

## UPDATED OBJECTIVE STANDARDS CONSISTENCY ANALYSIS

### I. Introduction and Background Regarding 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).)<sup>1</sup> To assist with the City's review, 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.

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."

As for the General Plan standards provided in this analysis, many are aspirational or visionary, meaning that they involve personal or subjective judgment or are not uniformly verifiable, and thus are not "objective zoning standards" or "objective design review standards" as defined under SB 35 and, therefore, do not apply to the Project. Nonetheless, as was included in the 2018 SB 35 Application, this updated consistency analysis demonstrates that, in addition to meeting all the *objective* standards contained in the General Plan and Cupertino Municipal Code (CMC), as defined by SB 35, the Project remains consistent with the *subjective* provisions of the General Plan, including the Vallco Shopping District Special Area goals and strategies.

### 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.)

This **Appendix IV, Updated Objective Standards Consistency Analysis** analyzes the modification request as compared to the 2018 SB Approval based on the above legal framework. 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 regarding the modification request generally focuses on consistency with the General Plan. **Table B-1** summarizes consistency with General Plan standards, and **Table B-2** summarizes consistency with CMC standards. Other than the objective standards listed in Table B-1, neither table is exhaustive, and both are provided for informational purposes only.

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. Additionally, the analysis now includes a new column analyzing whether the modification request modifies the Project consistency with the standard. This consistency analysis demonstrates that the Project as modified remains consistent with applicable objective planning standards.

When determining consistency with objective standards, the HCD Guidelines establish 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 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.)

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

As described in the [Modification Legal Framework & Application Methodology](#), this modification request 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.

**Table B-1: Consistency with General Plan 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?
<b>Objective General Plan Standards (Applicable As Described)</b>			
<p><b>Table LU-1: Citywide Development Allocation Between 2014-2020:</b> Vallco Shopping District allocated a maximum 2,000,000 square feet of office space.</p>	<p><b>Applicable.</b> 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><b>Consistent.</b> 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><b>Consistent as modified.</b> The modification request includes a maximum 1,973,494 square feet of office space, which remains less than the General Plan’s maximum allocation of 2,000,000 square feet.<sup>1</sup></p>
<p><b>Figure LU-2: Community Form Diagram:</b> Maximum residential density for Vallco Shopping District Special Area is 35 units per acre.</p>	<p><b>Applicable.</b> The maximum residential density does not require subjective judgment and is based on uniformly verifiable criteria and thus is objective and applicable.</p>	<p><b>Consistent.</b> 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><b>No change.</b> The modification request remains in compliance with the 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; however, the modification request maintains 2,402 total residential units, with no changes to the number of units on each side of Wolfe Road.</p>
<p><b>Figure LU-2: Community Form Diagram:</b> Building Planes. Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines.</p>	<p><b>Applicable.</b> 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><b>Consistent.</b> 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><b>Consistent as modified.</b> While the height and bulk of the primary building bulk has changed, such bulk remains in conformance with the 1:1 slope line from the arterial/boulevard curb line.</p>

<sup>1</sup> 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.

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<p><b>Strategy LU-19.1.4:</b> Land Use. The following uses are allowed on the site:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ Hotel: Encourage a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor.</li> <li>▪ 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.</li> <li>▪ Office: Encourage high-quality office space arranged in a pedestrian-oriented street grid with active uses on the ground floor, publicly</li> </ul>	<p><b>Applicable</b> 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><b>Consistent.</b> 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><b>Consistent as modified.</b> The modification request includes 429,408 square feet of retail area, which remains consistent with the concession granted pursuant to the Density Bonus Law for relief from the 600,000 minimum square feet of retail standard and allowing only 400,000 square feet; all granted concessions continue to apply to the modification request.</p>

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accessible streets and plazas/green space.			
<p><b>HE-2.3.7:</b> 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"> <li>▪ At least 5 percent of the housing units are restricted to very low income residents.</li> <li>▪ At least 10 percent of the housing units are restricted to lower income residents</li> <li>▪ At least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents.</li> <li>▪ 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.</li> </ul>	<p><b>Applicable.</b> 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><b>Consistent.</b> 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><b>Consistent as modified.</b> The modification request continues to provide 50% of the units affordable to at least 80% AMI households for a total of 1,201 affordable units, which exceeds the number of affordable units required by SB 35, as has been clarified by HCD, by 311 affordable units. See <b>Appendix II, Modification Request Project Description</b> for additional details.</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. 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 a reduction of the Very Low Income (VLI) units from 361 to 267, which represents 15% of the base density of 1,779. The State Density Bonus Law allows three 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 concessions previously granted by the City.</p>

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<p><b>HE-4.1.2:</b> 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.</p> <p>To further the objectives of the Green Building Ordinance, the City will evaluate the potential to 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><b>Applicable.</b> Any objective standards contained in the Landscape Ordinance or Green Building Ordinance may apply to the Project.</p>	<p><b>Consistent.</b> 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><b>No change.</b> The modification request maintains the proposed sustainability strategies and will achieve at minimum LEED Silver certification or an alternative reference standard in accordance with the Green Building Ordinance consistent with <i>Attachment C: Standard Project Requirements and Project Implementation Requirements</i>.</p>
<p><b>Policy M-3.8:</b> Bicycle Parking. Require new development and redevelopment to provide public and private bicycle parking.</p>	<p><b>Applicable.</b> The requirement to include bicycle parking does not require subjective judgment and is based on uniformly verifiable criteria</p>	<p><b>Consistent.</b> 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</p>	<p><b>Consistent as modified.</b> The modification request incorporates 2,780 Class I bicycle parking spaces and 326 Class II bicycle parking spaces,</p>

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	and thus is objective and applicable.	spaces, as those terms are defined under CMC 19.124.0404.	an increase from the approved Project.
<p><b>Policy RPC-1.2:</b> Parkland Standards. Continue to implement a parkland acquisition and implementation program that provides a minimum of three acres per 1,000 residents.</p>	<p><b>Applicable.</b> The parkland acquisition requirements do not require subjective judgment and are based on uniformly verifiable criteria and thus are objective and applicable.</p>	<p><b>Consistent.</b> 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 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><b>Consistent as modified.</b> The modification request continues to exceed the City’s park standards. The modification request includes well over the 12.96 acres of parkland demand generated by the Project. In sum, the modification request maintains over 26 acres of programmed open space throughout the Project site.</p> <p>The required mandatory and optional elements for private open space credit under CMC § 13.08.080 are included in the open space program. See <b>Appendix II, Modification Request Plan Set</b>, P-0101 for detail regarding open space areas.</p> <p>However, a Tentative Map amendment is proposed primarily to remove Public Access Easement dedications that had been included originally on the areas proposed for public parks and open space, including the plazas and the bicycle/pedestrian path given that the City has elected not to recognize these areas as public park dedications. As a result, the park fee will be paid in-lieu of park dedication in an amount as determined to be required by law. If the City desires park dedication,</p>

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			the Public Access Easement dedications can be added back to the map if fee credit is given and there is agreement establishing reasonable operational regulations.
<b>Non-Objective General Plan Standards (Inapplicable/Not Required, But Provided for Informational Purposes)</b>			
<b>Land Use Element – Vallco Shopping District Special Area</b>			
<p><b>Goal LU-1:</b> Create a balanced community with a mix of land uses that supports thriving businesses, all modes of transportation, complete neighborhoods and a healthy community</p>	<p><b>Not required</b>, because the standard is not objective. Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are 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.” Gov. Code § 65913.4 (a)(5). This policy involves personal or subjective judgment and is not uniformly verifiable to any uniform benchmark or criterion.</p>	<p><b>Consistent.</b> The Project fully implements the mixed-use town center vision described in the City of Cupertino General Plan by providing a mix of uses that are both horizontally and vertically integrated. The focus of the Project is planning for the redevelopment of the Vallco Mall property. Land uses will include commercial (retail, dining, and entertainment), residential, office around town plazas; concentrating uses in this way encourages pedestrian activity.</p> <p>Each building block will be provided with a green roof, some of which are publicly accessible, some are private to tenants, and will host a variety of diverse programs to enhance the town center character and give a unique Cupertino identity to the Project site.</p>	<p><b>No change.</b></p>
<p><b>Table LU-1: Citywide Development Allocation Between 2014-2020:</b> 389 residential units will be allocated to Vallco as a Priority Housing Element Site (see also HE-1.3.1 and Table HE-5).</p>	<p><b>Residential allocation not required.</b> The 389 unit allocation is inapplicable because SB 35 deems a project “consistent with the objective zoning standards related to housing density, as</p>	<p><b>Consistent.</b> The Project includes 2,402 units, which is allowed based on the standard of 35 units per acre plus the density bonus.</p>	<p><b>No change.</b></p>



