

# Comments for Vallco Shopping District Specific Plan Environmental Impact Report NOP File Number EA- 2017-05

## Potential to Cease EIR Mid-Stream:

The EIR scoping meeting provided inadequate and conflicting information with an infeasible “Proposed Project” and infeasible alternatives.

According to “CEQA Does Not Apply to Project Disapproval, Even if the EIR is Underway,” by [Abbott & Kindermann](#) Leslie Z. Walker, on September 22, 2009, the EIR process may be stopped mid-stream:

According to [Las Lomas Land Co., LLC v. City of Los Angeles](#) (Sept. 17, 2009, B213637) \_\_\_ Cal.App.4th \_\_\_, the long standing rule that CEQA does not apply to projects rejected or disapproved by a public agency, allows a public agency to reject a project before completing or considering the EIR. In Las Lomas, the Court of Appeals for the Second Appellate District made clear that a city may stop environmental review mid-stream and reject a project without awaiting the completion of a final EIR. While this holding may avoid wasting time and money on an EIR for a dead-on-arrival project, it will also make it harder for projects to stay in play until the entire environmental document is complete.

The article continues:

One of the City’s council members opposed the project and asked the City to cease its work on it. The City attorney advised the council members that the City was required to continue processing and completing the EIR. Nonetheless, the objecting council member introduced a motion to suspend the environmental review process until the city council made “a policy decision” to resume the process. The city council ultimately approved a modified motion which also called for the City to cease work on the proposed project.

Should the City Council find reason to cease the EIR, such as the “Proposed Project” being inconsistent with the General Plan (explained on the following pages), or that in light of its’ similarity to failed Cupertino ballot Measure D: The Vallco Initiative November 8, 2016, there is precedent as demonstrated above, to do so.

## Similarity of “Proposed Project” to Failed Ballot Initiative Measure D, Nov. 8, 2016 Should Disqualify It

The Vallco Measure D Initiative is described in the following: [CITY ATTORNEY'S BALLOT TITLE AND SUMMARY FOR PROPOSED INITIATIVE SUBMITTED ON MARCH 3, 2016](#) and would consist of:

- 2,000,000 SF office
- 640,000 SF retail
- 191 additional hotel rooms, bringing the site total to 339 hotel rooms
- 389 residential units with a Conditional Use Permit bringing the total to 800 residential units

The [November 8, 2016 Election results for Measure D](#) were 55% No. Advertising for the initiative obscured the office and focused on the retail portions. The actual square footage percentages for the Measure D Initiative were:

- 56% office
- 22% residential
- 16% retail
- 6% hotel

Notice these above percentages result in 84% non-retail uses and would be a majority office park. The “Proposed Project” for the EIR has less retail (600,000 SF) and other uses the same as Measure D.

The EIR process is not intended to be a disregard of the city’s General Plan to “try out” alternative concepts which have no consistency with the General Plan. This creates a great deal of confusion and distrust.

## General Plan Directive to Create a Vallco Shopping District Specific Plan:

This section amasses the multiple sections of the General Plan which reference the Vallco Shopping District and describe what it is planned to become.

Refer to: [Cupertino General Plan Vision 2040](#):

In Chapter 2 of the Cupertino General Plan Vision 2040: Planning Areas: Vallco Shopping District is described as: “...Cupertino’s most significant commercial center...” and that “...Reinvestment is needed...so that this **commercial center** is more competitive and better serves the community.” It is referred to as a “shopping district”, not an office park, or a residential community. Following is the actual page from the General Plan describing Vallco Shopping District:

## VALLCO SHOPPING DISTRICT

### CONTEXT

The Vallco Shopping District Special Area encompasses Cupertino's most significant commercial center, formerly known as the Vallco Fashion Park. 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. 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. 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.



### VISION

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. 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.

### VALLCO SHOPPING DISTRICT SPECIAL AREA DIAGRAM

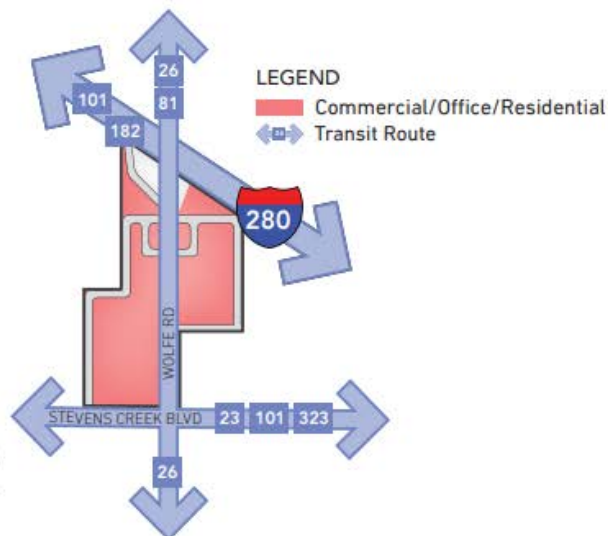


Figure 1

Vallco Shopping District is further described in the [General Plan Vision 2040 Land Use Element](#) through goals, policies, and strategies:

GOAL LU-19 Create a distinct and memorable mixed-use "town center" that is a regional destination and a focal point for the community

VALLCO SHOPPING DISTRICT SPECIAL AREA The City envisions a complete redevelopment of the existing Vallco Fashion Mall into a vibrant mixed-use "town center" that is a focal point for regional visitors and the community. This new Vallco Shopping District **will become a destination for shopping, dining and entertainment in the Santa Clara Valley.**

POLICY LU-19.1: SPECIFIC PLAN Create a **Vallco Shopping District Specific Plan** prior to any development 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:

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

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.

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.

LU-19.1.4: Land Use. The following uses are allowed on the site (see Figure LU-2 for residential densities and criteria):

1. Retail: High-performing retail, restaurant and entertainment uses. **Maintain a minimum** of 600,000 square feet of retail that provide a good source of sales tax for the City. Entertainment uses may be included but shall consist of no more than 30 percent of retail uses.
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.

