

SUPPLEMENTAL RESPONSES TO CITY OF CUPERTINO'S SB 35 APPLICATION FORM

GENERAL NOTES: The Project site is covered by the existing SB 35 Approval and the scope of this modification request is limited to design changes (e.g., architectural updates, circulation refinements, etc.) and associated updates within the same Project site. SB 35 establishes a unique framework for the City's role in evaluating this modification request application that differs from its review of the original SB 35 Application. In particular, the City's review of the modification application is "strictly limited" to determining whether the modification affects the approved project's consistency with objective planning standards and "shall not reconsider prior determinations that are not affected by the modification." (§ 65913.4(g)(4).) In doing so, the City must use the same "assumptions and analytical methodology" originally used to assess consistency with objective planning standards. (§ 65913.4(g)(1)(C).)

With this legal background, this modification request application provides the same level of detail, scale and scope of information as was provided originally, meaning that some information requested in the City's new SB 35 Application Form is not included. Where information is not provided, that is noted in the checklist below. Further, it does not address certain topics listed in the new form if the modification request does not impact the City's prior conclusions regarding those issues. For example, all of the "site" criteria are unaffected by the modification because the site is the same.

Lastly, note that missing information is not a basis for denial if there is sufficient information for a reasonable person to confirm consistency with the applicable objective standards. (HCD SB 35 Guidelines § 301(b)(1).) As such, whether or not this application includes all of the information requested by the City as stated in its SB 35 Application Form or elsewhere is not an appropriate basis for denial as long as this requirement is met. The modification request application package includes sufficient information for a reasonable person to confirm consistency with the applicable objective standards to the Project.

INFORMATION PROVIDED BELOW: This **Appendix I** provides supplemental responses to items listed in the City's SB 35 Application Form, including indicating the items for which information is either (i) not being provided because it is not applicable to the modification request or (ii) being provided at the same level of detail or form as was provided in the 2018 SB 35 Application materials, but which differs from what is requested in the City's current SB 35 Application Form (e.g., plan sets provided at the same scale as previously provided, which is different than requested in the City's SB 35 Application Form). This approach is consistent with the legal framework described above. Several items are marked as "N/A" because, while they may have been relevant questions to address in the initial SB 35 application, they are not applicable in the SB 35 modification context because they relate to topics that have not changed, such as the site location.

SECTION I – PROJECT INFORMATION (CITY SB 35 APPLICATION FORM P. 1-3)		
ITEM #	TOPIC	APPLICANT RESPONSE
#1 - Type of Multifamily Housing Development Proposed	A. Multifamily rental; residential only with no proposed subdivision.	Not applicable (N/A) because no changes proposed to project uses
	B. Multifamily residential with proposed subdivision (must qualify for exception to subdivision exclusion)	N/A because no change to project uses or to the fact that there is a subdivision
	C. Mixed-use: at least 2/3 of gross square footage (including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law and excluding any underground space) must be designated for residential use. If a subdivision is included, the development must qualify for exception to subdivision exclusion.	Yes , modified project continues to include at least 2/3 of gross square footage designated for residential use
#2 - Number of Parking Spaces Proposed	A. Is the site within one-half mile of public transit?	N/A because no change to project location
	B. Is the site within an architecturally and historically significant historic district?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit

	C. Are on-street parking permits required but not offered to the occupants of the project?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit
	D. Is the site within one block of a car share vehicle station?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit
#3 - Does the project propose 2 or more residential units?	A. Has the applicant certified compliance with affordability requirements?	N/A because the City has previously confirmed the Project's compliance with these requirements through both its 90-Day SB 35 Determination Letter dated June 22, 2018 and the SB 35 Approval, and the project continues to include 50% of its total units at below market rates; nonetheless, the application includes a signed copy of the certification form.
#4	Does the project include more than 10 units?	N/A because no change in unit count
#5	Is the project a public work?	N/A because no change in public work status
	A. If it is a public work, has the applicant certified to the City that the entirety of the development is a public work?	N/A because no change in public work status
	B. If it is not a public work, has the applicant certified compliance with prevailing wage requirements?	N/A because no change in public work status and certification letter previously submitted; nonetheless, the application includes a signed copy of the certification form

