest affordability to the most households for the longest term.</p> <p>C. Unless otherwise governed by other funding sources, to the extent consistent with fair housing laws, preferences for the affordable units will be given as specified in Chapter 19.172, Below Market Rate Housing Program, and implementing procedures and policies adopted by the City Council.</p> <p>D. An agreement shall be entered into between the developer and the City to ensure compliance with the provisions of this chapter and state law and shall include, without limitation the household type, number, location, size, affordability, and construction scheduling of all affordable units, and such information as shall be required by the City for the purpose of determining the developer's compliance with this chapter. For rental affordable very low and low income units, the agreement shall additionally contain, without limitation,</p>		<p>is that the 623 density bonus units are geographically separate, as permitted by state law and CMC 19.56.030.F.7.) While the Project complies with this code provision, it is not obligated to under SB 35 because the requirement to be “dispersed throughout the project” is not objective because it involves personal judgment and there are no “uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” While no concession is needed, the Project Description nonetheless provides an explanation for why relief from a requirement to uniformly disperse would achieve cost reductions and thus would qualify for a concession.</p> <p>The site plan package contains all the information required by CMC §19.56.060.</p>	<p>concessions previously granted by the City, and unlimited waivers.</p> <p>The modification request maintains City affordable unit dispersal, albeit through a modified site plan as compared to the SB 35 Approval. Under the modification request, affordable units will be provided in standalone buildings, which are distributed throughout the west and east side of the Project site. This dispersal strategy allows for project financing through low-income housing tax credit programs, as well as for the provision and allocation of key services and amenities to those affordable units.</p> <p>Nevertheless, compliance with this requirement is not required under SB 35 because the requirement for City affordable units to be “dispersed throughout the project” is not an applicable objective standard because it involves personal judgment and there are no “uniform benchmark or criterion available and knowable by both the development applicant or</p>

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<p>provisions for certification of tenant incomes, reporting and monitoring of affordable units, and management and maintenance of affordable units.</p> <p>E. The agreement shall be recorded against the housing development prior to final or parcel map approval, or, prior to issuance of any building permits, whichever occurs first, and shall be binding on all future owners and successors in interest.</p> <p>F. Affordable units in a project and phases of a project shall be constructed concurrently with or prior to the construction of market-rate units.</p> <p>G. Affordable units shall be provided as follows:</p> <ol style="list-style-type: none"> 1. Affordable units shall be dispersed throughout the project; 2. Affordable units shall be identical with the design of any market rate rental units in the project with the exception that a reduction of interior amenities for affordable units will be permitted upon prior approval by the City Council as necessary to retain project affordability. <p>H. Prior to the rental or sale of any affordable unit, the City or its designee, shall verify the eligibility of the prospective tenant or buyer. All affordable units shall be occupied by the household type that qualified</p>			<p>proponent and the public official prior to submittal.”</p>

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<p>the housing development for the density bonus and incentives or concessions.</p> <p>I. The City may establish fees for processing applications under this chapter and recovery of costs associated with the establishment and monitoring of affordable units.</p> <p>19.56.060 Application requirements.</p> <p>19.56.070 Findings.</p> <p>A. Before approving an application that includes a request for a density bonus, incentive or concession, waiver or reduction in parking standards, pursuant to this chapter, the decision-making body shall determine that the proposal is consistent with State Law by making the following findings, as applicable:</p> <ol style="list-style-type: none"> 1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested. 2. That all the requirements included in Section 19.56.030C have been met, if the density bonus is based all or in part on donation of land. 3. [omitted] 4. [omitted] 5. That the requested incentive(s) or concession(s) will result in identifiable, financially sufficient, and actual cost 			

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<p>reductions based upon the financial analysis and documentation provided by the applicant and the findings of the peer-reviewer, if incentive(s) or concession(s) are requested (other than mixed use development).</p> <p>6. That the proposed non-residential land uses within the proposed development will reduce the cost of the housing development and are compatible with the housing development and the existing or planned development in the area where the proposed development will be located, if an incentive or concession is requested for mixed use development.</p> <p>7. That the development standard(s) for which the waiver(s) are requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives or concessions permitted, if a waiver is requested.</p> <p>8. That all the applicable requirements in Section 19.56.040C have been met, if a reduction in off-street parking standards for an eligible housing development is requested.</p> <p>B. If the findings required by subsection (A) of this section, as applicable, can be made, the decision-making body may deny an application for an incentive or concession or waiver requested pursuant to Section 19.56.040 only if one of the following written</p>			