**Table LU-1: Citywide Development Allocation Between 2014-2040**

	commercial (s.f.)			office (s.f.)			hotel (rooms)			residential (units)		
	current built (Oct 7,2014)	buildout	available	current built (Oct 7,2014)	buildout	available	current built (Oct 7,2014)	buildout	available	current built (Oct 7,2014)	buildout	available
Heart of the City	1,351,730	214,5000	793,270	2,447,500	2,464,613	17,113	404	526	122	1,336	1,805	469
Vallco Shopping District**	1,207,774	120,7774	-	-	2,000,000	2,000,000	148	339	191	-	389	389
Homestead	291,408	291,408	-	69,550	69,550	-	126	126	-	600	750	150
N. De Anza	56,708	56,708	-	2,081,021	2,081,021	-	126	126	-	49	146	97
N. Vallco	133,147	133,147	-	3,069,676	3,069,676	-	123	123	-	554	1154	600
S. De Anza	352,283	352,283	-	130,708	130,708	-	315	315	-	6	6	-
Bubb	-	-	-	444,753	444,753	-	-	-	-	-	-	-
Monta Vista Village	94,051	99,698	5,647	443,140	456,735	13,595	-	-	-	828	878	50
Other	144,964	144,964	-	119,896	119,896	-	-	-	-	18,039	18,166	127
Major Employers	-	-	-	109,935	633,053	523,118	-	-	-	-	-	-
<b>Citywide</b>	<b>3,632,065</b>	<b>4,430,982</b>	<b>798,917</b>	<b>8,916,179</b>	<b>11,470,005</b>	<b>2,553,826</b>	<b>1116</b>	<b>1429</b>	<b>313</b>	<b>21,412</b>	<b>23,294</b>	<b>1,882</b>

\*\* Buildout totals for Office and Residential allocation within the Vallco Shopping District are contingent upon a Specific Plan being adopted for this area by May 31, 2018. If a Specific Plan is not adopted by that date, City will consider 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.

Figure 2 - “General Plan Table LU-1”



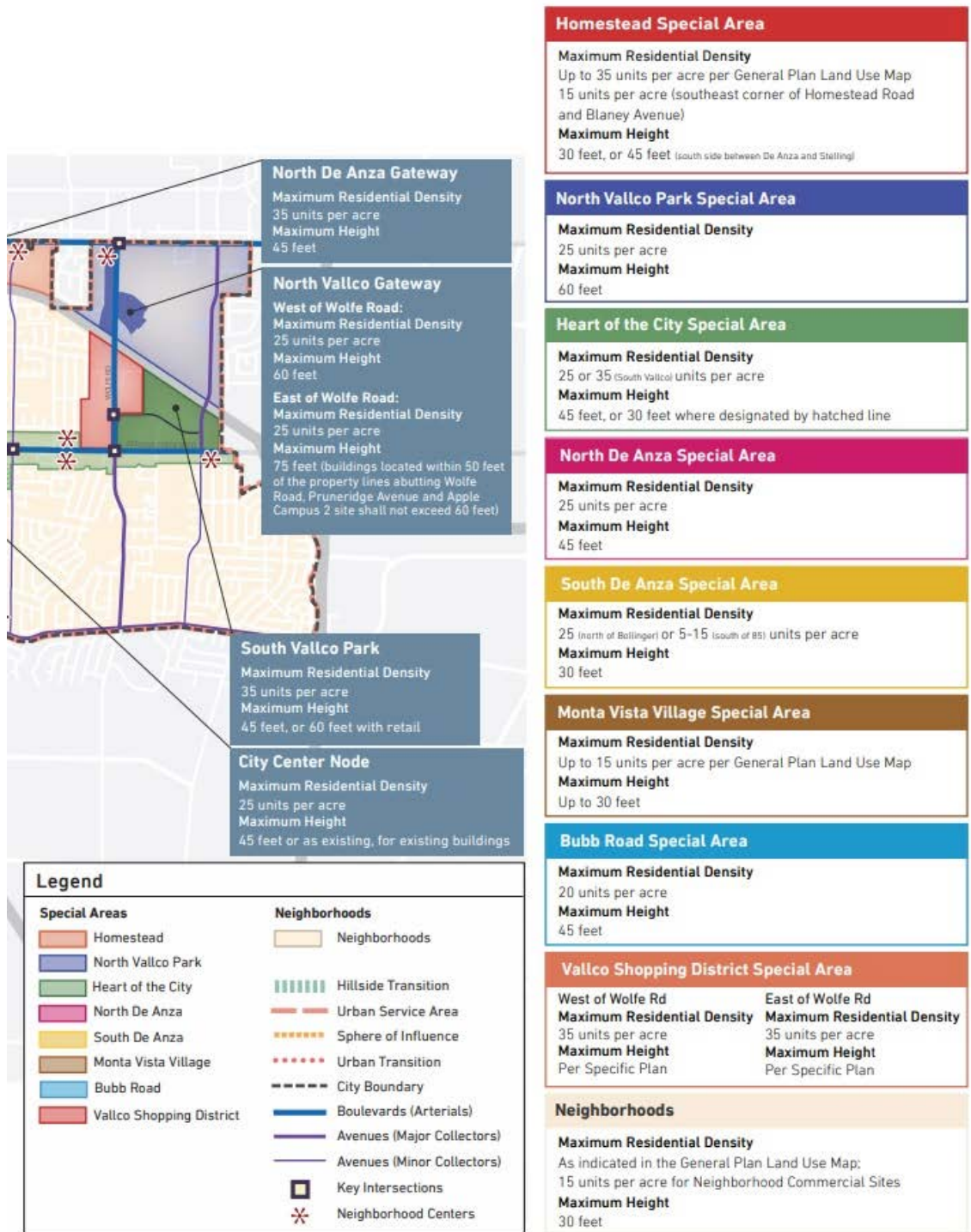


Figure 3 – “General Plan Figure LU-2”

General Plan Housing Element p H-21

“Priority Housing Sites: As part of the Housing Element update, the City has identified five priority sites under Scenario A (see Table HE-5) for residential development over the next eight years. The General Plan and zoning designations allow the densities shown in Table HE-5 for all sites except the Vallco Shopping District site (Site A2). The redevelopment of Vallco 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 Vallco 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. Applicable zoning is in place for Glenbrook Apartments; however the Homestead Lanes site 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.”