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	<p>applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.” Subd. (a)(5)(A). Figure LU-2 provides the governing General Plan’s maximum residential density of 35 units per acre, resulting in a greater density of units than would result under the unit allocation. As such, the unit allocation is inapplicable.</p>		
<p><b>Policy LU-1.4:</b> Land Use in all Citywide Mixed-Use Districts. Encourage land uses that support the activity and character of mixed-use districts and economic goals.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project site is identified by the General Plan as a mixed-use district. The General Plan states that <i>“The City envisions a complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use ‘town center’ that is a focal point for regional visitors and the community. This new Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley.”</i> Further, Goal LU-19 provides: <i>“Create a distinct and memorable mixed-use ‘town center’ that is a regional destination and focal point for the community.”</i> In addition to shopping, dining, hotel and entertainment uses, the</p>	<p><b>No change.</b></p>

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		Project includes residential, office, and recreational uses.	
<p><b>Policy LU-1.6:</b> Jobs/Housing Balance. Strive for a more balanced ratio of jobs and housing units.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project provides both employment opportunities and residential development within the boundaries of the Project site. The Town Center will provide opportunities for residents and people in neighboring areas to meet their daily needs proximate to where they live and work.</p>	<p><b>No change.</b></p>
<p><b>Policy LU-2.2:</b> Pedestrian-Oriented Public Spaces. Require developments to incorporate pedestrian-scaled elements along the street and within the development such as parks, plazas, active uses along the street, active uses, entries, outdoor dining and public art.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project is consistent with this policy because the Project site will be an active space, broken into retail, entertainment, office, and residential districts in a mixed-use setting. Elements of an active setting strongly focus on the ground floor to provide pedestrian interaction. Office entrances and lobbies will be located at ground level to enhance the active use of the adjacent streets and town plazas.</p> <p>The Project includes all of the suggested elements noted in the policy, including the plazas, parks, outdoor dining, and public art.</p>	<p><b>No change.</b></p>
<p><b>Policy LU-3.3:</b> Building Design. Ensure that building layouts and design are compatible with the surrounding environment and enhance the streetscape and pedestrian activity.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or</p>	<p><b>Consistent.</b> The Project is consistent with this policy because, as previously noted, the Town Center will have a traditional neighborhood layout that physically connects the community (internally and externally) to walkable, pedestrian and bike-friendly streets through</p>	<p><b>No change.</b></p>

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	<p>criterion that is currently knowable.</p>	<p>a variety of paths, plazas, and other public spaces.</p> <p>The Project also identifies that architecture within the Project site should be consistent and compatible with the context of the existing community and surrounding neighborhood. The silhouette of the buildings massing with their landscaped roofs, connected by narrow bridges, will help minimize the bulk of the Project site, weaving its form into its surrounding setting. Proposed setbacks and varying building heights will also help to create an interesting landscape and reduce the visual impact on the adjacent neighborhoods and public streets.</p>	
<p><b>Policy LU-3.4:</b> Parking. In surface lots, parking arrangements should be based on the successful operation of buildings; however, parking to the side or rear of buildings is desirable. No visible garages shall be permitted along the street frontage. Above grade structures shall not be located along street frontages and shall be lined with active uses on the ground floor on internal street frontages. Subsurface/deck parking is allowed provided it is adequately screened from the street and/or adjacent residential development.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project minimizes surface parking by using subsurface parking structures through-out. On-site parking will be located in underground garages on both sides of North Wolfe Road.</p> <p>Above-grade structured residential use parking will not be visible as they will be constructed internal to the blocks and covered by occupied spaces. Above-grade structures parking will not be located along major street frontages and, where they are located along internal street frontages, they will feature retail,</p>	<p><b>No change.</b></p>

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		<p>entries, and other active uses on the ground floor.</p> <p>To the extent feasible, parking structures will be located away from prominent pedestrian areas with entries and stairwells located adjacent to streets or plaza access points. Structures will be designed to be compatible with the architectural character of adjacent buildings, including considerations of style and color, and will support the development of the Project site into a high-quality mixed-use town center.</p>	
<p><b>Goal LU-4:</b> Promote the unique character of Planning Areas and the goals for community character, connectivity and complete streets in streetscape design.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project prioritizes streetscape design to increase walkability and biking, which creates connectivity throughout the Project site and supports the creation of community character. Sidewalks will be continuous, accessible, and tree-lined with signalized crosswalks connecting the street grid, which will support an aesthetically pleasing streetscape area, as well as be safe and comfortable for users.</p>	<p><b>No change.</b></p>
<p><b>Policy LU-4.1:</b> Street and Sidewalks. Ensure that the design of streets, sidewalks and pedestrian and bicycle amenities are consistent with the vision for each Planning Area.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or</p>	<p><b>Consistent.</b> The Project is consistent with this policy and the City’s Complete Streets policies identified in the General Plan because the Project site will have a street network hierarchy for public and private streets: Retail and Entertainment Streets; Office Streets; Capillary</p>	<p><b>Consistent as modified.</b> Vehicular circulation within the Project site remains centered around an internal small block street network, which has been designed consistent with the City’s Complete Street policies. The modification request includes certain refinements to</p>

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	<p>criterion that is currently knowable.</p>	<p>Streets; Perimeter Streets; and Municipal Streets. The classification relates to the location and to the function of the street system and all accommodate vehicular traffic, pedestrian sidewalks, and bike routes. This will provide a newly configured complete street grid hierarchy of streets, boulevards and alleys that is pedestrian-oriented, connects to existing streets, and creates walkable blocks for buildings and open space.</p>	<p>internal vehicular circulation. For example, Street 1 (crossing beneath Blocks 2 and 4) has been converted to a pedestrian-only paseo that connects the retail environments between Wolfe Road and the Project site.</p>
<p><b>Policy LU-4.2:</b> Street Trees and Landscaping. Ensure that tree planting and landscaping along streets visually enhances the streetscape and is consistent for the vision for each Planning Area (Special Areas and Neighborhoods):</p> <ol style="list-style-type: none"> <li>1. Maximize street tree planting along arterial street frontages between buildings and/or parking lots.</li> <li>2. Provide enhanced landscaping at the corners of all arterial intersections.</li> <li>3. Enhance major arterials and connectors with landscaped medians to enhance their visual character and serve as traffic calming devices.</li> <li>4. Develop uniform tree planting plans for arterials, connectors and neighborhood streets</li> </ol>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project retains the majority of the existing healthy trees located along I-280, N. Wolfe Road, Stevens Creek Boulevard, and the Perimeter Road neighborhood landscaped buffer. The Project will incorporate more than 1,000 new trees, which is more than 2 for every 1 removed.</p>	<p><b>No change.</b></p>

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<p>consistent with the vision for the Planning Area.</p> <p>5. Landscape urban areas with formal planting arrangements.</p>			
<p><b>Policy LU-5.1:</b> Neighborhood Centers. Retain and enhance local neighborhood shopping centers and improve pedestrian and bicycle access to neighborhoods to improve access to goods and services.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project allows for Community Retail uses targeted to local residents and employees. Uses could include specialty food stores, neighborhood retail, personal and professional services, retail stores, and restaurants. These uses will be within walking and/or biking distance of patrons.</p>	<p><b>No change.</b></p>
<p><b>Policy LU-5.2:</b> Mixed-Use Villages. Where housing is allowed along major corridors or neighborhood commercial areas, development should promote mixed-use villages with active ground-floor uses and public space. The development should help create an inviting pedestrian environment and activity center that can serve adjoining neighborhoods and businesses.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project includes a mix of uses that are both horizontally and vertically integrated. The Project will allow for approximately 400,000 square feet of retail uses; 2,402 residential units; 1,981,447 square feet of office space. The mixed-use building types with residential and/or office uses will generally include ground floor retail.</p>	<p><b>Consistent as modified.</b> The Project continues to include a mix of uses that are both horizontally and vertically integrated, including 2,402 residential units; 1,973,494 square feet of office space; and 429,408 square feet of retail space.</p>
<p><b>Policy LU-8.2:</b> Land Use. Encourage land uses that generate City revenue.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or</p>	<p><b>Consistent.</b> The Project includes a mix of land uses that will provide the City with development fees, property taxes and retail sales taxes.</p>	<p><b>No change.</b></p>

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	criterion that is currently knowable.		
<p><b>Strategy LU-8.2.1:</b> Fiscal Impacts. Evaluate fiscal impacts of converting office/commercial uses to residential use, while ensuring that the city meets regional housing requirements.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project is a mixed-use development, office, commercial, and residential uses are permitted. While residential uses will be added to the site, it also includes significant office and retail components that will generate significant revenue to the City. The Project site is identified as a Priority Housing Element Site (Site A2) in the City’s General Plan Housing Element. According to the Fiscal Impact Analysis prepared in September 2018 by Keyser Marston, the Project would generate an annual fiscal surplus of \$4.1 million, \$15.9 million of new construction related tax revenue, and \$40.2 million of net annual property tax revenue.</p>	<p><b>Consistent as modified.</b> The Project as modified will continue to generate significant tax revenue to the City. <b>Appendix VI, Updated Fiscal Impact Analysis</b> provides additional information.</p>
<p><b>Strategy LU-8.3.1:</b> Mixed-use. Consider mixed-use (office, commercial, residential) in certain commercial areas to encourage reinvestment and revitalization of sales-tax producing uses, when reviewing sites for regional housing requirements.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project implements the City’s vision for the Vallco Shopping District Special Area. Chapter 2, Planning Areas, of the General Plan states “The City envisions this area as a new mixed-use ‘town center’ and gateway for Cupertino.” The mix of retail, dining, entertainment, recreation, offices, housing, open space, and public amenities will represent a major investment in the area and will yield tax revenues for the City.</p>	<p><b>No change.</b></p>

