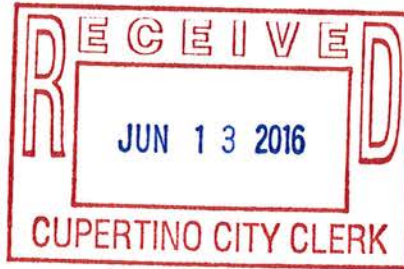


1 Stuart M. Flashman (State Bar #148396)
2 5626 Ocean View Drive
3 Oakland, CA 94618-1533
4 Telephone/Fax (510) 652-5373
5 Email: stu@stufdash.com

6 Bern Steves (State Bar #214454)
7 19925 Stevens Creek Blvd.
8 Cupertino, CA 95014
9 Telephone: (408) 253 6911
10 Email: bernsteves@californiabizlaw.com

11 Attorneys for Petitioners Committee Supporting Cupertino
12 Citizens' Sensible Growth Initiative, Steven Scharf, Xingchen Xu,
13 and Govind Tatachari



ENDORSED

2016 JUN 13 A 11:37

David H. Heresoph, Clerk of the Superior Court
County of Santa Clara, California
By: **S. ACKARD** Deputy Clerk

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SANTA CLARA**

16 COMMITTEE SUPPORTING CUPERTINO
17 CITIZENS' SENSIBLE GROWTH INITIATIVE,
18 an unincorporated association, Steven Scharf,
19 Xiangchen Xu, Govind Tatachari,

20 Petitioners,

21 vs.

22 CITY OF CUPERTINO, a General Law City;
23 GRACE SCHMIDT, in her official capacity as
24 Cupertino City Clerk, SHANNON BUSHEY, in
25 her official capacity as Santa Clara County Chief
26 Elections Officer, and DOES 1-20 inclusive,

27 Respondents

28 CITY COUNCIL OF THE CITY OF
29 CUPERTINO, and DOES 1-20 inclusive,

30 Real Parties in Interest

No.

16Cv296322

VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE

ELECTION MATTER - IMMEDIATE
ACTION REQUESTED
(Elec. Code §§9295, 13314)

Hearing:

No trial date yet assigned

Petitioners COMMITTEE SUPPORTING CUPERTINO CITIZENS' SENSIBLE GROWTH
INITIATIVE, STEVEN SCHARF, XIANGCHEN XU, and GOVIND TATACHARI (hereinafter
"PETITIONERS") hereby allege as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCTION

1. Respondents CITY OF CUPERTINO (hereinafter "CITY"), a Municipal Corporation; GRACE SCHMIDT, in her official capacity as Cupertino City Clerk (hereinafter "CITY CLERK"), together the "CITY RESPONDENTS), have requested that respondent SHANNON BUSHEY, in her official capacity as Santa Clara County Chief Elections Officer (hereinafter "ELECTIONS OFFICER") place on the ballot a ballot question drafted and adopted by real party in interest CITY COUNCIL OF CUPERTINO (hereinafter "CITY COUNCIL") that is false and misleading and fails to comply with the statutory requirements.

2. PETITIONERS petition this Court pursuant to Elections Code sections 9295 and 13314 for a writ of mandate to correct the noncompliant ballot question, and to issue an injunctive order prohibiting respondent ELECTIONS OFFICER from placing the current unlawful ballot question on the ballot.

3. The precise wording of the ballot question is of the utmost importance in the present case since the CITY COUNCIL has voted *not* to place the text of the initiative itself on the ballot. Thus, only the ballot question itself will appear on the actual ballot to inform voters of the import of the initiative.

4. Specifically, the ballot question adopted by the CITY COUNCIL falsely imputes to the Cupertino Citizens' Sensible Growth Initiative (hereinafter "CCSGI") the legislative effect of raising maximum building heights in various residential areas (so-called "Neighborhoods") from 30 feet to 45 feet. In fact, the CCSGI specifically preserves the existing 30 foot maximum height for "Neighborhoods." The ballot question on this point is erroneous as a matter of statutory construction and is false and misleading. In addition, it fails to comply with the requirements for a ballot question set by Election Code §§ 9051(c) and 10403. If allowed to be placed on the ballot, the CITY COUNCIL's ballot question would cause prejudice against the CCSGI among voters many of whom treat the ballot question as the principal means of information about a voter initiative. This prejudice is exacerbated by the fact that this is the only numerically quantified statement in the BALLOT QUESTION.

5. The ballot question also misrepresents the statutory intent of the CCSGI by claiming that it would "limit redevelopment of the Vallco Shopping District." In fact, the CCSGI would significantly *facilitate* redevelopment of the Vallco Shopping District for retail, hotel, dining and entertainment commercial uses by removing the current requirement that any redevelopment requires a master developer, and by removing the

1 current general plan requirement that any development would have to use “Town-Center” layout with streets
2 and blocks, and “transect planning.”

3 6. The CCSGI expressly aims to revitalize and enhance the Vallco Shopping District as a retail,
4 dining and entertainment venue instead of transmuting it into a high-density office and high-density
5 residential area with very little retail. No reasonable voter would expect “redevelopment of the Vallco
6 Shopping District” to refer to a transmutation of the current retail *shopping district* into a development
7 that is principally *office* and *residential*, with two million square feet of high-density office, high-density
8 residential, and only a very small amount of retail, and with concomitant burdens on traffic, community
9 services, local schools, etc. The ballot question’s characterization of the CCSGI as “limiting redevelopment
10 of the Vallco *Shopping District*” (italics added) is thus false and misleading, and an improper attempt to
11 prejudice voters against enacting the CCSGI.

12 **PARTIES AND STANDING**

13 7. Petitioner COMMITTEE SUPPORTING CUPERTINO CITIZENS’ SENSIBLE GROWTH
14 INITIATIVE (hereinafter “CCSGI COMMITTEE”) is an unincorporated association made up of
15 residents, citizens, and qualified electors of the City of Cupertino interested in preserving the character
16 of Cupertino as a livable, pleasant residential city where quality of life is preserved and enhanced by a
17 deliberate, moderated pace of development under a voter-approved General Plan and subject to ongoing
18 voter supervision through the democratic process. The CCSGI COMMITTEE files this action on
19 behalf of its members who were proponents (as defined in Elections Code §342), circulators and
20 signatories of the initiative in this case.

21 8. Petitioner Steven Scharf (hereinafter “SCHARF”) is a resident, citizen, taxpayer and duly
22 registered voter residing within the City of Cupertino. Petitioner SCHARF is an electrical engineer,
23 has two children who attended Cupertino public schools from K-12, is an active volunteer in
24 environmental and educational causes, and is a 36-year member of the Sierra Club. Petitioner
25 SCHARF and is one of the proponents who submitted to the CITY the notice of intent to circulate the
26 CCSGI.

1 9. Petitioner Xiangchen Xu (hereinafter "XU") is a resident, citizen, taxpayer and duly registered
2 voter residing within the City of Cupertino. Petitioner XU is a hardware engineer with two children,
3 living in Cupertino, and cares about schools and community. Petitioner XU is one of the proponents
4 who submitted to the CITY the notice of intent to circulate the CCSGI.

5 10. Petitioner Govind Tatachari (hereinafter "TATACHARI") is a resident, citizen, taxpayer and
6 duly registered voter residing within the City of Cupertino. Petitioner TATACHARI is a software
7 consultant, has resided in Cupertino for 23 years and raised two children that attend/ed Cupertino K-12
8 public schools.

9 11. RESPONDENT CITY OF CUPERTINO is a general law city duly organized and existing under
10 the California Constitution and California statutes. CITY through its city clerk has responsibility for
11 conducting its municipal elections and in particular for placing qualified initiatives on the ballot and
12 adopting a lawful ballot questions therefor. CITY has a duty to obey the mandates of the California
13 Constitution, California statutes and the CITY's General Plan and ordinances as enacted and amended
14 from time to time.

15 12. Respondent GRACE SCHMIDT is the City Clerk of the City of Cupertino. She is the elections
16 official for the City of Cupertino. As such, she has responsibilities for placing on the ballot a ballot
17 question adopted for an initiative by the CITY COUNCIL.

18 13. Respondent SHANNON BUSHEY is the Chief Elections Officer for Santa Clara County. As
19 such, she was entrusted by respondent CITY CLERK with the responsibility of placing on the general
20 elections ballot the ballot question herein. In her conduct of electoral affairs, ELECTIONS OFFICER
21 has a duty to follow the mandates of the California Constitution and California statutes, and specifically
22 the Elections Code, as well as her department's policies and guidelines.

23 14. The true names of DOES 1-20 are unknown at this time to PETITIONERS; however, they allege
24 on information and belief that each of Respondents named as Does 1-20 is responsible for the acts or
25 omissions of each of the other Respondents. Therefore PETITIONERS sue such Respondents by such
26
27

1 fictitious names, and will ask leave of the Court to amend this petition by inserting the true names and
2 capacities of said Does when ascertained.

3
4 **STATEMENT OF FACTS**

5 15. The Cupertino Citizens' Sensible Growth Initiative ("CCSGI") was proposed by voters as an
6 initiative to amend the CITY's existing General Plan so as to moderate the pace of commercial and residential
7 development throughout the CITY and to reassert the innate democratic right of CITY residents to exercise
8 ongoing control over the development process in the face of massively funded developer interests. A true
9 and correct copy of the CCSGI is attached hereto as **Exhibit A** and incorporated herein by this reference.

10 16. The CCSGI was submitted to the CITY on November 24, 2015 and a ballot title and summary was
11 prepared by the city attorney for inclusion in petitions to be circulated to voters. A true and correct copy of
12 the ballot title and summary is attached hereto as **Exhibit B** and incorporated herein by this reference.
13 Following its circulation among citizens of Cupertino as an initiative petition, petition sections for the CCSGI
14 were timely submitted to and accepted for filing by Respondent Grace Schmidt or her authorized
15 representative.