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<p>findings as applicable to each type of application, supported by substantial evidence:</p> <ol style="list-style-type: none"> 1. That the incentive or concession, or waiver would have an adverse impact on real property listed in the California Register of Historic Resources; or 2. That the incentive or concession, or waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the residential project unaffordable to low and moderate income households. For the purpose of this subsection, "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the residential project was deemed complete; or 3. That the incentive or concession, or waiver is contrary to state or federal law. <p>C. An application for an incentive or concession may also be denied if the decision-making body makes the written finding, supported by substantial evidence, that the requested incentive or concession is</p>			

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not required to provide for affordable housing costs or affordable rents. D. [omitted]			
Chapter 19.104: Signs			
<p>19.104.130 Sign Program—Applicability, Requirements and Findings.</p> <p>A. Applicability.</p> <p>1. All developments in a commercial, office, industrial, institutional, or residential district, with four or more tenant spaces on the same parcel, shall adopt a comprehensive sign program to encourage creativity and ensure high quality in the design and display of multiple permanent signs.</p> <p>2. The adoption of a sign program shall be required at the time of the initial construction of a new project. Existing developments in the City which do not have a comprehensive sign program shall be required to adopt one when the first tenant in the project requests a change of face as defined in this title. Thereafter, all subsequent changes of face in the project shall be required to conform to the adopted program.</p> <p>B. Application requirements. On any commercial, office or industrial site, or building requiring a sign program, the owner</p>	<p>Combination of subjective standards and generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. All Project signs are designed in compliance with all applicable standards. A comprehensive sign program will be developed at the time of initial construction. Any signage approvals by the Director of Community Development must be based solely on objective standards pursuant to Gov. Code § 65913.4(a)(5), (c).</p>	<p>No change. As set forth in Nos. 26 and 27 of <i>Attachment C: Standard Project Requirements and Project Implementation Requirements</i>, to the SB 35 Approval (and as similarly reflected in the subsequent 2022 Modification), signage will be submitted via separate application in compliance with applicable objective provisions of the City’s Municipal Code Chapter 19.104.</p>

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<p>shall submit to the Director a sign program application containing the following:</p> <ol style="list-style-type: none"> 1. An accurate site plan of the site showing the location of buildings, parking lots, driveways, and landscaped areas on the lot, at such scale as the Director may reasonably require; 2. Computation of the proposed maximum total sign area, the proposed maximum area of individual signs, allowed maximum total sign area, allowed maximum area of individual signs, the height of signs and the number of freestanding signs; and 3. Specifications with regard to: <ol style="list-style-type: none"> a. Sign type (individual channel letters, wood signs, etc.); b. Lighting; c. Location of each sign on the buildings; d. Materials; e. Sign proportions; f. Any other pertinent information as required by the Director. <p>C. Findings. The Director of Community Development may approve a Sign Program if the following findings are made:</p> <ol style="list-style-type: none"> 1. The Sign Program complies with the purpose of this chapter. 			

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<p>2. Proposed signs are creative, and are in harmony with the structures they identify, other signage on the site, and the surrounding development.</p> <p>3. The Sign Program contains provisions to accommodate future revisions that may be required because of changes in use or tenants.</p> <p>D. Minor modifications to the requirements of this chapter may be permitted, provided that the proposed Sign Program meets the following criteria in addition to Section 19.104.130C:</p> <p>1. Special circumstances, unique to the site and building locations, exist that require a modification from the standards in this chapter.</p> <p>2. Demonstrates unique design and exhibits a high degree of imagination, inventiveness, spirit, and thoughtfulness.</p> <p>3. Provides high quality graphic character through the imaginative use of color, graphics, proportion, quality materials, scale, and texture.</p>			
Chapter 19.124: Parking Regulations			
<p>19.124.010 Purpose.</p> <p>19.124.020 Applicability of regulations.</p> <p>19.124.030 Regulations for parking and keeping vehicles in various zones.</p>	<p>The Project is within 1/2 mile of public transit so the City may not impose any minimum parking requirements under SB 35. Gov. Code § 65913.4(d)(1)</p>	<p>Consistent. Although not required under SB 35, the Project includes approximately 10,500 automobile parking spaces,</p>	<p>Consistent as modified. See above discussion under Strategy LU-8.3.2. Although not required under SB 35, the modification request includes approximately 9,570</p>