#6	Does the project propose 75 units or more? (Subject to change Jan. 1, 2022)	N/A because no change in unit count
	A. If yes, has the applicant certified compliance with skilled and trained workforce requirements?	N/A because no change in unit count and previously certified compliance with skilled and trained workforce requirements
#7	Does the project involve a subdivision of land?	Yes, see Appendix II, <i>Modification Request Project Description</i> ; see also Appendix III, <i>Modification Request Plan Sets</i>
	A. Is the development consistent with all objective standards in the subdivision ordinance?	Yes, the updated Tentative Map is substantially the same as the approved Tentative Map, with changes only to the dedications which do not impact its consistency with any applicable objective subdivision standards
	B. Is the project financed with low-income housing tax credits?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements
	C. Has the applicant certified compliance with prevailing wage requirements?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements; nonetheless, an updated certification is included in this application
	D. Has the applicant certified compliance with skilled and trained workforce requirements?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements; nonetheless, an updated certification is included in this application

#8 - Would the development require demolition of any of the following types of housing?	A. Housing subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.	N/A because no change to project location
	B. Housing that is subject to any form or rent or price control.	N/A because no change to project location
	C. Housing that has been occupied by tenants within the past 10 years.	N/A because no change to project location
#9	Was the site previously used for housing that was occupied by tenants that was demolished within 10 years before the application was submitted?	N/A because no change to project location
#10	Does the property contain housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property?	N/A because no change to project location
#11	Would the development require demolition of a historic structure that was placed on a national, state, or local historic register?	N/A because no change to project location
#12	Is the project site within a very high fire hazard severity zone?	N/A because no change to project location
	A. If yes, are there adopted fire hazard mitigation measures applicable to the development?	N/A because no change to project location
#13	Is the project site a hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances	N/A because no change to project location

	Control pursuant to Health and Safety Code section 25356 of the Health and Safety Code?	
	A. If the site has been so listed or designated, has the applicant provided evidence that the site has received the required clearance from the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control for development as a residential use or residential mixed-use?	N/A because no change to project location
#14	Is the project site within a delineated earthquake fault zone?	N/A because no change to project location
	A. If yes, does the development comply with all applicable seismic protection building code standards?	N/A because no change to project location
#15	Is the project site habitat for protected species, identified in an adopted natural community conservation plan, or under a conservation easement?	N/A because no change to project location
#16	Does the project site contain wetlands?	N/A because no change to project location
#17	Is the project site within a special flood hazard area?	N/A because no change to project location
	A. If yes, has the site been subject to a Letter of Map Revision or does the site meet Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria?	N/A because no change to project location
#18	Is the project site within a regulatory floodway?	N/A because no change to project location
	A. If yes, has the project received a no-rise certification?	N/A because no change to project location

#19	Is the project site located on lands under a conservation easement?	N/A because no change to project location
#20	Is the project seeking a density bonus and/or any incentive, concession, waiver, or reduction of parking standards under state Density Bonus Law?	N/A because no change to the density bonus or concessions
	A. If yes, does the project proponent demonstrate how the requested concession, waiver or reduction of standards is the least amount necessary to develop the proposed affordable housing?	N/A because no change to concessions; moreover, this provision is inconsistent with state Density Bonus Law requirements, as set forth in Gov. Code §§ 65915(d), (e)
#21	Are the project's affordable units distributed throughout the development and of comparable size, both in terms of the square footage and the number of bedrooms, and quality to the market rate units with access to the same common areas and amenities?	Yes, regarding unit distribution. N/A regarding unit size and type because previously approved Density Bonus Law concessions continue to apply to modification request. See Section III(c) below

SECTION II – CERTIFICATIONS & ACKNOWLEDGMENTS (CITY SB 35 APPLICATION FORM P. 4-6)	
TOPIC	APPLICANT RESPONSE
Certification of Compliance with SB 35 Eligibility Requirements	N/A. This modification request does not affect the Project's compliance with the SB 35 eligibility requirements in this form. The City has previously confirmed the Project's compliance with these requirements through both its 90-Day SB 35 Determination Letter dated June 22, 2018 and the SB 35 Approval. Nonetheless, this application includes an updated certification.
Indemnification Clause Acknowledgement	N/A. As set forth in City's SB 35 Approval, Attachment C <i>Standard Project Requirements and Project Implementation Requirements</i> , No. 39, the Project was approved subject to an indemnification acknowledgement which continues to apply to this modification request. No further acknowledgement is required.
Acknowledgement of Public Records	Completed. See attached form.
Copyright Materials Release	Completed. See attached form.