16 17. The CCSGI includes a diagram (following page 5) labeled "Figure LU-1 COMMUNITY FORM
17 DIAGRAM." This diagram (the "2015 LU-1 DIAGRAM") had become part of the current General Plan
18 through a set of amendments adopted by the CITY on October 20, 2015 (i.e., shortly before submission of the
19 CCSGI to the CITY). A true and correct copy of the 2015 LU-1 DIAGRAM is attached hereto as **Exhibit C**
20 and incorporated herein by this reference

21 18. The CCSGI petitions were processed by the Santa Clara County Elections Office and found
22 sufficient. On March 1, 2016, the CITY COUNCIL voted to accept the Certification of Sufficiency for the
23 CCSGI and to commission three firms of land use consultants to prepare report pursuant to Section 9212 of
24 the Elections Code ("9212 REPORT").

25 19. In or about March 2016, the land use consultants submitted the 9212 REPORT to the CITY.
26
27

1 20. The 9212 REPORT refers¹ to “nine designated Special Areas ...³²” with a footnote stating “³² These
2 “Special Areas” are identified in the General Plan’s Community Form Diagram (Figure LU-1).” The
3 reference pertains to the 2015 LU-1 DIAGRAM. One of these “nine designated Special Areas” identified in
4 the (2015) General Plan’s Figure LU-1 is labeled “Neighborhoods.”

5 21. On March 31, 2016, the CITY COUNCIL held a meeting regarding the CCSGI. Meeting materials
6 provided to the CITY COUNCIL by City staff including the City Attorney include the following draft
7 wording for the CCSGI ballot question:

8 Shall an initiative ordinance be adopted amending Cupertino’s General Plan to limit
9 redevelopment of the Vallco Shopping District, limit building heights and lot coverages
10 in areas throughout the City, establish new setbacks and building planes on major
thoroughfares, and require voter approval for any changes to these provisions?

11 22. At the hearing, the City Council also discussed the 9212 report, and received oral and written
12 representations in favor of the CCSGI from the CSCGI COMMITTEE’s attorney Stuart Flashman and
13 various individuals. Oral and written communications in opposition to the CCSGI were received from
14 developers represented by legal counsel and from various individuals. Representations from the City
15 Attorney and outside counsel engaged by the City Attorney were also received.

16 23. The CITY COUNCIL voted not to adopt the CCSGI but instead to submit the CCSGI to voters at the
17 next General Election. The CITY COUNCIL adopted a modified version of the ballot question
18 recommended by the City Attorney and voted unanimously *not* to include the actual text of the CCSGI on the
19 ballot.

20 24. On April 5, 2016, after apparent insistent approaches from developers, CITY COUNCIL held a
21 further hearing at short notice to consider amendments to the ballot question adopted previously. CSCGI
22 COMMITTEE’s attorney Stuart Flashman provided further oral testimony and submitted a further letter to
23 the CITY COUNCIL. A true and correct copy of Mr. Flashman’s letter dated 4/5/2016 is attached hereto as
24 **Exhibit D** and incorporated herein by this reference.

25
26
27 ¹ Page 23.

1 25. At the end of the hearing, the CITY COUNCIL voted to adopt the following ballot question
2 (hereinafter "BALLOT QUESTION"):

3 Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit
4 redevelopment of the Vallco Shopping District, limit building heights along major
5 mixed-use corridors, increase to 45 feet maximum building height in the Neighborhoods,
6 limit lot coverages for large projects, establish new setbacks and building planes on
7 major thoroughfares, and require voter approval for any changes to these provisions?

8 A true and correct copy of the CITY COUNCIL's resolution adopting the BALLOT QUESTION
9 is attached hereto as **Exhibit E** and incorporated herein by this reference.

10 **HISTORY OF GENERAL PLAN AMENDMENTS**

11 26. On December 4, 2014, CITY COUNCIL adopted various updates to its then-existing General Plan
12 under the new title "Community Vision 2040" (the "2014 GENERAL PLAN").

13 27. The 2014 General Plan documents include an outdated version of the LU-1 diagram labeled "Figure
14 LU-1 Community Form Diagram" which appears following page LU-17 (hereinafter "2014 LU-1
15 DIAGRAM").

16 28. On October 20, 2015, CITY COUNCIL adopted a further set of amendments to the General Plan
17 (resulting in the "2015 GENERAL PLAN"). The aforesaid "2015 LU-1 DIAGRAM" appears as the fortieth
18 page of the amendment package as adopted.

19 **CHARGING ALLEGATION**

20 **FIRST CAUSE OF ACTION**

21 **IMPROPER, FALSE, MISLEADING AND BIASED BALLOT QUESTION** 22 **(ELECTION CODE §§ 10403, 9051, 13314)**

23 29. PETITIONERS hereby incorporate by reference paragraphs 1 through 28 herein as if fully set
24 forth.

25 30. A ballot question must be neutral and non-argumentative. Elections Code § 10403 provides that
26 "the question or proposition to appear on the ballot shall conform to this code governing the wording of
27 propositions submitted to the voters at a statewide election." The provisions for statewide measures require
28 the Attorney General to draft the ballot title in such a way that they "shall give a true and impartial statement

1 of the purpose of the measure in such language that the ballot title and summary shall neither be an argument,
2 nor be likely to create prejudice, for or against the proposed measure.” (Elections Code, § 9051(c).) Further,
3 “the wording on a ballot or the structure of the ballot cannot favor a particular partisan position.”
4 (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1433.) Additionally,
5 the description of the measure as it appears on the ballot itself cannot be “substantively misleading.” (*Id.*
6 at p. 1434.)

7 31. The BALLOT QUESTION drafted and adopted by the CITY COUNCIL violates Elections Code
8 §§ 10403 and 9051 because it is not impartial, but instead was written in a manner that would greatly
9 prejudice voters against the measure.

10 32. The BALLOT QUESTION falsely imputes that the CCSGI will raise maximum building heights in
11 residential areas (so-called “Neighborhoods”) from 30 feet to 45 feet. In fact, the CCSGI specifically
12 preserves the existing 30 foot maximum height for “Neighborhoods.” The statement that the CCSGI would
13 “increase to 45 feet maximum building height in the Neighborhoods” is erroneous as a matter of statutory
14 construction of the CCSGI and is false and substantially misleading.

15 33. The insertion into the ballot question of the (false) statement that the CCSGI would “increase to 45
16 feet maximum building height in the Neighborhoods” also violates Elections Code § 9051(b) which in
17 pertinent part requires that the ballot question “shall not contain more than 75 words and shall be a condensed
18 version of the ballot title and summary.”

19 34. The ballot question also misrepresents the statutory intent of the CCSGI by claiming that it would
20 “limit redevelopment of the Vallco Shopping District.” In fact, the CCSGI would significantly *facilitate*
21 redevelopment of the Vallco Shopping District as a *shopping district* for retail, hotel, dining and
22 entertainment commercial uses by removing the requirement under the current General Plan that any
23 redevelopment requires a master developer, and by removing the current general plan requirement that any
24 development would have to use “Town-Center” layout with streets and blocks, and “transect planning.”

25 35. The CCSGI expressly aims to revitalize and enhance the Vallco Shopping District as a
26 retail/entertainment area instead of transmutating it into a mixed-use area through the addition of high-density
27

1 residential and office development. No reasonable voter would expect “redevelopment of the Vallco
2 Shopping District” to refer to a transmutation of the current *shopping* district into a mixed-use area including
3 heavy *residential* and 2,000,000 square feet of *office* space with attendant burdens on traffic, community
4 services, local schools, etc. The ballot question’s characterization of the CCSGI as “limiting redevelopment
5 of the Vallco Shopping District” (italics added) is thus false and misleading, and an improper attempt to deter
6 voters from enacting the CCSGI.

7 36. Under Elections Code §§ 9251 and 10403, the question or proposition to appear on the ballot was
8 required to conform to the Elections Code provisions governing the wording of propositions submitted to the
9 voters at a statewide election. Under those provisions, the ballot label or question was required to contain
10 not more than 75 words and to be a condensed version of the ballot title and summary. Instead, the ballot
11 question adopted by the CITY COUNCIL contained provisions that were not part of the ballot title and
12 summary that had been prepared and circulated with the CCSGI petition. This violated the Elections Code.

13 37. If allowed to be placed on the ballot, the BALLOT QUESTION drafted by the CITY COUNCIL
14 would cause prejudice against the CCSGI among voters many of whom treat the ballot question as the
15 principal means of information about a voter initiative.

16 38. Because the BALLOT QUESTION violates the provisions of the Elections Code, PETITIONERS are
17 entitled to seek a writ of mandate pursuant to Elections Code §§ 9295 and 13314.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, PETITIONERS pray for relief as follows:

20 1. That this Court issue an immediate stay prohibiting RESPONDENTS from further amending the
21 ballot question, or from submitting the ballot question to the printer, until this Court has decided the
22 matter.

23 2. For this Court’s peremptory writ of mandate and/or other appropriate order directing
24 RESPONDENTS to amend the BALLOT QUESTION to appear on the ballot such that it fully comply
25 with the provisions of Elections Code §§ 9251 and 10403.

1 3. For this Court's declaration that the CCSGI if enacted would not as a matter of law "increase to
2 45 feet maximum building height in the Neighborhoods."

3 4. For this Court's temporary restraining order and preliminary injunction ordering CITY not to
4 adopt any ballot question pertaining to the CCSGI, and ordering RESPONDENTS, their agents,
5 employees and all those acting in concert with them to take no action that would interfere with
6 Petitioner's rights under this lawsuit, pending the final resolution of the lawsuit.

