

REPORT

Elections Code 9212 Report on Proposed Initiative

Initiative amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights and lot coverages in areas throughout the City, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions

**Prepared for:
City of Cupertino**

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I. Executive Summary

On January 19, 2016, the Cupertino City Council requested that City staff and consultants prepare an analysis of a proposed Initiative (referred to by its proponents as the Cupertino Citizens' Sensible Growth Initiative) that would amend the City of Cupertino's General Plan. This report contains this analysis, as authorized under California Elections Code section 9212.

California law requires each city and county to adopt and maintain a "general plan" that establishes permissible land uses and maximum development densities and intensities for all properties within that jurisdiction. The General Plan effectively serves as a city's living "constitution" for all future land use decisions, which can be amended by the City Council up to four times per year.

The City of Cupertino recently completed a multi-year planning effort that resulted in the adoption of a new comprehensive General Plan (entitled *General Plan (Community Vision 2015-2040)*) intended to guide development of the City through the year 2040. The proposed Initiative would change the General Plan in the following main ways:

- At the Vallco Shopping District (Vallco), the Initiative would only allow retail/entertainment and hotel uses, prohibiting any new residential or office development, and would make the following changes:
 - While none of the residential units presently allocated to Vallco (389 units) could be built there, about 60 percent (243 units) would be reallocated to other residential and mixed-use areas in Cupertino.
 - The 2,000,000 square feet of office space presently allowed at Vallco would be eliminated from the General Plan altogether, which would significantly reduce potential new office development in Cupertino.
 - The existing 1,200,000 square feet of existing commercial/retail at Vallco would need to be maintained, as both a "minimum" and a "maximum," thereby reducing flexibility to adapt to changing market conditions.
 - The height limits for new development on the Vallco site would be limited to a maximum of 45 feet, which is below the height of many existing buildings at Vallco.
 - The Initiative also deletes from the General Plan several "strategies" reflecting the City Council's determination that redevelopment of the area "will require a master developer in order to remove the obstacles to the development of a cohesive district" and that "complete redevelopment of the site [is necessary] to ensure that the site can be planned to carry out the community vision."
- In other areas of the City, the Initiative would generally modify the General Plan as follows:
 - Increase the maximum building height from 30 feet to 45 feet in the City's Neighborhoods (parts of the City that are outside of the General Plan's "Special Areas") – a 50 percent (%) increase. Neighborhoods represent approximately three quarters of the City's land area.
 - Prohibit increases in maximum building heights, densities, lot coverages, or building planes citywide, and prohibit decreases in minimum "setback requirements."
 - Add new policies regarding development and building standards, including setbacks, stepbacks, building planes, and rooftop height extensions citywide.
 - Limit the maximum lot coverage for projects over 50,000 square feet.
 - Reduce the residential allocation (number of new residences allowed) by 146 units.
 - Add specific land use policies applicable to North De Anza Boulevard, Stevens Creek Boulevard, and Homestead Road in North Vallco Park.
- The Initiative would require voter approval for any further changes to the development allocations for Vallco and to the other policies and provisions enacted by the Initiative.

- Voter approval would not be required for the City Council to make changes to the development allocations for other areas of the City or for any General Plan provisions not enacted or amended by the Initiative.

As the result of these changes, this Report analyzes the topics described in Elections Code section 9212 and finds that the Initiative, if adopted by the voters or the City Council, would have the following potentially significant effects on the City:

- Reduce the amount of housing (by 146 units) and office space (by 2,000,000 square feet) that could be developed in the City
- Prevent the revitalization of Vallco as a new pedestrian oriented, mixed-use “town center,” which has the greatest likelihood of success given today’s competitive retail environment.
- Lock into place new development and building standards for maximum building height and density, maximum lot coverage, building plane, and minimum setbacks throughout the City.
- Increase maximum heights in the City’s residential neighborhoods from 30 to 45 feet.
- Create potential, but likely not insurmountable, inconsistencies between the City’s General Plan, Zoning Ordinance, Specific Plans, and Housing Element.
- Reduce the total number of units that can be constructed in the City and prohibit housing in the Vallco Shopping District Special Area.
- Decrease job and business opportunities, preventing the City from attaining its economic development goals.
- Remove a key incentive for a developer or property owner to enter into a Development Agreement to achieve mixed-use development of Vallco and provide significant community benefits and infrastructure investments.
- Decrease potential revenues from the City’s major source of General Fund revenues– business-to-business sales tax, retail sales tax, and property tax revenues

Chapter III of this Report, along with the accompanying Appendices, present the supporting analyses for these findings in six sections that together cover all of the subjects the City Council directed staff to analyze: land use and housing policy, development patterns, economic development, infrastructure, infrastructure funding and fiscal. Table I.1 on the following page summarizes how the main provisions of the Initiative could potentially affect the City in these ways.

**Table I.1
Summary of Potential Effects or Impacts of Initiative**

Major Changes Proposed by Initiative	Potential Effects According to Analysis*					
	Land Use and Housing Policy	Development Patterns	Economic Development	Infrastructure	Infrastructure Funding	Fiscal
Vallco Shopping District Special Area						
Reduce height limits to a maximum of 45 feet for any new development.	■	■	■	■	■	■
Require a minimum of 1,200,000 square feet of commercial/retail space.	■	■	■	■	■	■
Eliminate 389 housing units and 2,000,000 square feet of office space.	■	■	■	■	■	■
Prohibit any new residential or office development, while retail/entertainment and hotel uses are allowed.	■	■	■	■	■	■
Other Areas of the City						
Increase the maximum building height from 30 feet to 45 feet in the City's Neighborhoods – a 50% increase. <i>Neighborhoods represent ¼ of the City's land area.</i>	■	■	■			■
Prohibit increases in maximum building heights, densities, etc.	■	■	■			■
Reduce the number of new residences allowed by 146 units.	■	■	■	■	■	■
Add specific land use policies applicable to North De Anza Boulevard, Stevens Creek Boulevard, and Homestead Road in North Vallco Park.	■	■	■			
Add new policies regarding development and building standards.	■	■	■			
Limit the maximum lot coverage for projects over 50,000 square feet.	■	■	■			
Voter Approval for Changes in Certain Areas						
Require voter approval for any further changes to the development allocations for Vallco and to the other policies and provisions enacted by the Initiative.	■	■	■			■

* Chapter III of this report analyzes the potential effects from the Initiative according to Elections Code section 9212.

■ = Indicates potential effect from the Initiative according to this analysis.

II. Introduction and Report Background

This Report evaluates the potential impacts of a 2016 Initiative in Cupertino with the following official title:

“Initiative amending Cupertino’s General Plan to limit redevelopment of the Vallco Shopping District, limit building heights and lot coverages in areas throughout the City, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions.”¹

This Initiative has qualified for the ballot in Cupertino, California. Following receipt of this Report, the Cupertino City Council must either adopt the Initiative exactly as proposed, or submit it to the voters at the November 8, 2016, election. If adopted by the City Council or the voters, the Initiative would amend the City of Cupertino General Plan.

On January 19, 2016, the Cupertino City Council requested that City staff and consultants prepare an analysis of the proposed Initiative specifically addressing its potential impacts on land use, housing, open space, traffic, the community’s ability to attract and retain business, infrastructure funding and potential fiscal impacts. This Report has been prepared pursuant to City Council Resolution No. 16-009 (a copy of which is included as Appendix 4) and Elections Code section 9212, and will be presented to the City Council at a specially scheduled meeting on March 31, 2016.

II.A. Report Organization

This Report is framed around development buildout scenarios with and without the proposed Initiative and offers a comparison between them in order to understand the Initiative’s potential effects and impacts on the City.

The Appendices include the Initiative language, a detailed summary of the key changes to the General Plan proposed by the Initiative, documentation related to Elections Code requirements and supporting analysis by the consultant team that was used to prepare this Report.

The Executive Summary in **Chapter I** summarizes the Initiative and its potential effects. This Chapter (**Chapter II**) begins with a description of the Initiative and its intended changes to the General Plan. The approach of this Report is then explained, including the definition of important terms, methodology of analysis, and numbers that are composed using publically accessible sources. An overview is provided of the four scenarios that form the basis of analysis in this Report.

Chapter III presents the Analysis of potential effects—a more detailed look at the Initiative’s impacts beyond the changes explicitly prescribed by the Initiative, as directed by the City Council. The effects and impacts studied in this Chapter are analyzed according to six general categories: land use and housing policy, development patterns, economic development, infrastructure, infrastructure funding and fiscal.²

The full text of the proposed Initiative is included as **Appendix 1**, along with the City Attorney’s official Title and Summary and the Initiative proponents’ “Notice of Intent” describing their reasons for proposing the Initiative.

Appendix 2 offers a detailed analysis of how the General Plan would be modified as the result of the Initiative.

Appendix 3 reproduces Section 9212 in full, the Section of the California Elections Code that authorizes a city

¹ State law requires the City Attorney to prepare an official title that gives a “true and impartial statement of the purpose of the proposed measure.” As is often the case, the official title for this Initiative differs from the short title proposed by the initiative proponents, which refers to the Initiative as the “Cupertino Citizens’ Sensible Growth Initiative.” The full text of the City Attorney’s official title and summary is reproduced in Appendix 1.

² California Elections Code section 9212 authorizes city councils to request a report evaluating the potential effects or impacts from the Initiative, and Chapter III provides the specific analysis authorized by section 9212 and requested by the City Council.

council to request a report regarding the potential impacts of an initiative prior to deciding whether to adopt the initiative or to order an election of the voters to approve or reject it. **Appendix 4** documents Cupertino City Council's Resolution to authorize the funding and preparation of this Report. **Appendices 5, 6, 7 and 8** contain supporting analysis and documentation from the technical studies used to prepare this Report.

II.B. Description of Initiative

Adopted in December 2014 and amended on October 20, 2015, the City of Cupertino General Plan provides the policy and regulatory framework for planning and development of Cupertino through 2040. The following is excerpted from the City of Cupertino General Plan.³

The General Plan is "a roadmap to the future that encompasses the hopes, aspirations, values and dreams of the Cupertino community." It establishes the policy and regulatory framework necessary to "build a great community that serves the needs of its residents, maximizes the sense of connection between neighborhoods and enhances Cupertino as a great place to live, work, visit and play."...The General Plan intends to ensure there are appropriate land use and community design, transportation networks, housing, environmental resources and municipal services through 2040.

The Initiative proposes to change the General Plan in the following main ways, which are described according to the specific geographic focus of the Initiative language:

Vallco Shopping District

- Removes language in the General Plan's goals and policies calling for the "complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed use 'town center'" and restates the City's goal as to "preserve and enhance the Vallco Shopping District as a local and regional retail, hotel, dining and entertainment commercial" destination.
 - The existing 1,200,000 square feet of existing commercial/retail at Vallco would need to be maintained at the same number of square feet.
- Only allows retail/entertainment and hotel uses, prohibiting any new residential or office development.
 - While none of the residential units presently allocated to Vallco (389 units) would be allowed to be built there, about 60 percent (243 units) would be reallocated to other residential areas in Cupertino.
 - The 2,000,000 square feet of office space presently allowed at Vallco would be eliminated from the General Plan altogether, which would significantly reduce potential new office development in Cupertino.
- Reduces height limits for any new development on the Vallco site to a maximum of 45 feet, which is below the height of some existing buildings at Vallco.
- Replaces a provision calling for open space to be included within a "central town square . . . interspersed with plazas and 'greens'" with a provision calling for "ground-level open space areas."
- Deletes several "strategies" reflecting the City Council's determination that redevelopment of the area "will require a master developer in order to remove the obstacles to the development of a cohesive district" and that "complete redevelopment of the site [is necessary] to ensure that the site can be planned to carry out the community vision."

³ From the City of Cupertino's General Plan adopted in 2014, "Community Vision 2040," Introduction, p. I-3. Minor changes to this document were adopted on October 20, 2015, yielding a new document, "General Plan: Community Vision 2015-2040". The General Plan can be downloaded from the City's website at: <http://www.cupertino.org/index.aspx?page=1275>

- Adds a requirement that a Specific Plan be created prior to any “significant changes in use” on the site.

Other Areas of the City

- Increases the maximum building height in the City’s Neighborhoods (parts of the City that are “outside of the Special Areas”) from 30 feet to 45 feet – a fifty percent increase.
- Prohibits increases in residential densities, maximum building heights (beyond those increases created by the Initiative), lot coverages, or building planes, and prohibits decreases in minimum “setback requirements” (These restrictions also apply to the Vallco site)
- Adds new policies regarding development setbacks, “stepbacks,” “building planes,” and rooftop height extensions citywide
- Limits the maximum lot coverage for projects over 50,000 square feet to 70%.
- Reduces the number of new residences allowed by 146 units.
- Adds specific land use policies applicable to North De Anza Boulevard, Stevens Creek Boulevard, and Homestead Road in North Vallco Park.
- Designates Scenario B in the current General Plan, which adds Housing Element sites at Glenbrook Apartments and Homestead Lane, and increases the density at the Hamptons and the Oaks Shopping Center.

Voter Approval for Changes in Certain Areas

- The Initiative would require voter approval for any further changes to the development allocations for Vallco and to the other policies and provisions enacted by the Initiative.
- Voter approval would not be required for the City Council to make changes to the development allocations for other areas of the City or for any General Plan provisions not enacted or amended by the Initiative.

II.C. Approach

In order to provide a basis for evaluating how the Initiative might impact the City of Cupertino, this Report defines and then compares potential future development under the **Adopted General Plan** and as if the General Plan were amended by the Initiative, referred to as **General Plan With Initiative**. More specifically, these two scenarios assume the following:

- **Adopted General Plan**– Development in the City of Cupertino occurs as envisioned by the City’s currently adopted General Plan entitled *General Plan (Community Vision 2015-2040)*.⁴
- **General Plan With Initiative**– Development in the City of Cupertino occurs as envisioned by the Initiative and assumes the City’s General Plan is amended by the Initiative as proposed.⁵

⁴ This scenario reflects fewer environmental impacts than the Proposed Project, Alternative C, analyzed in the General Plan EIR that the City Council certified in 2014 when it adopted the current General Plan. It should be noted that the City Council adopted lower development allocations and heights in the current General Plan than those that are analyzed in Alternative C. Therefore, the analysis of Alternative C presented greater environmental impacts than the General Plan that was adopted. Table LU-1 reflects the allocations as approved by City Council. This report assumes that the maximum allowable land uses in each Planning Area would be built as presented in Table LU-1 of the current General Plan. As described in Section II.E, this Report also evaluates a variation to this scenario, which assumes redevelopment of the Vallco Shopping District site as proposed by the owner of the majority of the Vallco property, Sand Hill Property Company, consistent with the Adopted General Plan.

⁵ As described in Section II.F of this Report, the analysis also evaluates two variations to this scenario, which assumes Vallco Shopping Mall either becomes a successful, enhanced mall or remains at its 2016 occupancy levels.

In order to address the requirements in Section 9212, the analysis in this Report evaluates the potential impacts at General Plan buildout (considered to be the year 2040) under these scenarios.

The General Plan allocates existing and future development by land use through 2040, so the analysis includes an assessment of currently approved development as well as the maximum allowable development at buildout by land use category under the Adopted General Plan and under the General Plan With Initiative.⁶ While not all development may actually occur, projecting the maximum allowable development by land use is intended to provide an equal basis for comparison of the potential effects of the Initiative on the General Plan. In this regard, it is important to note what this report does not do. It is not an Environmental Impact Report (EIR), and it does not analyze the Initiative's impact as a change from existing conditions.

To evaluate potential fiscal revenues to the City and other effects, this Report also evaluates the current amount of existing development that is already built in Cupertino, as further described in later sections of this Report.

1. Land Use Definitions

As variations in allowable land uses are a critical component of the analysis, potential new development by land use type is defined below, along with a brief description of potential measures of impact used in this Report⁷:

- **Residential**– includes single-family detached or attached homes (such as townhomes), multi-family units in condominium or apartment complexes, and other types of housing units. The number of housing units is used to estimate the projected number of residents, school children, and resident users of City services and infrastructure such as public safety, parks, libraries and utilities.
- **Commercial**– includes square feet of retail development, which is used to estimate retail spending and sales tax revenue that the City may collect, depending on whether or not the goods/services are taxable. It is also used to evaluate how much City services and infrastructure will be needed to serve this type of development.
- **Office**- includes square feet of office development, which is used to estimate the number of jobs in the City, the amount of retail spending from office workers who shop in Cupertino, and how much City services and infrastructure will be needed to serve this type of development.
- **Hotel**- includes hotel rooms and other lodging establishments, which is used to estimate transient occupancy tax revenues that the City collects from visitors, as well as the associated level of City services and infrastructure.

2. Definitions of Development and General Plan Designations

The General Plan describes the various stages of development in the City, and this Report uses similar definitions in order to analyze how much development would be able to be built as follows:

- **Current Built/Approved** includes both actually built projects as of the General Plan's adoption on December 10, 2014 and those projects that were approved but not yet built as of that date.⁸ As only 6 net new housing units were approved during 2015, Current Built/Approved is considered to be approximately equivalent to current conditions on the date this Report was completed.
- **General Plan Buildout** is defined as maximum allowable buildout in 2040 under the adopted General Plan.