SITE A2 (VALLCO SHOPPING DISTRICT):

“The site is designated Regional Shopping/Office/Residential in the General Plan and zoned Planned Development with Regional Shopping and Commercial (P[Regional Shopping and P[CG]). Strategy HE-1.3.1 provides that the City will **adopt a Specific Plan for the Vallco site by May 31, 2018 that would permit 389 units by right at a minimum density of 20 units per acre. The zoning for the site would be modified as part of the Specific Plan process to allow residential uses as part of a mixed-use development at a maximum density of 35 units per acre. If the Specific Plan is not adopted, the City will schedule hearings consistent with Government Code Section 65863 to consider removing Vallco Shopping District as a Priority Housing Site and replacing it with the sites shown in Scenario B.**”

5.5. RESIDENTIAL SITES INVENTORY - SCENARIO B As noted above, one particular site identified in Scenario A will involve substantial coordination for redevelopment (Vallco Shopping District, Site A2). Due to the magnitude of the project, the **City has established a contingency plan to meet the RHNA if a Specific Plan is not adopted by May 31, 2018. This contingency plan (referred to here as Scenario B and shown on Figure B-8), involves the City removing Vallco Shopping District, adding more priority sites to the inventory, and also increasing the density/allowable units on other priority sites.** Four of the sites discussed in Scenario A above are also included in Scenario B, with some modifications to density and realistic capacity on two of these sites. Two additional sites are added to the inventory, one of which was included in the 2007-2014 Housing Element sites inventory.



**FIGURE HE-1  
HOUSING ELEMENT: SITES TO  
MEET THE RHNA**

**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.

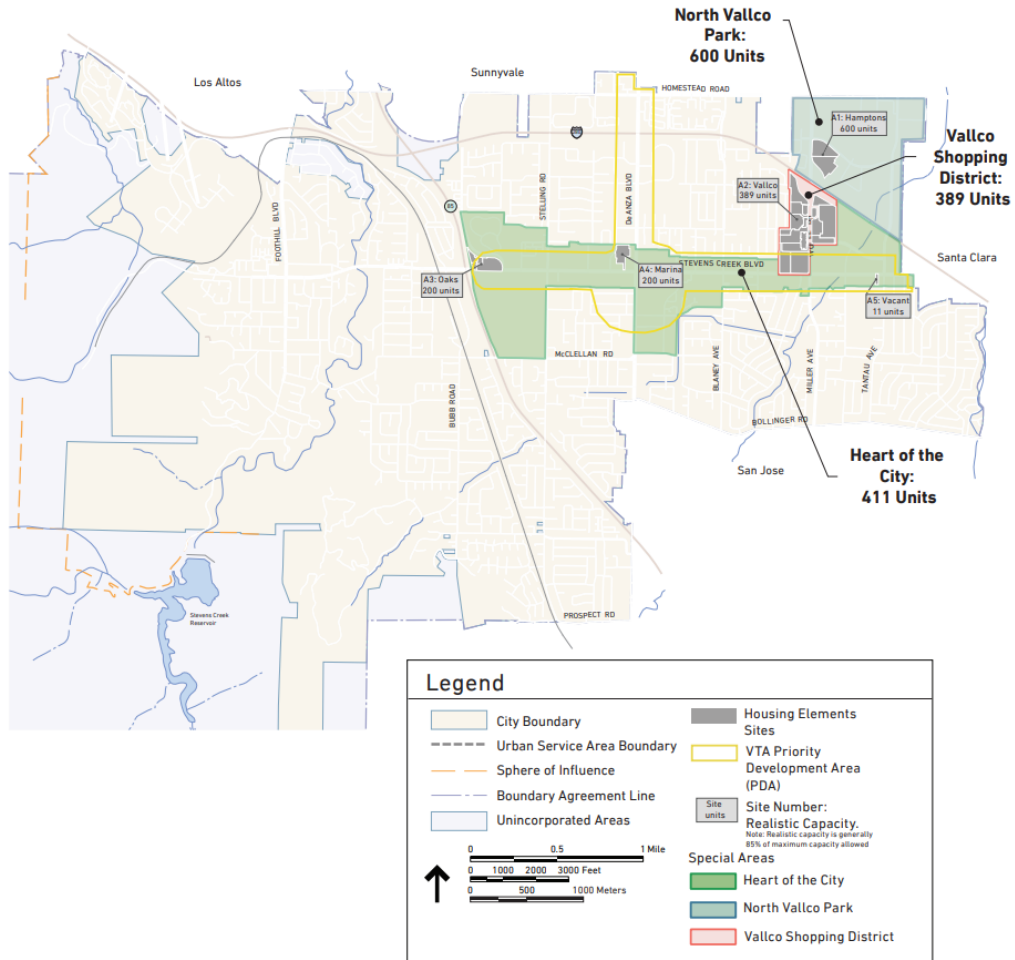


Figure 4 – “General Plan Figure HE-1”

“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 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. 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 (Vallco Shopping District, Site A2). 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 Scenario B and discussed further in General Plan Appendix B), would involve the City removing Vallco Shopping District, adding more priority sites to the inventory, and also increasing the density/allowable units on other priority sites.”

“DETERMINATION OF REALISTIC CAPACITY Sites inventory capacity must account for development standards such as building height restrictions, minimum setbacks, and maximum lot coverage, as well as the potential for non-residential uses in mixed-use areas. A survey of recent developments (Table 5.2) indicates that recent multi-family residential projects have built to between 82 percent and 99.5 percent of the maximum allowable density. To ensure that the sites inventory provides a “realistic capacity” for each site, estimates for maximum developable units on each site are conservatively reduced by 15 percent.”