SECTION III — SB 35 APPLICATION CHECKLIST (CITY SB 35 APPLICATION FORM P. 6-16)		
ITEM #	TOPIC	APPLICANT RESPONSE
#1	Application Form	Completed, subject to these Appendix I – <i>Supplemental Responses</i>. See completed City Application form.
#2	Power of Attorney [Required if application is	N/A

	being made by a person other than the property owner]	
#3	Filing Fee of Reimbursement Agreement	<p>Applicant has submitted an application fee payment of \$100,000 to the City in connection with this modification request application. For purposes of implementing the the SB 35 modification request, Applicant anticipates that amendments will be required to each of the following four entitlements issued in connection with the original SB 35 Approval: (1) Development Permit – Major; (2) Architectural and Site Approval – Major; (3) Tentative Subdivision Map for Condominium Purposes (Tentative Map); and (4) Tree Removal Permit.</p> <p>The City's published Schedule C - Planning Fee Schedule (effective July 3, 2021; "Fee Schedule") does not establish a fee amount for SB 35 applications or modification requests; moreover, in most cases, the Fee Schedule does not contemplate fees for permit amendments (exception being for a development permit amendment). Therefore, in recognition that the City will incur upfront costs in connection with its review of this modification request application, Applicant has provided a deposit amount of \$100,000 to the City for purposes of commencing its review, which exceeds the fees listed in the Fee Schedule for processing each of the above four permits. Per the Fee Schedule, City to provide notice to Applicant if additional processing fees apply.</p> <p>City to also advise on whether a separate reimbursement agreement is required; however, preparation and negotiation of a reimbursement agreement shall not cause delay in processing this application within 60 days after submission as required under SB 35. (See Gov. Code § 65913.4(g)(2).) For reference, the original SB 35 Application was processed without execution of a separate reimbursement agreement.</p>
#4	Certification of Compliance with Eligibility Requirements	See Section II response above.

#5	Indemnification Acknowledgement	See Section II response above.
#6	Title Report	N/A. Title report was previously submitted in connection with the original SB 35 Application. Modification request does not impact title, so no further information is required here. Nonetheless, the application includes an updated title report dated March 2022 for informational purposes; see Appendix VII, Updated Title Report.
#7	Arborist Report	See Appendix VIII, Updated Arborist Report. The Tree Removal Permit amendment will be required to account for removal of twelve (12) additional on-site tree removals consistent with Condition 30, which states that a Tree Removal Permit is required for removal of additional on-site protected trees. These additional tree removals are required due to location of Project driveways and loading areas along Wolfe Road; these additional trees include #63, 65, 66, 67, 277, 284, 440, 441, 442, 466, 467, and 1245 as shown in the tree disposition plan in Appendix III, Modification Request Plan Sets , Sheets P-0101 and P-0602B and as described in the Appendix VIII, Updated Arborist Report. Tree replacements on the Project site will continue to exceed City requirements. No additional amendments to the Tree Removal Permit are anticipated.
#8	Environmental Site Assessment (ESA) Reports	N/A. The modification request does not affect the Project location or ground disturbance as contemplated under the SB 35 Approval, so no additional information required. In addition, VPO has entered into a Voluntary Remediation Agreement with the Santa Clara County Department of Environmental Health; additional information is available on Geotracker.
#9	Fiscal Impact Analysis	See Appendix VI, Updated Fiscal Impact Analysis
#10	Preliminary Trash Management Plan	See Appendix IX, Updated Preliminary Trash Management Plan.
#11	Project Description	See Appendix II, Modification Request Project Description , as well as the original SB 35 Application materials previously submitted to the City and available on its website.

#12	Affordable Housing Plan	See Appendix V, Updated Preliminary Affordable Housing Plan.
#13	Statement of Consistency with Objective Standards	See Appendix IV, Updated Objective Standards Analysis.
#14	Statement of Design Intent	<p>N/A. The City's 90-Day SB 35 Determination Letter dated June 22, 2018 confirmed that there are no "objective design review standards" applicable to the Project, so a statement of design intent does not relate to any objective standards. Further, such a statement was not required as part of the original application, so such information should not be required for this modification.</p> <p>However, details regarding design are provided in Appendix II, Modification Request Project Description, which includes a discussion of the modification request design elements; in addition, Appendix IV, Updated Objective Standards Consistency Analysis includes discussion of relevant Project design element consistency with applicable objective standards.</p>
#15	Development Plan Sets	<p>General Note: Unless otherwise stated, Appendix III, Modification Request Plan Sets includes all information listed under Item 15 "Development Plan Sets" of the City's SB 35 Application Form. Plan Set Sheet P-0102 provides a comprehensive index of each SB 35 Approved Plan Set sheet previously provided with comparative information regarding the modification request as to whether each Plan Set Sheet: (i) has been revised (e.g., sheet number shifted from "REV-1" under original SB 35 Application to "REV-2" etc. under Modification Request); (ii) is no longer applicable so has been withdrawn (sheet number marked as "WDN"); (iii) has been newly prepared in connection with the Modification Request (sheet number marked as REV-0); or (iv) has not changed (e.g., sheet number "REV-#" remains the same).</p>
	(b)(ii) - Development Program [Mixed Use Projects]	<p>The modification request remains in compliance with the SB 35 requirement that "at least two-thirds of the square footage of the development is designated for residential use." See Appendix II, Modification Request Project Description and Appendix III, Modification Request Plan Sets for further details.</p>