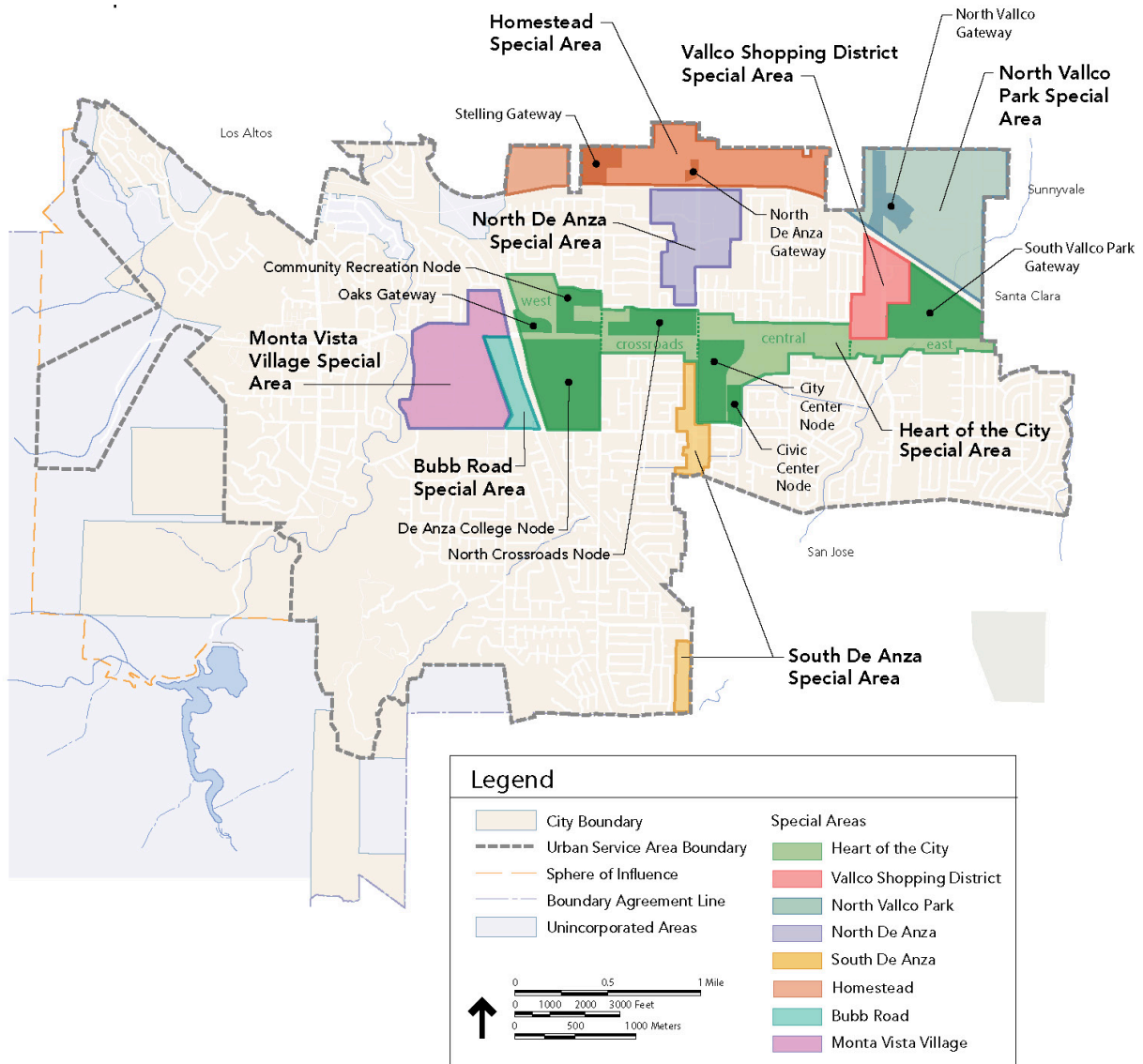
⁶ The Initiative proposes specific changes to Table LU-1 in the General Plan, as shown in Appendix 2.

⁷ These land use definitions are based on those used in the City's General Plan.

⁸ The term Current Built/Approved is used in this Report to be more descriptive of what is included in the "Current Built" column in Table LU-1 of the General Plan.

- **Development Buildout** is defined as maximum allowable development that could be built under each scenario in 2040.
- **Net Increase in Potential Development** is defined as the difference between Current Built/Approved and Development Buildout.
- **Projects Approved but Not Built** as of 12/10/14 is defined as approved development under construction or still in the development stage that does not yet generate fiscal revenues to the City or impact its infrastructure or services.

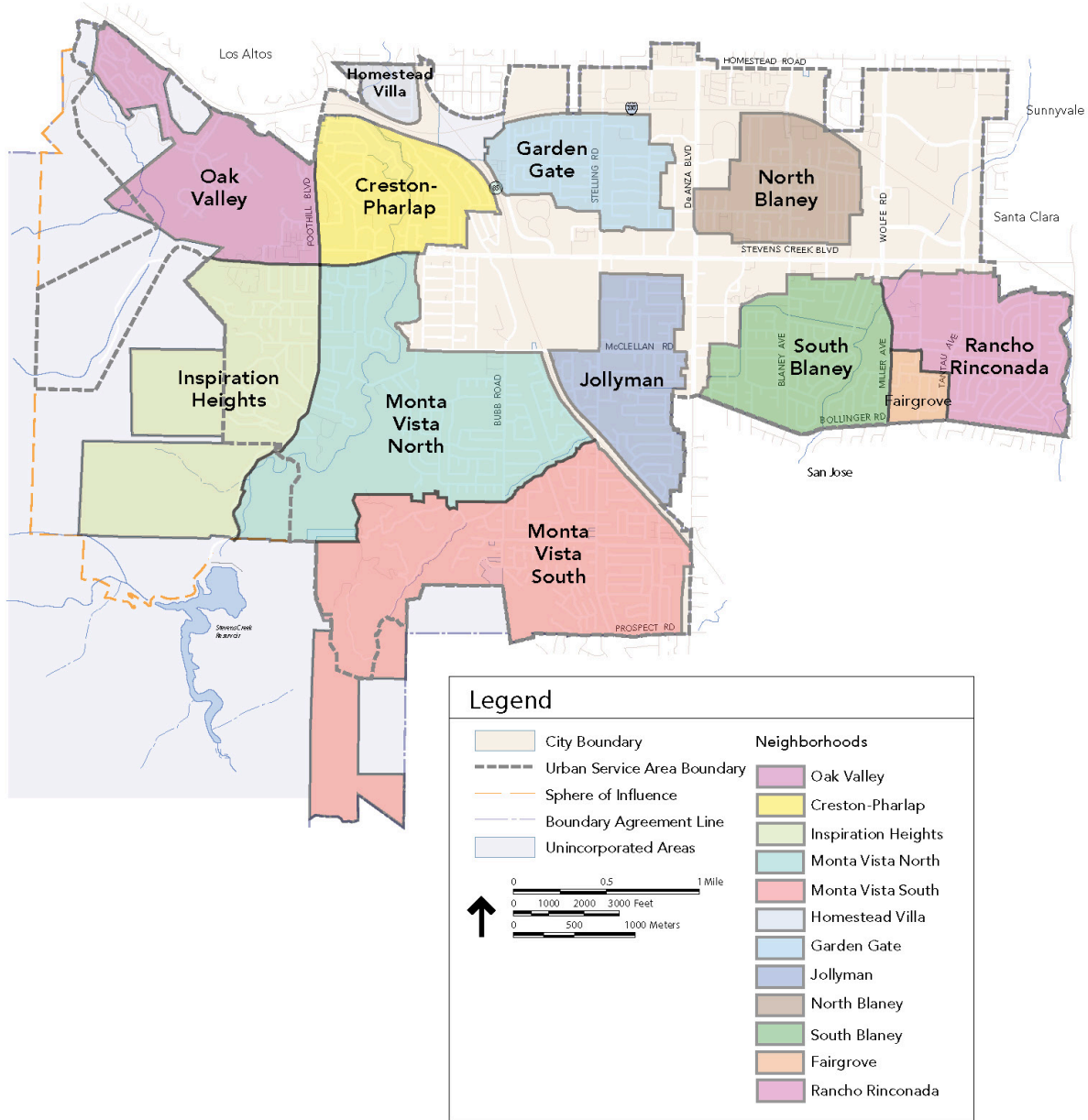
- Special Areas** are the nine areas located along major mixed-use corridors that have been identified as key areas to focus future development in the General Plan. These consist of the eight named Special Areas depicted below (Heart of the City, Vallco Shopping District, North Vallco Park, North De Anza, South De Anza, Homestead, Bubb Road, Monta Vista Village) and Other Non-Residential/Mixed-Use Special Areas that are located throughout Cupertino.⁹



Source: Cupertino General Plan Community Vision 2040, Chapter 2 pg. PA-5, Figure PA-1

⁹ For further description of the designated Special Areas and Neighborhoods, please refer to Chapter 2 of the Adopted General Plan.

- Neighborhoods** are the twelve areas identified in the General Plan that are generally residential. Neighborhoods typically have schools, parks and neighborhood shopping, and are located outside of Special Areas. The map below highlights the twelve identifiable Neighborhoods in Cupertino.



Source: Cupertino General Plan Community Vision 2015-2040, Chapter 2 pg. PA-19, Figure PA-2

3. Comparison of Maximum Allowable Development Citywide

Table II.1 compares the maximum allowable development at buildout for the **Adopted General Plan** and the **General Plan With the Initiative** and shows the potential increase or decrease in allowable development.¹⁰ As it indicates, the Initiative would reduce the amount of allowable residential development by 146 units and would reduce office space by 2 million square feet (sq.ft.) at buildout, but would not affect the total commercial (retail) space or hotel rooms allowed.

**Table II.1
Comparison of Citywide Development Buildout in 2040 by Land Use Category for
Adopted General Plan and General Plan With Initiative**

Land Uses	Citywide ^a		
	Adopted General Plan	General Plan with Initiative	Increase / (Decrease) with Initiative
Residential (units)	23,294	23,148	(146)
Commercial (sq. ft.)	4,430,982	4,430,982	No Change
Office (sq. ft.)	11,470,005	9,470,005	(2,000,000)
Hotel (rooms)	1,429	1,429	No Change
a. As described above, this table presents the maximum allowable buildout under each scenario, which is defined to include existing development “on the ground,” projects approved as of December 10, 2014, and potentially allowable future development through 2040. This definition is used consistently throughout this Report.			

Table II.2 shows the maximum allowable development at buildout for the **General Plan With the Initiative** as it affects the “Special Areas” as defined by the General Plan. The unit count, room count, and square footages are presented for the affected Special Areas. Changes proposed by the Initiative are shown with strikethrough text crossing out allocations from the General Plan, with new allocations proposed by the Initiative shown as normal text below. The conclusions are the same as Table II.1, but Table II.2 helps illustrate that the entire reduction of Office square footage proposed by the Initiative takes place in the Vallco Shopping District.

¹⁰ All numerical decreases in tables are shown in parenthesis, per standard accounting practice. For example, a decrease of 146 units is shown as (146) units.

**Table II.2
Comparison of Citywide Development Buildout in 2040 by Land Use for
“Special Areas” Identified in General Plan**

Allowable Buildout by Land Use	“Special Areas” Identified in General Plan ^a				
	Vallco Shopping District	Heart of the City	North Vallco	Other Areas	CITYWIDE TOTAL
Residential (units)	389 0	1,805 1,898	1,154 1,304	19,946	23,294 23,148
Office (sq. ft.)	2,000,000 0	2,464,613	3,069,676	3,935,716	11,470,005 9,470,005
Commercial/Retail (sq. ft.)	1,207,774	2,145,000	133,147	945,061	4,430,982
Hotel (rooms)	339	526	315	249	1,429

a. Strikethrough and bold text indicates changes proposed by Initiative.

4. Comparison of Citywide Resident and Employee Population

The amount of future development by land use will affect the number of future residents and employees (jobs) in the City, which are key assumptions used in this Report’s analysis. Table II.3 shows the difference between the scenarios, based on the land uses shown above and the General Plan factors used to project residents and jobs.¹¹

**Table II.3
Comparison of Citywide Resident and Employee Population at Development Buildout in 2040
for Adopted General Plan and General Plan With Initiative**

Future Residents and Employees at Development Buildout	Citywide		
	Adopted General Plan	General Plan with Initiative ¹²	Increase/ (Decrease) with Initiative
Residents	68,484	68,055	(429)
Employees			
Office	38,233	31,567	(6,666)
Commercial	9,847	9,847	No change
Hotel	3,720	3,720	No change
Total Employees	51,800	45,134	(6,666)

¹¹ Factors for resident and employee populations are the same as those used in the General Plan Environmental Impact Report, Table 4.11-3, as follows: 2.94 persons per housing unit, 1 employee per 450 square feet of retail, 1 employee per 300 square feet of office and 0.3 employees per lodging room.

¹² Assuming that Vallco were to become a successful, enhanced mall; see further description later in this Chapter.

II.D. Proposed Changes to Vallco Shopping District With Initiative

As described above, the most significant changes to the General Plan with the Initiative are proposed to occur in the Vallco Shopping District¹³, which is described in the General Plan as follows:¹⁴

The Vallco Shopping District Special Area encompasses Cupertino's most significant commercial center, formerly known as the Vallco Fashion Park.¹⁵ This Special Area is located between Interstate 280 and Stevens Creek Boulevard in the eastern part of the city. The North Blaney neighborhood, an established single-family area, is adjacent on the west side of the Vallco Shopping District. Wolfe Road bisects the area in a north-south direction, and divides Vallco Shopping District into distinct subareas: Vallco Shopping District Gateway West and Vallco Shopping District Gateway East. The Vallco Shopping District is identified as a separate Special Area given its prominence as a regional commercial destination and its importance to future planning/ redevelopment efforts expected over the life of the General Plan.

1. Comparison of Development Vision for Vallco Shopping District under Adopted General Plan and General Plan With Initiative

The General Plan envisions Vallco Shopping District as a:

...major regional and community destination. The City envisions this area as a new mixed-use "town center" and gateway for Cupertino. It will include an interconnected street grid network of bicycle and pedestrian-friendly streets, more pedestrian-oriented buildings with active uses lining Stevens Creek Boulevard and Wolfe Road, and publicly-accessible parks and plazas that support the pedestrian-oriented feel of the revitalized area. New development in the Vallco Shopping District should be required to provide buffers between adjacent single-family neighborhoods in the form of boundary walls, setbacks, landscaping or building transitions.¹⁶

By contrast, the Initiative envisions that Vallco Shopping District would be:

"preserve[d] and enhance[d] ... as a local and regional retail, hotel, dining and entertainment commercial destination ..."¹⁷

The Initiative removes General Plan language about the Vallco Shopping District becoming a "new mixed-use town center" and being planned for "...interconnected street grid network of bicycle and pedestrian-friendly streets." The Initiative adds language about Vallco "providing a unique and memorable shopping, dining and entertainment experience with appropriate bicycle and pedestrian-friendly access." Consistent with the revisions described above, the Initiative modifies the land uses allowed at Vallco Shopping District as shown in Table II.4 below.¹⁸

¹³ Vallco Shopping District, Vallco Shopping District Special Area and Vallco are used interchangeably in this Report.

¹⁴ General Plan, p. PA-9

¹⁵ Vallco Fashion Park, Vallco Shopping Mall, Vallco Shopping Center and Vallco are all terms used to describe the retail shopping mall within the Vallco Shopping District.

¹⁶ General Plan, p. PA-9

¹⁷ Initiative text, p. 1

¹⁸ A full summary of the Initiative changes is found in Appendix 2.

**Table II.4
Comparison of Development Buildout by Land Use
in Vallco Shopping District**

Land Uses	Vallco Shopping District		
	Adopted General Plan	General Plan with Initiative	Increase/ (Decrease) with Initiative
Residential (units)^a	389	0	(389)
Office (sq. ft.)	2,000,000	0	(2,000,000)
Commercial (sq. ft.)^b	1,200,000	1,200,000	No Change
Hotel (rooms)	313	313	No Change
<p>a. The General Plan allocates 389 units to the Vallco Shopping District. As further described in the next section, the Initiative would reallocate 243 of the 389 units at Vallco to other areas of the City.</p> <p>b. No major change to maximum allowable square feet in either Scenario, but the Initiative rounds commercial allocation to nearest 100,000 and prohibits reallocation of unused commercial (retail) to other parts of Cupertino.</p>			

2. Resident and Employee Population in Vallco Shopping District

Changes in land use would affect the number of future residents and employees in the City, as well as result in varying impacts given different development buildout projections. Table II.5 shows the difference between the Adopted General Plan and the General Plan With Initiative for the Vallco Shopping District, based on the land uses and standard factors used to project residents and employees described above.¹⁹

**Table II.5
Comparison of Population and Employment at Development Buildout
in Vallco Shopping District**

Future Residents and Employees at Development Buildout	Vallco Shopping District		
	Adopted General Plan	General Plan with Initiative	Increase/ (Decrease) with Initiative
Residents	1,143	0	(1,143)
Employees			
Office	6,666	0	(6,666)
Commercial	2,666	2,666	No Change
Hotel	94	94	No Change
Total Employees	9,426	2,760 ^a	(6,666)
<p>a. This is the maximum under the Initiative, but as detailed below, it is highly unlikely to be achieved under the Initiative.</p>			

¹⁹ Factors for resident and employee populations are the same as those used in the Environmental Impact Report for the General Plan.

The decrease in potential residents in the Vallco Shopping District with the Initiative would be mostly offset by allowable increases in residential use in other parts of Cupertino.²⁰ However, the reduction of employees would not be offset due to the Initiative's proposed elimination of 2 million square feet of office space in both the Vallco Shopping District and citywide.

II.E. Variation on Adopted General Plan Scenario for Vallco Shopping District

To provide a more specific review of potential effects, the analysis also considers a variation to the **Adopted General Plan** scenario to illustrate the potential effects of the potential redevelopment of the Vallco Shopping District as proposed by the owner of the majority of the property, Sand Hill Property Company (Sand Hill). This variation is referred to as **Adopted General Plan Assuming Sand Hill Proposal**. Sand Hill's proposal provides a level of specificity that is not included in the General Plan and is compared in this Report in order to better understand the potential impacts under the Initiative in comparison to what is currently being proposed at the Vallco site.²¹

The assumptions for the Sand Hill proposal are derived from Sand Hill's September 2015 application and the draft December 2015 project description prepared for the project Environmental Impact Report (EIR). This scenario is included in the analysis to provide readers with context as to the potential environmental impacts of The Hills at Vallco project (which conforms with the General Plan assumptions for Vallco), as well as the community benefits that the project would provide. While the Sand Hill proposal includes development within what is allowed on the site by the General Plan, it includes 550,000 fewer commercial square feet than the maximum amount allowed by the General Plan. It is assumed that these 550,000 square feet would be developed elsewhere in the City. Many of the community and economic benefits projected under this variation could only be realized if the City and the property owner entered into a "development agreement." A development agreement is a procedure authorized by State law that allows developer to propose through the development process—and a city to agree to accept—certain types of economic and other benefits that the city could not otherwise legally require a property owner or developer to provide.

It is important to note that the City could not legally *require* Sand Hill to provide the additional community benefits that exceed those authorized or required under State law. Moreover, at this point, Sand Hill has requested that the City cease processing its proposed application (in light of the Initiative) and thus there is no guarantee that the proposal would even come before the City Council in its current form for possible consideration and approval.

Nevertheless, the Sand Hill proposal illustrates the type of project that is contemplated, and indeed, encouraged under the current General Plan and that would be prohibited by the Initiative. For example, the adopted General Plan specifically encourages redevelopment of the Vallco site by a "master developer," which is the mechanism most likely to incentivize the use of the type of "development agreement" authorized by State law that frequently includes community benefits well in excess of what can be legally required. By contrast, the Initiative deletes the provisions calling for a master developer and deletes the provisions calling for complete redevelopment of the Vallco site. If the Initiative is adopted, it is highly unlikely that any developer or property owner could fund these types of additional improvements and there would be no incentive for a developer to enter into a development agreement to do so.

²⁰ The General Plan allocates 389 units to the Vallco Shopping District, and the Initiative would reallocate 243 of the 389 units at Vallco to other areas of the City.

²¹ On March 3, 2016, while this Report was significantly underway, the City received a Notice of Intent to circulate an initiative involving the Vallco Shopping District. This Report does not analyze that initiative, which differs in some material aspects to the Sand Hill Proposal. The City Council may wish to authorize a 9212 Report on that initiative.