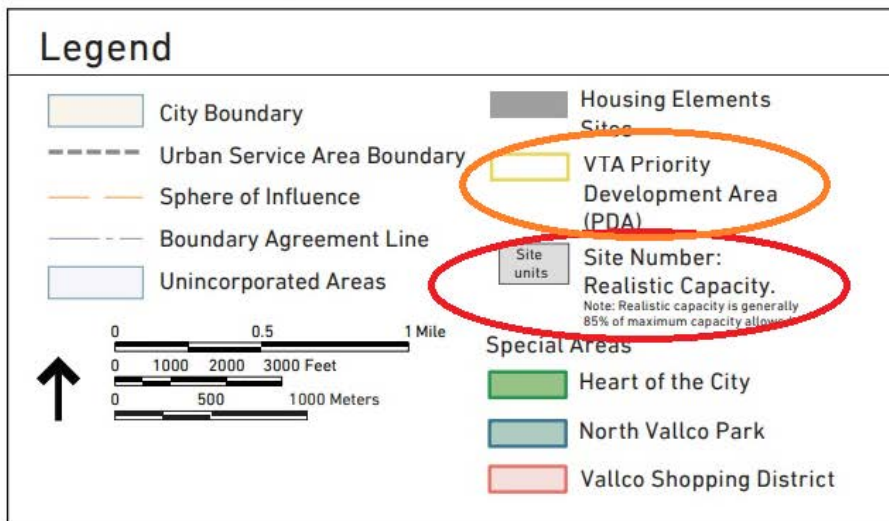
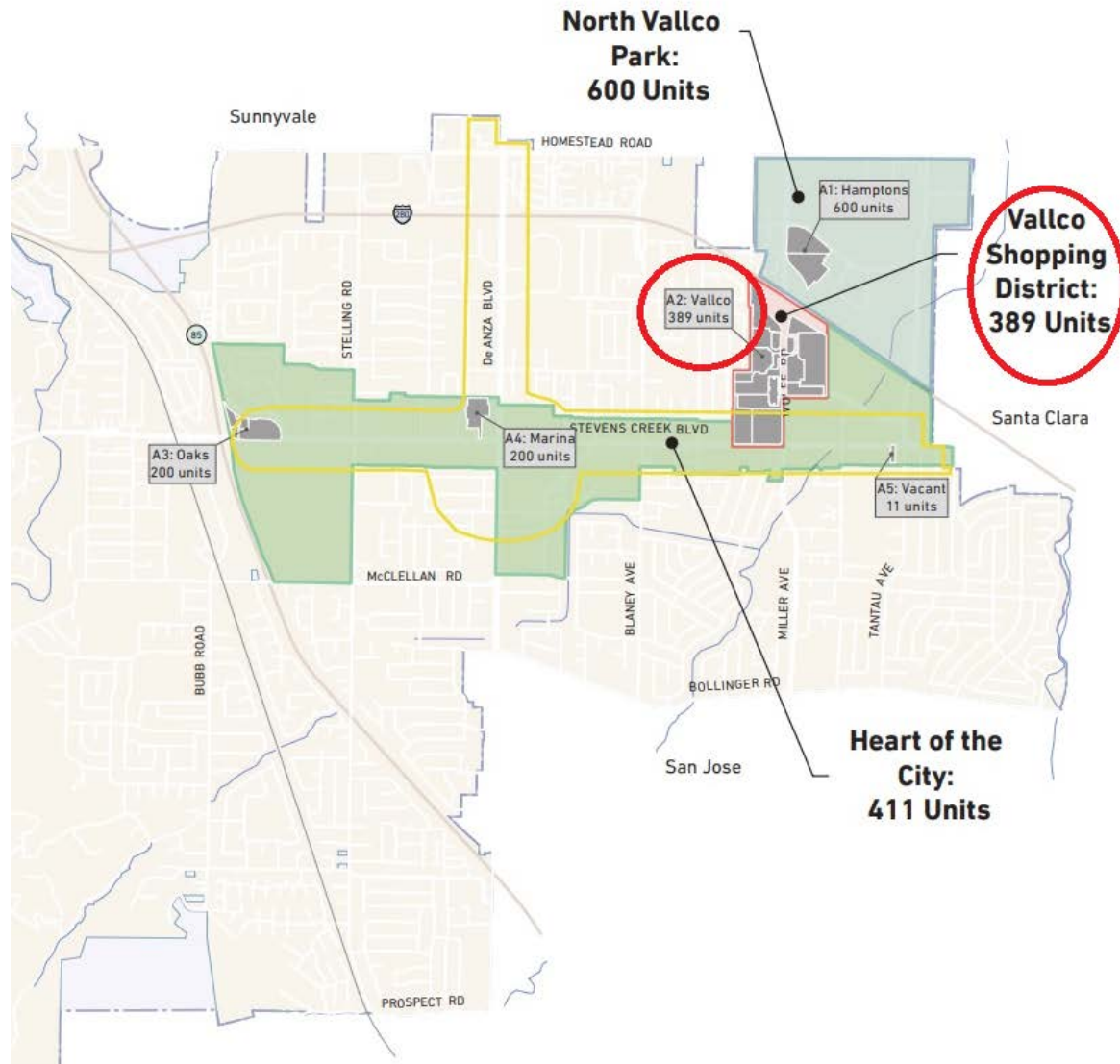


Figure 5 – “General Plan Figure HE-1 Zoomed in”