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<p>19.124.040 Regulations for off-street parking. 19.124.050 Exceptions–Approval authority. 19.124.060 Exceptions–Findings.</p>	<p>(“Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, shall not impose parking standards for a streamlined development. . .”) Any generally applicable objective standards may apply to the Project, such as parking stall dimension requirements. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>including shared parking as appropriate. The Project will comply with any applicable objective standards. All parking spaces are designed to conform to City standards. Although bicycle parking requirements are similarly inapplicable under SB 35, the Project includes approximately 3,000 Class I and II bicycle parking spaces.</p>	<p>vehicle stalls across the Project site. The modification request incorporates 2,887 Class I bicycle parking spaces and 474 Class II bicycle parking spaces, which meets or exceeds the applicable CMC bicycle parking requirements. See Appendix IV, Modification Request Plan Sets, Sheet P-0101 for additional details regarding parking accessibility and design standards.</p>

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Chapter 19.148: Required Artwork in Public and Private Developments			
<p>19.148.020 Applicability of Regulations.</p> <p>A. Any development of fifty thousand sq. ft. or larger involving construction of new buildings and/or the expansion of existing buildings shall be subject to the requirements of this chapter.</p> <p>B. Additional artwork not mentioned in this chapter by means of specific plan, permits or other discretionary review may be required when deemed appropriate by the City Council.</p> <p>19.148.050 Application Procedures for Public Artwork.</p> <p>A. An application for public artwork shall include all requirements of Chapter 19.12.</p> <p>B. Application for public art for a new development shall be made in conjunction with the review of the permits for the entire project, in order that the design and location be taken into consideration at the time of architectural and site planning, as outlined in Chapter 19.168.</p> <p>C. The Fine Arts Commission shall review for approval the public art application and artwork. The decision of the Fine Arts Commission may be appealed in accordance with Section 1.16.020 of the Cupertino Municipal code, or as amended.</p>	<p>Combination of subjective standards and generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>	<p>Consistent. The Project will satisfy all applicable objective standards requiring the provision of artwork in a private development. Artworks will be located throughout the project and will be valued well in excess of the one hundred thousand dollar expenditure cap.</p> <p>Any City approval of artworks must be based solely on objective standards pursuant to Gov. Code § 65913.4(a)(5), (c).</p>	<p>No change.</p>

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<p>19.148.070 Minimum Artwork Value. The minimum expenditure for the artwork, including but not limited to design, fabrication, and installation, is one-quarter of one percent, with an expenditure cap of one hundred thousand dollars, or such minimum expenditure and/or expenditure cap that is set forth in the Cupertino General Plan.</p> <p>19.148.060 Design Criteria and Artist Qualifications. [subdivisions omitted]</p>			
Chapter 19.168: Architectural and Site Review			
<p>19.168.030 Findings. A. The Approval Body may approve an application only if all of the following findings are made:</p> <ol style="list-style-type: none"> 1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience; 2. The proposal is consistent with the purposes of this chapter, the General Plan, any specific plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, 	<p>Combination of subjective standards and generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a public official, or are not uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. City compliance determinations may not be based on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,” those</p>	<p>As detailed in this appendix, the Project will implement the City’s vision for the Vallco Shopping District Special Area. However, any architectural and site review or approval of the Project is limited to compliance determinations based on objective criteria, pursuant to SB 35.</p>	<p>Consistent as modified. Although aspects of the architecture have been modified, as more fully described in the Appendix II, Modification Request Project Description, the Project continues to implement the City’s vision for the Vallco Shopping District Special Area. Further, as confirmed in the June 22, 2018 letter from the City, and Attachment B – <i>Basis of Approval</i> to the 2022 Modification, there are no objective design review standards that apply to the Project.</p>

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<p>but not limited to, adherence to the following specific criteria:</p> <ul style="list-style-type: none"> a. Abrupt changes in building scale should be avoided. A gradual transition related to height and bulk should be achieved between new and existing buildings. b. In order to preserve design harmony between new and existing buildings and in order to preserve and enhance property values, the materials, textures and colors of new buildings should harmonize with adjacent development by being consistent or compatible with design and color schemes, and with the future character of the neighborhood and purposes of the zone in which they are situated. The location, height and materials of walls, fencing, hedges and screen planting should harmonize with adjacent development. Unsightly storage areas, utility installations and unsightly elements of parking lots should be concealed. The planting of ground cover or various types of pavements should be used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees should be avoided. Lighting for development should be adequate to meet safety requirements as specified by the engineering and building departments, and provide shielding to prevent spill-over light to adjoining property owners. 	<p>determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		