7 5. For an award of attorneys' fees under Code of Civil Procedure §1021.5 or as otherwise
8 authorized;

9 6. For costs of suit incurred herein; and

10 7. For such other relief as the court deems just and proper.

11 Dated: June 10, 2016

12 Stuart M. Flashman

13
14 Bern Steves

15 Attorneys for Petitioners
16 Committee Supporting
17 Cupertino Citizens' Sensible
18 Growth Initiative,
19 Steven Scharf, Xiangchen Xu and
20 Govind Tatachari

21
22 By: 
23 Bern Steves

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

VERIFICATION

I, Steven Scharf, am a proponent of the CCSGI and a member of COMMITTEE SUPPORTING CUPERTINO CITIZENS' SENSIBLE GROWTH INITIATIVE and am authorized to make this verification on their behalf as well as in my personal capacity as petitioner. I have read the foregoing Verified Petition for Writ of Mandate and am familiar with the matters alleged therein. All facts alleged in the Amended Petition are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on June 9, 2016 at Cupertino, California.

By facsimile

Steven M. Scharf

Steven Scharf

EXHIBIT A

CUPERTINO CITIZENS' SENSIBLE GROWTH INITIATIVE

A MEASURE AMENDING THE CUPERTINO GENERAL PLAN TO ENSURE BALANCED AND SENSIBLE GROWTH BY MAINTAINING CITYWIDE LIMITS ON THE INTENSITY OF NEW DEVELOPMENT, PRESERVING AND ENHANCING THE VALLCO SHOPPING DISTRICT FOR RETAIL, HOTEL, DINING AND ENTERTAINMENT COMMERCIAL USES ONLY AND REQUIRING A VOTE OF THE PEOPLE TO MODIFY THOSE LIMITS AND USES.

THE PEOPLE OF THE CITY OF CUPERTINO DO ORDAIN AS FOLLOWS:

PART I. TITLE

This measure shall be called the CUPERTINO CITIZENS' SENSIBLE GROWTH INITIATIVE

PART II. FINDINGS

The people of Cupertino hereby find that:

- A. The City of Cupertino needs binding standards to guide new development within the City.
- B. Cupertino's citizens wish to maintain control over the long-term direction of that development.
- C. The City needs to develop in a moderate and controlled way that provides the housing, shopping, jobs, infrastructure, and amenities that will serve the best interests of City residents while avoiding overdevelopment and its associated traffic and other impacts.
- D. The long-term direction provided by the City's General Plan must be implemented through its specific plans and zoning ordinance without being subject to change due to pressure from the profit-driven proponents of specific projects.
- E. The City must protect the development density and intensity standards set by the General Plan through limits on heights, setbacks and building planes to prevent distortion of the desirable characteristics of the City through the influence of developers and other outside interests.
- F. The availability of sufficient retail commercial space is essential to the wellbeing of the City, its current and future residents, and its workers.

PART III. PURPOSE

This initiative measure (the "Initiative") has three purposes. If approved by the voters of Cupertino and enacted, it will (1) control the intensity of new development by setting general citywide limits on building heights, setbacks, building planes and lot coverage in Cupertino that will provide long-term direction, (2) preserve and enhance the Vallco Shopping District for

retail, hotel, dining and entertainment commercial uses and (3) require that changes or exceptions to those limits and uses be presented to and approved by the voters of Cupertino.

Under this Initiative, the General Plan (Community Vision 2015-2040) – hereinafter referred to as “General Plan,” specific plans and conceptual plans, and zoning ordinance would be enforced and not amended on an *ad hoc* basis to suit individual development projects. The standards in this Initiative are intended to strengthen these plans to protect Cupertino’s vibrant mixed use atmosphere, schools, and streetscapes, to limit traffic and congestion, and to promote public safety.

PART IV. GENERAL PLAN AMENDMENT

The General Plan is hereby amended by enacting or reenacting segments of that general plan as follows:

Note: All numbering of sections, policies, strategies, tables, and figures herein follows that of the General Plan as amended on October 20, 2015. Following the adoption of the Initiative, the General Plan’s sections, policies, strategies, tables, and figures, and all internal references thereto, shall be renumbered in a logical order, and tables and figures shall be modified to conform to the Initiative’s changes to the General Plan’s text, as specified herein.

Section 1. Chapter 1 – Introduction

- a. The last paragraph of the Section entitled “Purpose of Community Vision 2040 ” as of October 20, 2015, is amended as follows:**

Due to the breadth of topics covered in Community Vision 2040, conflicts between mutually-desirable goals are inevitable. For instance, increased automobile mobility may conflict with a safe, walkable community. This document reconciles these conflicts in the interest of building a cohesive community by placing a priority upon maintaining the well-being of Cupertino residents. Per State law, every goal and policy in this plan has equal weight. The City recognizes that the interests of residents of a particular street or neighborhood may need to be balanced with the overall needs and potentially greater goal of building a community. These are
Harmonization of possible conflicts between goals and policies in this plan shall be guided by an understanding that the General Plan reflects conscious choices that the City makes in the interest of building community and protecting its residents. That harmonization shall also recognize that changes made through this Initiative are intended to modify and supersede any section, policy, strategy, table, or diagram that might otherwise conflict with the amendments being made by this Initiative, and the General Plan shall be conformed accordingly.

- b. A new paragraph is added to the Section entitled “Purpose of Community Vision 2040” as of October 20, 2015 as follows:**

Portions of the General Plan were enacted or reenacted in 2016 by a voter initiative. A copy of that initiative shall be appended to the General Plan as an appendix unless or until that

requirement is changed or rescinded by the voters. It is the intent of the voters of Cupertino that, in interpreting and harmonizing the provisions of the General Plan, priority be given to ensuring that the provisions enacted or reenacted by the 2016 voter initiative be followed and implemented to the fullest extent possible.

Section 2. Chapter 2 – Planning Areas

- a. The Section “Vision” for the Vallco Shopping District Special Area is amended as follows:**

The Vallco Shopping District will continue to function as a major regional and community destination. The City envisions this area as a ~~new mixed-use “town center” and~~ gateway for Cupertino providing a unique and memorable shopping, dining and entertainment experience with appropriate bicycle and pedestrian-friendly access. ~~It will include an interconnected street grid network of bicycle and pedestrian-friendly streets, m~~More pedestrian-oriented buildings with active uses may line ~~lining~~ Stevens Creek Boulevard and Wolfe Road, ~~and~~ with publicly-accessible parks and plazas that support the pedestrian-oriented feel of the revitalized area. New development in the Vallco Shopping District ~~should~~ must ~~be required to~~ provide buffers ~~between~~ to protect adjacent single-family neighborhoods in the form of boundary walls, setbacks, landscaping or building transitions.

Section 3. Chapter 3 – Land Use and Community Design Element

- a. The Section “Context” is amended as follows:**

The first paragraph of the subsection “Economic Vitality” is amended as follows:

Cupertino is fortunate in its location in the heart of Silicon Valley. Despite its mostly suburban characteristics to the west and south, the city is home to a number of small, medium and large software, technology and biomedical companies. The General Plan ~~includes more office growth~~ recognizes the need to retain balanced growth to support ~~a~~ 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. Policies for commercial areas seek to revitalize the Vallco Shopping District, and enhance commercial centers and neighborhood centers, which contribute to the City’s tax base and serve community needs.

Table LU-1: “CITYWIDE DEVELOPMENT ALLOCATION BETWEEN 2014-2040” is amended by the additions and strikeouts shown below.

**TABLE LU-1
CITYWIDE DEVELOPMENT ALLOCATION BETWEEN 2014-2040**

	Commercial (s.f.)			Office (s.f.)			Hotel (rooms)			Residential (units)		
	Current Built (Dec 10, 2014)	Buildout Available	Current Built (Dec 10, 2014)	Buildout Available	Current Built (Dec 10, 2014)	Buildout Available	Current Built (Dec 10, 2014)	Buildout Available	Current Built (Dec 10, 2014)	Buildout Available	Current Built (Dec 10, 2014)	Buildout Available
Heart of the City	1,351,730	2,145,000	793,270	2,464,613	17,113	404	526	122	1,336	1,888*	1,888*	562*
Vallco												
Shopping District**	1,207,774	1,207,774	-	2,000,000	2,000,000	148	339	191	-	369	369	369
Homestead	291,408	291,408	-	69,550	-	126	126	-	600	750	750	150
N. De Anza	56,708	56,708	-	2,081,021	-	123	123	-	49	146	146	97
N. Vallco	133,147	133,147	-	3,069,676	-	315	315	-	554	1,304*	1,304*	750*
S. De Anza	352,283	352,283	-	130,708	-	-	-	-	6	6	6	-
Bubb	-	-	-	444,753	-	-	-	-	-	-	-	-
Monta Vista Village	94,051	99,698	5,647	443,140	13,595	-	-	-	828	878	878	50
Other	144,964	144,964	-	119,896	-	-	-	-	18,039	18,166	18,166	127
Major Employers	-	-	-	109,935	523,118	-	-	-	-	-	-	-
Citywide	3,632,065	4,430,982	798,917	9,470,005*	553,826	1,116	1,429	313	21,412	23,148*	23,148*	1,736*
				14,440,005	2,000,000					1,888	1,888	1,662

* - numbers indicated by a single asterisk may be changed through the normal general plan amendment process.
 ** - Building needs for Office and Residential allocations within the Shopping District are being updated for the year by May 31, 2019. If a Specific Plan is adopted by that date, City will provide the removal of the Office and Residential allocations for Vallco Shopping District. See the Housing Element Chapter 4, for additional information and requirements within the Vallco Shopping District.