1. Adopted General Plan Assuming Sand Hill Proposal

In September 2015, Sand Hill submitted an application to the City to redevelop Vallco pursuant to the adopted General Plan. This proposal, referred to as The Hills at Vallco,²² would demolish the existing buildings (including the shopping mall, fitness gym and restaurant buildings) and the onsite parking facilities. It would remove the existing pattern of internal driveways and construct a new mixed-use “Town Center” with the following land uses:

- Up to 650,000 square feet of commercial uses (including retail, restaurant, event, entertainment, and fitness uses)
- 2.0 million square feet of office uses
- 800 residential units
- Approximately 40,000 square feet of civic/community space

The Sand Hill proposal would include 411 more residential units than allocated to the Vallco Shopping District area in the City’s Housing Element. However, the City’s General Plan has additional housing units available in other Planning Areas that are not allocated to specific Housing Element sites.²³ While the General Plan Housing Element allocation for the site is 389 units, the General Plan EIR analyzed the development of up to 800 residential dwelling units on the site, and there is adequate allocation in the General Plan to consider 411 additional units.

In addition to the land use differences described above, the Sand Hill proposal includes the following summary features that differ from the basic City requirements. These will be described in more detail in later sections of the Report, as they apply to the analysis of effects but are briefly summarized here:

- Affordable Housing – includes 10% (80 of 800) below market rate residential units on site, rather than paying the minimum mandatory fee.
- Land Use –provides about 30 acres of open/green space on the roof.
- Sustainability –meets LEED Platinum standards, which is two levels higher than City requirement of LEED Silver.
- Transit, Bike and Pedestrian improvements – commits to funding a complementary community shuttle in coordination and partnership with the City, VTA, and corporate employers, enhance surrounding bus stops, provide new and restriped bicycle lanes and bikeways, and provide better pedestrian access and an improved pedestrian bridges among other improvements.
- Transportation– the Sand Hill Proposal includes construction of a new signalized intersection on North Wolfe Road between Vallco Parkway and the I-280 interchange; modification to the existing tunnel under North Wolfe Road to allow for east-west access for emergency and service vehicles, and a commitment to spearhead the widening and rebuilding of Wolfe Road/I-280, to include pedestrian and bicycle connectivity; lead a partnership with the City of Cupertino, VTA and corporate employees to fund a complimentary community shuttle; and establish multi-modal transit on the site for the community shuttle, VTA buses, corporate shuttles and sharing economy transportation services.

²² The Hills at Vallco is a development project proposed on the southern 50 acres of the Vallco Shopping District. Development of the northern seven acres of the Specific Plan area is not proposed as part of The Hills at Vallco project. The specifics of the project are based on the September 2015 The Hills at Vallco Project Description. (<http://www.cupertino.org/index.aspx?page=1365>) and the Draft Project Description from City staff dated December 8, 2015 and shared with the Project Applicant, which is attached as part of Appendix 5.

²³ According to General Plan Strategy LU-1.2.1, development allocations may be transferred among Planning Areas provided no significant environmental impacts are identified beyond those already studied in the Community Vision 2040 Final EIR (SCH# 2014032007).

- Schools – In addition to the state-mandated school impact fees, builds a new 700-student elementary school, upgrading classroom and playing field facilities at an existing elementary school, providing \$1 million for the 8th grade Yosemite Science Program, and builds a 10,000 square foot high school “innovation lab” and classroom facility on the project site.
- Infrastructure: Extends reclaimed water line from Homestead Road, down Wolfe Road to Vallco Parkway.
- Community Facilities– provides for a 20,000-square-foot community banquet hall on the green roof and 5,000 square foot civic meeting space located in the western portion of the site.

2. Comparison of Sand Hill Variation to Adopted General Plan

Table II.6 summarizes the primary differences in land use between the Adopted General Plan and the Adopted General Plan assuming the Sand Hill proposal for The Hills at Vallco.

**Table II.6
Comparison of Development Buildout by Land Use in
Vallco Shopping District Under Variations to Adopted General Plan**

Land Uses	Vallco Shopping District		
	Adopted General Plan	Adopted General Plan Assuming 2015 Sand Hill Proposal	Increase/ (Decrease)
Residential (units)	389	800 ^a	411 ^a
Office (sq. ft.)	2,000,000	2,000,000	No Change
Commercial (sq. ft.)	1,200,000	650,000	(550,000) or less ^b
Hotel (rooms)	313	313 ^c	No Change

a. The allowable number of housing units citywide would remain the same because the City’s General Plan has additional housing units available in other Planning Areas that are not allocated to specific Housing Element sites, and the adopted General Plan EIR analyzed the development of up to 800 residential dwelling units on Vallco. This is not a reflection of existing conditions.

b. This represents the maximum potential decrease below the General Plan maximum for the Vallco Shopping District. The General Plan allows the reallocation of the remaining 550,000 within the Vallco Shopping District or elsewhere in the City.

c. The Hills at Vallco does not include additional hotel development, but does not preclude another owner from developing a hotel within the Vallco Shopping District.

II.F. Variation on General Plan With Initiative Scenario for Vallco Shopping District

As described above, the Initiative proposes to amend the General Plan so that it maintains a minimum (as well as a maximum) of 1.2 million square feet of retail/dining/entertainment space at the Vallco Shopping District.

Requiring that this amount of square footage be maintained—i.e., neither increased nor decreased without voter approval—would significantly limit the flexibility of current and future owners of the property to modify the mix, size, and type of retail/dining/entertainment operating at the site and thereby significantly limit the flexibility to respond to changing market conditions.

In analyzing the Initiative's effects, two variations on the **General Plan With Initiative** are analyzed, one that assumes that Vallco becomes the successful, enhanced mall as envisioned by Initiative proponents/sponsors and an alternative that assumes Vallco remains essentially in its current state. An historical analysis of retail performance at Vallco is found in Section F.1 in Chapter III, and shows that the Shopping District has had declining sales revenue for the past 10 years. As further described below and in Appendix 6, it is highly unlikely Vallco could become a successful, enhanced mall under the changes to the General Plan proposed by the Initiative.

1. General Plan With Initiative Assuming Vallco as Enhanced Mall

The stated Initiative purpose regarding Vallco Shopping District is to “preserve and enhance the Vallco Shopping District”, so this variation assumes that the existing property could be enhanced and preserved as a local and regional destination.²⁴ It assumes full buildout under the General Plan as amended by the Initiative, with a re-tenanted Vallco that continues to include 1.2 million square feet of retail. It assumes some remodeling would occur within the existing building footprints and street layout, including exterior upgrades and tenant improvements. This variation, referred to as **General Plan With Initiative Assuming Vallco as Enhanced Mall**, assumes Vallco could become a vibrant destination with similar characteristics to Valley Fair, although this is not considered to be a likely outcome according to the City's retail consultant, Greensfelder Commercial Real Estate LLC (Greensfelder), as further described in Section C.2. in Chapter III.

2. General Plan With Initiative Assuming Vallco With 2016 Occupancy

This variation assumes that the property remains largely in its current state and is not able to be redeveloped given its current constraints, referred to as **General Plan With Initiative Assuming Vallco With 2016 Occupancy**. The 2014 Retail Strategy Report to the General Plan prepared by Greensfelder indicates the Vallco Fashion Mall is not a viable retail project in its current form.²⁵ Greensfelder has provided an updated technical study for this Report, and its findings will be further described in Section C.2. in Chapter III.

In summary, the study finds that Vallco has been declining for a number of years, both due to consumer trends²⁶ and

²⁴ The Initiative would require a Specific Plan for any change in use from that existing at the time the Initiative is adopted.

The Initiative also designates a maximum building height of 45 feet for the Vallco Shopping District, which is lower than some existing buildings at the Vallco Shopping Mall. The existing structures could remain as currently built. New structures would have to meet the lower height requirements.

²⁵ Retail Strategy Report, p 15.

²⁶ *Washington Post* *Why no one likes indoor malls anymore* <https://www.washingtonpost.com/news/wonk/wp/2015/01/06/why-no-one-likes-indoor-malls-any-more/>, January 6, 2015

the position of the mall in a very competitive retail trade area with strong alternatives for shoppers.²⁷ These and other factors create a real possibility that investors would not be willing to make the necessary investment, or that they might not succeed, in revitalizing the mall. As indicated in this study:

“In recent years there has been some façade improvement to the Vallco Fashion Mall; however, there has been no major reinvestment in the mall for decades. Reinvestment is needed to upgrade or replace older buildings and make other improvements so that this commercial center is more competitive and better serves the community. Currently, the major tenants of the mall include a movie theater, bowling alley and three national retailers.”²⁸

Since this study was completed in 2014, all three national retailers (Macy’s, Sears and J.C. Penney) have closed or are in the process of closing. This variation illustrates the effects if the property remains in close to its current state of occupancy and has about 314,000 square feet currently occupied (26% occupied), assuming J.C. Penney closes in April as publicly indicated by J.C. Penney.²⁹ The reduction of commercial employees at Vallco is not assumed to be offset by increases in commercial employment elsewhere in Cupertino, as the total 1.2 million square feet allocation remains in Vallco Shopping District, despite being substantially vacant.

3. Comparison of Variations on General Plan With Initiative

The differences in land use between the two variations of the General Plan With Initiative are summarized in Table II.7.

Table II.7
Comparison of Allowable Buildout by Land Use
in Vallco Shopping District Under Variations to General Plan With Initiative

Land Uses	Vallco Shopping District		
	General Plan with Initiative Assuming Vallco as Enhanced Mall	General Plan with Initiative Assuming Vallco with 2016 Occupancy	Increase/ (Decrease)
Residential (units)	0	0	No Change
Office (sq. ft.)	0	0	No Change
Retail/Commercial (sq. ft.)	-	-	-
Total Allowable	1,200,000	1,200,000	-
Occupied	1,200,000	314,000 ^a	(886,000)
Hotel (rooms)	313	313	-

a. Although all 1.2 million square feet of space would remain as built, only about 314,000 square feet are assumed to be occupied once J.C. Penney closes in April 2016.

²⁷ Retail Strategy Report, p 39.

²⁸ General Plan, p. PA-9. Note that as of March 2016, only one of the three national retailers remains, and that one plans to close on April 9, 2016.

²⁹ After the closure of JC Penney in April 2016, only 313,982 sq. ft. (or 26 percent) of the Vallco Shopping Mall will be occupied, with the remaining unoccupied/vacant.

II.G. Summary of Scenarios Analyzed in this Report

Where relevant, this Report evaluates the effects and impacts of the Initiative by comparing what would occur under the Adopted General Plan without the Initiative and what would occur under the General Plan With Initiative.

As described above, it also evaluates two variations on each of these major scenarios, which look at alternative development outcomes, as summarized in Table II.8 below.

**Table II.8
Summary of Development Scenarios**

	Without Initiative		With Initiative	
Scenario	Adopted General Plan	Adopted General Plan with 2015 Sand Hill Proposal	General Plan with Initiative Assuming Vallco as Enhanced Mall	General Plan with Initiative Assuming Vallco with 2016 Occupancy
Description	Buildout of the adopted General Plan	Buildout of the adopted General Plan, including the 2015 Sand Hill Property Company's proposal for the Vallco Site (The Hills at Vallco)	Buildout of the General Plan as amended by the Initiative, assuming Vallco is renovated, improved, and successfully occupied	Buildout of the General Plan as amended by the Initiative, assuming Vallco remains largely in its current state with the projected occupancy of 26 percent.

The quantitative analysis in this Report uses these scenarios to compare the type and amount of new development that would be allowed to occur in order to analyze the potential impacts at buildout. Table II.9 contains a summary comparison of development buildout under the Adopted General Plan without and with the Initiative. It also takes into account the alternative levels of occupancy that could occur at Vallco under each scenario.

**Table II.9
Comparison of Development Build Out Under the Development Scenarios**

Development Buildout	Without Initiative		With Initiative		Change in General Plan Buildout With Initiative
	Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Enhanced Mall	General Plan with Initiative Assuming Vallco with 2016 Occupancy	
Residential		-			
Housing (units)	23,294	23,294	23,148	23,148	(146)
Non-Residential		-			
Office (sq.ft.)	11,470,005	11,470,005	9,470,005	9,470,005	(2,000,000)
Commercial/Retail (sq.ft.)	4,430,982	4,430,982	4,430,982	4,430,982	-
Vallco (Allowable)	1,200,000	650,000	1,200,000	1,200,000	-
<i>Vallco (Assumed Occupancy)</i>	<i>1,104,000</i>	<i>598,000</i>	<i>1,104,000</i>	<i>312,000</i>	-
Other Retail/Commercial	3,230,982	3,780,982	3,230,982	3,230,982	-
Hotel (rooms)	1,429	1,429	1,429	1,429	-
Source: City of Cupertino					

III. Analysis

This chapter of the Report presents the analysis of the Initiative's potential effects and impacts, pursuant to Elections Code section 9212. The analysis is presented in six sections that together cover all of the section 9212 subjects that the City Council directed staff to analyze:

- **Land Use and Housing**– Effect on the internal consistency of the City's General and Specific Plans, including the Housing Element, consistency between planning and zoning, and any limitations on city actions,³⁰ as well as its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs, per section 9212 (b)(2 & 3).
- **Development Patterns**– Impact on agricultural lands, uses of vacant parcels of land, and developed areas designated for revitalization and existing business districts, per section 9212 (b)(6 & 7).
- **Economic Development**–Impact on the community's ability to attract and retain business and employment, per section 9212 (b)(5).
- **Infrastructure**– Impact on transportation (traffic congestion), schools, parks and open space, other public services and utility infrastructure, per section 9212 (b)(7).
- **Infrastructure Funding**– Impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space, per section 9212 (b)(4).
- **Fiscal**– Impact on the City's fiscal conditions, per section 9212 (b)(1).

Each section begins with a brief overview of the key components of the analysis and describes the potential effects and/or impacts of the Initiative in specific ways.

III.A. Land Use and Housing

As the Initiative proposes to amend the General Plan, the effects on land use and housing are first considered because they provide the context for the rest of the analyses in the Report. A key focus of this analysis is the Initiative's effect on the consistency of the City's land use policies and programs. It also evaluates how the Initiative could affect the use of land for housing, impact the availability and location of housing, and impair the city's ability to meet its regional housing needs.

1. Background

California law requires every city and county in the State to adopt a general plan with policies and objectives to guide land use and development. The law requires that the general plan be comprehensive, forward-looking, and internally consistent, and also requires that all zoning regulations, capital planning, and individual land use decisions be consistent with that general plan. As described earlier, the City of Cupertino amended its General Plan in 2014 to establish the policy and regulatory framework necessary to build a great community in alignment with its vision for how planning and development should occur through buildout in 2040. Some General Plan policies are quite specific,

³⁰ Elections Code section 9212 specifically authorizes reports to address "limitations on city actions under Section 65008 of the Government Code and Chapters 4.2. (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code."

establishing minimum parcel sizes, building heights and allowable land uses within the various land use designations, while others are more general.³¹

The General Plan also contains specific policies for nine designated Special Areas, one of which is the Vallco Shopping District, which is the primary focus of the Initiative.³² These Special Areas, which comprise approximately one quarter of the City's land area, are located along the City's four main thoroughfares. According to the General Plan, these Special Areas "represent key areas within Cupertino where future development and reinvestment will be focused." The General Plan also contains policies that relate to the remainder of the City, referred to as Neighborhoods, which include the remaining three quarters of the City's land area. The General Plan consists of nine chapters, and Chapter 4 of the General Plan is the City's Housing Element.

The Initiative proposes amendments to four chapters of the General Plan, as detailed in Appendix 2. The amendments would affect land use and housing in the following major ways, each of which is further analyzed below:

- Specific land use changes and policies in the Vallco Shopping District Special Area
- Citywide development and building standards (including maximum building heights and densities, building planes, and minimum setback requirements)
- City's Housing Element
- Voter approval requirements and process to amend the General Plan provisions adopted or revised by the Initiative

One of the key legal aspects that must be analyzed with any proposed initiative that amends the General Plan is how it affects the General Plan's "internal consistency" and the "vertical consistency" of the City's Zoning Ordinance and subordinate plans with the General Plan (as amended by the Initiative). Each of these terms is briefly described to establish context for this analysis:

- Internal Consistency– State law requires that the General Plan, which functions as the "constitution" for the City's land use decisions, must comprise an integrated, internally consistent and compatible statement of policies.³³ This is known as the internal (or horizontal) consistency requirement. As the California Supreme Court has explained, it is unlawful for an initiative to cause a city's general plan to become internally inconsistent or otherwise defective.
- Vertical Consistency– State law also requires that the City's Zoning Ordinance, which is contained in Title 19 of the Cupertino Municipal Code, must be consistent with its General Plan. This requirement is referred to as "vertical" consistency. "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."³⁴

The Initiative's effect on both internal and vertical consistency is also analyzed in relationship to land use and housing, in the following sections.

³¹ Please refer to the City's website for further information on the General Plan: <http://www.cupertino.org/index.aspx?page=1275>

³² These "Special Areas" are identified in the General Plan's Community Form Diagram (Figure LU-1).

³³ Gov't Code § 65300.5

³⁴ *Corona-Norco Unified School District v. City of Corona* (1983) 17 Cal.App.4th 985.

2. Vallco Shopping District

As described in Appendix 2 and Section II.C. of this Report, the Initiative makes significant changes to the General Plan's vision and policies for revitalizing and redeveloping the Vallco Shopping District Special Area.³⁵ While the changes proposed by the Initiative are substantial, they do not appear to create any internal inconsistencies in the General Plan, with two possible exceptions.

First, the General Plan's Recreation, Parks, and Community Services Element (Chapter 9) calls for the development of a "potential trail" along the drainage channel on the south side of I-280. This Element notes that several development projects have already contributed to a proposed future study and potential improvements to implement the trail and states that "[t]he timing of the study is expected to be coordinated with the redevelopment of the Vallco Shopping District and other developments in the area."

Because the Initiative deletes the provisions in Chapter 3 of the General Plan calling for the complete redevelopment of the Vallco Shopping District and removes the incentives for a "master developer" to promptly submit a Specific Plan to achieve that redevelopment, it potentially could interfere with the timing of (and funding for) studying and developing this potential new trail. On the other hand, the Initiative amends one of the land use strategies regarding Vallco to specify that any development or revision to the street pattern at the site should contribute towards the I-280 trail study and improvements.³⁶ Ultimately, even if there is any tension between these different provisions, the City Council has broad discretion in balancing the competing goals, policies, and other provisions of the General Plan. It is unlikely that a court would find that this potential tension renders the General Plan internally inconsistent under State law.

The second possible exception concerns the Initiative's removal from the General Plan of the provisions establishing Vallco as a "priority Housing Element site" for providing the City's state-mandated share of regional housing needs. Because this issue is intertwined with the Initiative's changes to the Housing Element affecting other areas of the City, it is discussed below after the analysis of the Initiative's effects on citywide building standards.