**FIGURE B-7  
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.

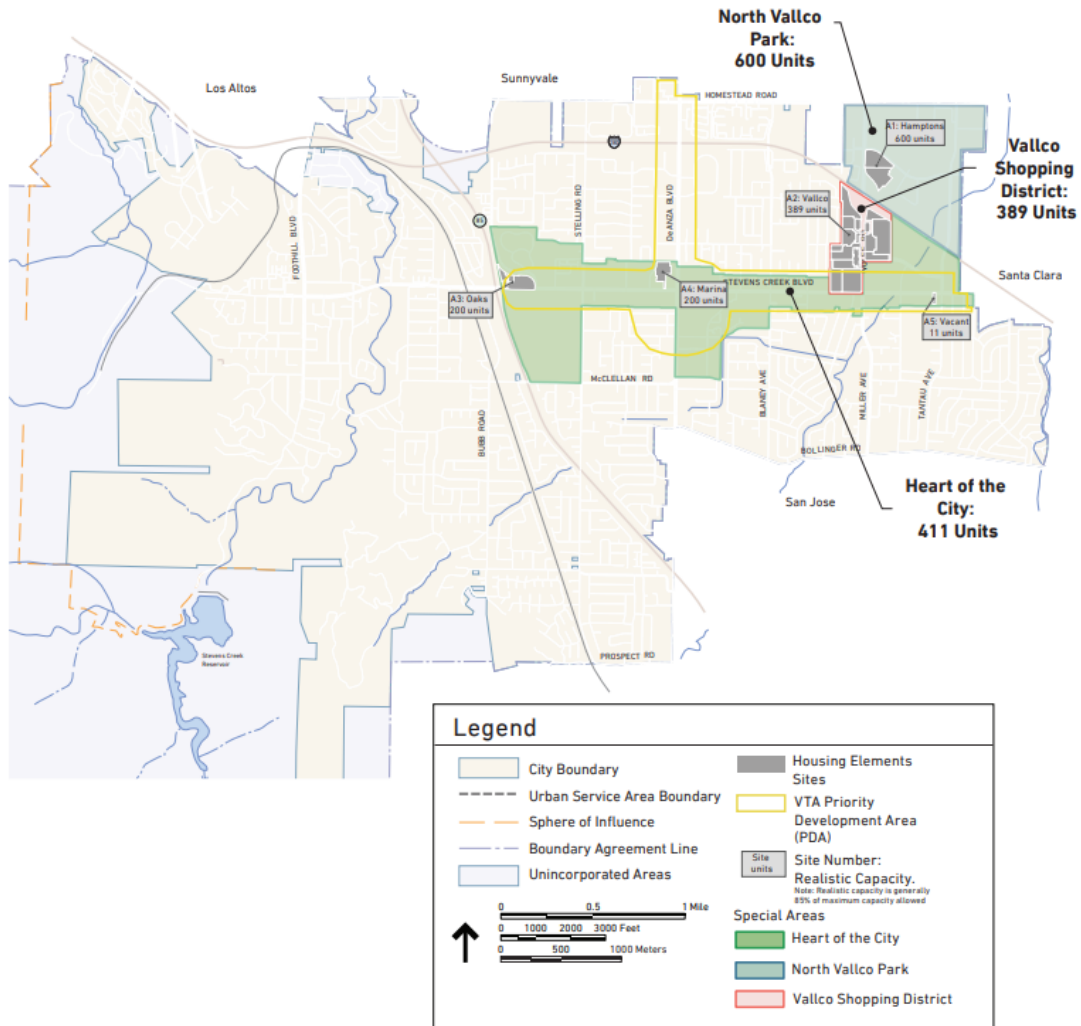


Figure 6 – “General Plan Figure B-7: Priority Housing Element Sites Scenario A”

**FIGURE B-8  
PRIORITY HOUSING ELEMENT SITES  
SCENARIO B**

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

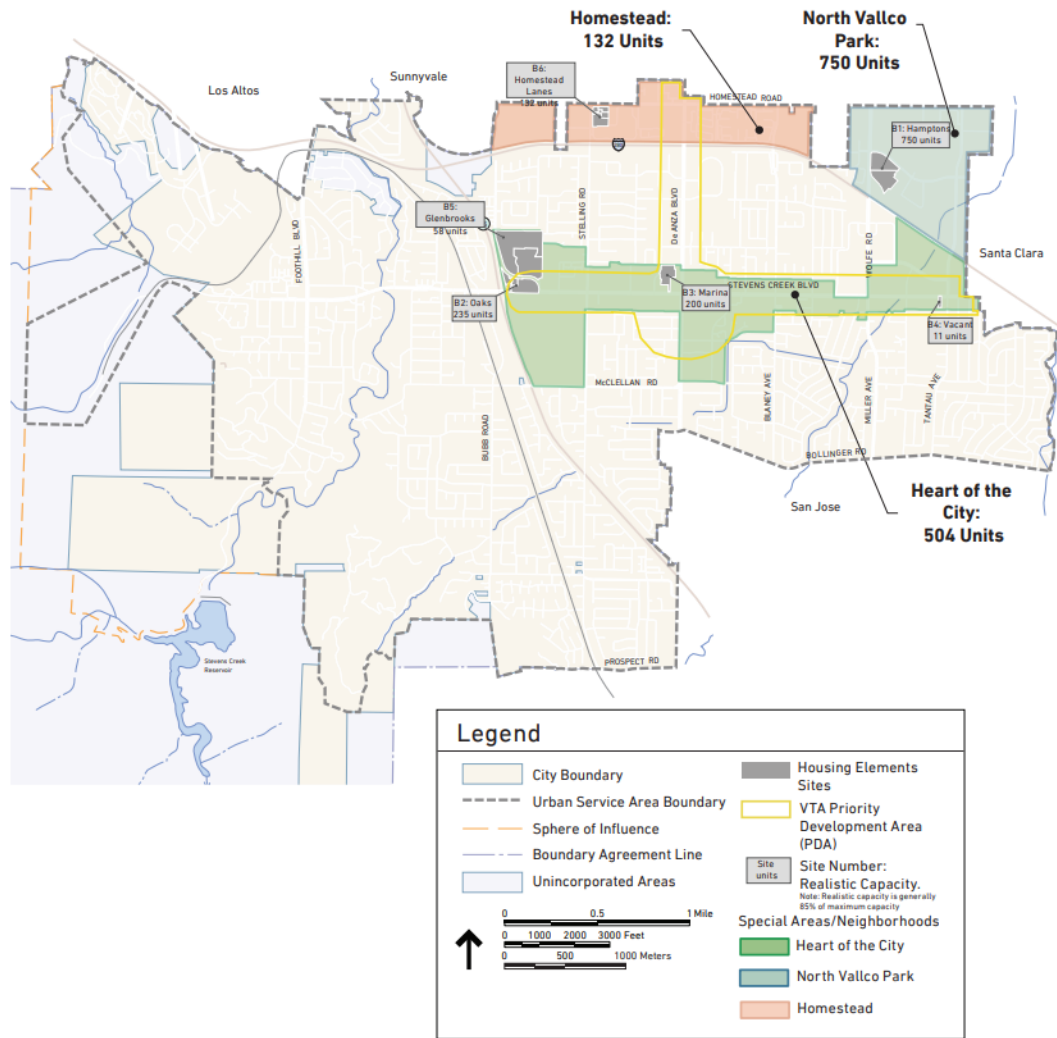


Figure 7 – “General Plan Figure B-8 Priority Housing Element Sites Scenario B”



Table 5.3: Summary of Priority Housing Sites - Scenario A					
Site	Adopted General Plan/Zoning	Max Density (DUA)	Acres	Realistic Capacity (units)	Affordability Level
Site A1 (The Hamptons)	High Density P(Res)	85	12.44	600	Very Low/Low
Site A2 (Vallco Shopping District)	RS/O/R P(Regional Shopping) & P(CG) (a)	35	58.7	389	Very Low/Low
Site A3 (The Oaks Shopping Center)	C/R P(CG, Res)	30	7.9	200	Very Low/Low
Site A4 (Marina Plaza)	C/O/R P(CG, Res)	35	6.86	200	Very Low/Low
Site A5 (Barry Swenson)	C/O/R P(CG, Res)	25	0.55	11	Very Low/Low
Total			86.51	1,400	

Notes:

(a) Zoning to be determined by Specific Plan to allow residential uses.