The subsection “Site and Building Design” is amended as follows:

Policy LU-3.0: Community Form

The maximum heights and densities for the special areas shown in the Community Form Diagram (Figure LU-1) shall not be exceeded. Outside of the Special Areas shown in Figure LU-1, building heights may not exceed 45 feet. Building height shall be measured to the highest point of the building, excluding light poles, antennae, minor mechanical boxes or roof vent protrusions which are not easily visible. A below-grade structure is not counted towards building height. For any project of over 50,000 sq. ft. of building area, maximum lot coverage shall not exceed 70%.

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

Figure LU-1 “Community Form Diagram” and the Land Use Map (shown below in their current form) shall be conformed to the requirements set by Policy LU-3.0, Policy LU-3.2, Policy LU-19.2 and the density changes identified in Footnotes (a) through (c) in the new Table HE 5.5 [previously Appendix B Table 5.5] as shown in Section 3 of this Part IV.

In order to assure the retention and enforcement of City guidelines not currently included in the General Plan, the following policies are amended as shown

Policy LU-3.2: Building Heights, and Setback Ratios, Stepbacks and Building Planes:

Maximum heights and setback ratios are specified in the Community Form Diagram (Figure LU-1) and as described below. As indicated in the figure, taller heights are focused on major corridors, gateways and nodes. Setback ratios are established to ensure that the desired relationship of buildings to the street is achieved.

Policy LU-3.2.1: Additional Floor Area. In any area where an increase in the maximum building height is granted in exchange for ground floor retail, no more than 1 square foot of additional floor area above the otherwise-applicable height limit may be allowed for every 1 square foot of ground floor retail. In any such exchange, all ground floor retail must be fully accessible to the public during operating hours.

Policy LU-3.2.2: Rooftop Height Extensions. Rooftop mechanical equipment and utility structures other than cell phone transmission antennae, but no other structures or building features, may exceed stipulated height limitations shown in Figure LU-1 if they are enclosed, centrally located on the roof and not visible from adjacent streets.

Policy LU-3.2.3: North De Anza Boulevard. For the area from I-280 south to Alves Drive on the west and from I-280 south to St. Joseph's Church on the east, not including St. Joseph's Church:

- For all new construction, there shall be landscaped setback areas extending a minimum of 50-ft. from curb line. Alternatively, the landscaped setback areas adjacent to North De Anza Blvd. may have a varied depth but a minimum square footage equal to the lot frontage distance multiplied by 50 ft., and a minimum setback distance at any point of 35 ft. from curb line.

Policy LU-3.2.4: Stevens Creek Boulevard

- The minimum setback on both sides of Stevens Creek Boulevard from CA-85 to the eastern boundary of the City of Cupertino is no less than 35 feet from the curb line.
- On both sides of Stevens Creek Boulevard from CA-85 to Perimeter Road buildings shall be below a 1:1 (i.e. 1 foot of stepback for every 1 foot of building height drawn from the curb line) slope line drawn from the Stevens Creek Boulevard curb line.
- On the north side of Stevens Creek Boulevard from Perimeter Road to the eastern boundary of the City of Cupertino buildings shall be below a 1.5:1 (i.e. 1.5 feet of stepback for every 1 foot of building height drawn from the curb line) slope line drawn from the Stevens Creek Boulevard curb line.
- On the south side of Stevens Creek Boulevard from Perimeter Road to the eastern boundary of the City of Cupertino buildings shall be below a 1:1 slope line drawn from the Stevens Creek Boulevard curb line.

Policy LU-3.2.5: Homestead Road in the North Vallco Park Area

On Homestead Road from Linnet Lane (west of Wolfe Road) to Swallow Drive (east of Wolfe Road) buildings shall be below a 1.5:1 slope line drawn from the Homestead Road curb line.

Policy LU-3.2.6: Building Planes on Arterial/Boulevard Streets.

Unless specified in other LU-3.2 policies, all other arterial/boulevard streets buildings shall be below a 1:1 (i.e. 1 foot of setback for every 1 foot of building height drawn from the curb line) slope line drawn from the curb line or lines.

The Subsection “City Center Subarea” is amended as follows:

Strategy LU-16.1.3: Building form. The form of buildings should, through the use of step-downs and setbacks, be designed to transition from existing taller buildings (new or existing) to the scale of the surrounding area. Taller buildings should provide appropriate transitions to fit into the surrounding area.

The subsection “Vallco Shopping District Special Area” is amended as follows:

Vallco Shopping District Special Area

The City envisions encourages the renovation and improvement of the existing Cupertino’s Vallco Fashion Shopping Mall while maintaining its important role as a retail shopping center serving Cupertino’s residents and regional visitors. a complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed use “town center” that is a focal point for regional visitors and the community. This new As renovated, the Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley.

GOAL LU-19

CREATE A DISTINCT AND MEMORABLE MIXED USE “TOWN CENTER” THAT IS PRESERVE AND ENHANCE THE VALLCO SHOPPING DISTRICT AS A LOCAL AND REGIONAL RETAIL, HOTEL, DINING AND ENTERTAINMENT COMMERCIAL DESTINATION AND A FOCAL POINT FOR THE COMMUNITY

Policy LU-19.1: Specific Plan

Create a Vallco Shopping District Specific Plan prior to any development or other significant changes in use on the site that lays out the land uses, design standards and guidelines, and infrastructure improvements required. The Specific Plan will be based on the following strategies:

Strategy LU-19.1.1: Master Developer. Redevelopment will require a master developer in order remove the obstacles to the development of a cohesive district with the highest levels of urban design.

Strategy LU-19.1.2: Parcel assembly. Parcel assembly and a plan for complete redevelopment of the site is required ~~prior to adding residential and office uses.~~ Parcelization is highly discouraged in order to preserve the site for redevelopment in the future.

Strategy LU-19.1.3: Complete Redevelopment. ~~The “town center” plan should be based on complete redevelopment of the site in order to ensure that the site can be planned to carry out the community vision.~~

Strategy LU-19.1.4: Land use. The following uses are allowed on the site (see Figure LU-1 for residential densities and criteria):

1. Retail: High-performing retail, restaurant and entertainment uses. Maintain a minimum of ~~600,000~~ 1,200,000 square feet of retail/dining/entertainment that provide a good source of sales tax for the City and provides high quality convenient shopping for residents of the city and surrounding areas. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.

2. Hotel: Encourage a business class hotel with conference center and active uses including main entrances, lobbies, retail and restaurants on the ground floor.

~~3. Residential: Allow residential on upper floors with retail and active uses on the ground floor. Encourage a mix of units for young professionals, couples and/or active seniors who like to live in an active “town center” environment.~~

~~4. Office: Encourage high quality office space arranged in a pedestrian oriented street grid with active uses on the ground floor, publicly accessible streets and plazas/green space.~~

Strategy LU-19.1.5: “Town Center” layout. ~~Create streets and blocks laid out using “transect planning” (appropriate street and building types for each area), which includes a discernible center and edges, public space at center, high quality public realm, and land uses appropriate to the street and building typology.~~

Strategy LU-19.1.6: Connectivity. ~~Provide a newly configured complete street grid hierarchy of streets, boulevards and alleys that is~~ Any changes to the existing circulation pattern as part of a development or revision should be pedestrian-oriented, connects to existing streets, and creates walkable urban blocks for buildings and open space. It should also incorporate transit facilities, provide connections to other transit nodes and coordinate with the potential expansion of Wolfe Road bridge over Interstate 280 to continue the walkable, bikeable boulevard concept along Wolfe Road. ~~The project~~ Any such development or revision should also contribute towards a study and improvements to a potential Interstate 280 trail along the drainage channel south of the freeway and provide pedestrian and bicycle connections from the project sites to the trail.

Strategy LU-19.1.8: Open space. ~~Ground-level~~ Open space areas in the form of a central town square on the west and east sides of the district interspersed with plazas and “greens” should be included that create community gathering spaces, locations for public art, and event space for community events.

Policy LU-19.2: The Vallco Shopping District shall continue to be devoted to retail, hotel, dining and entertainment commercial use. No residential or office use shall be allowed. Building heights shall be restricted to a maximum of 45 feet. Figure LU-1 and the Land Use Map shall be conformed to this policy.

The subsection “North Vallco Park Special Area” is amended as follows:

Policy LU-20.3: Building Form. Buildings in the retail and hotel area should provide active, pedestrian-oriented uses along the street. Buildings ~~should~~ shall transition to fit the scale of the surrounding area. Taller buildings ~~should~~ shall provide appropriate transitions to fit into the surrounding area. In addition to the height limits established in the Community Form Diagram, buildings abutting the campus shall incorporate appropriate setbacks, landscaped buffering, and building height transitions to minimize privacy and security impacts.

Section 4. Chapter 4 – Housing Element

a. The Section “Housing Resources” is amended as follows:

The subsection “Overview of Available Sites for Housing” is amended in its second and third paragraphs as follows:

Figure HE-1 indicates the available residential development opportunity sites to meet and exceed the identified regional housing need pursuant to the RHNA. The opportunity sites can accommodate infill development of up to ~~1,400~~ 1,386 residential units on properties zoned for densities of 20 dwelling units to the acre or more. The potential sites inventory is organized by geographic area and in particular, by mixed use corridors. The sites identified to meet the near term development potential are shown in Table HE-5. ~~As shown in Table HE-5, sites identified to meet the near term development potential lie within the North Vallco Park Special Area, the Heart of the City Special Area, and the Vallco Shopping District Special Area.~~

~~One particular site will involve substantial coordination for redevelopment (Because redevelopment of the Vallco Shopping District, Site A2), cannot involve additional housing units. Due to the magnitude of the project, the City has established a contingency plan to meet the RHNA if a Specific Plan is not approved within three years of Housing Element adoption. This contingency plan (called the City must follow its contingency plan to meet the RHNA, known as Scenario B and (discussed further in General Plan Appendix B), . Scenario B would involve the City removing Vallco Shopping District from its inventory of available sites for housing, adding other more priority sites to the inventory, and also increasing the density/allowable units on some of the other priority sites.~~

Figure HE-1: Priority Housing Element Sites: Scenario A is deleted in its entirety and replaced by Figure B-8 from Appendix B, page B-148, which shall be relabeled as Figure HE-1: Priority Housing Element Sites – Scenario B. Both the current Figure HE-1 and Figure B-8 are provided below.