3. Development and Building Standards

The Initiative contains several amendments that would modify development and building standards differently in various areas of the City. (These standards include limits on heights, densities, setbacks and stepbacks, and building planes.) The potential effects in each area of the City are described below.

a) Neighborhoods

Perhaps the most significant of the Initiative's amendments regarding standards is the provision in the proposed new Policy LU-3.0 that increases maximum building heights for the bulk of the City. Specifically, the second sentence of this Policy (on page 5 of the Initiative) provides that "[o]utside of the Special Areas shown in Figure LU-1, building heights may not exceed 45 feet."

The only areas of the City that are "outside of the Special Areas" are the City's Neighborhoods, which comprise approximately three-quarters of the City's land area. Both the adopted General Plan and the City's Zoning Ordinance establish a maximum height limit of 30 feet (or less) for the Neighborhoods. Accordingly, this provision of the Initiative increases the maximum height limit in Neighborhoods by fifty percent (50%) from 30 feet to 45 feet.

³⁵ Please refer to Appendix 2 and Section II.B of this Report for a description of the Initiative.

³⁶ See Initiative at p. 10 (amending Strategy LU-19.1.6).

This increased building height limit has implications for both the internal and the vertical consistency of the General Plan. With respect to internal inconsistency, the General Plan describes the Neighborhoods as areas of the City “where future changes are expected to be minimal.”³⁷ The General Plan identifies twelve distinct Neighborhoods and explains that most of these areas are already fully developed. However, the General Plan also anticipates limited future development (and redevelopment) in the Neighborhoods. And it stresses that, “as redevelopment opportunities arise, it is important that the policies outlined in the General Plan with respect to neighborhood preservation, connectivity, mobility and access to services are implemented.” The provisions of the General Plan setting forth the City’s “Vision” for each of these Neighborhoods confirms that the City anticipates minimal future changes to these neighborhoods. The fifty percent increase in maximum height limits for these areas could be viewed as conflicting with the General Plan’s focus on preserving the Neighborhoods with “minimal” future changes.

With respect to vertical consistency, this increase in the maximum building heights raises the question of whether the City’s Zoning Ordinance—which establishes maximum building heights of 30 feet (or less) in the Neighborhoods—is inconsistent with the Initiative’s new proposed height limit, and therefore would need to be amended to conform to the General Plan if the Initiative is adopted. In other words, would a Zoning Ordinance provision establishing a maximum building height of 30 feet be consistent with a General Plan specifying “building heights may not exceed 45 feet?”

As noted above, State law requires that the Zoning Ordinance (and all other subordinate planning regulations and approvals) must be consistent with the General Plan. This requirement is satisfied if the Zoning Ordinance (or other regulation or action) would “considering all its aspects, further the objectives and policies of the general plan and not obstruct their attainment.” State law also provides that any resident or property owner within the City may file a lawsuit to enforce this consistency requirement.³⁸

The City Council would likely have the discretion either to increase—or not to increase—the applicable Zoning Ordinance height limitations to 45 feet, with two possible exceptions. This is because the 30-foot maximum height limit specified for the zoning districts that comprise the bulk of the Neighborhoods appears on its face to comply with the Initiative’s proposed new General Plan policy specifying that the heights in these areas “not exceed” 45 feet. Simply put, 30 feet is less than 45 feet and therefore, by definition, does “not exceed” 45 feet. The Initiative authorizes the Council to increase zoning in a Neighborhood to 45 feet, to be consistent with the General Plan, where such an increase would currently require a General Plan Amendment.

However, there are important exceptions to this conclusion. Several zoning districts within the City defer to the height in the General Plan. For example, the Commercial Zone allows maximum heights of “30 feet unless otherwise permitted by the General Plan or applicable Specific Plan.”³⁹ Other zoning districts similarly defer to the height in the General Plan.⁴⁰

Although the majority of the Neighborhoods are zoned some type of residential land use, which limits the height to 30 feet in most cases, some parcels with other zoning designations defer to the General Plan. For instance, some Neighborhood sites have Planned Development (P) zoning. The Zoning Ordinance specifies that the maximum

³⁷ See General Plan, Chapter 2, Introduction.

³⁸ Government Code § 65860(b).

³⁹ Cupertino Municipal Code (“CMC”) § 19.60.060(B).

⁴⁰ For example, see Administrative Office (OA) and Administrative Professional (OP) CMC §19.68.050(B) or Industrial Park (MP) CMC §19.72.060(B).

height in any Planned Development (P) zone is governed by “both the General Plan and any underlying zoning designation which regulates the site.”⁴¹

For example, several Neighborhood locations are zoned P(Res). There is no “underlying zoning designation” of “Res” that specifies the heights for those sites. Therefore, arguably, the height defers to the General Plan, or 45 feet under the Initiative.

The second possible exception concerns multi-family housing in the Planned Development (P) residential zone and the R-3 zone. General Plan Land Use Strategy LU-27.6.2, Ordinances Update, directs the City Council to “[u]pdate the Planned Development (Residential) and R-3 ordinances to achieve the policies and strategies applicable to multifamily development in neighborhoods.” It is unclear whether the Initiative’s increase in maximum height limits for the Neighborhoods, as set forth in the proposed new Policy LU-3.0, constitutes a policy “applicable to multifamily development in neighborhoods.” However, to the extent that it does constitute such a policy, then the City may be required to update the P (Residential) and R-3 ordinances to increase the maximum height limits in those zoning districts to 45 feet as well.

Finally, even if the City Council determines that the Initiative (if adopted) does not require the City to increase the maximum height limit in a particular Neighborhood, a property owner wishing to develop his or her property in that Neighborhood could challenge this interpretation and argue that it is inconsistent with the Initiative’s “conformity” provisions. As noted above, one of these provisions directs that “all provisions of the municipal code, ordinances, including zoning ordinances, resolutions, administrative policies, general plans, specific plans, conceptual plans or any other plan of the City shall be revised and amended to make them conform with the provisions of this Initiative.”⁴² The City has already received several written inquiries asking about the effect of these conformity provisions. If such a legal challenge is brought, the courts might ultimately have to decide the meaning of this provision.

b) Special Areas

The Initiative’s proposed new Policy LU-3.0 would prohibit any increases in the maximum building height and densities within any of the General Plan’s Special Areas. This provision essentially readopts limitations already set forth in the current General Plan for these Special Areas and requires voter approval to change these limitations. It does not create any General Plan inconsistencies and does not appear to have any direct effect on the City’s Land Use Policies and Programs. It would, however limit the City’s flexibility in making future changes to these building heights and densities in these “key areas” of the City. This change is somewhat in tension with other General Plan provisions calling for flexibility in the development of the Special Areas and with the General Plan’s recognition that these Special Areas “are expected to transition over the life of the General Plan.”

As described in Appendix 2, however, the Initiative slightly modifies these standards or in fact adopts new standards applicable to certain Special Areas. None of these changes are substantial, but they could still require the City to make changes to the specific plans for the affected Special Areas. This is because the Initiative contains several “conformity” requirements that direct the City to update all other provisions of the General Plan, and all provisions of the City’s other laws and regulations, to conform to the provisions of the Initiative. In light of these “conformity” provisions, the City may need to update the applicable Specific Plans or Conceptual Plans for the Special Areas affected by these changes to conform to the changes made by the Initiative.

⁴¹ CMC § 19.08.040(C)(1).

⁴² See Page 16 of the Initiative (Part VI); see also Page 2 of the Initiative (Part IV, Section 1(a)).

c) Citywide

Most of the Initiative's provisions regarding citywide development and building standards simply readopt (or prevent changes to) standards already set forth elsewhere in the General Plan or in other City planning documents. Policy LU-3.0 would prohibit changes to development and building standards citywide. Specifically, it specifies that:

“No provision allowing additional height or density, modifying maximum lot coverage, building plane, or minimum setback to relax the standard set forth in this General Plan, other than those mandated by state law, shall be allowed.”

This amendment would generally lock in place the General Plan's existing standards (as modified by the Initiative) for residential density, maximum building height, maximum lot coverage, building plane, and minimum setbacks throughout the City. This provision would thus require voter approval for any increase in the specified maximum (or decrease in the specified minimum) standards, “other than those mandated by state law.” As this provision effectively readopts already existing standards, it does not create any General Plan inconsistencies and does not appear to have any direct effect on the City's Land Use Policies and Programs. It could, however, discourage property owners from pursuing development that would require even minor changes to these standards and would likely prevent the City from issuing any variances to exempt property owners from these standards. The scope and process for this voter approval requirement is discussed below in Section A.6, Voter Approval Requirement and Process to Change General Plan.

The Initiative's proposed Policy LU-3.0 contains an additional limitation for certain large projects throughout the City. Specifically, it states that “[f]or any project of over 50,000 sq. ft. of building area, maximum lot coverage shall not exceed 70%.” This limitation would require any future project application exceeding these criteria to obtain voter approval.

In addition to the new proposed Policy LU-3.0, the Initiative also modifies existing General Plan Policy LU-3.2 and adds new policies LU-3.2.1 through LU-3.2.6 to add provisions relating to building heights, setback ratios, setbacks, and building planes. The Initiative states that these modifications are made “[i]n order to ensure the retention and enforcement of City guidelines not currently included in the General Plan.” (These modifications are detailed in Appendix 2, Part IV(C)(4).) The bulk of these provisions reflect existing City policies or guidelines contained in various specific plans or other similar documents.

4. Housing Element

California law recognizes the vital role that local governments play in the supply and affordability of housing. It also requires that all cities' Housing Elements must be updated on a regular basis and reviewed by the Department of Housing and Community Development (HCD) for compliance with State law. Cupertino's Housing Element (Chapter 4 of the City's General Plan) was updated along with the recent General Plan Amendment, and it was reviewed and approved by HCD in 2015.⁴³

The Housing Element contains plans to meet the City's share of the Bay Area's housing needs, referred to as the City's Regional Housing Needs Allocation, or RHNA. For the period from 2015 to 2023, State law requires that the City make sites available for at least 1,064 housing units to meet regional needs.

The Initiative could potentially impact the availability of land, location of housing, and the City's ability to meet its regional housing needs.

⁴³ The City's Housing Element was adopted on May 19, 2015.

5. Availability and Location of Housing

The Housing Element contains two lists of “priority Housing Element sites” that can accommodate the City’s share of regional needs. Scenario A, the preferred scenario, includes Vallco as a housing site. Scenario B, the contingency plan, removes Vallco as a priority site and transfers those units to other sites in the event that a Specific Plan to develop housing as part of a mixed-use project at Vallco is not approved by May 31, 2018. (The table below compares the two scenarios.)

If the Initiative is adopted, Scenario A will be eliminated entirely from the Housing Element, and Scenario B will become the City’s only housing plan for meeting its regional housing needs. The replacement of Scenario A with Scenario B will also have a variety of impacts on the availability and location of housing in the City more generally.

**Table III.1
List of Priority Sites from Housing Element Under Two Scenarios**

Special Area	Scenario A Housing Units	Scenario B Housing Units
North Vallco Park The Hamptons	600 net new units; 942 total	750 net new units; 1,092 total
Vallco Shopping District Vallco Shopping District	389	0
Heart of the City The Oaks Shopping Center Marina Plaza Barry Swenson Site Glenbrook Apartments	200 200 11 -	235 200 11 58 net new units; 575 total
Homestead Homestead Lanes and adjacent sites	-	132
Total Net New Units	1,400	1,386

These scenarios are presented both in the City’s Housing Element and in the Housing Element Technical Report, which is included in Appendix B of the General Plan. The Initiative changes the Housing Element (as just described), but does not make conforming changes in Appendix B to remove Scenario A from consideration. Appendix B continues to state that Scenario A is the preferred alternative, and Scenario B is a contingency plan. If the Initiative is adopted, Appendix B will become inconsistent with the changes made to the Housing Element by the Initiative. Consequently, the Initiative arguably will have created an internal inconsistency in the Housing Element.

However, the Initiative directs the City to revise all other provisions of the General Plan “to make them conform with the provisions of this Initiative.” In the event that the Initiative is challenged in court, it is likely that a court would construe this language as authorizing the City Council to revise the background information contained in Appendix B to be consistent with the policies established by the Initiative.⁴⁴

⁴⁴ See *Pala Band of Mission Indians v. San Diego County* (1997) 54 Cal.App.4th 565, 577 n.8.

a) Ability to Meet Regional Housing Needs

Priority housing sites designated in Scenario A can realistically accommodate 1,400 residences. Priority sites designated in Scenario B can realistically accommodate 1,386 residences. Since Cupertino's share of the regional housing need totals 1,064 units, the citywide reduction of 14 units under Scenario B with the Initiative does not materially affect Cupertino's ability to meet its regional need.

However, the City has already received an application from the owner of The Hamptons property (in the North Vallco Park Special Area) to construct the 600 net new units allowed by Scenario A, rather than the 750 net new units allowed by Scenario B. If the Initiative is adopted, and The Hamptons is approved as now proposed, 150 fewer units could be accommodated in Scenario B. The sites listed in Scenario B would continue to accommodate 1,236 units, which would provide enough sites to meet the City's share of the regional housing need. However, the net effect could be an additional loss of 150 housing units.

In addition, the Initiative reduces the total future development allocations for housing, including sites zoned for housing but not listed in the Housing Element, by 146 units, from 1,882 units to 1,736 units. The Initiative's revised Table LU-1, Citywide Development Allocation between 2014-2040, does not allocate sufficient additional units to other areas to compensate entirely for the loss of 389 units in the Vallco Shopping District, adding just 150 units to the North Vallco allocation and 93 units to the Heart of the City area. This reduction in the residential allocation reduces the City's ability to accommodate additional housing development.

b) Location of Priority Housing Sites

The Initiative removes all priority housing sites from the Vallco Shopping District and adds two priority housing sites:

- Glenbrook Apartments, located in the Heart of the City Special Area, with the capacity for 58 net new units
- Homestead Lanes, located in the Homestead Special Area, with the capacity for 132 units

In addition, under Scenario B with the Initiative, the maximum density is increased on two key sites:

- At the Hamptons, located in the North Vallco Park Special Area, maximum density is increased from 85 units per acre to 99 units per acre and capacity for net new units is increased from 600 to 750 units.
- At the Oaks Shopping Center, maximum density is increased from 30 units per acre to 35 units per acre and capacity is increased from 200 to 235 units.

If viewed by Special Area, Scenario B removes 389 units from the Vallco Shopping District; adds 132 units to the Homestead Special Area; adds 150 units to the North Vallco Park Special Area; and adds 93 units to the Heart of the City Special Area. Residential allocations shown in Table LU-1 have been increased correspondingly in the North Vallco Park Special Area and Heart of the City Special Area but no residential allocations have been added to the Homestead Special Area. It should be noted that revisions to the Housing Element require review by the California Department of Housing and Community Development.

c) Effect on Provision of Affordable Housing

The City has adopted policies that require 15 percent of all new for-sale housing units to be affordable to moderate and middle-income households. Rental housing is required to pay affordable housing impact fees of \$20 to \$25 per square foot, because state law does not allow the City to require rental housing to be affordable. The Initiative does not modify these Housing Element policies.

However, high land costs have made it difficult for the City to construct or purchase affordable housing with its impact fees. The current property owner of the Vallco site has submitted a proposal to the City to construct 800 rental units on the Vallco site, with 10 percent affordable (32 units affordable to low-income households and 48 units affordable to very low income households). If the Initiative passes and no housing is permitted on the Vallco site, it will be difficult for the City to find an alternate location for 80 affordable units.

d) State Law Provisions Applicable to Sites Shown in Scenario B

State law includes various provisions that are applicable to sites listed in the Housing Element. For all sites listed in Scenario B, the City must make findings if it proposes to approve a project with fewer units than shown in the Housing Element. In that case, the City must demonstrate that adequate sites remain to meet the City's fair share of the regional need at all income levels, or must designate alternative sites to meet that need.⁴⁵ If a developer proposes fewer units than shown in the Housing Element, the developer must propose the designation of an alternative site if needed to accommodate the City's fair share.

If the Initiative is adopted, this requirement will apply to any proposal to construct or approve fewer units than are shown in the "Summary of Priority Sites: Scenario B." In particular, this requirement will apply to a proposal to construct 600 net new units at The Hamptons rather than the 750 net new units shown in Scenario B. Additionally, the Initiative states that any rezoning of Homestead Lanes will "allow residential uses by right at a minimum density of 20 units per acre."

The phrase "use by right" is defined by state law to mean that the City may not require any discretionary review for residences on the Homestead Lanes site that would be subject to the California Environmental Quality Act (CEQA). The City may require design review approval for the residences, but any design review approval is also not subject to CEQA.⁴⁶ As a consequence, after any required rezoning is completed for Homestead Lanes, the City may only require design review approval for residences, and residential development will not be subject to CEQA.

e) Consistency of the Initiative with State Law

State law requires that each of the actions identified in the Housing Element must have a "timeline for implementation."⁴⁷ The Housing Element must also "include an identification of the agencies and officials responsible for the implementation of the various actions."⁴⁸ The rezoning of the Homestead Lanes site must be accomplished "no later than three years after...the date that the housing element is adopted," or by May 31, 2018, unless a one-year extension is provided.⁴⁹

⁴⁵ Gov't Code §65863

⁴⁶ Gov't Code § 65583.2(i)

⁴⁷ Gov't Code § 65583(c)

⁴⁸ Gov't Code § 65583(c)(7)

⁴⁹ Gov't Code §§ 65583(c)(1)(A), 65583(f)

The Initiative deletes the following table regarding Strategy 1:

Cupertino Department of Responsible Agencies:	Community Development / Planning Division
Time Frame:	Ongoing; Adopt Specific Plan and rezoning for Vallco by May 31, 2018; otherwise, conduct public hearings to consider adoption of “Scenario B” of sites strategy.
Funding Sources:	None required
Quantified Objectives:	1,064 units (178 extremely low-income units, 178 very low-income units, 207 low-income units, 231 moderate-income units and 270 above moderate-income units)

Because the entire table following Strategy 1 has been deleted, the Housing Element as modified by the Initiative will not contain all of the content required by the housing element statute, because it will not:

- Contain a timeline for implementing any of the actions contained in Strategy 1
- Identify the agencies and officials responsible for implementing actions contained in Strategy 1
- Commit to rezoning the Homestead Lanes site by May 31, 2018.

The Initiative’s deletion of the table following Strategy 1 also removes all quantified objectives for housing at specified income levels to be accomplished by Strategy 1. The quantified objectives included in the deleted table show that Strategy 1 can accommodate the City’s entire share of the regional need at each income level. The quantified objectives for the other strategies in the City’s Housing Element do not show how the City will meet the regional need.

