

From: [City of Cupertino Planning Dept.](#)
 To: [REDACTED]
 Subject: FW: Deny 18 35 SB 35 Applica Den Amend Valco DEIR
 Date: Thursday, June 14, 2018, 12:09:53 PM
 Attachments: [tm2.1.dwg](#)
[tm2.1.pdf](#)
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I'm only copying you guys when it appears to have gone to our general box only.

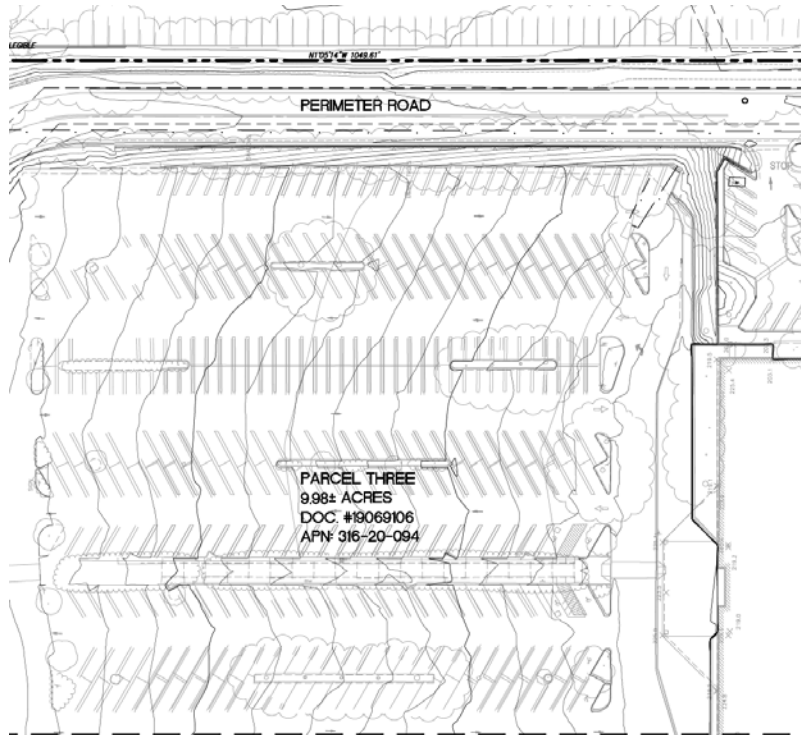
Catarina S. Kidd, AICP, Senior Planner
 City of Cupertino | Community Development
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 408-777-3214 | catarinak@cupertino.org

From: Kitty Moore [REDACTED]
 Sent: Thursday, June 14, 2018 10:57 AM
 To: Darcy Paul <DPaul@cupertino.org>; Rod Sinks <RSinks@cupertino.org>; Barry Chang <BChang@cupertino.org>; Savita Vaidhyathan <svaidhyathan@cupertino.org>; Steven Scharf <SScharf@cupertino.org>; City Clerk <CityClerk@cupertino.org>
 Cc: Cupertino City Manager's Office <manager@cupertino.org>; City Attorney's Office <CityAttorney@cupertino.org>; Esq. Bern Steves [REDACTED] City of Cupertino Planning Dept. <planning@cupertino.org>
 Subject: Re: Deny Valco SB 35 Application Amend Valco DEIR