(b) Realistic capacity for Sites A1, A3, A4 and A5 reduces the maximum developable units by 15 percent. Realistic capacity for Site A2 is the amount allocated to the site in the Housing Element; a specific plan will be required for Site A2 prior to any new development.

(c) 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.

(d) Residential capacity for Site A1 reflects the net increase in units.

Source: City of Cupertino, 2014

Figure 8 – “General Plan Table 5.3: Summary of Priority Housing Sites – Scenario A”

Notice that Figures B-7 and HE-1, Table LU-1, Table HE-5 show Vallco Shopping District with 389 units and the Legend of both clearly state that the Site Number is Realistic Capacity with the note: “Realistic capacity is generally 85% of maximum capacity”. That would mean that 389 units is 85% of Vallco Shopping District’s maximum, which would be 457.6 units.

Current zoning does not allow residential uses at Vallco, and as shown above, and would need to be modified: **“The zoning for the site would be modified as part of the Specific Plan process to allow residential uses as part of a mixed-use development...”** p 116 General Plan

Appendix B Housing Element Technical Report:

<http://www.cupertino.org/home/showdocument?id=12717>

**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-2.

Figure 9 – “General Plan Table HE-%: Summary of Priority Housing Element Sites to Meet the RHNA – Scenartio A”

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
<b>Total</b>				<b>64.24</b>	<b>1,386</b>	
Site B6 (Carl Berg property)	North De Anza	O//C/R P(CG, ML, Res)	25	7.98	169	Very Low/Low
<b>Total</b>				<b>87.31</b>	<b>1318</b>	

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 PlRec, Enterl.
- (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.

Source: City of Cupertino, 2014

Figure 10– “Table 5.5: Summary of Priority Housing Sites – Scenario B”

Scenario B more equitably spreads housing across the city and results in some positive consequences and emergency shelter potentials. There also appears to be a RHNA surplus of +384 generated by this Scenario alternative.

Table 5.6: Comparison of Sites and RHNA - Scenario B			
Income Category	Sites	Remaining RHNA	Surplus/ Shortfall(+/-)
Extremely Low and Very Low	1,386	356	
Low	--	207	
Moderate	--	196	
Above Moderate	--	243	
<b>Total</b>	<b>1,386</b>	<b>1,002</b>	<b>+384</b>

Source: City of Cupertino, 2014

As discussed in the Needs Assessment, the 2013 Santa Clara County Homeless Survey identified 112 homeless individuals on the streets and in emergency shelters, transitional housing, and domestic violence shelters in the city of Cupertino. The homeless facilities in Cupertino have a capacity to house 20 individuals. As a result, there is a need to accommodate at least 92 more homeless individuals in the City.

There are several underutilized parcels within the BQ zone that could accommodate a permanent emergency shelter that serves 92 or more individuals. In particular, a number of churches in BQ zones own more land than they currently use. Surplus lands owned by churches include large parking lots and recreational spaces like fields and tennis courts. There are at least five parcels with approximately 154,000 square feet of vacant land in the BQ zone that could accommodate a permanent emergency shelter. These sites range from 19,000 square feet to 50,000 square feet, with an average lot size of 31,000 square feet. Parcels of this size would be able to accommodate a permanent emergency shelter that meets the needs of Cupertino.

Those parcels with surplus land area in the BQ zone are primarily located on or near Cupertino's main arterial corridors, providing for easy access to public transportation and essential services. In total, 12 bus lines and 131

Figure 11 – Scenario B, the Alternative

## Insufficient and Conflicting Information Presented in NOP EIR Scoping Meeting, with Infeasible “Proposed Project” due to Inconsistency with General Plan & Initiative Vote Results

### Consistency Requirement with the General Plan

The Specific Plan must be consistent with the General Plan by  
law.

[Ca GC 65450-65457:](#)

**(b) The specific plan shall include a statement of the relationship of the  
specific plan to the general plan.**

[http://www.opr.ca.gov/docs/specific\\_plans.pdf](http://www.opr.ca.gov/docs/specific_plans.pdf)

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65451.&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65451.&lawCode=GOV)

A project that is inconsistent with an applicable General Plan or subsidiary land use plan may not be approved without an amendment to the Plan or a variance. See Gov't Code § 65860. Where a project conflicts with even a single general plan policy, its approval may be reversed. *San Bernardino County Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 753; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1341.

Consistency demands that a project both "further the objectives and policies of the general plan and not obstruct their attainment." *Families*, 62 Cal.App.4th at 1336; see *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 378. Accordingly, where a project opponent alleges that a project conflicts with plan policies, a court need not find an "outright conflict." *Napa Citizens* at 379. "The proper question is whether development of the [project] is compatible with and will not frustrate



the General Plan's goals and policies ... without definite affirmative commitments to mitigate the adverse effect or effects." Id.

## Proposed Project and Project Alternatives:

A resident of Cupertino spoke to the Fehr + Peers representative during the EIR Scoping Meeting February 22, 2018 regarding the 'housing heavy' option and was told that option would have "around 4,000 units." During the slide show presentation the following slides were shown for the project and the alternatives:

### Proposed Project:

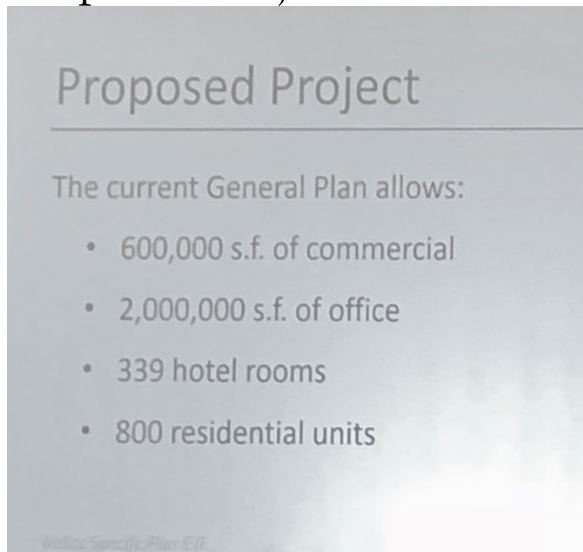


Figure 12

### Figure 2

During the presentation, recorded here: [https://youtu.be/kb89Oh1WU\\_0](https://youtu.be/kb89Oh1WU_0) The "Proposed Project", Figure 12, was listed as:

#### Proposed Project:

- 600,000 S.F. of commercial
- 2,000,000 SF office
- 339 hotel rooms
- 800 residential units

The General Plan refers to Vallco Shopping District as: "... a vibrant mixed-use "town center" that is a focal point for regional visitors and the community. This new Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley."