A city cannot take an action inconsistent with, or preempted by, state law.⁵⁰ An initiative amendment must conform to all formal requirements and may not lack any of the content specified by statute for the mandatory elements of the general plan.⁵¹ If a general plan amendment is “substantively deficient, then it may be challenged on that basis.” Substantial compliance with state housing element law “means actual compliance in respect to the substance essential to every reasonable objective of the statute,” as distinguished from ‘mere technical imperfections of form.’⁵²

In *Friends of Avilara v. City of Carlsbad* (2012) 210 Cal.App.4th 1103, 1113, the Court of Appeal ordered Carlsbad to adopt a timeline for completing a program shown in its housing element but did not require Carlsbad to vacate its adoption of its housing element. If a court were to find that the absence of a timeline, responsible agency, and quantified objectives for Strategy 1 are inconsistent with state law, it would have discretion to mandate a variety of remedies.⁵³ Under *Friends of Avilara*, the court would likely order the City to correct the deficiencies in the Housing Element rather than directing that the entire Initiative be invalidated

⁵⁰ California Constitution, Article XI, Section 7

⁵¹ See *DeVita v. County of Napa* (1995) 9 Cal. 4th 763, 796 n.12.

⁵² *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1185.

⁵³ See *DeVita*, 9 Cal. 4th at 796 n.12 (citing *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103-04).

6. Voter Approval Requirement and Process to Change General Plan

As explained above and in Appendix 2, the Initiative contains several provisions that would prohibit any changes to certain General Plan requirements—including to most provisions adopted by the Initiative—without voter approval. Similar voter approval requirements are included in many initiatives, and the courts have generally upheld them.⁵⁴

This section of the Report addresses the scope of the Initiative’s voter approval requirements and the likely options for seeking voter approval.

a) Scope of Initiative’s voter approval requirement

The Initiative expressly or implicitly recognizes three limits on the scope of its voter approval requirements. First, the Initiative states that changes to the “Development Allocations” it makes to Table LU-1 that are indicated by an asterisk “may be changed through the normal general plan amendment process.”⁵⁵ As explained in Appendix 2, the implication of this voter approval language for the allocations **expressly** removed or added to Table LU-1 by the Initiative is clear: The allocations deleted from the Vallco site may not be readopted without voter approval; likewise, the reallocated residential units for the North Vallco Park and Heart of the City Special Areas may be amended by the City Council through the “normal general plan amendment process” (i.e., without voter approval), as indicated by the asterisks added by the Initiative.

For the other allocations set forth in Table LU-1—which are neither added nor deleted by the Initiative—it is not clear whether the Initiative’s voter approval requirements apply. It should be noted that the Initiative does **not** state that it is readopting or reenacting Table LU-1 as a whole. Instead, it states (at the bottom of page 3) that “Table LU-1: . . . is amended by the additions and strikeouts shown below.” Since the other allocations in Table LU-1 were not reenacted, it appears that the voter approval requirement in Part VIII of the Initiative does not apply to these other allocations except to the extent that some other provision of the Initiative expressly references them.

Given this lack of clarity, the City Council most likely would have the discretion to interpret the Initiative in this way. As one court recently explained in construing a general plan amended by initiative, “the settled rule [is] that where [a general plan] is ambiguous, courts should give it “a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical and that will lead to a wise policy rather than mischief or absurdity.”⁵⁶ See Appendix 2, Part IV(C)(2)

Second, Part V of the Initiative (Page 16) states that the “Initiative shall not apply to any development project which has obtained as of the effective date of this Initiative a vested right pursuant to state law.” This Part appears to insulate the Initiative from a legal claim that it constitutes an unconstitutional “taking” or otherwise violates the property of a landowner or developer that has already obtained a legal right to proceed with a specific development project. The courts have found that similar clauses in other land use initiatives generally preclude any claim that the initiative, on its face, constitutes an unconstitutional taking in such circumstances.⁵⁷

⁵⁴ See, e.g., *DeVita v. County of Napa* (1995), 9 Cal.4th 763, No. S037642; see also Elec Code § 9217 (specifying that no adopted initiative “shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original [initiative]”).

⁵⁵ See Initiative, page 4

⁵⁶ *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 521; see *id.* at 513-15, 521-24.

⁵⁷ See *Shea Homes v. Alameda County*, 110 Cal.App.4th 1246, 1266-67 (2003).

Third, proposed new Policy LU-3.0 provides an exception where mandated by state law: “No provision allowing additional height or density, modifying maximum lot coverage, building plane, or minimum setback to relax the standard set forth in this General Plan, other than those mandated by state law, shall be allowed.” This “other than mandated by state law” language appears to provide a safety valve to allow the City Council to relax the specified standards where a specific provision of State law—for instance the various State law provisions requiring cities to provide for their regional fair share of housing or density bonuses—would require such a relaxation. The courts have upheld similar provisions.⁵⁸

However, the language of this provision does not clearly allow the City to grant any variances from these specified building standards in the absence of a specific state law provision requiring one. The provision of the State Planning Law **authorizing** variances does not mandate that a city grant a variance, even where the strict application of buildings standards would deprive the owner of a specific property “of privileges enjoyed by other property in the vicinity and under identical zoning classification.”⁵⁹ To the contrary, the California Supreme Court has long held that the granting of a variance is discretionary, not mandatory.⁶⁰ And one appellate court recently upheld the denial of variance and permit where an initiative had banned the granting of any non-conforming uses, including variances.⁶¹

b) Voter Approval Process

State law governs the manner in which voter approval could be sought for General Plan amendments or other activities that the Initiative prohibits without voter approval. There are two main ways to obtain voter approval: (1) “voter-sponsored” measures, which, like the Initiative itself, are placed on the ballot pursuant to the Initiative power contained in the California constitution; and (2) “council-sponsored measures,” which are placed on the ballot by the City Council. Both procedures are governed by the Elections Code.

For a voter-sponsored measure to be placed on the ballot, the “proponents” of the measure must submit a notice of intent to circulate the proposed initiative petition, request and obtain the official title and summary from the City Attorney, and, after complying with various other requirements, gather and file with the City the requisite number of valid signatures within 180 days of receiving the official title and summary.⁶² The requisite number of valid signatures to qualify a measure for the ballot is ten percent (10%) of the registered voters of the City. Voter-sponsored measures are not subject to the California Environmental Quality Act (“CEQA”). However, the City Council could, if it so chose, direct that a section 9212 Report be prepared on any such measure.

In addition, the City Council may, if it so chooses, submit a proposal to the voters.⁶³ Council-sponsored measures are subject to CEQA and, accordingly, the Council would need to comply with CEQA prior to placing a measure on the ballot. Under the City’s current General Plan, property owners wishing to submit a development application that requires a General Plan amendment must first seek authorization from the City Council to process such amendments.⁶⁴ Under the Initiative, the City Council would retain the discretion not to grant such authorization.

⁵⁸ See, e.g., *Shea Homes Ltd. Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1265-66; see also Appendix 2, Part IV(C)(3) (discussing this provision).

⁵⁹ See Gov’t Code § 65906 (providing that variances “shall be granted only when” such circumstances are present).

⁶⁰ *Metcalf v. Los Angeles County* (1944) 24 Cal.2d 267, 272; *Rubin v. Board of Directors of City of Pasadena* (1940) 16 Cal.2d 119, 126.

⁶¹ *Ideal Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 308, 313-20.

⁶² See Elections Code §§ 9200 – 9215.

⁶³ Elections Code § 9222.

⁶⁴ The City adopted this requirement in 2015, pursuant to Resolution No. 15-078, to create a procedure for the consideration of future General Plan amendments that would encourage orderly development of the City.

It is impossible to predict how many elections would be required under the Initiative. However—given the Initiative provision stating that “No provision allowing additional height or density, modifying maximum lot coverage, building plane, or minimum setback to relax the standard set forth in this General Plan, other than those mandated by state law, shall be allowed”—it appears that the Initiative would require voter approval even for the types of relatively minor “variances” that State law authorizes the City to grant where minor exceptions from such requirements are necessary. If that is the case, voter approval could be required for the types of small projects that the City would otherwise have the power to issue a variance to allow.

The City would be required to pay for the costs of any election required by the Initiative. The estimated costs for holding an election depend on whether the City places the measure(s) on the ballot at: (1) a stand-alone election; or (2) a “consolidated” election, which means an election where some other matter is already on the ballot (e.g., a statewide primary or general election).

Based on the most recent information available from the County Registrar of Voters, a stand-alone election (i.e., an election on a date that the County is not already conducting an election) would include a “base charge” of \$377,600 plus an additional cost of roughly \$53,400 for an average length ballot measure. Thus, the total estimated costs to conduct a stand-alone election on a single ballot measure would be approximately \$431,000.

For a consolidated election (i.e., an election on a date the County is already conducting an election), the “base charge” would be \$52,900 and the additional \$53,400 per-measure costs would remain the same. Thus, the total estimated costs to put a single measure on the ballot at a consolidated election would be approximately \$106,300.

These costs are estimates only. The final costs would depend on the actual full costs for the County to conduct the election. These estimates do not include any staff time or other expenses the City might itself incur. For instance, the City Council could decide—as it did in the case of the present Initiative—to order preparation of a report under Elections Code section 9212. The precise costs of a 9212 report depend on the nature of the initiative; however, the budget for the two 9212 reports that the City Council has ordered thus far in calendar year 2016 were \$150,000 per report.

III.B. Development Patterns

As described in the prior section, the Initiative will affect both land use and housing throughout the City. As the result of the proposed land use changes, the Initiative will affect the future uses of vacant parcels of land, community form, and developed areas designated for revitalization and existing business districts. It will not affect agricultural uses. In summary, the following effects would occur:

- As previously described, the Initiative would primarily affect the future development of Vallco, a site that has been designated for revitalization for many years and which is part of and adjacent to the City’s major existing business districts. As will be further described in the next section, the Initiative could significantly affect the potential development success of Vallco, which could in turn affect the surrounding business districts. It would also restrict the urban form and development potential of Vallco in specific ways as previously discussed.
- Under the adopted General Plan, the maximum building height for areas outside Special Areas (i.e. Neighborhoods) is 30 feet. Under the Initiative, the maximum building height in areas outside Special Areas (i.e. Neighborhoods) would increase from 30 to 45 feet. Buildings of 45 feet are typically three to four stories tall. The Initiative, therefore, would change the form of future development in Neighborhoods to allow taller

buildings, but the maximum square footage allowed on individual properties would continue to be subject to General Plan allocations and zoning standards.

As the City has minimal land in agricultural uses and the Initiative does not propose any specific changes to policies that would affect agricultural land, it would not have a direct impact on agricultural uses.

III.C. Economic Development

This section evaluates the Initiative's potential impact on the community's ability to attract and retain business and employment. As the Initiative would only directly affect the allocations for Office and Commercial non-residential uses in the General Plan, this section evaluates the effect of the Initiative on these land uses and evaluates how this would in term affect the City's economic development potential to attract and retain business.

If the Initiative were to be adopted, it would remove a key incentive for a developer or property owner to enter into a Development Agreement to undertake the mixed-use development of the Vallco Shopping Center and potentially provide significant community benefits and infrastructure investments as part of the Development Agreement. As discussed below, this could limit the potential for economic development at the Vallco site in other ways as well.

1. Office

The General Plan provides room for office growth to “support strong fiscal revenues and a stable tax base. In particular, policies focus on retaining and increasing the number of small, medium and major businesses in key sectors and provide flexible space for innovative startups that need non-traditional office environment.”

The Initiative would eliminate office space entirely at Vallco Shopping District, and it would reduce office space by 2 million square feet citywide, counter to the City goals of attracting and retaining businesses. A limited supply of office space, coupled with competition for space from existing businesses in Cupertino, will also constrain the City's ability to attract and retain growing companies. A very tight market for office space, combined with the high share of office space occupied by Apple, results in scarce leasing opportunities in the 20,000 to 100,000 square foot range. Although larger spaces are also in short supply, 20,000 to 100,000 square feet spaces are in particularly high demand for growing companies such as midsize technology startups. As a result, many expanding midsize firms have opted to relocate to other nearby communities.⁶⁵

2. Commercial/Retail

The Initiative seeks to preserve and enhance the Vallco Shopping Center in its current form and requires that 1.2 million square feet of retail/dining/entertainment be preserved as both the “minimum” and the maximum commercial square footage at Vallco. Requiring that this amount of square footage be maintained—i.e., neither increased nor decreased without voter approval—would significantly limit the flexibility of current and future owners of the property to modify the mix, size, and type of retail/dining/entertainment operating at the site and thereby significantly limit the flexibility to respond to changing market conditions.

The impacts of this limitation would likely be exacerbated by the fact that that Vallco Shopping Mall⁶⁶ is not a viable retail project in its current form, as discussed above in Chapter II. Greensfelder Commercial Real Estate

⁶⁵ Economic Development Strategic Plan Background Report, Revised Draft Report, Strategic Economics and MIG, January 2016, page 5.

⁶⁶ Vallco Fashion Park, Vallco Shopping Mall, Vallco Shopping Center and Vallco are all terms used to describe the retail shopping mall within the Vallco Shopping District.

(Greensfelder), the retail specialist and author of the 2014 Retail Strategy Report, has provided an updated technical analysis for this Report that evaluates the effects of the Initiative. Appendix 6 contains the Greensfelder analysis, which is summarized here.

a) Major Retail Trends

Vallco has been declining for a number of years, both due to consumer trends and the position of the mall in a very competitive retail trade area with strong alternatives for shoppers. The following major retail trends are affecting how Vallco is currently performing and would likely perform in the future under alternative development scenarios:

- **Mall retailers who do a better job of differentiating themselves from competitors are consolidating into fewer, high performing Class A regional malls, and an increasingly wide divide is developing between higher performing Class A malls and lower performing Class C malls of which Vallco is an excellent example.**
 - Today’s successful malls are predominantly comprised of “specialty” retailers that need to draw customers from a broad retail trade area.
 - Vallco operates in a retail trade area where there is an oversupply of mall space.
 - Mall leasing and operation is a highly competitive business.
 - The accelerating rate at which Class A malls are differentiating themselves from Class B and C malls is definitive evidence that Vallco’s circumstance is not unique.
 - Department stores and big box retailers have consolidated within their respective categories.
 - Many retailers have experienced financial and operational challenges including Macy’s, Sears and JC Penney, all of which were anchors at Vallco before their closure.
- **Technology has changed shopping, particularly for commodity goods. Multiple retail “channels” now compete against traditional “bricks and mortar” retail.**
 - An increasing number of retailers sell through multiple retail channels and try to create an “omnichannel” experience for the consumer.
 - This trend has resulted in the closure of some “bricks and mortar” retailers, while it has also provided some more nimble and responsive retailers with new opportunities to reach consumers.
 - These trends have particularly forced commodity retailers to operate in an ever-changing environment. This competitive environment combined with continued consolidation amongst commodity retailers means there will be fewer tenants available to fill space should Vallco be re-positioned as a so-called power center.
- **Retail must constantly reinvent itself to stay “fresh” and relevant to customers.**
 - Mall operators and retailers alike must build rapport and excitement with their customers in order to create “want-based” as opposed to “need-based” specialty shopping experiences, and to retain a competitive edge.
 - Consumers are increasingly looking for well-designed and authentic destination retail environments where they not only can spend their free and recreational time, but where they can have a compelling “experience” while doing so.
 - The addition of residential and office space in a redeveloped Vallco provides greater opportunities to create a dynamic environment and greater critical mass to support an active retail component.

- An owner or developer with both expertise and deep financial capability is needed to execute a repositioning strategy at Vallco.

Specifically, current retail trends point to Valley Fair, Santana Row and Stanford Shopping Center continuing to dominate the retail market because all evidence points to the market having determined there is no need for another regional mall serving the Cupertino trade area.

b) Analysis of Alternative Development Scenarios

Greensfelder evaluated the four alternative development scenarios based on the types of retail that might be supportable and attracted to Cupertino, the potential improvements that would be needed along with a high level estimate of required investment to accomplish anticipated development and its likelihood of success along with other considerations. The potential success of each of the listed scenarios is largely dependent on the market forces described in Appendix 6.

Generally, the scenarios allowing Vallco to be redeveloped under the City's Adopted General Plan are the scenarios most likely to succeed, although the amount of successful retail is expected to be significantly less than presently exists at Vallco. The scenarios requiring Vallco to operate in its present format are generally not feasible. The specific findings for each scenario are presented below and additional findings are included in the Conclusion section of Appendix 6:

- Adopted General Plan– A mixed-use project with a smaller retail component has a much higher likelihood of success than preserving the existing Vallco mall in its present configuration.
- Adopted General Plan With Sand Hill Proposal– Allowing for a mix of land uses on the Vallco site has the greatest likelihood of success. The Sand Hill Proposal that includes 800 residential units and 2,000,000 square feet of office space has the potential to create a dynamic environment.
- General Plan With Initiative Assuming Vallco as Enhanced Mall –This scenario is not a feasible option from either a market or development perspective. Trying to preserve Vallco as it was decades ago will not attract new tenants or customers, especially customers who are drawn to vibrant, pedestrian oriented retail environments. Something substantively new and differentiated from competing projects must be created at Vallco in order to draw customer traffic.
- General Plan With Initiative Assuming Vallco With 2016 Occupancy–Vallco in its present configuration is unlikely to generate the incremental income required to justify investment in a significant renovation. The most likely outcome with the Initiative is that Vallco will remain in its current state, or it will continue to decline and face closure like many similar Class C malls across the United States. Without significant investment in redevelopment, Vallco is more likely to deteriorate as opposed to improve beyond its present 2016 level of occupancy (314,000 SF retail occupied).

c) Reduction of Employment

The decrease in office space would have the effect of reducing potential employment in the City by 6,666 jobs, as described in Chapter II. In addition, if Vallco were to continue at its current occupancy, there would be a further loss of about 1,800 Commercial/Retail jobs for a total loss of about 8400 jobs.

d) Jobs-Housing Balance

The ratio of jobs to housing in the City is a measure that is used to evaluate how many jobs a City provides in comparison to housing units. Under the Adopted General Plan scenario, the number of jobs in Cupertino per

residential unit would be 2.22 (i.e., there would be 2.22 jobs within the City for every residential unit). The reduction in employment in Cupertino under the Initiative would reduce the jobs to housing ratio to 1.95 under the General Plan With Initiative Assuming Vallco As Enhanced Mall or 1.91 under the General Plan With Initiative Assuming Vallco with 2016 Occupancy.

III.D. Infrastructure

This section evaluates the Initiative's potential impact on transportation (traffic congestion), schools, parks and open space, other public services and utility infrastructure. As noted above, one potentially substantial effect of the Initiative is that it would remove the financial incentives for a developer or property owner to voluntarily offer to enter into a Development Agreement to undertake the mixed-use development of the Vallco Shopping Center and potentially provide significant community benefits and infrastructure investments as part of the Development Agreement. To provide a basis for comparison, this section includes a discussion of the types of infrastructure improvements Sand Hill offered to provide in its September 2015 application to redevelop the Vallco Shopping Center. The analysis in this section is based on the analysis performed by David J. Powers & Associates contained in Appendix 5, which includes as attachments the September 2015 application and December 2015 Draft EIR Project Description for The Hills at Vallco.