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<p><b>Strategy LU-8.3.2:</b> Shared or Reduced Parking. Consider shared or reduced parking, where appropriate as incentives to construct new commercial and mixed-use development, while increasing opportunities for other modes of transportation.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable. In addition, the Project is within 1/2 mile of public transit so the City may not impose any minimum parking standards under SB 35.</p>	<p><b>Consistent.</b> The Project includes approximately 10,500 parking spaces, including shared parking as appropriate.</p>	<p><b>Consistent as modified.</b> Because the Project site is located within one-half mile of public transit, parking standards are not applicable to the Project, including this modification request. (See § 65913.4(e)(1).) Nonetheless, the modification request continues to maintain sufficient parking to adequately meet the demands of the various uses, as described below for informational purposes.</p> <p>Overall, total parking has been reduced to 7,583 vehicle stalls across the Project site. These parking counts are inclusive only of striped stalls, and do not include additional parking accommodation that may be provided through parking management strategies, including valet parking programs and mechanical stackers.</p> <p>The reduction in parking is consistent with Strategy LU-8.3.2, which encourages shared or reduced strategies where appropriate as incentives to construct new commercial and mixed-use development, while increasing opportunities for other modes of transportation.</p> <p>Vehicle parking reductions were undertaken after further analysis of the parking allocations demonstrated that surplus below-grading parking</p>



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			was available for office and retail uses under the parking ratio included under the SB 35 Approval, based on an opportunities for shared parking arrangements, COVID-19 work-from-home market shifts, and increased utilization of rideshare services. Reduced parking is also an effective TDM strategy that encourages the use of alternative modes of transportation, thereby reducing additional trip generation, consistent with General Plan goals. See <b>Appendix II, Modification Request Project Description</b> for additional information.
<p><b>Policy LU-9.1:</b> Collaboration with Business Community. Collaborate with the business community to facilitate growth, development and infrastructure improvements that benefit residents and businesses.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project implements the City’s General Plan vision for complete revitalization of the Project site into a “vibrant mixed-use town center” that will be a focal point for regional visitors and the community.</p>	<p><b>No change.</b></p>
<p><b>Vallco Shopping District Special Area</b> <b>Goal LU-19:</b> Create a distinct and memorable mixed-use “town center” that is a regional destination and focal point for the community.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project fully implements the mixed-use town center vision identified in this goal by providing a mix of uses that are both horizontally and vertically integrated, creating a focal point for the community. Land uses will include commercial/retail, residential, office, entertainment, and parks and open space arranged around town plazas;</p>	<p><b>No change.</b></p>

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		<p>concentrating uses in this way encourages pedestrian activity. Community facility uses are a part of the Project to enhance the Town Center character of and give a unique Cupertino identity to the Project site.</p> <p>The Project envisions a traditional neighborhood layout connecting the community (internally and externally) to walkable, pedestrian and bike-friendly streets through a variety of paths, plazas, and other public spaces.</p>	
<p><b>Strategy LU-19.1.1:</b> Master Developer. Redevelopment will require a master developer in order to remove obstacles to the development of a cohesive district with the highest levels of urban design.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project will be completed by the applicant, acting as the master developer.</p>	<p><b>No change.</b></p>
<p><b>Strategy LU-19.1.2:</b> Parcel Assembly. Parcel assembly and a plan for complete redevelopment of the site is required prior to adding residential and office uses. Parcelization is highly discouraged in order to preserve the site for redevelopment in the future.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> All parcels associated with the Project have been assembled by the applicant and the Project proposes a complete redevelopment of the site. The Project includes a Tentative Subdivision Map that will consolidate existing parcels so there will be two parcels on either side of Wolfe Road, with up to 2,500 condo units for the various buildings and residential condominium. This Tentative Subdivision Map for</p>	<p><b>No change.</b></p>

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		<p>Condominium Purposes covering Parcels A and B is submitted in accordance with SB 35 and pursuant to Government Code § 66426 and Government Code § 66427(a) for development, financing, construction, leasing and sales purposes, to permit condominium units within the Vallco SB 35 Project comprising up to 2,500 condominium units, including not to exceed 2,402 residential condominium units, together with retail/commercial units, but in no event shall the number or scope of such condominium units in the aggregate exceed the number of such units approved for each of the uses, as identified in the concurrently filed Vallco Project SB 35 submittal.</p>	
<p><b>Strategy LU-19.1.3:</b> Complete Redevelopment. The “town center” plan should be based on complete redevelopment of the site in order to ensure that the site can be planned to carry out the community vision.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project constitutes a comprehensive redevelopment of the entire Project site, consistent with the community vision as described in the Community Vision 2040 General Plan, which includes the development of a “town center,” mixed-uses, entertainment, grid street network, etc.</p>	<p><b>No change.</b></p>
<p><b>Strategy LU-19.1.5:</b> “Town Center” Layout. Create streets and blocks laid out using “transect planning” (appropriate street and building types for each area), which includes a</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by</p>	<p><b>Consistent.</b> The Project consists of a series of pedestrian-scale blocks designed in a grid-format around two plazas to create a mixed-use town center. The urban form and</p>	<p><b>No change.</b></p>

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discernible center and edges, public space at center, high quality public realm, and land uses appropriate to the street and building typology.	reference to an external and uniform benchmark or criterion that is currently knowable.	architectural features have been designed to create high-quality, amenity-rich urban spaces for a multitude of users.	
<p><b>Strategy LU-19.1.6:</b> Connectivity. Provide a newly configured complete street grid hierarchy of streets, boulevards and alleys that is pedestrian-oriented, connects to existing streets, and creates walkable urban blocks for buildings and open space. It should also incorporate transit facilities, provide connections to other transit nodes and coordinate with the potential expansion of Wolfe Road bridge over Interstate 280 to continue the walkable, bike-friendly boulevard concept along Wolfe Road. The project should also contribute towards a study and improvements to a potential Interstate 280 trail along the drainage channel south of the freeway and provide pedestrian and bicycle connections from the project sites to the trail.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> As shown in the plans submitted as part of this application, the Project fully complies with the prescribed design parameters of this strategy. The Project will have a street network hierarchy for public and private streets that will accommodate vehicular traffic, pedestrian sidewalks, and bike routes. This will provide a newly configured “complete streets” grid hierarchy of streets, boulevards and alleys that are pedestrian- and bicycle-oriented, connect to existing streets, and create walkable blocks for buildings and open space.</p>	<p><b>Consistent as modified.</b></p>
<p><b>Strategy LU-19.1.7:</b> Existing Streets. Improve Stevens Creek Boulevard and Wolfe Road to become more bike and pedestrian-friendly with bike lanes, wide sidewalks,</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by</p>	<p><b>Consistent.</b> The streetscape of both north side of Stevens Creek Boulevard and both sides of N. Wolfe Road will be substantially upgraded and include bike and pedestrian-friendly with bike</p>	<p><b>No change.</b></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?
street trees, improved pedestrian intersections to accommodate the connections to Nineteen800 and Main Street.	reference to an external and uniform benchmark or criterion that is currently knowable.	lanes, wide sidewalks, street trees, improved pedestrian intersections to accommodate better connections to adjacent land uses. Wolfe Road will include a new frontage road to facilitate a slower travel lane adjacent to the active retail uses, creating a boulevard effect.	
<b>Strategy LU-19.1.8:</b> Open Space. Open space in the form of a central town square on the west and east sides of the district interspersed with plazas and “greens” that create community gathering spaces, locations for public art, and event space for community events.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project will include two publicly accessible town plazas, located on each side of N. Wolfe Road.	<b>Consistent as modified.</b> The Project retains the two town plazas, located on each side of N. Wolfe Road, that will act as community gathering spaces. As described above under <b>Policy RPC-1</b> above, a Tentative Map amendment is proposed primarily to remove Public Access Easement dedications that had been included originally on the areas proposed for public parks and open space, including the plazas and the bicycle/pedestrian path, given that the City has elected not to recognize these areas as public park dedications. However, the plazas will remain open for community use and events, subject to owner regulation and enforcement of rules and regulations related to security, use, hours of operation and conduct. Such rules and regulations may be subject to change based on operational and market needs, as determined by owner.
<b>Strategy LU-19.1.9:</b> Building Form. Buildings should have high-quality	<b>Not required.</b> The standard is not objective because it involves	<b>Consistent.</b> Project plans identify maximum roof heights and maximum	<b>No change.</b>