The Square footage amounts would result in primarily office, then residential, then commercial, then hotel: 2,000,000 SF, approximately 961,622 SF (using the Measure D Initiative Square Footage for then proposed 800 units as listed in the "Vallco Specific Plan Initiative Environmental Assessment," 600,000 SF retail, and approximately 500,000 SF hotel. The hotel total is approximate due to part of the hotel allotment being currently under construction at Hyatt House and 277,332 SF of hotel was mentioned in the Vallco Specific Plan Initiative Environmental Assessment for the remaining 191 hotel rooms available in the allotments.

The "Proposed Project" would result in an even smaller percentage of retail than the failed Measure D percentage: 16%.

There appears to be no City Council support for 2 million SF of office at Vallco. As stated earlier, the EIR may be stopped, and the reason to stop it would be that it is both inconsistent with the General Plan, and has insufficient support from the city leaders or the community.

Retail has definite requiring language regarding Vallco. None of the other parts have more than "encourage". Residential says "allow". The Land use portion language is not solidly stating anything is required except for retail. Following this logic, having the 2 Million SF office allotment is inconsistent with the GP language because building that would cause the site to be an office destination with some retail.

The GP EIR studied 600,000 SF retail, 2 Million SF office, 800 residential units, and 339 hotel rooms. The adopted Scenario A in the GP has 389 units. 35 DU/Ac was not an allotment but a density maximum for the 389 units on the site in those parts of the mixed use area which would allow housing. Alternative Scenario B has no housing at Vallco. The Housing Element supports that Vallco could have 389 units, and refers to those unit quantities as "realistic capacity" in Table HE-5 (above).

The General Plan adopted "Scenario A" allotments for Vallco and stated that it would fall to Scenario B should a Specific Plan not be adopted by May 31, 2018.

As shown in the above section "General Plan Directive to Create a Vallco Shopping District Specific Plan", Vallco was never shown in any portion of the General Plan having more than 339 residential units.

A reasonable person ("reasonable person" from: [http://www.opr.ca.gov/docs/specific\\_plans.pdf](http://www.opr.ca.gov/docs/specific_plans.pdf)) would conclude that Vallco was never intended to be a heavy housing site and the General Plan provided Scenario B with other sites available for housing with **zero housing at Vallco**. The Vallco site was described in the General Plan as: "... a vibrant mixed-use "town center" that is a focal point for regional visitors and the community. This new Vallco Shopping District will become a destination for shopping, dining and entertainment in the Santa Clara Valley." While the Vallco owner may wish for something else, that would have to follow a different process such as a General Plan Amendment.

The goals, policies, and strategies to achieve this vision in the General Plan Land Use section support residential as subordinate to other uses.

Additionally, the 2 million SF of office completely *frustrates* the General Plan Housing Element Goal of providing adequate housing by generating an excess of employment. 2 million SF of office space would result in 1 employee per 300 SF or 6,667 new employees which far exceeds the number of residential units being studied. This is a project adjacent to 14,200 employees expected at Apple Park which has no onsite housing and 942 residential units planned in an expanded Hamptons complex, increased that complex by 600 residential units. This explains why there is scant support for 2 million SF of office at Vallco.

While Sand Hill requested that a much denser housing option be studied at Vallco, and that a mix between Measure D and a housing heavy option also be studied, neither of these options are consistent with the General Plan nor do they lessen the impacts of the “Proposed Project” which is a CEQA requirement.

Attempting to include a reallocation of allotments in and among other sites is beyond the scope of a Vallco Specific Plan and the General Plan. When office or any other allotment is pulled from the General Plan and placed in the city "pool" it results in an alteration of the General Plan. These options were not studied in the General Plan EIR.

## Alternatives to Project:

“The California Environmental Quality Act (CEQA), Section 15126.6, requires an Environmental Impact Report (EIR) to describe a reasonable range of alternatives to a Project or to the location of a Project which **could feasibly attain its basic objectives but would avoid or substantially lessen any of the significant effects of the project**, and evaluate the comparative merits of the alternatives.”

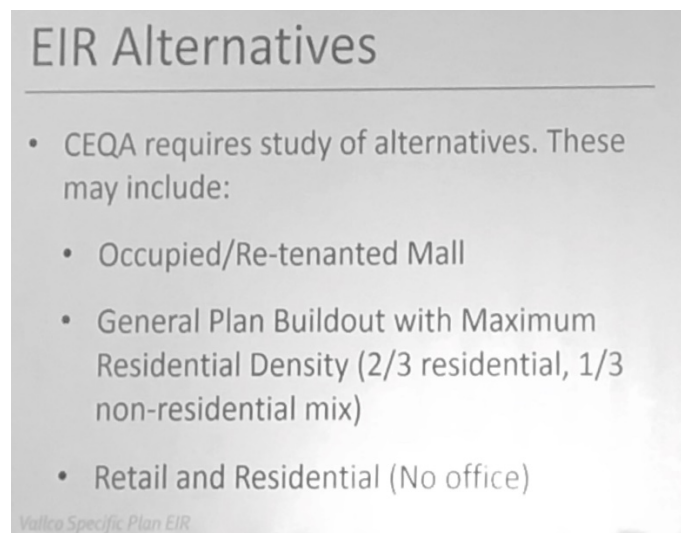


Figure 13

The EIR Alternatives were listed as:

- Occupied Re-Tenanted Mall
- General Plan Buildout with Maximum Residential Density (2/3 residential, 1/3 non-residential mix)
- Retail and Residential (No office)

## Occupied/Re-tenanted Mall is Not “No Project”

CEQA alternatives require the “no project” alternative:

“NO PROJECT ALTERNATIVE CEQA Guidelines section 15126.6(e) requires that an EIR evaluate a “No Project” alternative. The purpose of this alternative is to “allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” This alternative analysis compares the environmental effects of the project site remaining in its existing condition against environmental effects that would occur if the proposed project were approved.”