Figure HE-1

Priority Housing Element Sites: Scenario A

Applicable if Vallco Specific Plan is adopted by May 31, 2018

If Vallco Specific Plan is not adopted by May 31, 2018, the designated Priority Housing Element Sites will be as shown in General Plan Appendix B, Section 5.5: Residential Sites Inventory - Scenario B.

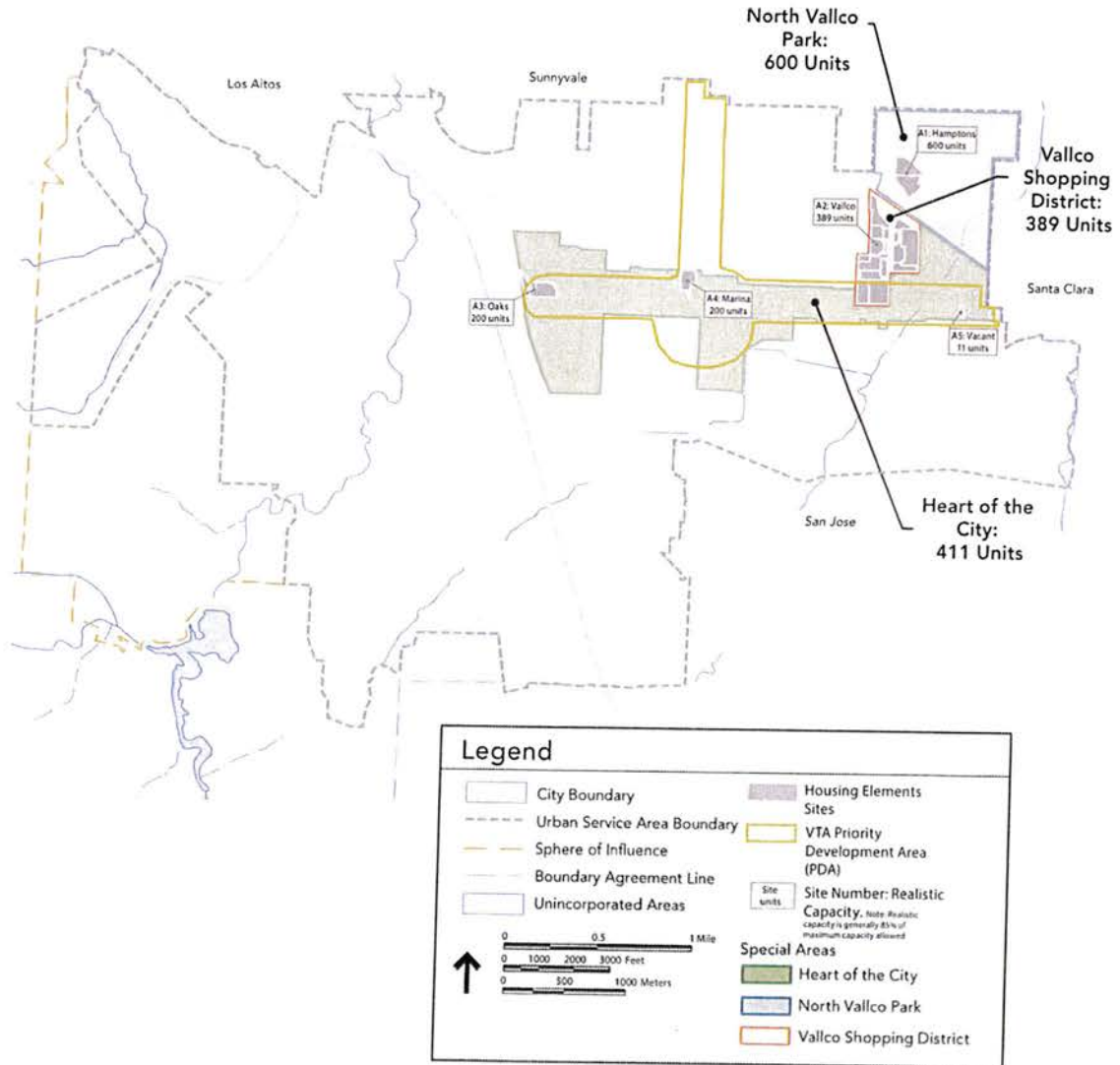


Figure B-8
 Priority Housing Element Sites - Scenario B

Applicable if Vallco Specific Plan is **not** adopted by May 31, 2018

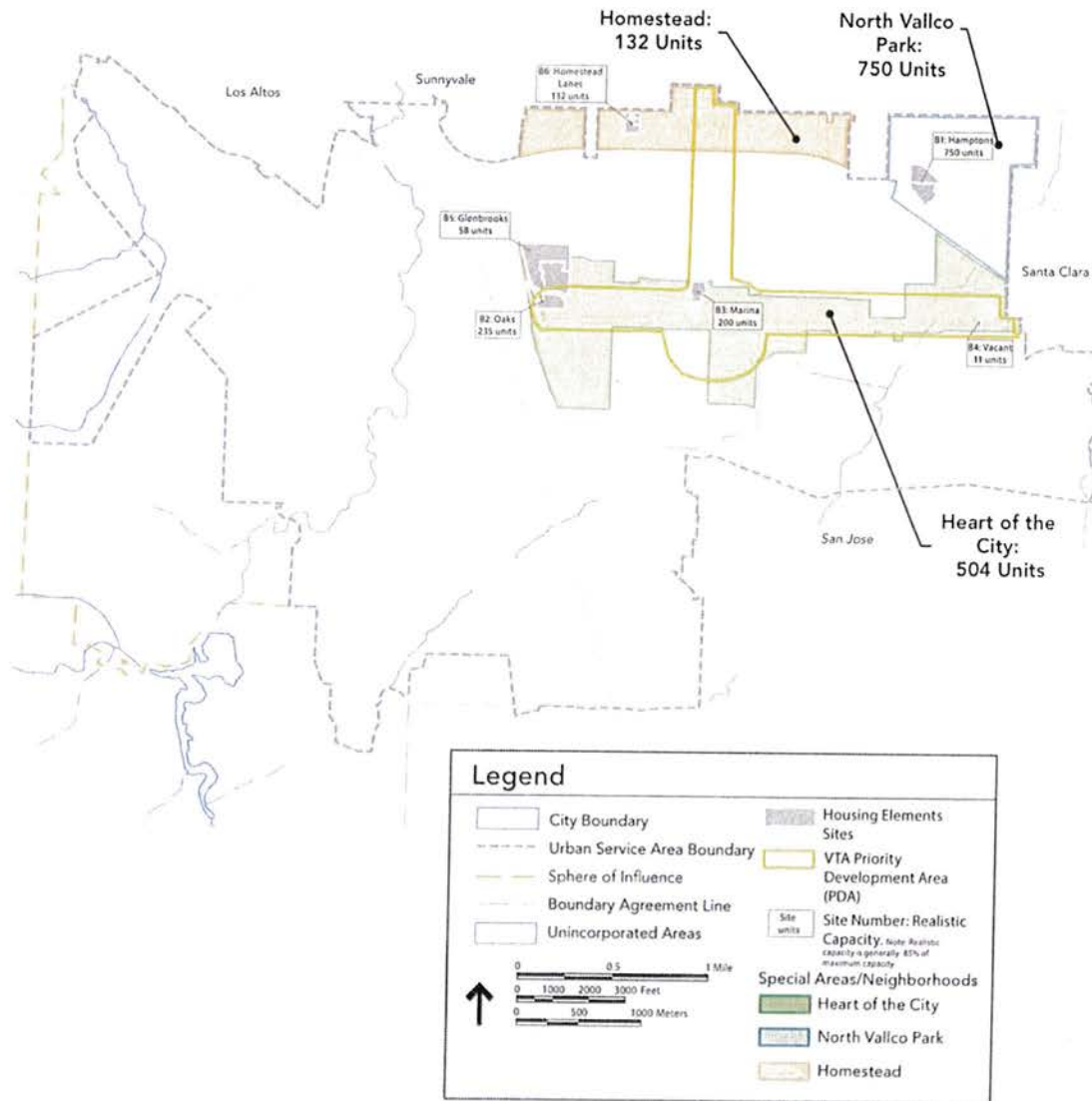


Table HE-5: “SUMMARY OF PRIORITY HOUSING ELEMENT SITES TO MEET THE RHNA – SCENARIO A” is deleted in its entirety and replaced by Table 5.5 from Appendix B, page B-153, which shall be relabeled as Table HE-5: SUMMARY OF PRIORITY HOUSING SITES – SCENARIO B. Both the current Table HE-5 and the replacement Table 5.5 are provided below:

TABLE HE-5: SUMMARY OF PRIORITY HOUSING ELEMENT SITES TO MEET THE RHNA - SCENARIO A

Site	Adopted General Plan/ Adopted Zoning	Special Area	Max Density (DUA)	Max Height	Realistic Capacity (units)
Site A1 (The Hamptons)	High Density P(Res)	North Vallco Park	85	75 ft; or 60 ft in certain locations*;	600 net
Site A2 (Vallco Shopping District)	RS/O/R P(Regional Shopping) & P(CG)	Vallco Shopping District	35	height to be determined in Vallco Shopping District Specific Plan	389
Site A3 (The Oaks Shopping Center)	C/R P(CG, Res)	Heart of the City	30	45 ft	200
Site A4 (Marina Plaza)	C/O/R P(CG, Res)	Heart of the City	35	45 ft	200
Site A5 (Barry Swenson)	C/O/R P(CG, Res)	Heart of the City	25	45 ft	11
Total					1,400

Notes: Zoning for Site A2 (Vallco) will be determined by Specific Plan to allow residential uses. Site A1 (Hamptons) height limit of 60 feet is applicable for buildings located within 50 feet of property lines abutting Wolfe Rd, Pruneridge Ave. & Apple Campus 2 site. Site A2 (Vallco) height will be determined by Specific Plan. For more detail on height limits, see Land Use and Community Design Element, Figure LU-1.