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<p>architecture, and an emphasis on aesthetics, human scale, and create a sense of place. Additional heights may be approved in specific areas by the City Council as part of the Community Benefits Program. Taller buildings should provide appropriate transitions to fit into the surrounding area.</p>	<p>personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p>building heights by zone, and building heights will generally be higher on the east side of N. Wolfe Road and lower on the west side of N. Wolfe Road. The Project buildings have high-quality architectural design that will help to unify the green roof and ensure a human-scaled neighborhood without abrupt transitions into the surrounding areas.</p> <p>Proposed setbacks, street level landscape, and varying building heights will also help to create an interesting landscape and reduce the visual impact on the adjacent neighborhoods and public streets.</p> <p>For SB 35 “objective standard” purposes, it should be noted that the General Plan does not impose any maximum height limits.</p>	
<p><b>Strategy LU-19.1.10:</b> Gateway Character. High-quality buildings with architecture and materials befitting the gateway character of the site. The project should provide gateway signage and treatment.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project provides high-quality architecture and building materials including the extensive use of glass, steel, stone, and wood. The streetscape will include special treatments (e.g. pavers, colored concrete, etc.) to create a pedestrian friendly atmosphere. Gateway signage and special treatments will be constructed throughout the Project site.</p>	<p><b>No change.</b></p>
<p><b>Strategy LU-19.1.11:</b> Phasing Plan. A phasing plan that lays out the</p>	<p><b>Not required.</b> The standard is not objective because it involves</p>	<p><b>Consistent.</b> Demolition and subsequent redevelopment of the Project site is expected</p>	<p><b>Consistent as modified.</b> The modification application includes an updated phasing</p>

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<p>timing of infrastructure, open space and land use improvements that ensures that elements desired by the community are included in early phases.</p>	<p>personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable. In particular, the term “elements desired by the community” is subjective.</p>	<p>to occur in a single construction phase over several years, with both sequenced and concurrent starts and openings by building and/or block. It is currently anticipated that retail, residential, and office use construction would commence concurrently, although market conditions or construction requirements may require modifications to the sequencing.</p>	<p>plan that focuses the initial work on the area west of Wolfe Road. This approach delivers the retail, the west plaza and a significant portion of the residential early in the project and defers most of the office to the later phases.</p>
<p><b>Strategy LU-19.1.12:</b> Parking. Parking in surface lots shall be located to the side or rear of buildings. Underground parking beneath buildings is preferred. Above grade structures shall not be located along major street frontages. In cases, where above-grade structures are allowed along internal street frontages, they shall be lined with retail, entries and active uses on the ground floor. All parking structures should be designed to be architecturally compatible with a high-quality “town center” environment.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project minimizes surface parking with extensive use of subsurface parking. Above-grade parking structures are “Residential Wrap Buildings” and the parking structure will not be visible from the streets.</p>	<p><b>No change.</b></p>
<p><b>Strategy LU-19.1.13:</b> Trees. Retain trees along the Interstate 280, Wolfe Road and Stevens Creek Boulevard to the extent feasible, when new development are proposed.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or</p>	<p><b>Consistent.</b> A significant majority of the healthy trees along Interstate 280, Wolfe Road and Stevens Creek Boulevard will be retained.</p>	<p><b>No change.</b></p>

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	criterion that is currently knowable.		
<p><b>Strategy LU-19.1.14:</b> Neighborhood Buffers. Consider buffers such as setbacks, landscaping and/or building transitions to buffer abutting single-family residential areas from visual and noise impacts.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> As shown in the Project plans, existing healthy trees along Perimeter Road, that serve as a neighborhood landscaped buffer, will be retained and additional trees planted. Building setbacks, street level landscaping, and varying building heights will also help to create an interesting urban form and minimize visual impacts on the adjacent neighborhoods and public streets.</p>	<p><b>No change.</b></p>
<b>Environmental Resources and Sustainability Element</b>			
<p><b>Policy ES-1.1:</b> Principles of Sustainability. Incorporate the principles of sustainability into Cupertino’s planning, infrastructure and development process in order to improve the environment, reduce greenhouse gas emissions and meet the needs of the community without compromising the needs of future generations.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project incorporates sustainable design and technologies. As noted in the analysis of Policy HE-10, the Project will incorporate energy efficiency elements. Project features to meet the water demand by including use of captured rain water, on-site grey water, and/or district-provided recycled water; and use of drought-tolerant and native landscape materials.</p>	<p><b>No change.</b> The modification request will achieve at minimum LEED Silver certification or an alternative reference standard in accordance with the Green Building Ordinance consistent with <i>Attachment C: Standard Project Requirements and Project Implementation Requirements</i>.</p>
<p><b>ES-2.1.5:</b> Urban Forest. Encourage the inclusion of additional shade trees, vegetated stormwater treatment and landscaping to reduce the “heat island effect” in development projects.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project includes green roofs on all buildings as well as landscaped and tree-lined ground level town plazas and streetscapes.</p>	<p><b>No change.</b></p>



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<p><b>ES-2.1.9:</b> Energy Efficient Transportation Modes. Continue to encourage fuel-efficient transportation modes such as alternative fuel vehicles, driverless vehicles, public transit, car and van-pooling, community and regional shuttle systems, car and bike sharing programs, safe routes to schools, commuter benefits, and pedestrian and bicycle paths through infrastructure investment, development incentives, and community education.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project supports energy efficient transportation, such as non-vehicular and fuel-efficient mobility options.</p>	<p><b>No change.</b></p>
<p><b>ES-3.1.1:</b> Green Building Program. Periodically review and revise the City’s Green Building ordinance to ensure alignment with CALGreen requirements for all major private and public projects that ensure reduction in energy and water use for new development through site selection and building design.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project will meet or exceed the City’s requirements for LEED certification.</p>	<p><b>No change.</b></p>
<p><b>Policy ES-4.1:</b> New Development. Minimize the air quality impacts of new development projects and air quality impacts that affect new development.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project includes measures to reduce construction-related and operational air quality impacts associated with the Town Center that will also be applicable to future development within the Project site.</p>	<p><b>No change.</b></p>
<p><b>ES-5.1.2:</b> Built Environment. Ensure that</p>	<p><b>Not required.</b> The standard is not objective</p>	<p><b>Consistent.</b> The Project includes extensive</p>	<p><b>No change.</b></p>

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sustainable landscaping design is incorporated in the development of City facilities, parks and private projects with the inclusion of measures such as tree protection, stormwater treatment and planting of native, drought tolerant landscaping that is beneficial to the environment	because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	landscaping using native and regionally-appropriate landscaping. All surfaces at grade and on roof-tops will contain absorbent surfaces where rain water will be collected, cleaned, and to the fullest extent possible while meeting minimum C.3 requirements, reused within the Project site for irrigation	
<b>Policy ES-7.1:</b> Natural Water Bodies and Drainage Systems. In public and private development, use Low Impact Development (LID) principles to manage stormwater by mimicking natural hydrology, minimizing grading and protecting or restoring natural drainage systems.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The San Francisco Bay Municipal Regional Stormwater NPDES permit mandates treating 100% of the storm water runoff with LID measures (e.g., rainwater harvesting, reuse, infiltration, and biotreatment). Implementation of the Project will result in the replacement of primarily impervious surface with landscape over podium and building green roofs. All rain water will be collected, cleaned, and to the fullest extent possible, reused within the Project site for irrigation. Rainfall on the podium area and private roads will be diverted to one of the regional retention vaults, and will be treated and reused through media filtration. Areas that prove infeasible to be diverted for on-site uses will be treated prior to off-site discharge consistent with State and local regulations.	<b>No change.</b>
<b>Policy ES-7.2:</b> Reduction of Impervious Surfaces.	<b>Not required.</b> The standard is not objective	<b>Consistent.</b> The Project will increase pervious surfaces	<b>No change.</b>

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?
Minimize storm water runoff and erosion impacts resulting from development and use low impact development (LID) designs to treat stormwater or recharge groundwater	because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	associated with the at grade landscaped plazas, parks, paths, and streetscapes, as well as each buildings green roof. Implementation of the Project will result in the replacement of primarily impervious surface with the green roof and other landscaped areas.	
<b>Policy ES-7.3:</b> Pollution and Flow Impacts. Ensure that surface and groundwater quality impacts are reduced through development review and voluntary efforts.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project includes features to reduce surface flows and water quality impacts.	<b>No change.</b>
<b>Policy ES-7.6:</b> Other Water Sources. Encourage the research of other water sources, including water reclamation.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project will incorporate the use of district-provided recycled water, on-site treated grey water, storm water and rainfall collection and reuse; and use of drought-tolerant and native landscape materials.	<b>No change.</b>
<b>ES-7.9.1:</b> Water Conservation Measures. Implement water conservation measures and encourage the implementation of voluntary water conservation measures from the City’s water retailers and SCVWD.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> Storm water requirements mandate treating 100% of the storm water runoff with Low Impact Development (LID) measures. These measures will include rainwater harvesting, re-use, infiltration, biotreatment, and green roofs.  The Project will be plumbed to accept recycled water and	<b>No change.</b>