To reiterate, this Report compares the Initiative and the Sand Hill Proposal with buildout under the adopted General Plan. It is not an Environmental Impact Report (EIR) and does not compare the existing conditions with a proposed project. For example, the Sand Hill Proposal would increase traffic impacts from existing conditions due to increased development and higher levels of employees and residents. These impacts would be studied as part of an EIR. Likewise, under the General Plan With Initiative Assuming Vallco as Enhanced Mall scenario, there would be traffic increases due to the increased number of customers that higher occupancy and usage rates would bring. The nature and extent of the redevelopment and renovation activities associated with this scenario would determine the nature and extent of CEQA review required and thus the scope of the City's ability to impose measures to mitigate these impacts.

By contrast, the analysis in this report focuses on the difference in General Plan build out under both scenarios, as discussed in Chapter II.

1. Transportation

The City's transportation system consists of a combination of transit, bicycle, pedestrian, roadway and freeways. In order to minimize traffic congestion, the City continues to monitor and undertake improvements in all of these transportation areas. The Initiative's impact is thus first analyzed according to these key transportation areas.

a) Transit, Bicycle, and Pedestrian Facilities

New development is subject to General Plan policies that ensure adequate transit, bicycle, and pedestrian facilities are available to Cupertino residents. With or without the Initiative, new development would be subject to a Transportation Impact Analysis (TIA) that would evaluate a development's specific transit, bicycle, and pedestrian impacts and identify necessary mitigation measures.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, Sand Hill proposes to provide transit, bicycle, and pedestrian improvements in excess of those typically required as TIA mitigations, including funding for a community shuttle, designating a "Multi-Modal Transit Center," dedicating curbside areas for commuter shuttles and replacing the existing, enclosed bridge over North Wolfe Road with a landscaped pedestrian bridge.

Under the General Plan With Initiative, the renovation and improvement of Vallco likely would not require a TIA or improvements to existing roads, bridges, transit, bicycle and pedestrian facilities, and no improvements would be required or made if Vallco remains in its current state.

b) Roadway Infrastructure

New development would be subject to General Plan policies to ensure the City's roadway infrastructure supports existing and future development. New development would be subject to a TIA that would evaluate a development's significant transportation impacts and identify necessary mitigation measures. New development would also be subject to the City's Transportation Mitigation Fee Program, which would provide additional funding to support transportation improvements, once adopted.

Buildout of the Adopted General Plan with or without the Initiative would result in significant congestion at intersections. However, as there would be less development citywide with the Initiative, the impacts on roadways would be less than under the Adopted General Plan.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, Sand Hill offers to provide a new signalized intersection on North Wolfe Road between Vallco Parkway and the I-280 interchange, as well as modifications to the existing tunnel under North Wolfe Road to allow east-west access for emergency and service vehicles, which would not typically be required as a TIA mitigation.

Under the General Plan With Initiative, the renovation and improvement of Vallco likely would not require a TIA or improvements to existing roadway infrastructure. No TIA or roadway improvements would be required or made if Vallco were to remain in its current state.

c) Freeway Infrastructure

As described above, new development would be subject to a TIA and the City's Transportation Mitigation Fee Program, once adopted. Under the General Plan With Initiative, the renovation and improvement of Vallco would not likely require a TIA or improvements to existing freeway infrastructure. No TIA or freeway infrastructure improvements would be required or made if Vallco remains in its current state.

Buildout of the Adopted General Plan with or without the Initiative would result in significant impacts to freeway segments. However, as there would be less development with the Initiative, the impacts on freeways would likely be less than under the Adopted General Plan at build-out.

2. Schools

All new development (residential and non-residential) is required to pay school impact fees pursuant to Senate Bill (SB) 50, and the payment of these fees provides full and complete mitigation on school facilities. No other improvements for schools are specifically required under the Adopted General Plan without or with the Initiative.

While it is acknowledged that school facility improvements within existing school district campuses may occur over the buildout of the General Plan, no specific physical school improvements were identified or required as part of the General Plan buildout. Therefore, the Initiative would not affect local school district facilities directly, except that it would not allow the proposal by Sand Hill to move forward on the Vallco site and therefore would not include the school improvements that Sand Hill is offering as part of the Hills at Vallco project, such as a new elementary school and innovation center. (Please see the section III.E. of this Report for a specific discussion of the proposed school improvements by Sand Hill, which would not occur with the Initiative.)

3. Parks/Open Space

New residential development is subject to General Plan policies and the City's Municipal Code, which requires residential developers to pay park impact fees and dedicate parkland (or pay in-lieu fees) to offset their impacts to parkland.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, Sand Hill proposes to offset their development's park needs by paying the required fees and providing private amenity space, two "town squares," and a 30-acre green roof with publicly-accessible active and passive open spaces. Sand Hill also proposes to improve the play fields at the former Nan Allan Elementary and Collins Elementary. The Sand Hill development exceeds the City's parkland dedication requirements.

Under the General Plan With Initiative, there would be 146 fewer dwelling units developed citywide. The reduction in residential development would result in a proportional reduction in use of existing park and recreational facilities and a reduction in the need for new or expanded park and recreational facilities. The park impact fees collected by the City and the dedication of new parkland or payment of in-lieu fees would also be reduced proportionately. Under the General Plan with Initiative, renovation and improvement of Vallco would not be required to pay park impact fees, dedicate parkland or pay in-lieu fees. No fees or parkland dedication would be required if Vallco remains in its current state.

4. Other Public Facilities

a) Police Services

The City of Cupertino contracts with the Santa Clara County Sheriff's office for its police services. New development would be subject to General Plan policies that ensure adequate police protection services in the City. Overall, buildout of the General Plan With Initiative would likely generate less demand for police services than under the Adopted General Plan because the Initiative would result in less development citywide. However, there could be differing needs for police services at Vallco without and with the Initiative.

To determine the Initiative's impact on the need for services at Vallco, the Sheriff's Office analyzed calls for service and reported incidents from 2013 to present. The Sheriff's Office analysis is contained in Appendix 8. Macy's closed in March of 2015 and Sears in October of 2015. In any active shopping mall, theft crimes will comprise the majority of incidents, specifically shoplifting. Second to that, patrons leaving valuables in their vehicles while they shop will attract vehicle burglars, making these incidents of high frequency as well. As the occupancy of the mall decreased from 2013 – 2015, the Sheriff calls for service for the commercial burglary and petty theft decreased as well.

Within the last year, Vallco has seen an uptick in vandalism incidents and the number of stolen vehicles and recovered stolen vehicles (see Figure III-1). Deputies did not recover any stolen vehicles at Vallco in 2013, but recovered one in 2014 and six in 2015/2016 (all six were recovered after the closure of Macy's and Sears). The proximity to Interstate 280, from N. Wolfe Road, provides for a quick escape route and avenue of disassociation.

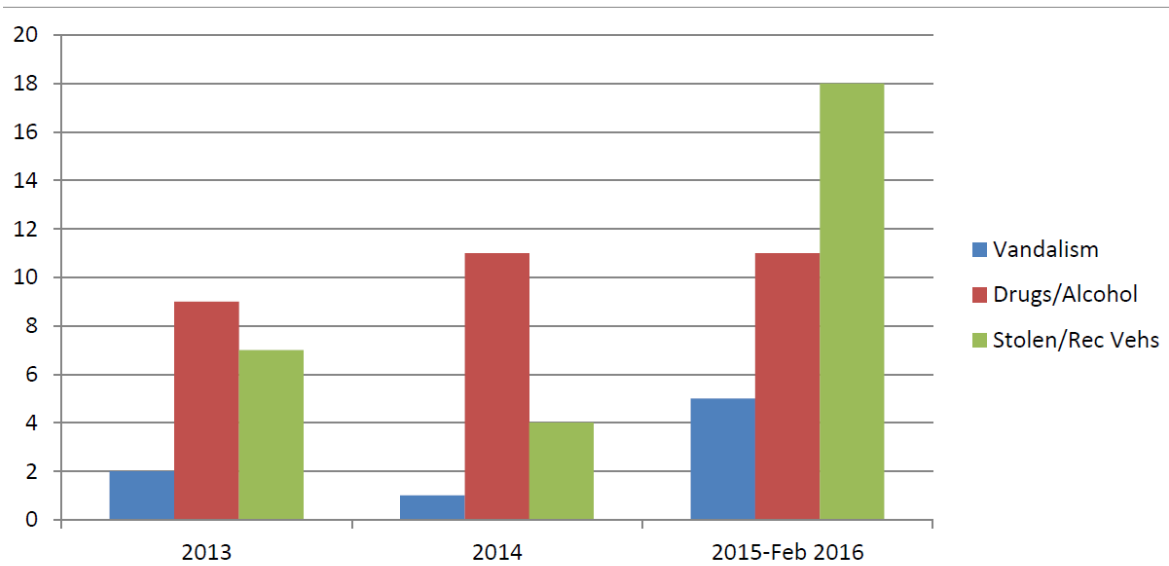
As with any property, if building(s) are vacant, this creates an opportunity for differing types of activity, including arson, drug sales, and vandalism, and it may serve as an encampment space for transients. Although Vallco is not completely vacant, there has been an increase in calls for service for vandalism as the occupancy of the mall has decreased. Drug and alcohol related incidents have remained fairly consistent from 2013 to the present.

Cupertino has adopted a Nuisance Abatement Ordinance, which is codified in Chapter 1.09 of its Municipal Code. If Vallco becomes vacant and deteriorates to the point of becoming a "nuisance" as defined in Section 1.09.030, the

City can initiate an administrative abatement action. In addition, the City has other remedies such as a civil action for abatement of a nuisance.

If the Sand Hill proposal is adopted and the site is built out according to the Adopted General Plan, more activity and increased population would increase the demand for police services, while at the same time, the enhanced activity at Vallco would likely reduce vandalism and vagrancy.

**Figure III.1
Recent History of Crime Incidents in Vallco (2013-2015)**



b) Fire Services

New development would be subject to the City’s Fire Code and to General Plan policies that ensure adequate fire protection in the City. Buildout of the General Plan With Initiative would have less demand for fire protection services than under the Adopted General Plan because the Initiative would result in less development citywide. However, new development would result in new buildings and the potential replacement of older buildings, which would lower the demand for fire services as the result of modern fire and building codes.

c) Library Service

The existing employees and library facilities in the Santa Clara County Library system are sufficient to serve the demand from the buildout of the Adopted General Plan with or without the Initiative. Buildout of the General Plan With Initiative would have less demand for library services than under the Adopted General Plan because the Initiative would result in fewer residents and employees city-wide.

5. Utilities and Service Systems

a) Wastewater Treatment/Sewer System

Buildout of the Adopted General Plan with or without Initiative would not exceed the design or permitted capacity of the wastewater treatment plants serving the City. Project-specific review is required when new development is proposed to determine if sufficient capacity exists and/or if improvements to the local collection system may be required as a condition of approval.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, preliminary analysis indicates that the Sand Hill development would require the construction of a parallel pipe to the existing sewer main in North Wolfe Road to provide adequate sewer service to the development. Downstream capacity of the sewer collection system would also need to be considered and other improvements may be necessary.

Buildout of the General Plan With Initiative would have less citywide demand for sewer conveyance and treatment than under the Adopted General Plan because the Initiative would result in less development. No sewer system improvement would be required for the renovation and improvement of Vallco, or if it remains in its current state.

b) Water

There is sufficient water supply to serve the buildout of the Adopted General Plan with or without Initiative. New development would be subject to General Plan policies that ensure adequate water supply.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, the existing water main in North Wolfe Road would be rerouted to Perimeter Road to connect to the existing water main in I-280. Sand Hill also proposes to extend the existing City of Sunnyvale recycled water infrastructure to Vallco. Redevelopment of Vallco by Sand Hill would be LEED Platinum (or equivalent), which would result in greater water efficiency and reduced water demand than assumed for the site under the Adopted General Plan.

Buildout of the General Plan With Initiative would result in less water demand citywide than under the Adopted General Plan because the Initiative would result in less development citywide. Specifically at Vallco, the water efficiency of existing mall fixtures are from the water efficiency standards at the time they were constructed (mid-1970s, with tenant improvements mainly occurring in the early 1990s). It is assumed that the water efficiency of existing, occupied mall spaces would not be updated and that any renovations and improvements completed would meet current water efficiency standards. In addition, the water demand from the mall would be proportionately less if it is 26 percent occupied versus successfully occupied.

c) Solid Waste

New development is subject to General Plan policies that ensure adequate waste collection and disposal facilities. Construction and demolition projects (such as the redevelopment of Vallco as proposed by Sand Hill or the renovation and improvement of Vallco under the Initiative) are required to meet the City's Construction and Demolition Recycling Diversion Requirements.

Buildout of the General Plan With Initiative would result in less solid waste generation than under the Adopted General Plan because the Initiative would result in less development citywide. In addition, the solid waste generation from the mall would be proportionately less if it were 26 percent occupied versus successfully occupied.

d) Energy

Buildout of the City would intensify uses and development in the City; however, it would not necessarily result in greater energy demands. New development is subject to General Plan policies regarding energy efficiency and must be constructed in compliance with CalGreen, resulting in significant energy conservation and savings.

If Vallco were redeveloped as proposed by Sand Hill under the Adopted General Plan, the development would be LEED Platinum (or equivalent), which would result in greater energy efficiency than currently required of new development by the City and exceed the energy efficiency assumptions for the site under buildout of the Adopted General Plan.

Buildout of the General Plan With Initiative would result in less demand for electricity and natural gas than under the Adopted General Plan because the Initiative would result in less development citywide. However, because the Initiative would reduce the amount of housing and office space in the City (specifically, it would not allow a mix of residential and employment uses at Vallco), the City's overall vehicle miles traveled would increase compared to the Adopted General Plan because new housing and jobs would be located further from each other. Specifically at Vallco, the energy efficiency of existing mall buildings are from the energy efficiency standards at the time they were constructed (mid-1970s with tenant improvements in the early 1990s). It is assumed that the energy efficiency of existing, occupied mall spaces would not be updated and that any renovation and improvement completed would meet current energy efficiency standards. In addition, the energy demand of the mall would be proportionately less if it is 26 percent occupied verses successfully occupied.

III.E. Infrastructure Funding

As described in the prior section, the buildout of the Adopted General Plan with and without the initiative could affect transportation, schools and parks/open space, which are the main categories to be evaluated according to Election Code 9212. This section analyzes the potential impact on funding on these three types of infrastructure. As described in Section C, if the Initiative were to be adopted, it would remove a key incentive for a developer or property owner to enter into a Development Agreement to undertake the mixed-use development of the Vallco Shopping Center and potentially provide significant community benefits and infrastructure investments as part of the Development Agreement, as further described below.

1. Transportation

Mitigation Measure TRAF-1 in the General Plan EIR, which was adopted by the City, identifies examples of transportation improvements that would reduce, to an acceptable level, the transportation impacts due to buildout of the General Plan, and that could be analyzed in a nexus study for a Transportation Mitigation Fee Program to fund the improvements on a fair share basis. A key future potential source of funding from new development would be generated by the City's proposed Transportation Mitigation Fee Program, which is not yet adopted. If adopted, this program would provide funding for roadway and infrastructure improvements that would help mitigate impacts from new development. Pursuant to Mitigation Measure TRAF-1, the fees shall be assessed when there is new construction, an increase in square footage in an existing building, or the conversion of existing square footage to a more intensive use. The City shall use the transportation mitigation fees to fund construction (or to recoup fees advanced to fund construction) of the transportation improvements identified in Mitigation Measure TRAF-1, among other things that at the time of potential future development may be warranted to mitigate transportation impacts. Individual developments would need to evaluate and potentially undertake or fund transportation improvements to mitigate their project-specific impacts. Because less new development would be allowed under the Initiative, there would be less funding for transportation, but there could theoretically also be fewer traffic impacts because there would be fewer vehicle trips.

If Vallco is redeveloped as proposed by Sand Hill under the Adopted General Plan, Sand Hill has offered to provide and fund a number of specific transit, bicycle and pedestrian infrastructure improvements, some of which could extend beyond what would be required by General Plan policies. None of the other development scenarios would provide funding for specific transit, bicycle or pedestrian improvements, although specific improvements could be provided as part of mitigation for new development.

Sand Hill has similarly offered to provide and fund roadway improvements separate from TIA mitigations, including a new signalized intersection on N. Wolfe Road between Vallco Parkway and the I-280 interchange, as well as

modifications to the existing tunnel under North Wolfe Road to allow east-west access for emergency and service vehicles.

No specific freeway improvements are identified or required for the buildout of the General Plan. However, new development would be subject to General Plan policies, including policy M-7.1, which requires a transportation impact analyses to evaluate a development's significant freeway impacts and identify mitigation measures, as appropriate.

2. Schools

As required by California Senate Bill 50 (SB 50), all new development, including both residential and non-residential development, is required to pay the school impact fees based on a development's square footage.⁶⁷ Generally, local schools are directly impacted by residential development in that school-age children living in the new development would attend the local public schools. Non-residential development (e.g., commercial or office development) does not directly generate residents or school-aged children. Residential and non-residential developments, however, are required to pay school impact fees.

Under the Adopted General Plan, there would be 1,882 more dwelling units than currently exist. This net increase in dwelling units would generate approximately 735 new students (471 elementary school students, 132 middle school students, and 132 high school students). The Initiative would decrease the number of residential units citywide by 146 units, which would reduce the student population at buildout by 57 students, and in turn, reduce the amount of impact fees generated from new development by about \$500,000 as shown in Table III.2.

It would also reduce funding for schools from school impact fees from non-residential development because the Initiative eliminates 2 million square feet of office space, which would reduce impact fee revenues by about \$1.1 million. A summary of the school impact fee estimates under each scenario is shown in Table III.2, below. With the school impact fees collected, the local school districts (Cupertino Union School District, Fremont Unified High School District, and Santa Clara Unified School District) can complete facility improvements, as necessary.

In addition, when comparing the effects of the Initiative on school funding and infrastructure to the Adopted General Plan under the Sand Hill Proposal, the benefits to school infrastructure that would be potentially lost under the Initiative are even more significant. Under the Initiative, the City and local School Districts would not benefit from the following benefits proposed by Sand Hill, which are in addition to the payment of school impact fees as required:

Cupertino Union School District

- A new 700-student elementary school;
- Permanent classrooms at Collins Elementary;
- Improved play fields at the former Nan Allan Elementary and Collins Elementary;
- Creation of a \$1.0 million endowment for the 8th grade Yosemite Science Program; and
- Extra parcel tax payments for the non-senior market rate apartments.