All,

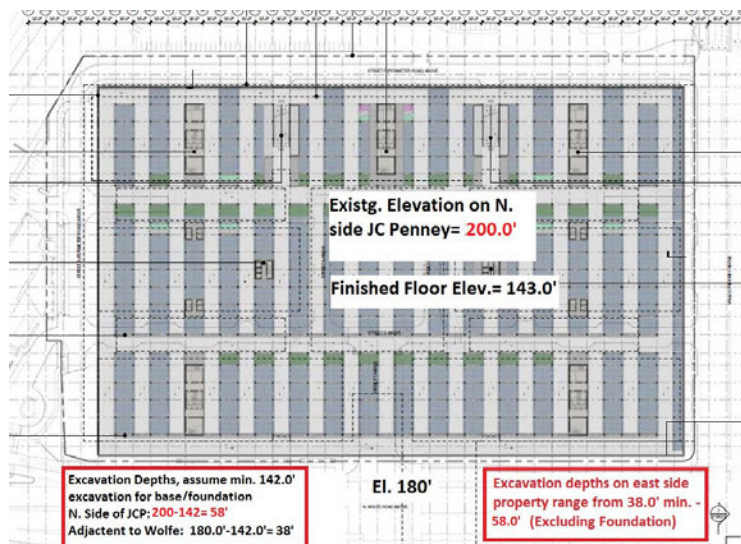
Please correct the depth of cut as 38'-58". It is still about double what has been previously communicated. The topo map spot elevations are not the FF of the JCP building, the elevations of the topo lines on the Tentative Map which show those spot elevations were all removed so it was not apparent as you can see.

Topo map for the Tentative Map Submission, TM.2.1:



SEE SHEET TM.2.3

Actual depth of cut:



Sorry for any confusion.

Kitty Moore

On Thu, Jun 14, 2018 at 9:56 AM, Kitty Moore wrote:

Dear Mayor Paul and City Council,

Please add this to the Public Record for both Valco DEIR comments and the Valco SB 35 application:

The Valco SB 35 Project is on a site which is listed for hazardous materials pursuant to Gov. Code Section 65962.5. This makes the site non-compliant with SB 35, Ca. Gov. Code 65913.4(a)(6)(E). Until which time the site is not on this list, the site does not qualify for SB 35 ministerial streamlining. Additionally, the DEIR and SB 35 applications need to reflect the east side property depths of excavation at 38.0'-78.0' and NOT the "20 to 30 feet" currently being incorrectly communicated.

CA. GOV. CODE § 69513.4(A)(6)(E)

(a) A development proponent may submit an application for a development that is subject to the streamlined ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the following objective planning standards

(6) The development is not located on a site that is any of the following

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

This statute is applicable and the project is not compliant and disqualified from SB 35.

VTC SB 35 Applicant claims they are exempt from SB 35 Subd. (a)(6-7) in VTC SB 35 Development Application, Project Description SB 35 Eligibility Checklist p. 4, PDF 23. http://www.cupertino.org/home/showdocument?id_19613

However the DEIR for Valco shows the site is on the hazardous materials list: Draft Environmental Impact Report for Valco Specific Plan Special Area SCH# 2018022021, p. 143, PDF 179. http://www.cupertino.org/home/showdocument?id_20887

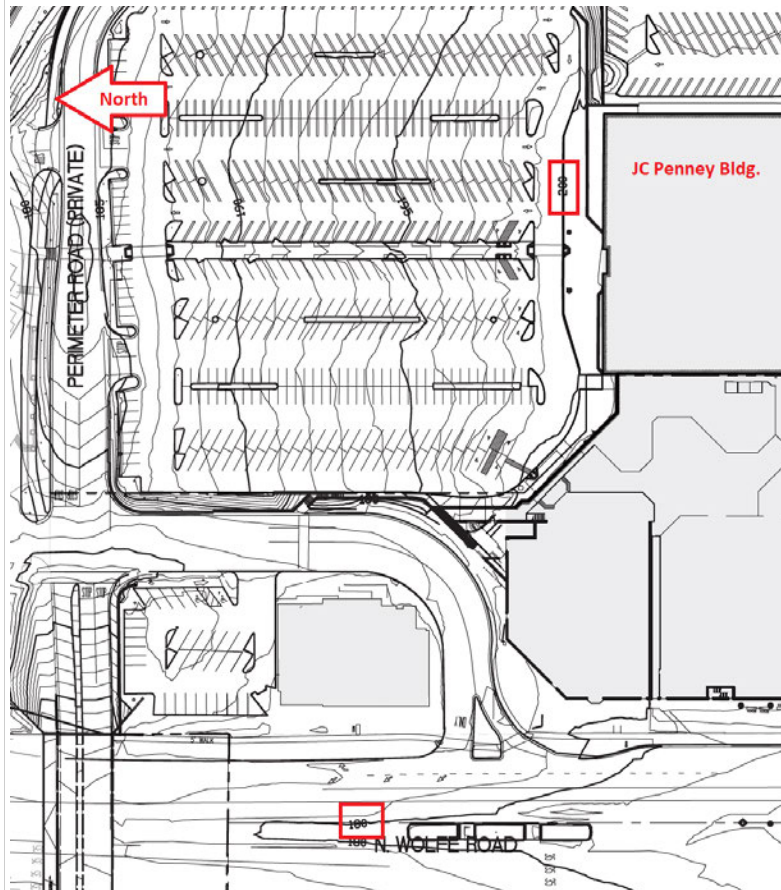
"Impact HAZ-2: The project (and project alternatives) is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5:"