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		accommodate the planned public recycled water system.	
<b>Health and Safety Element</b>			
<p><b>Goal HS-8:</b> Minimize noise impacts on the community and maintain a compatible noise environment for existing and future land uses.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> As part of the implementation of Goal HS-8 and of the above policies, in particular Policy HS-8.1, Land Use Decision Evaluation, the City of Cupertino has identified compatible noise levels for various types of land uses. Properties adjacent to N. Wolfe Road and Stevens Creek Boulevard fall within the 70 dBA CNEL contour, identified in the General Plan, as do properties proximate to I-280.</p> <p>Approximately half of the Project site is within a 70 dBA or 65 dBA CNEL contour. The southwestern portion of the Project site is within a 60 dBA CNEL contour. Cupertino has adopted the State of California Guidelines for Land Use Compatibility for Community Noise Environments. With the implementation of Applicant Proposed Measures, impacts will be less than significant. The Project provides for development that will be compatible with these standards.</p>	<p><b>No change.</b></p>
<b>Infrastructure Element</b>			
<p><b>Goal INF-4:</b> Implement best practices in stormwater management to reduce demand on the stormwater network,</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public</p>	<p><b>Consistent.</b> The Project will result in the replacement of primarily impervious surface with the green roof and other landscape areas. Rain</p>	<p><b>No change.</b></p>

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reduce soil erosion, and reduce pollution into reservoirs and the Bay.	official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	water will be cleaned, and to the fullest extent possible, collected and reused within the Project site for irrigation. Rainfall on the podium area and private roads will be diverted to one of the regional retention vaults, and will be treated and reused through media filtration. This will result in a decrease of flow, volume and duration of peak flow to the public storm drain system.	
<b>Housing Element</b>			
<b>Goal HE-1:</b> An adequate supply of residential units for all economic segments	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	The Project ensures that the City is providing an adequate supply of residential units for all economic segments. By providing approximately 1200 affordable units, the Project will vastly exceed the City’s below moderate RHNA targets. The 360 very low income units will fulfill 101% of the City’s remaining Regional Housing Needs Allocation (RHNA) for the current cycle, which ends in 2022. The 840 low income units will fulfill 406% of the City’s remaining RHNA for the current cycle and likely for future cycles as well.	<b>Consistent as modified.</b> The Project will continue to provide 1,201 affordable units, but the number of very low income units will be reduced to 267, which is 15% of the "base density," as allowed under the State Density Bonus Law.
<b>Policy HE-1.1:</b> Provision of Adequate Capacity for New Construction Need. Designate sufficient land at appropriate densities to accommodate Cupertino’s Regional Housing Needs Allocation of 1,064 units for the 2014-2022 projection period.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or	<b>Consistent.</b> The Project site is identified as a Priority Housing Element Site (Site A2) in the City’s General Plan Housing Element which allocates 389 units to the Project site “by right”.	<b>No change.</b>

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?
	criterion that is currently knowable.		
<b>Policy HE-1.2:</b> Housing Densities. Provide a full range of densities for ownership and rental housing.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project allows for a range of densities up to 35 dwelling units per acre.	<b>No change.</b>
<b>Policy HE-1.3:</b> Mixed Use Development. Encourage mixed-use development near transportation facilities and employment centers.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> Residential, employment, retail/commercial, recreational, and entertainment uses are provided within the Project site. The Project site is located within a Transit Priority Area and facilitates access to existing transportation facilities like bus stop and access to the future BRT.	<b>No change.</b>
<b>Policy HE-2.1</b> Housing Mitigation. Ensure that all new developments—including market-rate residential developments—help mitigate project-related impact on affordable housing needs.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> As noted for Goal HE-2, the Project is consistent with this policy because future projects must comply with the City’s BMR Housing Program. The Town Center will comply with the City’s Housing Mitigation Program by providing affordable housing on site.	<b>No change.</b>
<b>Policy HE-2.2</b> Range of Housing Types. Encourage the development of diverse housing stock that provides a range of housing types (including smaller, moderate cost	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by	<b>Consistent.</b> The Project ensures that the City is providing an adequate supply of residential units for all economic segments. By providing approximately 1200 affordable units, the	<b>Consistent as modified.</b> The Project will continue to provide 1,201 affordable units, but the number of very low income units will be reduced to 267, which is 15% of the "base density," as

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>housing) and affordability levels. Emphasize the provision of housing for lower- and moderate-income households including wage earners who provide essential public services (e.g., school district employees, municipal and public safety employees, etc.)</p>	<p>reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p>Project will vastly exceed the City’s below moderate RHNA targets. The 360 very low income units will fulfill 101% of the City’s remaining Regional Housing Needs Allocation (RHNA) for the current cycle, which ends in 2022. The 840 low income units will fulfill 406% of the City’s remaining RHNA for the current cycle and likely for future cycles as well.</p>	<p>allowed under the State Density Bonus Law.</p>
<p><b>HE-2.3.6:</b> Incentives for Affordable Housing Development. The City will continue to offer a range of incentives to facilitate the development of affordable housing. These include:</p> <ul style="list-style-type: none"> <li>▪ Financial assistance through the City’s Below Market-Rate Affordable Housing Fund (BMR AHF) and Community Development Block Grant (CDBG) funds</li> <li>▪ Partner with CDBG and/or support the funding application of qualified affordable housing developers for regional, state, and federal affordable housing funds, including HOME funds, Low Income Housing Tax Credits (LIHTC), and mortgage revenue bonds</li> </ul>	<p>Does not impose requirements on the Project.</p>	<p><b>Consistent.</b> Fifty percent, or approximately 1,200, of the units will be affordable, with approximately 360 units affordable to households earning 60% of the area median income (AMI) and 840 units affordable to households earning 80% AMI. This is an unprecedented percentage and total number of affordable units, vastly exceeding the 96 affordable units issued building permits in Cupertino since 2007.</p> <p>The Project implements this Housing Element strategy by providing affordable units at two income levels. The project utilizes certain City incentives for affordable housing creation, such as the density bonus, while not requiring financial assistance through the BMR AHF or CDBG funds.</p>	<p><b>Consistent as modified.</b> The Project will continue to provide 1,201 affordable units, but the number of very low income units will be reduced to 267, which is 15% of the "base density," as allowed under the State Density Bonus Law.</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"> <li>▪ Density bonus incentives (see Strategy 12)</li> <li>▪ Flexible development standards</li> <li>▪ Technical assistance</li> <li>▪ Waiver of park dedication fees and construction tax</li> <li>▪ Parking ordinance waivers</li> <li>▪ Expedited permit processing</li> </ul> <p>The City joined the Santa Clara County HOME Consortium so that HOME funds for eligible affordable housing projects within the City of Cupertino are available beginning federal fiscal year 2015.</p>			
<p><b>Policy HE-10:</b> Energy and Water Conservation. Encourage energy and water conservation in all existing and new residential development.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> Energy efficiency and water conservation will be achieved through factors including each building’s green roof which will reduce urban heat island effect, minimize water run-off, minimize water and air quality impacts, improve energy efficiency of the buildings, and promote bio-diversity. Project features to meet the water demand by including the use of captured rain water, on-site grey water, and/or district-provided recycled water; and use of drought-tolerant and native landscape materials.</p>	<p><b>No change.</b></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?
<b>Mobility Element</b>			
<p><b>Policy M-2:</b> Street Design. Adopt and maintain street design standards to optimize mobility for all transportation modes including automobiles, walking, bicycling and transit.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project includes a street network hierarchy, including: Retail and Entertainment Streets; Office Streets; Capillary Streets; Perimeter Streets; and Municipal Streets. The classification relates to the location and to the function of the street system and all accommodate vehicles and transit traffic, pedestrian sidewalks, and bike routes.</p>	<p><b>No change.</b></p>
<p><b>Policy M-2.2:</b> Adjacent Land Use. Design roadway alignments, lane widths, medians, parking and bicycle lanes, crosswalks and sidewalks to complement adjacent land uses in keeping with the vision of the Planning Area. Strive to minimize the adverse impacts and expand alternative transportation options for all Planning Areas (Special Areas and Neighborhoods). Improvement standards shall also consider the urban, suburban and rural environments found within the city.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project establishes a street hierarchy and provides cross sections that identify the characteristics for type of street that is appropriate for the adjacent land uses. The Project envisions a traditional neighborhood layout connecting the community (internally and externally) to walkable, pedestrian and bike-friendly streets through a variety of paths, plazas and other public spaces, arranged in accordance with the principles of transect planning. The two plazas will be centers of activity in the Project site.</p>	<p><b>No change.</b></p>
<p><b>Policy M-3.2:</b> Development. Require new development and redevelopment to increase connectivity through direct and safe pedestrian connections to public amenities, neighborhoods, shopping and employment</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or</p>	<p><b>Consistent.</b> The Project provides pedestrian pathways throughout the Project site and provide existing and planned connections external to the Project site.</p>	<p><b>No change.</b></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?
destinations throughout the city.	criterion that is currently knowable.		
<b>Policy M-3.3:</b> Pedestrian and Bicycle Crossings. Enhance pedestrian and bicycle crossings and pathways at key locations across physical barriers such as creeks, highways and road barriers.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project is designed to accommodate vehicle, pedestrian, and bike traffic at key locations.	<b>No change.</b>
<b>Policy M-3.4:</b> Street Widths. Preserve and enhance citywide pedestrian and bike connectivity by limiting street widening purely for automobiles as a means of improving traffic flow.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project is consistent with this policy because the Project site’s internal street network is designed to accommodate vehicular, transit, pedestrian, and bicycle movement. Implementation of the Project will not involve any street widening purely for automobiles.	<b>No change.</b>
<b>Policy M-3.6:</b> Safe Spaces for Pedestrians. Require parking lots to include clearly defined paths for pedestrians to provide a safe path to building entrances.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> Entries and stairwells for parking structures will be located adjacent to streets or plaza access points. Parking structure entries will be designed to be visually open, and promote a sense of security. All garages will have clearly identified entry points with wayfinding signage as a part of the Master Sign Program. The Project also identifies that lighting in the Project site is intended to help to create a safe environment for pedestrians and cars (e.g., street lighting, surface and garage parking lighting).	<b>No change.</b>