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<p>c. The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures shall minimize traffic hazards and shall positively affect the general appearance of the neighborhood and harmonize with adjacent development.</p> <p>d. With respect to new projects within existing residential neighborhoods, new development should be designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, walls and other appropriate design measures.</p>			
Chapter 19.172: Below Market Rate Housing Program			
<p>19.172.020 Below Market Rate (BMR) Housing Program Requirements.</p> <p>A. Developers of housing development projects must comply with the requirements set forth in Residential Housing Mitigation Program of the City of Cupertino's Housing Element of the General Plan.</p> <p>B. To the extent permitted by law, the City's objective is to obtain actual affordable housing units within each development rather than off-site units or mitigation fee payments. Provision of off-site units, land donation, or payment of Housing Mitigation Fees may only be permitted as specified in</p>	<p>Not required. SB 35 preempts a local government's affordable housing ordinance with limited exceptions. SB 35 provides that a local affordable housing ordinance will apply only if the ordinance "requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income." Because the City's affordable housing ordinance requires only 15 percent of new residential units to be dedicated as affordable, it does not apply.</p>	<p>Not applicable, but consistent within minimum affordability requirements. Fifty percent of the Project's residential units will be affordable, including 15 percent very low income units and 35 percent low income units, greatly exceeding the 9 percent very low income and 6 percent low income units required by the BMR Manual.</p>	<p>Consistent as modified. In compliance with SB 35, the Project will continue to provide 50% of the base units affordable to at least 80% AMI households, yielding 890 BMR units. The SB 35 requirement to provide 50% affordable units is calculated excluding any market rate density bonus units, which based on the Project's density of 1,779 units, yields a total Project requirement of 890 affordable units. (See § 65913.4(k)(2)(B); see also HCD Guidelines § 402(b)(3).)</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the CMC standard?
<p>the Residential Housing Mitigation Program rules and regulations.</p> <p><i>[additional provisions included in the BMR Housing Mitigation Program Procedural Manual (“BMR Mitigation Manual”) are not reproduced here]</i></p>			<p>Further, consistent with state law and the City’s practice, the 15% BMR units required by the City’s affordable housing program are of the base density of 1,779. Therefore, if the City requirement applies, it is to provide 267 units.</p> <p>Note also that pursuant to the City’s BMR Mitigation Manual, the City waives park land fees for all residential BMR units, which in recent practice has included units with affordable rent levels as defined under Section 50053 of the California Health and Safety Code. (See, e.g., The Veranda project at 19160 Stevens Creek Boulevard).</p>
<p>19.172.030 BMR Program Administration.</p> <p>A. The City Council shall adopt rules and regulations consistent with the provisions of this chapter and the Housing Element for the purpose of carrying out the administration of the Residential Housing Mitigation Program. Such rules and regulations shall address, but are not limited to, program eligibility requirements, affordable housing cost, income limits, preferences for housing applicants, minimum occupancy limits, waiting list procedures, buyer selection procedures, methodology for the calculation</p>	<p>Not required. SB 35 preempts a local government’s affordable housing ordinance with limited exceptions. SB 35 provides that a local affordable housing ordinance will apply only if the ordinance “requires that greater than 50 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income.” Because the City’s affordable housing ordinance requires only 15 percent of new</p>	<p>Not applicable.</p>	<p>Consistent. The original position described here remains true that local programs only apply if they exceed the SB 35 requirement, and has been confirmed by the court in <i>Ruegg & Ellsworth v. Berkeley</i>. (63 Cal. App. 5th 277, 326 at fn. 34).</p> <p>Administration of the 267 units that satisfy the City BMR Program requirements are subject to the City of Cupertino Policy and Procedures Manual for</p>

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<p>of affordable housing cost and affordable rent, resale restrictions and reasonable accommodations for disable applicants. The rules and regulations shall also address Residential Housing Mitigation Program components such as the provision of rental BMR units in for-sale housing developments or off-site BMR units. A copy of such policies, rules and regulations shall be on file and available for public examination in the office of the city clerk.</p> <p>B. Failure or refusal to comply with any such rules, regulations or agreements promulgated under this section shall be deemed a violation of this chapter.</p>	<p>residential units to be dedicated as affordable, it does not apply.</p>		<p>Administering Deed Restricted Affordable Housing Units (City BMR Administration Manual). The City BMR Administration Manual includes procedures and guidelines for prioritizing applicants, evaluating the eligibility of applicants, setting maximum affordable rents, and monitoring compliance of tenants with the recorded affordability covenants. The remaining 623 affordable units that are not subject to the City BMR program, are subject to administration under the California Tax Credit Allocation Committee’s compliance manual that sets out similar procedures and guidelines for those units.</p> <p>In order to ensure consistent and efficient administration of all BMR units within the Project, Applicant requests that all 890 BMR units be administered under the California Tax Credit Allocation Committee’s compliance manual. See Appendix VI, Preliminary Affordable Housing Plan, for additional details regarding administration of the affordable units.</p>