TABLE 5.5: SUMMARY OF PRIORITY HOUSING SITES - SCENARIO B

Site	Special Area/ Neighborhood	General Plan/Zoning	Max Density (DUA)	Acres	Realistic Capacity (units)	Affordability Level
Site B1 (Hamptons)	North Vallco Park	High Density P(Res)	99 ^(a)	12.44	750	Very Low/ Low
Site B2 (The Oaks Shopping Center)	Heart of the City	C/R P(CG, Res)	35 ^(b)	7.9	235	Very Low/ Low
Site B3 (Marina Plaza)	Heart of the City	C/O/R P(CG, Res)	35	6.86	200	Very Low/ Low
Site B4 (Barry Swenson)	Heart of the City	C/O/R P(CG, Res)	25	0.55	11	Very Low/ Low
Site B5 (Glenbrook Apartments)	Heart of the City	Medium Density R3(10-20)	20	31.3	58	Very Low/ Low
Site B6 (Homestead Lanes and Adjacency)	Homestead	C/R ^(c) P(CG, Res) ^(c)	35 ^(c)	5.1	132	Very Low/ Low
Total				64.24	1,386	

Notes:

- (a) A General Plan Amendment and zoning change will be necessary to allow the increase in density from 85 to 99 units per acre on Site B1.
- (b) A General Plan Amendment and zoning change will be necessary to allow the increase in density from 30 to 35 units per acre on Site B2.
- (c) A General Plan Amendment and zoning change will be necessary to allow residential uses at 35 units per acre on Site B6. Existing zoning for Site B6 is P(Rec, Enter).
- (d) Realistic capacity reduces the maximum developable units by 15 percent on Sites B1, B2, B3, B4, and B6. Realistic capacity of Site B5 is (d) reduced by 46 percent due to existing site constraints.
- (e) Identified capacity of sites that allow development densities of at least 20 units per acre are credited toward the lower-income RHNA based on State law. Pursuant to Government Code Section 65583.2(c)(3)(B), local governments may utilize "default" density standards to provide evidence that "appropriate zoning" is in place to support the development of housing for very-low and low-income households. The default density standard for Cupertino and other suburban jurisdictions in Santa Clara County is 20 dwelling units per acre (DUA) or more.
- (f) Realistic capacity for sites B1 and B5 represent net new units.

b. The Section “Housing Plan” is amended as follows:

The subsection “Implementing Strategies” is amended as follows:

The fifth bullet point under Strategy 1: Land Use Policy and Zoning Provisions is amended as follows:

- ~~Priority Housing Sites: As part of the Housing Element update, the City has identified five priority sites under Scenario A B-(see Table HE-5) for residential development over the next eight years. The General Plan and zoning designations will allow the densities for this development. ~~shown in Table HE-5 for all sites except the Vallecito Shopping District site (Site A2). The redevelopment of Vallecito Shopping District will involve significant planning and community input. A specific plan will be required to implement a comprehensive strategy for a retail/office/residential mixed use development. The project applicant would be required to work closely with the community and the City to bring forth a specific plan that meets the community’s needs, with the anticipated adoption and rezoning to occur within three years of the adoption of the 2014-2022 Housing Element (by May 31, 2018). The specific plan would permit 389 units by right at a minimum density of 20 units per acre.~~~~

~~If the specific plan and rezoning are not adopted within three years of Housing Element adoption (by May 31, 2018), the City will schedule hearings consistent with Government Code Section 65863 to consider removing Vallecito as a priority housing site under Scenario A, to be replaced by sites identified in Scenario B (see detailed discussion and sites listing of “Scenario B” in Appendix B—Housing Element Technical Appendix). As part of the adoption of Scenario B, the City intends to add two additional sites to the inventory: Glenbrook Apartments and Homestead Lanes, along with increased number of permitted units on The Hamptons and The Oaks sites. All sites in Scenario B, except the Homestead Lanes, have Applicable zoning is in place, for Glenbrook Apartments; however the The Homestead Lanes site will would need to be rezoned at that time to permit residential uses. Any rezoning required will allow residential uses by right at a minimum density of 20 units per acre.~~

Delete the following table:

Responsible Agencies:	Cupertino Department of 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-, 178 very low-, 207 low-, 231 moderate- and 270 above moderate-income units)

Part V: EXEMPTIONS FOR CERTAIN PROJECTS

This 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.

Part VI: EFFECTIVE DATE, PRIORITY, AND CONSISTENCY

This Initiative shall become effective immediately upon the certification of the election results. Within six (6) months of the effective date of this measure, 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. Until such time as the above referenced ordinances and plans have been so revised and amended, the provisions of this Initiative shall prevail over any conflicting provisions.

Part VII: SEVERABILITY

The people of Cupertino hereby declare that they intend to enact each and every provision of this Initiative regardless of the presence or absence of any other provision, and to that extent all of the provisions of this Initiative are to be considered severable. In the event a final judgment of a court of competent jurisdiction determines that any provision, section, subsection, sentences, clause, or phrase or application of this Initiative measure is found to be invalid or unenforceable for any reason, the invalid or unenforceable portion shall be severed from this measure, and the remaining portions of this measure shall remain in full force.

Part VIII: AMENDMENT OR REPEAL

Except as otherwise indicated herein, this Initiative may be amended or repealed only by the voters at a City election.

EXHIBIT B

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY FOR PROPOSED INITIATIVE
SUBMITTED ON NOVEMBER 24, 2015

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.

SUMMARY: As required by State law, the City of Cupertino's General Plan establishes permissible land uses, maximum development densities, and intensities for all properties within the City. The City recently completed a multi-year planning effort that resulted in the adoption of its General Plan (Community Vision 2015 – 2040), intended to guide development through the year 2040.

The initiative amends Cupertino's General Plan in several ways, including requirements for: the Vallco Shopping District; building heights, setbacks, planes, and lot coverage in other areas of the City; residential allocation; and the Housing Element.

For the Vallco Shopping District, the initiative: (1) removes the General Plan's vision 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. . . ."; (2) prohibits residential and office uses; (3) restricts building heights to a maximum of 45 feet; and (4) increases the minimum square footage of retail/dining/entertainment uses from 600,000 to 1,200,000 square feet.

In other areas of the City, the initiative: (1) prohibits building heights greater than 45 feet except in North Vallco Park and South Vallco Park Gateway within the Heart of the City Special Area; (2) adds policies regarding setbacks, "stepbacks," "building planes," and rooftop height extensions citywide; (3) adds specific policies applicable to North De Anza Boulevard, Stevens Creek Boulevard, and Homestead Road in North Vallco Park; (4) limits the maximum lot coverage for projects over 50,000 square feet to 70%; and (5) reduces the Citywide residential allocation by 146 units.

For the Housing Element, state law requires that every general plan identify priority housing sites to accommodate that city's share of regional housing needs. The initiative removes the current General Plan "Scenario A" of priority sites and replaces it with the General Plan's "contingency plan", "Scenario B". Scenario B: (1) removes the Vallco Shopping District as a priority housing site; (2) increases residential units allocated to

the Heart of the City and North Vallco Park Special Areas: (3) adds two other sites; and (4) reduces the total number of priority housing units by 14.

The initiative states that it shall not apply to any development project that has obtained, prior to the initiative's effective date, a vested right pursuant to state law.

It directs the City to amend all other provisions of its municipal code, ordinances, plans, policies, and resolutions to conform with the initiative within six months.