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><b>Policy M- 4.7: Vallco Shopping District Transfer Station:</b> Work with VTA and/ or other transportation service organizations to study and develop a transit transfer station that incorporates a hub for alternative transportation services such as, car sharing, bike sharing and/ or other services.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable. Further, this policy, along with others under Goal M-4, gives direction to the City, not individual applicants. The City’s most recent General Plan Annual Review confirmed that this policy is directed at the City, not applicants.</p>	<p>Not previously addressed in SB 35 Approval; discussion regarding modification request provided for informational purposes.</p>	<p><b>Consistent.</b> The Project includes a variety of transportation amenities, including ample bike parking, extensive bicycle/pedestrian trails, several bike hubs, two mobility hubs, a new rideshare hub, an improved bus stop, opportunities for private shuttles, and easy connections to transit routes. The Applicant is also supportive of the City’s efforts to work with VTA regarding a potential future transit transfer station and is willing to cooperate with the City and VTA if that moves forward.</p>
<p><b>Goal M-6:</b> Promote innovative strategies to provide efficient and adequate vehicle parking.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> One of the objectives of the Project is to provide adequate parking and vehicular access, compatible with a high-quality “town center” environment, that meet the needs of future visitors, employees, and residents, while encouraging the use of transit, bicycle, and other alternative modes of transportation.</p>	<p><b>Consistent as modified.</b> The modification request includes a reduction in vehicle parking counts and certain changes to parking locations. Because the Project site is located within one-half mile of public transit, parking standards are not applicable to the Project, including this modification request. (See § 65913.4(e)(1).) Nonetheless, the modification request continues to maintain sufficient parking to adequately meet the demands of the various uses, as described below for informational purposes.</p> <p>Vehicle parking reductions were undertaken after further analysis of the parking allocations demonstrated that surplus below-grading parking</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>was available for office and retail uses under the parking ratio included under the SB 35 Approval, based on an opportunities for shared parking arrangements, work-from-home market shifts, and increased utilization of rideshare services. Reduced parking is also an effective TDM strategy that encourages the use of alternative modes of transportation, thereby reducing additional trip generation, consistent with General Plan goals. See <b>Appendix II, Modification Request Project Description</b> for additional information.</p> <p>Class I and Class II bicycle parking has been increased, as described above.</p>
<p><b>Policy M-6.2:</b> Off-Street Parking. Ensure new off-street parking is properly designed and efficiently used.</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.</p>	<p><b>Consistent.</b> The Project site will include below grade, above grade, and street level parking. The majority of the parking spaces in the Project site will be located in underground parking structures. The Town Center establishes a street hierarchy that directs vehicles to the parking garages efficiently, reducing conflicts with pedestrians and bicyclists on the at-grade street network.</p>	<p><b>Consistent as modified.</b> The modification request includes certain changes to vehicular parking locations but the majority of parking spaces remain located within structured parking, and circulation remains designed to reduce conflicts with pedestrians and bicyclists in the at-grade street network.</p>
<p><b>Policy M-8.5:</b> Design of New Developments. Encourage new commercial developments to provide shared office facilities, cafeterias, daycare facilities,</p>	<p><b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by</p>	<p><b>Consistent.</b> The Project is consistent with this policy because of all the noted items in this policy are either a part of the Project or are permitted by the Project. For example, the horizontally-</p>	<p><b>No change.</b></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?
lunchrooms, showers, bicycle parking, home offices, shuttle buses to transit facilities and other amenities that encourage the use of transit, bicycling or walking as commute modes to work. Provide pedestrian pathways and orient buildings to the street to encourage pedestrian activity.	reference to an external and uniform benchmark or criterion that is currently knowable.	and vertically-integrated Town Center includes a mix of uses including retail, dining, entertainment, recreation, offices, housing, open space, and public amenities located with a community setting with pedestrian and bicycle pathways.	
<b>Policy M-9.3:</b> Street Width. Except as required by environmental review for new developments, limit widening of streets as a means of improving traffic efficiency and focus instead on operational improvements to preserve community character.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable.	<b>Consistent.</b> The Project identifies that streets will vary in width and configuration based on localized circulation requirements.	<b>No change.</b>
<b>Recreation, Parks, and Community Services Element</b>			
<b>Strategy RPC-2.2.1: Dedication of Parkland.</b> New developments, in areas where parkland deficiencies have been identified, should be required to dedicate parkland rather than paying in-lieu fees.	<b>Not required.</b> The standard is not objective because it involves personal or subjective judgment by a public official and is not uniformly verifiable by reference to an external and uniform benchmark or criterion that is currently knowable. For example, the General Plan does not explicitly define the areas in which parkland deficiencies have been identified; although, General Plan Figures RPC-3 and RPC-5 and Table RPC-1 do each indicate that the Project’s vicinity has less	Not previously addressed in SB 35 Approval; discussion regarding modification request provided for informational purposes.	<b>Consistent as modified.</b> Under the SB 35 Approval, the Applicant elected to dedicate park land rather than pay the in-lieu fee, consistent with <b>Strategy RPC-2.2.1.</b> The approved Tentative Map included Public Access Easement dedications on the areas proposed for public parks and open space.  However, the City has taken the position that it does not need to recognize these dedications and can levy the full park fee, notwithstanding the direction in Strategy RPC-2.2.1; therefore, a Tentative Map amendment is proposed

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>parkland than much of the City. More recently, the City's Parks and Recreation System Master Plan also identified "north and east Cupertino," an area that includes the Project site, as an underserved parkland location where the City should focus new parks. (See Parks and Recreation System Master Plan, p. 92.) Taken together, these City maps, figures, and planning documents demonstrate that the Project site is located in an area where parkland deficiencies have been identified. Per Strategy RPC-2.2.1, dedication of parkland in-lieu of park fees is appropriate and, if such dedication is proposed, the City has no discretion to instead seek an in-lieu fee with no credit provided.</p> <p>The approved Tentative Map included Public Access Easement dedications on the areas proposed for public parks and open space. Pursuant to <b>Strategy RPC-2.2.1</b>, the City was required to accept this dedication and provide appropriate fee credit. Notwithstanding this requirement, the City has taken the position that it will not recognize these areas as park dedications and instead has sought</p>		<p>in connection with the modification request that removes Public Access Easement dedications that had been included originally on the areas proposed for public parks and open space, including the plazas, the bicycle/pedestrian path and green roof access. As a result, the park fee will be paid in-lieu of park dedication in an amount as determined to be required by law. If the City desires park dedication, the Public Access Easement dedications can be added back to the map if fee credit is given and there is agreement establishing reasonable operational regulations.</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?
	payment of the full in-lieu fee with no credit provided.		

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

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
Health and Sanitation, Title 9			
Chapter 9.18: Stormwater Pollution Prevention and Watershed Protection			
<p><b>9.18.090 Stormwater Pollution Prevention Plan (SWPPP).</b></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><b>Consistent.</b> 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 <b>Appendix C</b> provides further information regarding water quality measures.</p>	<p><b>No change.</b> The Project remains consistent with SWPPP and general NPDES requirements; <b>Appendix X, Updated C.3 Data Sheets and Supporting NPDES Compliance Documentation</b> provides further information regarding water quality measures.</p>
<p><b>9.18.100 Permanent Stormwater Measures Required for Development and Redevelopment Projects.</b></p> <p>A. All applicants for permits pertaining to the planning, design, and construction of new development and redevelopment projects shall</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</p>	<p><b>Consistent.</b> The Project will comply with all applicable objective standards. Permanent stormwater BMP measures will be sized and installed to meet C.3 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</p>	<p><b>No change. Appendix X, Updated C.3 Data Sheets, Supporting NPDES Compliance Documentation, and Third-Party Compliance Letter</b> provides further information regarding water quality measures.</p>



Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
<p>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>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>will include, but not limited to, rainwater harvesting, green roofs, and maximizing landscaped areas.</p>	