Fremont Union High School District

- A 10,000-square foot High School "Innovation Center" at Vallco that would be available to the High School District for rent for 34 years; and

⁶⁷ Under SB 50, the payment of school impact fees provides full and complete school facilities mitigation for new development associated with the buildout of the General Plan.

- Pay in lieu parcel tax payments for the non-senior market rate apartments as though they were separate parcels rather than a single parcel, per current taxes and parcel taxes as authorized in the future.

As mentioned above, it is important to note that the City could not legally *require* Sand Hill to provide the additional school facility and other benefits described above that exceed those authorized or required under State law. Moreover, at this point, Sand Hill has requested that the City cease processing its proposed application (in light of the Initiative), and thus there is no guarantee that the proposal would even come before the City Council in its current form for possible consideration and approval. Likewise, it is impossible at this point to know whether the City Council would approve this proposal. Nevertheless, this proposal does illustrate the type of proposal that is contemplated and even encouraged under the current General Plan, and which would be prohibited by the Initiative. Likewise, the adopted General Plan specifically encourages redevelopment of the Vallco site by a “master developer,” which is the mechanism most likely to incentivize the use of the type of “development agreement” authorized by State law that frequently includes community benefits well in excess of what can be legally required. By contrast, the Initiative deletes the provisions calling for a master developer and deletes the provisions calling for complete redevelopment of the Vallco site.

**Table III.2
School Funding and Infrastructure**

	Assumptions ^a	Without Initiative		With Initiative		Increase/ (Decrease) With Initiative
		Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Viable Mall	General Plan With Initiative Assuming Vallco With 2016 Occupancy	
Students from Net Increase in Potential Development		735	735	678	678	(57)
Net Increase in Potential Development	See Appendix 7 Table 1					
New Residential (Sq.Ft.)		2,258,400	2,258,400	2,083,200	2,083,200	(175,200)
New Non-Residential (Sq.Ft.)		3,509,243	3,509,243	1,509,243	1,509,243	(2,000,000)
Development Impact Fee (Maximum Fees)						
New Residential	\$3.36 /sq.ft.	\$7,590,000	\$7,590,000	\$7,000,000	\$7,000,000	(590,000)
New Non-Residential	\$0.54 /sq.ft.	\$1,890,000	\$1,890,000	\$810,000	\$810,000	(1,080,000)
Total Development Impact Fee		\$9,480,000	\$9,480,000	\$7,810,000	\$7,810,000	(1,670,000)
Cupertino Unified School District (CUSD) Share	60%					
<i>Total Development Impact Fee to CUSD</i>		\$5,680,000	\$5,680,000	\$4,690,000	\$4,690,000	(990,000)
Fremont Union High School District (FUHSD) Share	40%					
<i>Total Development Impact Fee to FUHSD</i>		\$3,800,000	\$3,800,000	\$3,130,000	\$3,130,000	(670,000)
Additional Infrastructure Benefits		N/A	See below*	N/A	N/A	
<p>*Additional infrastructure benefits under "Adopted General Plan With 2015 Sand Hill Proposal" includes:</p> <ul style="list-style-type: none"> • A new 700-student elementary school; • Permanent classrooms at Collins Elementary; • Improved play fields at the former Nan Allan Elementary and Collins Elementary; • Creation of a \$1.0-million endowment for the 8th grade Yosemite Science Program; • A 10,000-square foot High School "Innovation Center" at Vallco; and • Extra parcel tax payments for the non-senior market rate apartments. 						

Note: Projected fees rounded to the nearest ten thousand. Numbers may not add up precisely due to rounding.

a. Development impact fee revenues are calculated based on net increase in potential development, as shown in Appendix 7, Table 1.

Source: Cupertino Unified School District, Fremont Union High School District, Seifel Consulting Inc.

3. Parks/Open Space

Buildout of the General Plan would increase the current population by 5,533 people, which would require the creation of 5.5 acres of parkland according to the adopted General Plan. The City's parkland goals are based upon the number of residents. No specific parkland or recreational facility improvements were identified as part of the buildout of the General Plan. However, new residential development, including redevelopment and/or renovation of existing sites that provides net new units, would need to dedicate parkland or pay in-lieu fees to accommodate and offset their fair share of impacts to parklands.

Compared to the Adopted General Plan scenarios, the General Plan with Initiative would result in 146 fewer housing units and 2.0 million fewer square feet of office development citywide. This reduction in allowable development will result in a proportional reduction in the need for new or expanded park and recreational facilities. Accordingly, the park impact fees collected by the City from new development and/or the dedication of new parkland would also be reduced proportionately. As shown in Table III.3, the estimated reduction in park funding with the Initiative is \$3.2 million. However, the number of future residents from the net increase in potential development with the Initiative is correspondingly less.

Under the Adopted General Plan without the Initiative, Sand Hill is proposing to provide and fund the following park facilities:

Park/Open Space

- Two “town squares” that would have programmable green space for community events and activities; and
- A 30-acre green roof with publicly accessible active and passive open spaces.

The Initiative would thus result in reduced funding for park facilities from both park fees, and the City would not benefit from the potential provision and funding of additional park facilities at Vallco by Sand Hill. The provision of park and open space facilities is typically of greater benefit to the City than payment of fees, because facilities are built sooner because fees are collected over time and then facilities are subsequently designed and built by the City.

**Table III.3
Park Impact Summary**

	Assumptions ^a	Without Initiative		With Initiative		Increase/ (Decrease) With Initiative
		Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Viable Mall	General Plan With Initiative Assuming Vallco With 2016 Occupancy	
Net Increase in Potential Development						
New Residential (unit)	See Appendix 7 Table 1	1,882	1,882	1,736	1,736	(146)
Residents Added		5,533	5,533	5,104	5,104	(429)
Park Dedication In-Lieu Fee^b						
Residential	\$21,600 per unit average	\$40,650,000	\$40,650,000	\$37,500,000	\$37,500,000	(\$3,150,000)
Additional Infrastructure Benefits		N/A	See below*	N/A	N/A	
*Additional infrastructure benefits under "Adopted General Plan With 2015 Sand Hill Proposal" includes:						
• 33-acre green roof parkland/open space is approximately 20 acres greater than General Plan requirement of 13 acres.						

Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

Note: These fees are subject to change based on appraised value of land in the City of Cupertino.

a. Development impact fee revenues are calculated based on net increase in potential development, as shown in Appendix 7, Table 1.

b. Per City's estimates based on the following fee schedule. Not applicable to non-residential development.

Fee Schedule for Park Dedication In-Lieu Fee

- \$42,000 per unit of residential development with density of 0-5 units per acre
- \$24,000 per unit of residential development with density of 5-20 units per acre
- \$21,600 per unit of residential development with density of 20+ units per acre
- \$21,600 per unit of residential development with density of 10+ units per acre
- \$12,000 per unit of elderly housing development

Source: City of Cupertino, Seifel Consulting Inc.

4. Affordable Housing

While affordable housing is not infrastructure, the City has significant affordable housing needs, as described in the General Plan. Table III.4 summarizes the potential revenue to the City from the Housing Mitigation Fee, which would help fund affordable housing. The loss is a result of the decrease in the number of housing units as well as the loss of commercial space.

**Table III.4
Housing Mitigation Fee Revenue**

	Assumptions ^a	Without Initiative		With Initiative		Increase/ (Decrease) With Initiative ^b
		Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Viable Mall	General Plan With Initiative Assuming Vallco With 2016 Occupancy	
Housing Mitigation Fee^c						
Residential (Market Rate)	\$24,000 per unit average	\$42,432,000	\$41,952,000	\$39,576,000	\$39,576,000	(\$2,856,000)
Non-Residential						
Office	\$20.00 per sq.ft. of Office	\$51,080,000	\$51,080,000	\$11,080,000	\$11,080,000	(\$40,000,000)
Retail/Commercial	\$10.00 per sq.ft. of Retail/Commercial	\$7,990,000	\$7,990,000	\$7,990,000	\$7,990,000	\$0
Hotel	\$10.00 per sq.ft. of Hotel	\$1,570,000	\$1,570,000	\$1,570,000	\$1,570,000	\$0
Subtotal-Non-Residential		\$60,640,000	\$60,640,000	\$20,640,000	\$20,640,000	(\$40,000,000)
Total All Land Uses		\$103,072,000	\$102,592,000	\$60,216,000	\$60,216,000	(\$42,856,000)

Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

- a. Development impact fee revenues are calculated based on net increase in potential development, as shown in Appendix 7, Table 1.
- b. Represents the increase (or decrease) from the "Adopted General Plan" scenario to the "General Plan With Initiative Assuming Vallco As Viable Mall" scenario.
- c. Per City's estimates based on the following fee schedule. Not applicable to non-residential development.

Fee Schedule for Housing Mitigation Fee

Residential (Ownership) Units:

- \$15.00 per sq.ft. of Detached Single Family Residence
- \$16.50 per sq.ft. of Small Lot Single Family Residence or Townhome
- \$20.00 per sq.ft. of Multi-family Attached Townhome, Apartment, or Condo

Residential (Rental) Units:

- \$20.00 per sq.ft. of Multi-family Attached Townhome, Apartment, or Condominium (up to 35 du/ac)
- \$25 per sq.ft. of Multi-family Attached Townhome, Apartment, or Condominium (over 35 du/ac)

Source: City of Cupertino, Seifel Consulting Inc.

5. Summary of Infrastructure Funding Findings

Overall, the Initiative would have a negative impact on the funding and the potential provision of infrastructure for transportation, schools and parks in the City. However, the impacts on infrastructure from future development would also be less under the Initiative, due to the reduced level of allowable development at build-out that results in a corresponding decrease in future residents and employees. (See Table III.5.)

**Table III.5
Infrastructure Funding Summary**

	Without Initiative		With Initiative		Increase/ (Decrease) With Initiative
	Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Viable Mall	General Plan With Initiative Assuming Vallco With 2016 Occupancy	
School Impact Fees					
Cupertino Unified School District	\$5,680,000	\$5,680,000	\$4,690,000	\$4,690,000	(\$990,000)
Fremont Union High School District	<u>\$3,800,000</u>	<u>\$3,800,000</u>	<u>\$3,130,000</u>	<u>\$3,130,000</u>	<u>(\$670,000)</u>
Subtotal	\$9,480,000	\$9,480,000	\$7,820,000	\$7,820,000	(\$1,660,000)
Park Dedication In-Lieu Fee					
Residential	\$40,650,000	\$40,650,000	\$37,500,000	\$37,500,000	(\$3,150,000)
Housing Mitigation Fee					
All Land Uses	\$103,072,000	\$102,592,000	\$60,216,000	\$60,216,000	(\$42,856,000)
Total Impact Fee Revenues	\$153,202,000	\$152,722,000	\$105,536,000	\$105,536,000	(\$47,666,000)

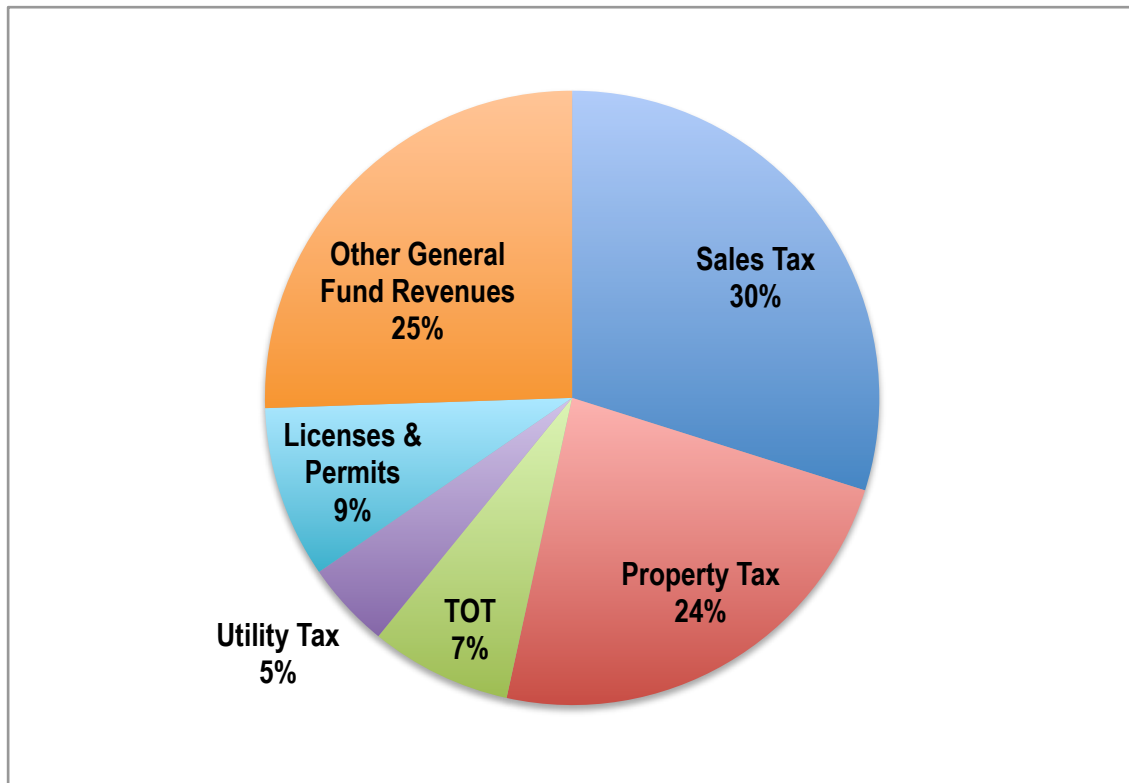
Note: Figures rounded to the nearest thousand. Numbers may not add up precisely due to rounding.

Source: City of Cupertino, Seifel Consulting Inc.

III.F. Fiscal

According to the City's FY 2015/16 budget, the City generates about \$68 million in General Fund revenues. The General Fund pays for basic services such as public safety, public works, planning and development, park maintenance, code enforcement, and the administrative services required to support them. As shown in Figure III.2, more than half of the City's revenues are generated from sales tax (30 percent of total) and property tax (24 percent).

**Figure III.2
Distribution of City's Fiscal Revenues**



The City's General Fund revenue is projected to increase as new development occurs, and the Net Increase in Potential Development is the difference between what is Current Built/Approved and Development Buildout.⁶⁸ The fiscal analysis evaluates the potential difference in fiscal revenues that would be generated from the Net Increase in Potential Development from each scenario. (Please refer to Appendix 7 for the detailed tables accompanying the fiscal analysis, which includes the supporting calculations for the projections of new development.)

The fiscal revenue projections and assumptions and methodology for projections are further described in the following section.⁶⁹

⁶⁸ Refer back to Section II.B for further detail on these definitions.

⁶⁹ While Seifel has made extensive efforts to substantiate this information, Seifel does not guarantee the accuracy of third party data and assumes no responsibility for inaccuracies in the provided information or analysis. Any estimated revenue projections are based on the best available project-specific data as well as the experiences of similar projects. They are not intended to be projections of the future for the specific project, and no warranty or representation is made that any of the estimates or projections will actually materialize.

1. Sales Tax

Sales Tax revenues are based on taxable sales of goods and services either to retail consumers or other businesses that occur in Cupertino. The City's tax revenues are generated from four principal economic categories: business-to-business, 71.8% (includes electronic equipment and software manufacturers and distributors); general retail, 9.3%; food products, 8.6%; and construction, 5.9%.

Sales tax is an excise tax imposed on retailers for the privilege of selling tangible personal property. The Use Tax is an excise tax imposed on a person for the storage, use, or other consumption of tangible personal property purchased from any retailer. The proceeds of sales and use taxes imposed within the boundaries of Cupertino are distributed by the State to various agencies, with the City of Cupertino receiving one percent (1%) of the collected revenue.

The projection of future sales tax revenues from new development under each scenario is based on 1% of taxable sales attributable to the Net Increase in Potential Development for Commercial/Retail uses and Office uses.

a) Sales Tax from Retail Consumers

Sales tax is typically generated by consumers shopping at local retail establishments. While all scenarios have the same potential amount of allowable Commercial/Retail space city wide, the amount of retail sales tax would vary depending on the performance and occupancy of the retail establishments. As described in Section III.C, under the Adopted General Plan, Vallco would be redeveloped as a mixed-use development, which has a much higher likelihood of success than what would occur under the General Plan With Initiative, according to Greensfelder.

As of December 2014, the occupancy at Vallco was about 66%. With the closure of all three department stores, the current occupancy is about 26%. With the Initiative, if Vallco were to be occupied at this occupancy level after J.C. Penny closes, this will significantly reduce the amount of square feet that is producing sales tax at Vallco, particularly as a substantial portion of the remaining square footage is used for entertainment and fitness uses that historically do not generate much sales tax. This will in turn decrease the potential retail sales tax generation for the City.

Based on consultation with Greensfelder, a 92% occupancy rate is considered to be a fair occupancy assumption for retail development across the City. This level of occupancy would be expected for a successful mall, so it is used in the analysis, with the caveat that this level of occupancy is not likely attainable with a preserved Vallco given all of the considerations discussed in the Greensfelder analysis and historical retail sales performance.

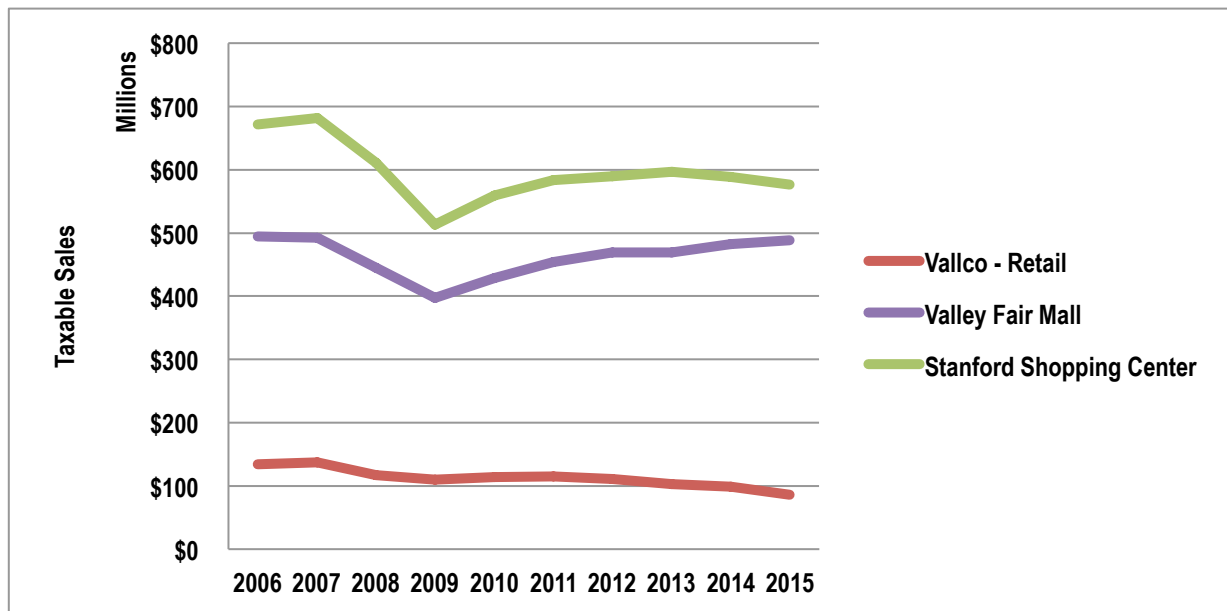
As indicated in the Greensfelder analysis presented in Section III C, Vallco has significantly underperformed relative to its two nearest competitive regional malls. Both within a 20-minute drive from Vallco, the Westfield Valley Fair Mall (Valley Fair) in Santa Clara and the Stanford Shopping Center in Palo Alto are the Vallco Shopping District's most immediate mall competitors. The historical poor performance of Vallco in comparison with these nearby malls is shown clearly by historical reports of taxable sales volumes, using retail sales tax data from MuniServices.