The mall has been gradually closed by the owners over the past few years, most recently announcing the departure of AMC theaters. The occupancy rate of the mall in 2014 was 66% according to Appendix 7 Table 2 City of Cupertino 9212 Report for Vallco Specific Plan ‘Measure D’ and had taxable sales of \$99,060,000 based on actual performance. AMC will close in March, 2018. (Traffic analysis must occur after their departure.)

A “re-tenanted mall” would be an alternative apart from and substantially different to “no project” since the mall has been largely shuttered and the owner has allowed other uses: automobile dealership car storage, Genentech and other shuttle bus commuter parking and transit pickup on the site, with Bay Club gym, Bowlmor lanes, the ice rink, Dynasty restaurant, and new remodeling of the Food Court for Fremont Union High School District classroom use either remaining or upcoming. These conditions are “no project”, not a re-tenanted mall. A re-tenanted mall would be a fourth alternative to project.

## Alternative B is Not Consistent with the General Plan

The second alternative on the EIR Alternatives Slide, Figure 2, “Alternative B” was described as “General Plan Buildout with Maximum Residential density (2/3 residential, 1/3 non-residential mix)” At 8:48 in the recording, linked above, it was stated that the residential *‘may have approximately 2,600 to 2,640 residential units in addition to office and retail and hotel space’*. This alternative is inconsistent with the General Plan.

Vallco Shopping District in no part of the General Plan was ever described as a housing complex nor were housing totals ever in any vicinity of these amounts. The General Plan consistently shows 389 residential units as the realistic capacity any only by inference could a higher capacity

of 457.6 residential units be determined. When I attended the meeting, I did not hear the residential densities spoken and only learned of them through a news blog. In no mailings were these quantities given, and they are not listed on the city website. This is insufficient information describing the project since the slide shows no proposed sizes or any information as to what the non-residential mix could possibly have in it. Given the abundance of office at Apple Park (3.7 million SF with expected 14,200 employees), the variations in “the mix” can cause huge environmental impacts.

A reasonable person would find this proposed alternative ‘housing heavy’ option not consistent with the general plan.

## Alternative C is Insufficiently Described – May be inconsistent

Lastly, the third alternative was listed as “Retail and Residential (No office).” This alternative, “Alternative C,” had no quantity either on the slide or spoken about for either retail or residential and omits the hotel room and office allotments from the General Plan.

This proposed alternative ‘retail and residential’ is described too insufficiently to determine if it could potentially avoid or substantially lessen any of the significant negative effects of the “Proposed Project”, or not.

## Conclusions:

1. The “Proposed Project” does not appear to be consistent with the General Plan because it is an office park with over 84% non-retail use when the project is detailed as the “Vallco Shopping District.”
2. The “Proposed Project” frustrates the General Plan goal to balance employment with housing by providing a gross excess of jobs to housing.
3. Cupertino Ballot Measure D, a similar proposal to “Proposed Project”, was placed before voters and was rejected 55%. This project, with the high office square footage has scant support and would likely be rejected by City Council.
4. “No Project” would be a fourth alternative, Occupied/Re-tenanted mall is not the same as “No Project”
5. Alternative B, with conflicting 2,600-4,000 residential units, is inconsistent with the General Plan.
6. Alternative C is too insufficiently described to determine if is consistent with the General Plan. Portions of the mixed uses were eliminated, which seems inconsistent.
7. For the above reasons, the EIR process must be halted for a replacement “Proposed Project” which is consistent with the General Plan.





# Appendix

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CUPERTINO CITY CLERK

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY FOR PROPOSED INITIATIVE  
SUBMITTED ON MARCH 3, 2016

TITLE: Initiative adopting the Vallco Town Center Specific Plan to (1) provide that the Vallco Shopping District Special Area ("Area") contains a mixture of residential, office, retail, civic and education uses; (2) require any development to fund or provide community benefits such as transit, schools, a green roof, and recycled water; and (3) grant the property owner initial entitlements to develop in accordance with the Initiative and establish a process for future approvals; and making related amendments to Cupertino's General Plan and Municipal Code.

SUMMARY: The Initiative involves the property designated in Cupertino's General Plan (Community Vision 2015 – 2040) as the Vallco Shopping District Special Area. Fifty-one acres of the 58-acre property are currently occupied by the Vallco Shopping Mall. The General Plan envisions redevelopment of the Area as a mixed-use project, sets forth development allocations, goals, policies and strategies, and requires adoption of a specific plan prior to any development.

The Initiative states that it implements and fulfills the requirements of the General Plan and the vision of the community by approving the Vallco Town Center Specific Plan ("Specific Plan") establishing a mix of retail, dining, entertainment, recreation, offices, housing, hotel, education, civic, public open space, and amenities. The Initiative includes associated amendments to the General Plan and City of Cupertino Municipal Code.

The Initiative:

(1) States that it would entitle the property owners to develop the Area in accordance with the Specific Plan, exempt the Area from provisions of the Municipal Code not provided in the Specific Plan, and establish process for future approvals;

(2) Adopts a Specific Plan establishing development features for the Area including:

- (a) 389 residential units (minimum 20% senior apartments), which may be increased through a Conditional Use Permit process up to the General Plan allocations if there are no significant and unavoidable impacts beyond those identified in the General Plan Environmental Impact Report;
- (b) 2,000,000 square feet ("sf") of office space (minimum of 100,000 sf of incubator space for businesses);
- (c) 640,000 sf of commercial space (regional retail, entertainment, and personal service);
- (d) 100,000 (minimum 50,000) sf of public/civic space;
- (e) Two Town Centers (3-acre minimum);

- (f) 30 acres minimum of Community Park and Nature Area or “green roof” (3.8 miles minimum to be publicly accessible trails), with drought tolerant landscaping and recycled water infrastructure;
- (g) 9,060 parking spaces below, above, and at grade level;
- (h) 80 feet (maximum) building height west of Wolfe Road and 95 feet (maximum) building height east of Wolfe Road, scaled to minimize impacts on residential; and
- (i) 191 hotel rooms (in addition to a previously approved hotel).

(3) Requires any development, other than on two sites proposed for hotels, to fund community benefits which may be incorporated into a development agreement, including transportation improvements (\$30 million for I-280, a free shuttle, transit center, and bike/pedestrian trails), 5,000 square feet of charitable civic space, and no less than 10 times what is legally required for schools (approximately \$40 million);

(4) Changes standards for “parcelization” (division of the property into smaller parcels);  
and

(5) States that, until January 1, 2027, its provisions may only be amended or repealed by the voters.