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
<p><b>9.18.160 Agreement to Maintain Stormwater Treatment Systems and Best Management Practices.</b></p> <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</p>	<p>Not required to the extent an agreement is negotiated and thus not verifiable against knowable and objective criteria.</p>	<p><b>Consistent.</b> The project applicant will enter into a written Stormwater Treatment Systems 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>	<p><b>No change.</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 General Plan standard?
<p>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 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>			

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
Title 10: Public Peace, Safety, and Morals			
Chapter 10.48: Community Noise Control			
<p><b>10.48.053 Grading, Construction and Demolition.</b></p> <p>A. Grading, construction and demolition activities shall be allowed to exceed the noise 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"> <li>1. No individual device produces a noise level more than eighty-seven dBA at a distance of twenty-five feet (7.5 meters); or</li> <li>2. The noise level on any nearby property does not exceed eighty dBA.</li> </ol> <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</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><b>Consistent.</b> The Project will adhere to construction noise limits. The original SB 35 Application Appendix C provides further information regarding noise reduction measures.</p>	<p><b>No change.</b> The Project will continue to implement the noise reduction measures stated in the original SB 35 Application Appendix C.</p>

Cupertino Municipal Code Provision	Applicability	2018 SB 35 Approval Project Consistency	Modification Request Consistency: Does the modification request modify Project consistency with the General Plan standard?
<p>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 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>			
<p><b>10.48.055 Motor Vehicle Idling.</b> 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>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,”</p>	<p><b>Consistent.</b> The Project will comply with motor vehicle idling limitations during all construction activities.</p>	<p><b>No change.</b></p>

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<p>B. The vehicle is in use for provision of police, fire, medical, or other emergency services.</p>	<p>those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		
<p>Title 13: Parks</p>			
<p>Chapter 13.08 Park Land Dedication Fee</p>			
<p><b>13.08.050 Park Land Dedication.</b></p> <p>A. Where the City determines that a park or recreational facility is to be located in 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>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><b>Consistent.</b> The Project exceeds the City’s park land dedication standards. Based 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><b>Consistent as modified.</b> The modification request continues to exceed the City’s park standards. The modification request includes well over the 12.96 acres of parkland demand generated by the Project. In sum, the modification request maintains over 26 acres of programmed open space throughout the Project site. The required mandatory and optional elements for private open space credit under CMC § 13.08.080 are included in the open space program. See <b>Appendix III, Modification Request Plan Sets</b>, P-0101 for detail regarding open space areas.</p>
<p><b>13.08.100 General Procedures.</b></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</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><b>Consistent.</b> 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><b>Consistent as modified.</b> Because the City’s position has been that the park and open space areas that were dedicated to the public do not qualify as park land dedication and that</p>

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<p>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 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>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>a Park Fee must be paid, the Tentative Map has been revised to remove the Public Access Easement dedications. As a result, the park fee will be paid in-lieu of park dedication in an amount determined to be required by law. If the City desires park dedication, the Public Access Easement dedications can be added back to the Tentative Map if fee credit is given.</p>
<p>Title 14: Streets, Sidewalks and Landscaping</p>			
<p>Chapter 14.02: Transportation Impact Fee (TIF) Program</p>			
<p><b>14.02.040 Applicability.</b></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>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</p>	<p><b>Consistent.</b> The Project applicant will pay any required fee pursuant to Chapter 14.02.</p>	<p><b>No change</b>, subject to the existing dispute regarding the scope of the amount owed.</p>

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<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>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>		
<b>Chapter 14.04: Street Improvements</b>			
<p><b>14.04.020 Application.</b>  <b>14.04.030 General purpose and intent.</b>  <b>14.04.040 Requirements–General.</b>  <b>14.04.050 Dedication–Time–Purpose.</b>  <b>14.04.060 In-lieu payments and deferred agreements.</b>  <b>14.04.070 In-lieu payments–Purpose Deferral of payments by the City.</b>  <b>14.04.080 Deferred agreements–Purpose–Deferral of improvements by the City.</b>  <b>14.04.090 Interim street improvement–Certain areas–Purpose.</b>  <b>14.04.100 Credit–Purpose.</b>  <b>14.04.110 Improvements installed prior to permit–Imposition of street improvement reimbursement charges, cost of land and interest.</b>  <b>14.04.120 Rules and regulations.</b></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><b>Consistent.</b> The Project will comply with all applicable street improvement requirements in Chapter 14.04.</p>	<p><b>No change.</b></p>



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<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>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>			
<b>Chapter 14.12: Trees</b>			
<p>14.12.030 Responsibility.</p> <p>14.12.040 Enforcement.</p> <p>14.12.050 Master street tree list.</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal</p>	<p><b>Consistent.</b> The Project will comply with all applicable requirements regarding trees in Chapter 14.12.</p>	<p><b>No change.</b></p>

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<p><b>14.12.060 Planting specifications.</b></p> <p><b>14.12.070 Public tree management.</b></p> <p><b>14.12.080 Prohibited acts.</b></p> <p><b>14.12.090 Public utilities–Tree trimming permit.</b></p> <p><b>14.12.100 Replacement tree–Deposit.</b></p> <p><b>14.12.110 Nuisance–Liability.</b></p> <p><b>14.12.120 Condition for development or building permit.</b></p> <p><b>14.12.130 New street tree costs and public tree damage or removal fee schedules.</b></p>	<p>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>		
<b>Chapter 14.15: Landscape Ordinance</b>			
<p><b>14.15.010. Intent.</b></p> <p><b>14.15.020. Applicability.</b></p> <p><b>14.15.030. Definitions.</b></p> <p><b>14.15.040. Prescriptive Compliance Option.</b></p> <p><b>14.15.050. Landscape Documentation Package.</b></p> <p><b>14.15.060. Water-Efficient Design Elements.</b></p> <p><b>14.15.070. Water Budget Calculation.</b></p> <p><b>14.15.080. Soil Analysis.</b></p> <p><b>14.15.090. Recycled Water.</b></p> <p><b>14.15.100. Graywater Systems.</b></p> <p><b>14.15.110. Irrigation Schedule.</b></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</p>	<p><b>Consistent.</b> The Project will comply with all applicable Landscape Ordinance requirements in Chapter 14.15.</p>	<p><b>No change.</b></p>

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<p><b>14.15.120. Landscape and Irrigation Maintenance Schedule.</b></p> <p><b>14.15.130. Landscape and Irrigation Installation Report.</b></p> <p><b>14.15.140. Landscape Maintenance Agreement.</b></p> <p><b>14.15.150. Audit of Existing Landscapes Larger Than One Acre.</b></p>	<p>inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).</p>		
<b>Chapter 14.18: Protected Trees</b>			
<p><b>14.18.030 Actions Prohibited</b></p> <p><b>14.18.050 Protected Trees</b></p> <p><b>14.18.060 Plan of Protection</b></p> <p><b>14.18.100 Recordation</b></p> <p><b>14.18.110 Application and Approval Authority for Tree Removal Permit</b></p> <p><b>14.18.120 Action by Director</b></p> <p><b>14.18.130 Notice and Posting</b></p> <p><b>14.18.140 Tree Management Plan</b></p> <p><b>14.18.150 Exemptions</b></p> <p><b>14.18.160 Tree Replacement</b></p> <p><b>Table 14.18.160A - Replacement Tree Guidelines</b></p> <p><b>14.18.180 Review, Determination and Findings</b></p> <p><b>14.18.200 Protection During Construction</b></p> <p><b>14.18.210 Protection Plan Before Demolition, Grading or Building Permit Granted</b></p> <p><b>Appendix A - Standards for the Protection of Trees</b></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><b>Consistent.</b> 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 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</p>	<p><b>Consistent as modified.</b> The modification request will continue to comply with the applicable protected tree requirements.</p> <p>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 <b>Appendix III,</b></p>

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<p><b>During Grading and Construction Operations</b></p>		<p>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><i>Modification Request Plan Sets</i>, Sheets P-0101 and P-0602B and as described in the <b>Appendix VIII, Updated Arborist Report</b>.</p> <p>In total, the Project will include 1,271 trees 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 City replacement requirements. No additional amendments to the Tree Removal Permit are anticipated.</p>
<p><b>Chapter 14.24: Underground Utilities – New Developments</b></p>			
<p><b>14.24.030 Required.</b></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 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</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</p>	<p><b>Consistent.</b> All utility distribution facilities for the Project will be installed underground.</p>	<p><b>No change.</b></p>

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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.	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).		
Title 16: Buildings and Construction			
Chapter 16.72: Recycling and Diversion of Construction and Demolition Waste			
<p><b>16.72.040 Diversion Requirement.</b></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 waived in whole or in part on grounds of impracticability or impossibility.</p>	Applicable objective standard.	<b>Consistent.</b> The Project will divert at least 65% of all materials generated for discard during demolition and construction activities.	<b>No change.</b>
<p><b>16.72.050 Information Required Before Issuance of Permit.</b></p>	Generally applicable objective standards. Such standards are not applicable to the extent	<b>Consistent.</b> The Project applicant will submit a Waste Management Plan pursuant to the applicable requirements.	<b>Consistent as modified.</b> The modification request includes an <b>Appendix IX, Updated Preliminary</b>