Figure III.3 shows taxable sales volume of these three malls from 2006-2015, which reflects sales before and during the most recent economic recession. In addition to their close geographic proximity, the three malls are also similar in

size: Vallco is 1.2 million sq. ft., Valley Fair is 1.48 million sq. ft.⁷⁰ and Stanford Shopping Center is 1.36 million sq. ft.⁷¹

According to these square footages, while Stanford Shopping Center is only 14% larger than Vallco, it brings in more than six times the taxable sales volume of Vallco. Valley Fair, only 23% larger than Vallco, brings in more than five times the taxable sales volume of Vallco. The Stanford Shopping Center shows slightly decreasing sales over the past two years, but its sales volume remains substantially higher than Vallco. Due to the imminent closure of JC Penney’s in addition to the closures of Sear’s and Macy’s, Vallco’s sales are anticipated to continue to decline, projected at about 60 percent of 2014 levels during next fiscal year based on reduced occupancy and the fact that about half of the remaining uses are entertainment and fitness uses that do not generate significant taxable sales.

**Figure III.3
Historical Trend of Taxable Sales of
Comparable Shopping Centers (In 2015 Constant Dollars)**

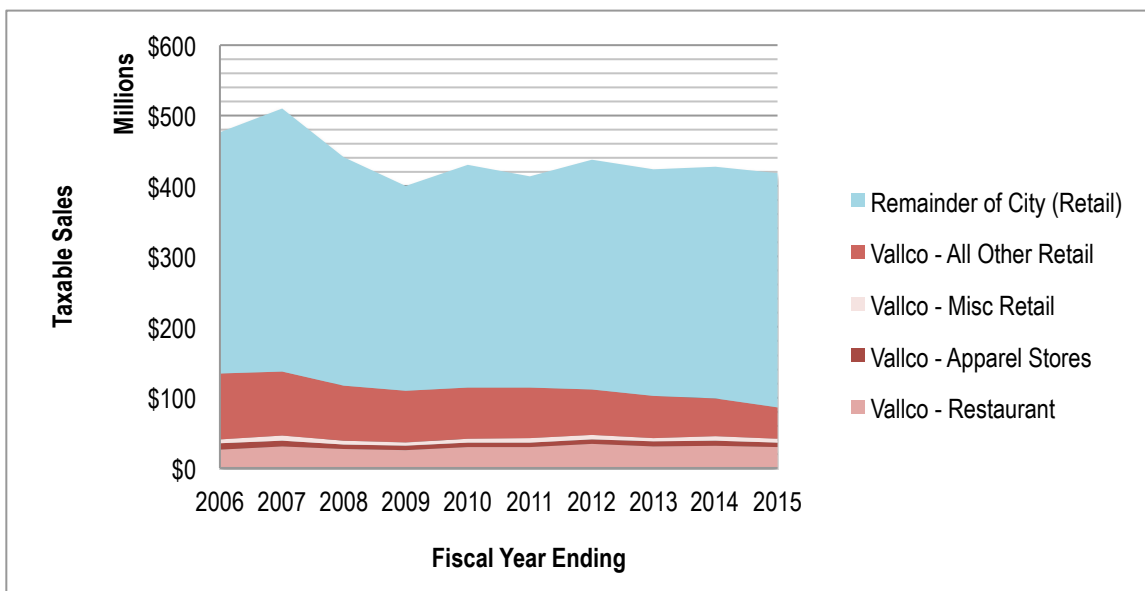


The City’s overall sales tax performance has been influenced by the decline of retail sales from Vallco. Figure III.4 provides an historical perspective on Cupertino’s taxable retail sales from 2006-2015, comparing sales revenues from key retail categories at Vallco to other retail stores in the remainder of the City. While taxable sales from retail stores in the remainder of the City have increased since 2013, Vallco has shown a consistent decline.

⁷⁰ Gross leasable area.
<<http://www.westfieldcorp.com/centre/westfield-valley-fair/>> Retrieved 2016-03-21.

⁷¹ Gross leasable area.
<<http://business.simon.com/leasing/stanford-shopping-center/>> Retrieved 2016-03-21.

**Figure III.4
Historical Trend of Taxable Retail Sales in City of Cupertino (in Constant 2015 Dollars)**



Retail sales tax data from MuniServices was also used to estimate the taxable retail sales per square foot for Vallco and for other retail locations citywide as of the end of December 2014, when the General Plan was amended. These estimates are used in order to evaluate the likely changes in sales tax revenues to the City under the various development scenarios, as shown in Appendix 7, Table 2.⁷² This analysis evaluates the potential differences in taxable retail sales from Vallco, as well as the additional retail sales that could be generated by new development in other parts of the City through development buildout under the Adopted General Plan and the General Plan With Initiative.

b) Business-to-Business Sales Tax

Business-to-business (or B-to-B) sales tax revenue is generated from sales activity between companies (rather than between a company and individual consumers) for goods and services. Historically, B-to-B transactions have generated a high proportion of the City’s sales tax revenue. This sales tax revenue currently constitutes about 72 percent of the City’s total sales tax revenue compared to 17 percent statewide.

Recent B-to-B sales tax revenues from MuniServices along with data on existing office space was analyzed in order to estimate typical B-to-B sales for Office space in Cupertino. Based on information provided by City staff and MuniServices, the average B-to-B sales tax generation from Office space citywide is about \$0.40 per square foot, as shown in Appendix 7, Table 3. While B-to-B sales tax revenue from office space for this site is estimated to be significant based on the above analysis, future B-to-B sales tax generation would depend on the type of business

⁷² Historical data on taxable retail sales was reviewed for Vallco and other establishments throughout the City. The estimates used in the analysis are based on actual performance from 2014, adjusted as necessary to appropriately reflect each retail area and scenario. Taxable sales at Vallco in 2014 were used alongside occupancy data of the mall to estimate the average retail sales per square foot of occupied space. This data was adjusted downward by 40% for the General Plan with Initiative Assuming Vallco with 2016 Occupancy because a substantial portion of currently occupied space is for entertainment and fitness uses. The same type of analysis was done for the areas located outside of Vallco.

activity that could potentially occur on this site. As a result, actual B-to-B sales tax generation could be significantly higher or lower than what is estimated.

The Initiative reduces total office space citywide by 2 million square feet, which decreases the City's opportunity to generate B-to-B sales taxes and would likely reduce a significant revenue stream for the City's budget.

c) Overall Sale Tax Revenue Generation

With the Initiative, the projected annual sales tax revenues to the City would be lower than under the Adopted General Plan. Revenues would be lowest under the General Plan With Initiative Assuming Vallco with 2016 Occupancy.

2. Property Tax

Under current law, property is assessed at actual full cash value with the maximum levy being 1% of the assessed valuation. The City of Cupertino receives 5.6% of the basic 1% property tax revenues on average, and new development will generate additional property tax revenue from growth in assessed value multiplied by the City's tax rate. For this analysis, the incremental growth in assessed value from new development is estimated by land use category, as presented in Appendix 7 Table 4.⁷³

- The incremental growth in assessed value from residential is estimated to be \$560,000 per unit for a typical residential development. Because there are fewer residential units under the General Plan With Initiative, the estimated assessed value and commensurate annual property tax revenues are lower under the two General Plan With Initiative scenarios.
- This analysis does not reflect growth or reductions in assessed value at commercial/retail space at Vallco, although it could likely increase or decrease under different development scenarios. Assessed value would most likely increase under Adopted General Plan With 2015 Sand Hill Proposal due to substantial redevelopment and infill of the property. However, as 550,000 square feet of allowable retail could relocate citywide under this scenario, assessed value from this new space is projected to increase assessed value citywide, along with the additional retail allowed to be built through General Plan buildout.
- The incremental growth in assessed value from office is estimated at \$520 per sq.ft., inclusive of personal property. Because there is 2 million sq.ft. less office space under the Initiative, the estimated assessed value and commensurate annual property tax revenues are lower under the two General Plan With Initiative scenarios.
- The incremental growth in assessed value from hotel is estimated based on \$300,000/room. Because the number of hotel rooms does not vary with or without the Initiative, the estimated assessed value and commensurate annual property tax revenues are the same in all scenarios.

Under the General Plan With Initiative, projected annual property tax revenues to the City overall would be lower than under the Adopted General Plan scenarios. The annual property tax revenues estimated at buildout are shown by development scenario in Appendix 7 Table 4.

3. Transient Occupancy Tax

New hotel developments would generate Transient Occupancy Tax (TOT) revenues based on the City's current 12 percent TOT rate on hotel and motel room revenues. Seven percent of the General Fund is generated by transient occupancy tax (TOT). Together with Sales and Property taxes, these revenues comprise 61% of the General Fund.

⁷³ Incremental growth in assessed value is based on the difference between the value of potential new development and the existing value of the site, based on recent market values for land in Cupertino. For more detail, please refer to Appendix 7 Table 4

This analysis assumes the average daily room rate of \$215 and an occupancy rate of 80% based on the City's TOT data.

4. Utility User Tax and Other Revenues

Cupertino charges a Utility User Tax (UUT) on gas, electricity and telecommunication services provided within the City's jurisdiction at a rate of 2.4% of billed charges. Revenues generated from this tax can be used for general City purposes. Revenue from UUT has been declining or flat in recent years despite major development in the City. This is primarily due to lower electricity usage resulting from large investments in solar and other energy generation infrastructure. Since new development is meeting increasing energy-efficiency standards, future development is likely to decrease rather than increase city revenues. For this reason, and because UUT comprises less than 5% of the 2015/16 budget, this revenue category is not analyzed in the Report.

A variety of other, smaller revenue sources contribute the remainder of General Fund revenues. In consultation with City staff, no other revenues are projected in this analysis because they correlate less specifically with new development, are dedicated funds for a particular service or function (like planning fees) or comprise very small portions of the 2015/16 budget.

5. Summary of Fiscal Impact

As shown in Table III.6 below, the Initiative would have the effect of reducing revenues to the City's General Fund, primarily due to decreases in business-to-business sales tax revenues and property tax revenues related to the loss of office space.

**Table III.6
Summary of General Fund Annual Revenues**

	Without Initiative		With Initiative	
	Adopted General Plan	Adopted General Plan With 2015 Sand Hill Proposal	General Plan With Initiative Assuming Vallco As Viable Mall	General Plan With Initiative Assuming Vallco With 2016 Occupancy
Net Increase in General Fund (GF) Annual Revenues				
Sales Tax				
From Retail Space ^a	\$1,750,000	\$2,650,000	\$1,480,000	\$340,000
From Business-to-Business (B-to-B) Transactions ^b	\$1,020,000	\$1,020,000	\$220,000	\$220,000
Sales Tax Subtotal	\$2,770,000	\$3,670,000	\$1,700,000	\$560,000
Property Tax ^c	\$1,580,000	\$1,730,000	\$960,000	\$960,000
Transient Occupancy Tax (TOT) ^d	\$2,360,000	\$2,360,000	\$2,360,000	\$2,360,000
Total Net Increase in GF Revenues	\$6,710,000	\$7,760,000	\$5,020,000	\$3,880,000
Comparison of Fiscal Impact of Various Scenarios to Adopted General Plan				
Difference in GF Revenues	N/A	\$1,050,000	(\$1,690,000)	(\$2,830,000)

- a. See Appendix 7, Table 2.
- b. See Appendix 7, Table 3.
- c. See Appendix 7, Table 4.
- d. See Appendix 7, Table 5.

Source: City of Cupertino, Seifel Consulting Inc.

As described in the previous sections, the reduction in allowable future development with the Initiative would likely reduce key municipal service demands at build out because there would be less residents and employees citywide. Under the scenario, General Plan With Initiative Assuming Vallco With 2016 Occupancy, the County Sheriff would need to provide a greater level of police presence to prevent crimes associated with vacant buildings and inactive areas. Under the Adopted General Plan or the General Plan With Initiative Assuming Vallco as Enhanced Mall, the County Sheriff would need to provide a higher level of police presence at Vallco as would be needed with an active retail and/or mixed use area.

Based on a review of the City's budget and the recent fiscal impact analysis done for the Apple Campus,⁷⁴ as well as discussions with City staff, the net fiscal impact (fiscal revenues compared to fiscal costs) under the Adopted General Plan would likely be higher than the net fiscal impact under the General Plan With Initiative for the following reasons:

- The fiscal revenues that the City would receive from the 2 million square feet of office space at Vallco would likely exceed the City's service costs because the types of businesses that occupy new office space in Cupertino generate significant revenues from B-to-B sales and property taxes as compared to other land uses.

⁷⁴ Economic and Fiscal Impacts Generated by Apple in Cupertino – Current Facilities and Apple Campus 2, Keyser Marston Associates, May 2013.

- Under the Adopted General Plan, the retail at Vallco is much more likely to be successful and generate a higher level of taxable retail sales per square foot, which would result in a higher ratio of fiscal revenues compared to fiscal costs.
- The 146 unit difference in residential development would not likely change the City's fiscal costs, as the number of housing units citywide would only decrease by 0.6%, which would not significantly change the cost of City services to residential units.
- The City would need to pay for the continued cost of potential stand-alone or consolidated elections, which would range from approximately \$106,000 to \$431,000 for each election in direct election related costs, plus the City's staff time to conduct the election. In addition, the City Council could decide to order preparation of a report under Elections Code section 9212. The precise costs of a 9212 report depend on the nature of the initiative but could cost about \$150,000 per report based on recent experience.
- The City would likely incur greater City Attorney and outside counsel costs in order to interpret and potentially implement this proposed Initiative, as well as any future Initiatives that might occur as the result of this Initiative.

IV. Conclusion

The proposed Initiative would significantly reduce the development capacity currently allowed under the City's approved General Plan – specifically removing 2 million square feet of office space and 389 residential units at Vallco. While the Initiative reallocates 243 of the housing units to other areas, the result is 146 less units citywide. With Vallco's reduced development capacity, height limits, and restrictions on future development, the City would not be able to move forward with the current proposed project, and it is unlikely that a developer would undertake the revitalization of Vallco, as envisioned in the General Plan.

In other parts of the City, the Initiative's changes would be contrary to several of the General Plan's stated goals. For example, in the City's Neighborhoods "where future changes are expected to be minimal," the Initiative would allow height increase from 30 feet to 45 feet (a 50% increase). As Neighborhoods comprise about three-quarters of the City's land area, this could have a dramatic effect on the City's development patterns.

In several ways, the Initiative restricts the City's ability to make changes to building and urban design standards without voter approval. In general, the Initiative locks into place development and building standards for maximum building height and density, maximum lot coverage, building plane, and minimum setbacks throughout the City. Changes would require voter approval for any increase in the specified maximum (or decrease in the specified minimum) standards, "other than those mandated by state law." This would restrict the City's capacity to undertake development as envisioned in the adopted General Plan. In addition, it would potentially inhibit developers' desire to enter into development agreements and propose community benefits in return for certainty of applicable development standards, as is currently offered by the owner of Vallco.

Regarding the delivery of market-rate and affordable housing, the Initiative impacts the availability of land and the location of housing. Affordable housing, which has proven very difficult for the City to build in recent years due to the high cost of construction and limited availability of land, would not get built on the Vallco site as currently offered by the master developer at Vallco. Sand Hill has proposed the construction of 80 affordable units at Vallco, 10% of the residential units that would be built on-site.

The City of Cupertino has the stated goals of attracting and retaining businesses. By eliminating 2 million square feet of office space, the Initiative constrains the City's ability to attract and retain growing companies given a limited supply of office space coupled with competition for space from existing businesses and would reduce future job opportunities.

Vallco has been declining for a number of years, due to both consumer trends and the position of the mall in a very competitive retail trade area with strong alternatives for shoppers. Vallco in its present configuration is unlikely to generate the incremental income required to justify investment in a significant renovation. The most likely outcome with the Initiative is that Vallco will remain in its current, largely vacant state, or it will continue to decline and face closure like many similar Class C malls across the United States.

Something substantively new and differentiated from its competitors must be created at Vallco in order to draw customer traffic, but the Initiative would prevent the revitalization of Vallco as a new pedestrian oriented, mixed-use "town center," which has the greatest likelihood of success given today's competitive retail environment.

As compared to the Adopted General Plan, buildout of the General Plan with the Initiative is expected to reduce the overall demand on city services as there will be fewer residents and employees citywide. While reducing the demand on city services and public infrastructure, the reduction of development buildout also reduces the collection of

development impact fees, which can be used to help fund infrastructure. Additionally, the City and local School Districts would not receive the community benefits proposed by Sand Hill as part of the Vallco development, including a new 700-student elementary school, permanent classrooms, a high school “Innovation Center,” new parks and open space, and new transit, bicycle, pedestrian and road improvements.

The Initiative would have the effect of reducing revenues to the City’s General Fund, primarily due to decreases in business-to-business sales tax revenues and property tax revenues related to the loss of office space. In addition, the continued decline of Vallco would negatively affect the generation of retail sales in Cupertino, which is an important component of the City’s budget.

Based on a review of the City’s budget and the recent fiscal impact analysis done for the Apple Campus, as well as discussions with City staff, the net fiscal impact (fiscal revenues compared to fiscal costs) under the Adopted General Plan would likely be higher than the net fiscal impact under the General Plan With Initiative for the reasons discussed above.

In conclusion, this Report analyzes the topics described in Election Code section 9212 and finds that the Initiative, if adopted by the voters or the City Council, would have significant effects on the City of Cupertino in almost all of the topic areas described in section 9212.

Appendices

- 1. Text of Proposed Initiative, City Attorney's official Title and Summary, and Notice of Intent to Circulate Petition**
- 2. Section-by-Section Description and Summary of Initiative**
- 3. California Elections Code, Section 9212**
- 4. City Council Resolution (authorizing this Report)**
- 5. DJPA Environmental Analysis**
- 6. Greensfelder Retail Analysis**
- 7. Fiscal Analysis Tables**
- 8. Santa Clara County Office of the Sheriff Analysis**