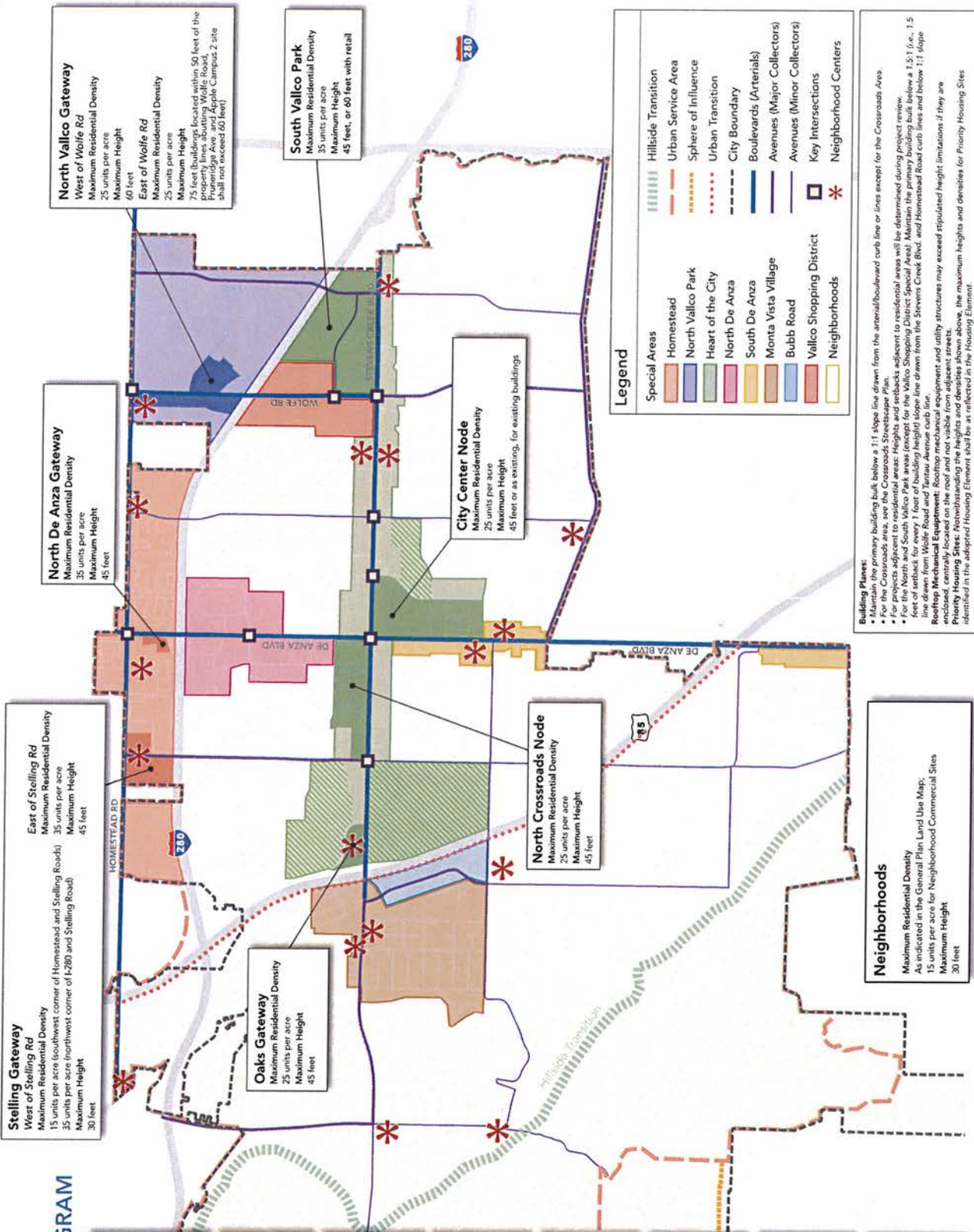
The initiative states that, except as indicated therein, no provision of the initiative may be amended without voter approval.

The initiative has no expiration date.

EXHIBIT C

Figure LU-1
COMMUNITY FORM DIAGRAM

<p>Homestead Special Area</p> <p>Maximum Residential Density Up to 35 units per acre per General Plan Land Use Map 15 units per acre (southeast corner of Homestead Road and Blaney Avenue) 35 units per acre (northwest corner of I-280 and Stelling Road) Maximum Height 30 feet, or 45 feet, south-south between De Anza and Stelling</p>	<p>North Vallico Park Special Area</p> <p>Maximum Residential Density 25 units per acre Maximum Height 60 feet</p>	<p>Heart of the City Special Area</p> <p>Maximum Residential Density 25 or 35 units per acre Maximum Height 45 feet, or 30 feet where designated by hatched line</p>	<p>North De Anza Special Area</p> <p>Maximum Residential Density 25 units per acre Maximum Height 45 feet</p>	<p>South De Anza Special Area</p> <p>Maximum Residential Density 25 units per acre Maximum Height 30 feet</p>	<p>Monta Vista Village Special Area</p> <p>Maximum Residential Density Up to 15 units per acre per General Plan Land Use Map Maximum Height Up to 30 feet</p>	<p>Bubb Road Special Area</p> <p>Maximum Residential Density 20 units per acre Maximum Height 45 feet</p>	<p>Vallico Shopping District Special Area</p> <p>West of Wolfe Rd Maximum Residential Density 35 units per acre Maximum Height Per Specific Plan</p> <p>East of Wolfe Rd Maximum Residential Density 35 units per acre Maximum Height Per Specific Plan</p>
---	---	---	--	--	--	--	--



Building Planes:

- Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or lines except for the Crossroads Area
- For projects adjacent to residential areas, the maximum building height shall be determined during project review.
- For the North and South Vallico Park areas (except for the Vallico Shopping District Special Area), the maximum building height shall be 1.6:1 (i.e., 1.5 feet of setback for every 1 foot of building height) slope line drawn from the Stevens Creek Blvd. and Homestead Road curb lines and below 1:1 slope line drawn from Wolfe Road and Tantau Avenue curb line.

Roof-top Mechanical Equipment: Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are located on the roof and not visible from adjacent streets.

Priority Housing Sites: Priority housing sites are identified in the Housing Element. The maximum heights and densities for Priority Housing Sites identified in the adopted Housing Element shall be as reflected in the Housing Element.

Neighborhoods

Maximum Residential Density
As indicated in the General Plan Land Use Map:
15 units per acre for Neighborhood Commercial Sites
Maximum Height
30 feet

Legend

Special Areas	Hillsides Transition
Homestead	Urban Service Area
North Vallico Park	Sphere of Influence
Heart of the City	Urban Transition
North De Anza	City Boundary
South De Anza	Boulevards (Arterials)
Monta Vista Village	Avenues (Major Collectors)
Bubb Road	Avenues (Minor Collectors)
Vallico Shopping District	Key Intersections
Neighborhoods	Neighborhood Centers

EXHIBIT D

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com
Delivery via electronic mail

April 5, 2016

Hon. Barry Chang, Mayor, and
Cupertino City Council
Cupertino City Hall
10300 Torre Ave.
Cupertino, CA 95014

Re: Ballot question for CCSG Initiative.

Dear Mayor Chang and Council Members,

I am writing to you on behalf of my clients, the Cupertino Residents for Sensible Zoning Action Committee and the proponents of the Cupertino Citizens' Sensible Growth Initiative, in regard to tonight's special city council meeting and its sole agenda item, a proposal to modify the ballot question for the Cupertino Citizens Sensible Growth Initiative (CCSGI). The meeting has apparently been set to respond to a letter the City received from an attorney representing the backers of a counter-initiative (primarily Vallco Property Owner, LLC [AKA San Hill Property Company]) asserting that the City's previously-approved ballot language is inaccurate and must be corrected. My clients agree with the developer's attorney that the previously approved language is inaccurate, but not about the nature of the inaccuracy.

The developer's attorney relies on the report prepared for the City under Elections Code §9212 as showing that the height limit in the City's Neighborhoods would be increased by the CCSGI. However, that report itself was inaccurate because it ignored the fact that in October of 2015 the City Council revised and amended the general plan. In particular, the October 2015 General Plan Amendment revised Figure LU-1, the Community Form Diagram, and that revised diagram is specifically and explicitly included in the CCSGI at page 6. A copy of that revised figure is attached to this letter as Exhibit A. The revised diagram, like that included in the December 2014 general plan revisions, identifies the various "Special Areas" within the City and identifies key land use standards for those areas. At the lower right corner of the diagram, the diagram legend, like that in the December 2014 General Plan, lists the various Special Areas and shows how they are designated in the diagram. However, the October 2015 General Plan Amendment added, at the bottom of that list (which has the heading "Special Areas"), "Neighborhoods" with a block next to it showing that this Special Area is indicated on the diagram in white. The October 2015 General Plan Amendment also added a box at the bottom of Figure LU-1 that identifies a maximum density (15 units per acre) and a maximum height (30 feet) for the Neighborhoods Special Area.

The developer's attorney's letter, and the §9212 report on which it is based, assume that the Neighborhoods are not a Special Area, and are therefore covered by the CCSGI's policy that, "Outside of the Special Areas shown in Figure LU-1, building heights may not exceed 45 feet." However, as noted, the Neighborhoods are explicitly shown in Figure LU-1 as a Special Area. Therefore, the quoted policy does **not** apply to the Neighborhoods. In fact, the CCSGI explicitly says, in **Policy LU-3.0: Community Form** that, "The maximum heights and densities for the Special Areas shown in the Community Form Diagram (Figure LU-1) shall not be exceeded."

Hon. Mayor Chang and City Council - Ballot Question for CCSG Initiative
April 5, 2016
Page 2

Since Figure LU-1 shows the maximum height in the Neighborhoods as 30 feet and the maximum density as fifteen units per acre, those limits are re-enacted by the CCSGI. The City's proposed ballot question must therefore be modified accordingly. My clients also believe that the Elections Code §9212 Report prepared for the City should also be revised to properly reflect the changes that the City Council made to the General Plan in October 2015. A suggested revised ballot question (in both clean and redline form) is attached to this letter as Exhibit B.