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<p>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>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><i>Waste Management Plan</i>, which describes changes compared to the Preliminary Waste Management Plan previously submitted on Aug 24, 2018, link <a href="#">here</a>.</p>
<p><b>16.72.060 Administrative Fee.</b></p> <p>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><b>Consistent.</b> The Project applicant will pay any required deposit and application fee.</p>	<p><b>No change.</b></p>
<p><b>16.72.070 Reporting.</b></p> <p>Within 60 days after the completion of any covered project, the applicant shall submit to the Public Works Director or designee a</p>	<p>Generally applicable objective standards. Such standards are not applicable to the extent that they involve personal or subjective judgment by a</p>	<p><b>Consistent.</b> The Project applicant will submit a demolition debris recycling report within 60 days of the completion of any covered project.</p>	<p><b>No change.</b></p>

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<p>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>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><b>Title 18: Subdivisions</b></p>			
<p><b>Chapter 18.16: Subdivision Maps, Article I: Tentative Subdivision Maps</b></p>			
<p><b>18.16.010 Form and Contents.</b> 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 on criteria other than compliance with objective standards that have been “published and adopted by ordinance or resolution,”</p>	<p><b>Consistent.</b> 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 data requested by the City are not published and adopted by ordinance or resolution, such requirements are not objective standards.</p>	<p><b>Consistent as modified.</b> The modification request includes revisions to the Tentative Map to be consistent with the changes to the modification request site plan, as further described in <b>Appendix III, Modification Request Project Description.</b></p>

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	those determinations are inapplicable pursuant to SB 35. Gov. Code § 65913.4(a)(5), (c).		
Zoning, Title 19			
Chapter 19.48: Fences			
<p><b>19.48.020 Fence Location and Height for Zones Requiring Design Review.</b>  <b>19.48.030 Fence Location and Height for Zones Not Requiring Design Review.</b>  <b>Table 19.48.030 sets forth the rules and regulations pertaining to fences in zones where design review is not required.</b>                      [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 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</p>	<p><b>Consistent.</b> 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><b>No change.</b></p>



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	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).		
<b>Chapter 19.56: Density Bonus</b>			
<p><b>19.56.010 Purpose.</b></p> <p><b>19.56.020 Eligibility for density bonus.</b></p> <p><b>19.56.030 Density bonus.</b></p> <p><b>19.56.040 Incentives or concessions, waivers and reduction of parking standards.</b></p> <p><b>19.56.050 General requirements.</b></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</p>	<p>Applicable objective standards, to the extent that the CMC density bonus requirements are based on 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><b>Consistent.</b> The Project will satisfy all applicable objective standards relating 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</p>	<p><b>Consistent as modified.</b> The modification request continues to provide 50% of the units affordable to at least 80% AMI households for a total of 1,201 affordable units, which exceeds the number of affordable units required by SB 35, as has been clarified by HCD, by 311 affordable units. See <b>Appendix II, Modification Request Project Description</b> for additional details.</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. Consistent with the SB 35 Approval, the Project’s density bonus units remain geographically separate, as allowed under the state Density Bonus Law.</p>

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<p>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 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</p>		<p>exception 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. The site plan package contains all the information required by CMC § 19.56.060.</p>	<p>The modification request includes a reduction of the Very Low Income (VLI) units from 361 to 267, which represents 15% of the base density of 1,779. The State Density Bonus Law allows three 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 concessions previously granted by the City.</p>

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<p>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, 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>			

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<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"> <li>1. Affordable units shall be dispersed throughout the project;</li> <li>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.</li> </ol> <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 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><b>19.56.060 Application requirements.</b></p> <p><b>19.56.070 Findings.</b></p>			

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<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"> <li>1. That the housing development is eligible for the density bonus requested and any incentives or concessions, waivers or reductions in parking standards requested.</li> <li>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.</li> <li>3. [omitted]</li> <li>4. [omitted]</li> <li>5. That the requested incentive(s) or concession(s) will result in identifiable, financially sufficient, and actual cost 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).</li> <li>6. That the proposed non-residential land uses within the proposed development will reduce the</li> </ol>			

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<p>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 findings as applicable to each type of application, supported by substantial evidence:</p> <p>1. That the incentive or concession, or waiver</p>			

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<p>would have an adverse impact on real property listed in the California Register of Historic Resources; or</p> <p>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</p> <p>3. That the incentive or concession, or waiver is contrary to state or federal law.</p> <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 not required to provide for</p>			

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affordable housing costs or affordable rents. D. [omitted]			
<b>Chapter 19.104: Signs</b>			
<p><b>19.104.130 Sign Program– Applicability, Requirements and Findings.</b></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 shall submit to the</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><b>Consistent.</b> 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><b>No change.</b> As set forth in SB 35 Approval Letter - <i>Attachment C: Standard Project Requirements and Project Implementation Requirements</i>, Nos. 26 and 27 of the SB 35 Approval, signage will be submitted via separate application in compliance with applicable provisions of the City’s Municipal Code Chapter 19.104.</p>



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<p>Director a sign program application containing the following:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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</li> <li>3. Specifications with regard to:                             <ol style="list-style-type: none"> <li>a. Sign type (individual channel letters, wood signs, etc.);</li> <li>b. Lighting;</li> <li>c. Location of each sign on the buildings;</li> <li>d. Materials;</li> <li>e. Sign proportions;</li> <li>f. Any other pertinent information as required by the Director.</li> </ol> </li> </ol> <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"> <li>1. The Sign Program complies with the purpose of this chapter.</li> </ol>			

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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>			
<b>Chapter 19.124: Parking Regulations</b>			
<p><b>19.124.010 Purpose.</b></p> <p><b>19.124.020 Applicability of regulations.</b></p> <p><b>19.124.030 Regulations for parking and keeping vehicles in various zones.</b></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><b>Consistent.</b> Although not required under SB 35, the Project includes approximately 10,500 automobile parking spaces, including shared parking as appropriate. The Project will</p>	<p><b>Consistent as modified.</b> See above discussion under Strategy LU-8.3.2. Although not required under SB 35, the modification request</p>

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<p><b>19.124.040 Regulations for off-street parking.</b>  <b>19.124.050 Exceptions– Approval authority.</b>  <b>19.124.060 Exceptions– Findings.</b></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>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>includes approximately 7,583 vehicle stalls across the Project site. The modification request incorporates 2,780 Class I bicycle parking spaces and 326 Class II bicycle parking spaces, an increase from the approved Project. See <b>Appendix III, Modification Request Plan Sets</b>, Sheets P-0101 for additional details regarding parking accessibility and design standards.</p>
<p><b>Chapter 19.148: Required Artwork in Public and Private Developments</b></p>			
<p><b>19.148.020 Applicability of Regulations.</b>                      A. Any development of fifty thousand sq. ft. or larger</p>	<p>Combination of subjective standards and generally applicable objective standards. Such standards</p>	<p><b>Consistent.</b> The Project will satisfy all applicable objective standards requiring the provision of artwork in a private</p>	<p><b>No change.</b></p>

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<p>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><b>19.148.050 Application Procedures for Public Artwork.</b></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><b>19.148.070 Minimum Artwork Value.</b></p>	<p>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>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>	

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<p>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><b>19.148.060 Design Criteria and Artist Qualifications.</b> [subdivisions omitted]</p>			
<b>Chapter 19.168: Architectural and Site Review</b>			
<p><b>19.168.030 Findings.</b></p> <p>A. The Approval Body may approve an application only if all of the following findings are made:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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, but not limited to, adherence to the following specific criteria:</li> </ol>	<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>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><b>Consistent as modified.</b> Although aspects of the architecture have been modified as more fully described in the <b>Appendix II, Modification Request Project Description</b>, 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, there are no objective design review standards.</p>

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<p>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.</p> <p>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-</p>			

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<p>over light to adjoining property owners.</p> <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>			
<b>Chapter 19.172: Below Market Rate Housing Program</b>			
<p><b>19.172.020 Below Market Rate (BMR) Housing Program Requirements.</b></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</p>	<p><b>Not required.</b> 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</p>	<p><b>Not applicable,</b> 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><b>Consistent as modified.</b> The Project will continue to provide 50% of the units affordable to at least 80% AMI households. However, the modification request includes a reduction of the Very Low Income units to 267, which represents 15% of the base density of 1,779. 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.</p>

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<p>payment of Housing Mitigation Fees may only be permitted as specified in 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>units to be dedicated as affordable, it does not apply.</p>		<p>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><b>19.172.030 BMR Program Administration.</b></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 of affordable housing cost and affordable rent, resale restrictions and reasonable accommodations</p>	<p><b>Not required.</b> 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><b>Not applicable.</b></p>	<p><b>Consistent.</b> 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 &amp; Ellsworth v. Berkeley</i>. (63 Cal. App. 5th 277, 326 at fn. 34).</p> <p>Nonetheless, the Project includes 267 units that meet City’s BMR requirements. The remaining affordable units will meet state density bonus and SB 35 requirements, as applicable, and will utilize the California Tax Credit Allocation Committee’s compliance manual.</p>



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<p>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>			