		Note that consistent with the analytical methodology the City used for the approved SB 35 Approval plan sets, diagram axonometric drawings for the modification request are provided in lieu of the detailed floor plan breakdowns to scale stated in (b)(ii).
	(c) Density Bonus Plans	<p>As further described in Appendix II, Modification Request Project Description, the Project qualified for and was granted a density bonus under the State Density Bonus Law (as implemented by the Cupertino Municipal Code). Under the SB 35 Approval, the City granted a density bonus of 35 percent, yielding 623 market rate bonus units, and granted three concessions, as further described in Item 15(c)(iii) below.</p> <p>The modification request remains eligible for the approved density bonus and three concessions, as it continues to provide 15% of the units affordable to at least 50% AMI households.</p> <p>Although the Project now qualifies for a 50% density bonus due to changes in State Density Bonus Law, the Project continues to propose the same number of total units. However, the modification request includes 267 Very Low Income units, a reduction from the 361 Very Low Income units in the original submittal, which represents 15% of the “base” density of 1,779 as required by state law. The State Density Bonus Law allows three concessions for projects with 15% of the “total units,” available for very low income households; “total units” is defined to exclude units added by the density bonus. As a result, the Project continues to qualify for three concessions.</p>
	(c)(iii) Density Bonus Plans [Additional Information Regarding Incentives/concessions]	<p>N/A. The modification request maintains the three concessions that were granted by the City under its SB 35 Approval, which are stated in full below. None of the changes affect the rationale supporting the concessions, so no further information is required.</p> <ol style="list-style-type: none"> 1. A concession to allow the affordable units to be studios and one-bedroom units instead of a mix of units comparable to the units within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (A);

		<p>2. A concession to allow the affordable units to be smaller in size than the market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(B); and</p> <p>3. A concession to allow 400,000 square feet of retail, a reduction of 200,000 square feet, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.</p>
E. Site Plans		<p>Appendix III, <i>Modification Request Plan Sets</i> includes site plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials.</p> <p>Enlarged program distribution site plans are also provided at 1/100"=1'-0" scale, also consistent with the 2018 SB 35 Application.</p>
F. Building Elevations		<p>Appendix III, <i>Modification Request Plan Sets</i> includes building elevations at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials. Certain enlarged building sections and elevations are also provided at 1/32"=1'-0" scale, also consistent with the 2018 SB 35 Application.</p>
G. Floor Plans		<p>Appendix III, <i>Modification Request Plan Sets</i> include floor plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials. Appendix III – <i>Modification Request Plan Sets, Attachment A Typical Enlarged Residential Unit Plans</i>, includes enlarged units plans at 1/4"=1'-0" scale, also consistent with the 2018 SB 35 Application.</p>
H. Roof Plans		<p>Appendix III, <i>Modification Request Plan Sets</i> include roof plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials.</p>
I. True Cross-Sections (Building and Site)		<p>Appendix III, <i>Modification Request Plan Sets</i> include cross-sections at the same 1"=10' scale and detail as provided in the 2018 SB 35 Application materials.</p>
J. Landscape Plans		<p>Appendix III, <i>Modification Request Plan Sets</i> include landscape plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials.</p>

		Enlarged detailed landscape plans are also provided at 1"=10' scale, also consistent with the 2018 SB 35 Application.
	K. Fence Plan	N/A. Appendix III, <i>Modification Request Plan Sets</i> includes location of fences but does not include information regarding fence heights and types, consistent with the 2018 SB 35 Application materials.
	N. Photo-Simulations	N/A. Photosimulations are not included in Appendix III, <i>Modification Request Plan Sets</i> , consistent with the 2018 SB 35 Application materials.
	R. Utility Plan	Appendix III, <i>Modification Request Plan Sets</i> include utility plan information at the same level of detail as provided in the 2018 SB 35 Application materials. Utility equipment will be screened although specific design details are not included, consistent with the 2018 SB 35 Application.
	S. Stormwater Management Plan T. NPDES Construction General Permit	See Appendix X, <i>Updated C.3 Data Sheets, Supporting NPDES Compliance Documentation, and Third-Party Compliance Letter</i>
	V. Additional Information to Determine Compliance with Eligibility Requirement	N/A. Project location remains unchanged under this modification request; no additional site information is required for purposes of processing this modification request application.