Most sincerely



Stuart M. Flashman

Attachments:

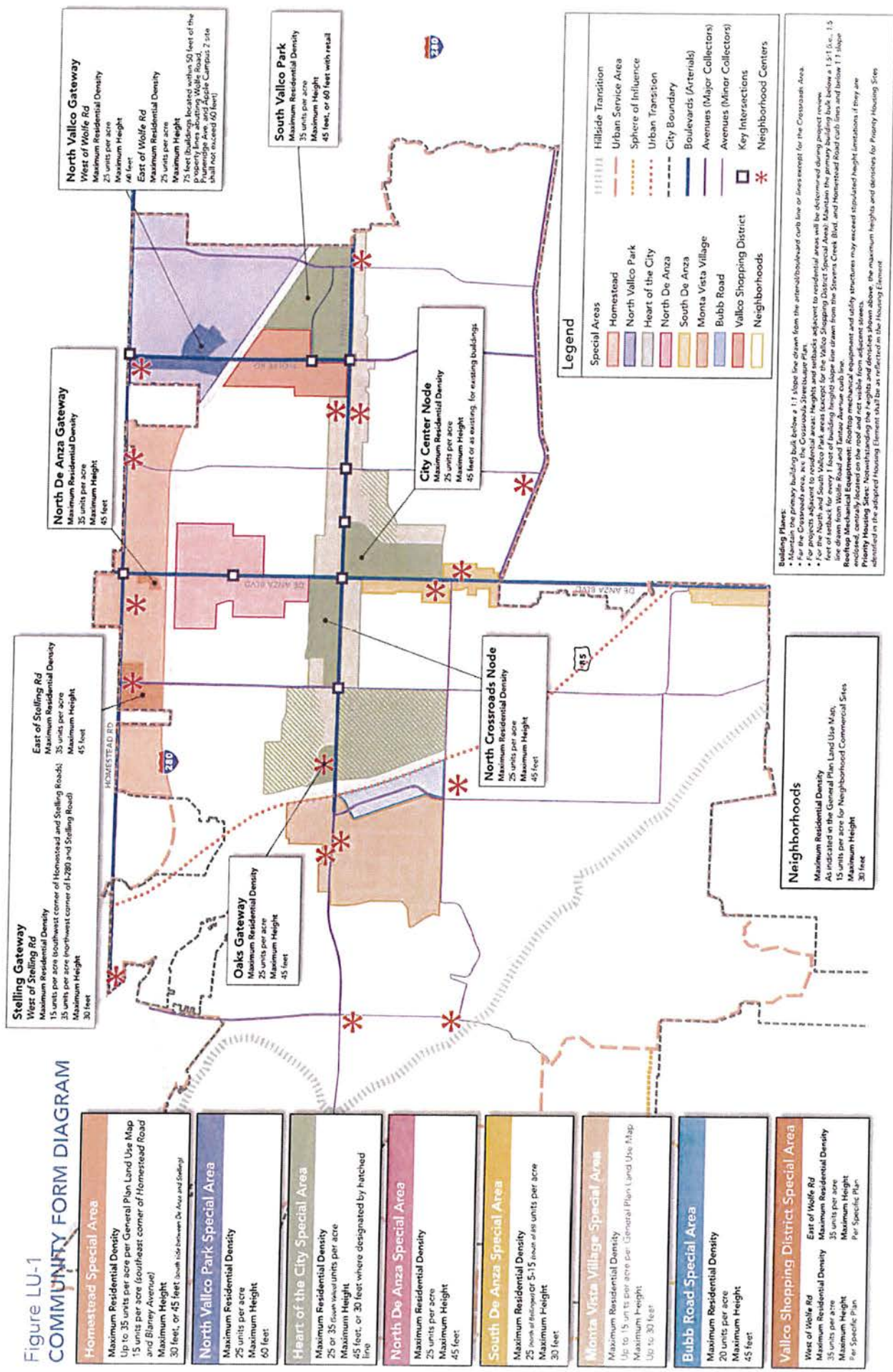
October 2015 version of General Plan Figure LU-1 – Community Form Diagram
Proposed Revised Ballot Question

cc: City Manager
City Attorney

11/11/11

Exhibit A

Figure LU-1
COMMUNITY FORM DIAGRAM



Homestead Special Area
Maximum Residential Density
Up to 35 units per acre per General Plan Land Use Map
15 units per acre (southeast corner of Homestead Road and Blaney Avenue)
Maximum Height
30 feet, or 45 feet (south side between De Anza and Stelling)

North Vallico Park Special Area
Maximum Residential Density
25 units per acre
Maximum Height
60 feet

Heart of the City Special Area
Maximum Residential Density
25 or 35 units per acre
Maximum Height
45 feet, or 30 feet where designated by hatched line

North De Anza Special Area
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

South De Anza Special Area
Maximum Residential Density
25 units per acre
Maximum Height
30 feet

Monta Vista Village Special Area
Maximum Residential Density
Up to 15 units per acre per General Plan Land Use Map
Maximum Height
Up to 30 feet

Bubba Road Special Area
Maximum Residential Density
20 units per acre
Maximum Height
45 feet

Vallico Shopping District Special Area
West of Wolfe Rd
Maximum Residential Density
35 units per acre
Maximum Height
Per Specific Plan

Stelling Gateway
West of Stelling Rd
Maximum Residential Density
15 units per acre (southwest corner of Homestead and Stelling Road);
35 units per acre (northwest corner of 1280 and Stelling Road)
Maximum Height
30 feet

East of Stelling Rd
Maximum Residential Density
35 units per acre
Maximum Height
45 feet

Oaks Gateway
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

North Crossroads Node
Maximum Residential Density
25 units per acre
Maximum Height
45 feet

City Center Node
Maximum Residential Density
25 units per acre
Maximum Height
45 feet or as existing, for existing buildings

North Vallico Gateway
Maximum Residential Density
35 units per acre
Maximum Height
45 feet

North Vallico Gateway
West of Wolfe Rd
Maximum Residential Density
25 units per acre
Maximum Height
46 feet

East of Wolfe Rd
Maximum Residential Density
25 units per acre
Maximum Height
75 feet (buildings located within 50 feet of the property lines abutting Wolfe Road, and the adjacent Campus 2 site shall not exceed 60 feet)

South Vallico Park
Maximum Residential Density
35 units per acre
Maximum Height
45 feet, or 60 feet with retail

Legend

Special Areas	Hillside Transition	Urban Service Area	Sphere of Influence	Urban Transition	City Boundary	Boulevards (Arterials)	Avenues (Major Collectors)	Avenues (Minor Collectors)	Key Intersections	Neighborhood Centers
Homestead	North Vallico Park	Heart of the City	North De Anza	South De Anza	Monta Vista Village	Bubba Road	Vallico Shopping District	Neighborhoods		

Building Plans:

- Maintain the primary building bulk below a 1:1 slope line drawn from the arterial/boulevard curb line or line except for the Crossroads Area.
- For the Crossroads area, use the Crossroads Street/Usage Plan.
- For the North and South Vallico Park areas, heights and setbacks to residential areas will be determined during project review.
- For the North and South Vallico Park areas, setbacks to Shopping District Special Area. Maintain the primary building bulk below a 1:1 slope line drawn from Wolfe Road and Tanager Avenue curb line.
- For the North and South Vallico Park areas, setbacks to Shopping District Special Area. Maintain the primary building bulk below a 1:1 slope line drawn from Wolfe Road and Tanager Avenue curb line.
- Roofing Mechanical Equipment: Rooftop mechanical equipment and utility structures may exceed stipulated height limitations if they are identified in the adopted Housing Element and are not visible from adjacent streets.
- Priority Housing Sites: Neighborhood Centers identified in the adopted Housing Element shall be as reflected in the Housing Element.

Neighborhoods
Maximum Residential Density
As indicated in the General Plan Land Use Map
15 units per acre for Neighborhood Commercial Sites
Maximum Height
30 feet

Exhibit B

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, ~~establish a 45-foot maximum building height in the Neighborhoods~~ maintain existing maximum heights and densities in all special areas, including the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, maintain existing maximum heights and densities in all special areas, including the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?

EXHIBIT E

RESOLUTION NO. 16-032

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING THE BALLOT QUESTION FOR THE CUPERTINO CITIZENS'
SENSIBLE GROWTH INITIATIVE AND AMENDING RESOLUTIONS 16-028
AND 16-029**

WHEREAS, on March 31, 2016, the City Council accepted a report prepared pursuant to Elections Code Section 9212 ("9212 Report") on the Cupertino Citizens' Sensible Growth Initiative entitled, "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" (hereafter "Initiative"); and

WHEREAS, on March 31, 2016, the City Council adopted Resolution 16-028, Resolution of the City Council of the City of Cupertino Calling and Giving Notice of the Holding of a General Municipal Election to be Held on November 8, 2016, for the Submittal to the Voters of a Ballot Measure to Limit Redevelopment of the Vallco Shopping District, Limit Building Heights and Lot Coverages Throughout the City, and Establish New Setbacks and Building Planes on Major Thoroughfares; and Requesting the Assistance of the County of Santa Clara for the Consolidation of the Election and to Render Specified Services to the City of Cupertino Relating to the Conduct of the Election; and

WHEREAS, on March 31, 2016, the City Council adopted Resolution 16-029, A Resolution of the City Council of the City of Cupertino Providing for Written Arguments Regarding a City Measure and Directing the City Attorney to Prepare an Impartial Analysis; and

WHEREAS, both Resolution 16-028 and 16-029 contain the proposed ballot question for the Initiative as follows:

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, establish a 45 feet maximum building height in the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?	YES
	NO

WHEREAS, upon receiving the information contained in the Elections Code 9212 Report, the City Council determines that a change in language may provide increased information to the voters about the Initiative, and that such change is accurate, impartial and not misleading;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That Resolution 16-028 and Resolution 16-029 be amended to reflect the following ballot question to be submitted to the voters:

Shall an initiative ordinance be adopted amending Cupertino's General Plan to limit redevelopment of the Vallco Shopping District, limit building heights along major mixed-use corridors, increase to 45 feet the maximum building height in the Neighborhoods, limit lot coverages for large projects, establish new setbacks and building planes on major thoroughfares, and require voter approval for any changes to these provisions?	YES
	NO

SECTION 2. That Resolution 16-028 and Resolution 16-029 remain unchanged in all other respects.

SECTION 3: That Resolution 16-030 relating to the Initiative also adopted on March 31, 2016, is not changed by this Resolution.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Cupertino this 5th day of April, 2016, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
-------------	------------------------------------

AYES:	Chang, Sinks, Wong
NOES:	Vaidhyanathan, Paul
ABSENT:	None
ABSTAIN:	None

ATTEST:

APPROVED:

/s/Grace Schmidt

/s/Barry Chang

Grace Schmidt, City Clerk

Barry Chang, Mayor, City of Cupertino