In the DEIR, they go on to say how it can be mitigated to less than significant but that is indeterminate. More importantly, the SB 35 law asks a yes or no question is it on the hazardous materials list or not. It is. Ministerial approval of a site on the Cortese list is beyond the scope of SB 35 and would be a subjective decision on an environmental matter regarding hazardous materials.

The pertinent pages from the Valco DEIR are included to illustrate how these are not simple matters to ignore.

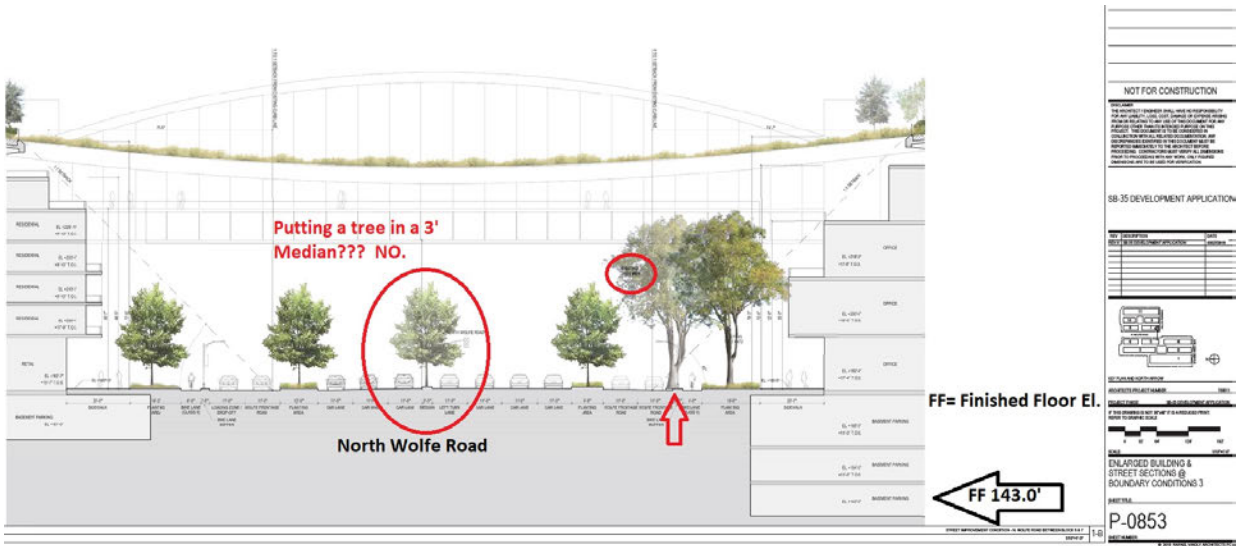
What is of note, is that the Valco SB 35 application does not show this hazardous materials listing, and the Measure D, Hills at Valco Environmental Assessment, also does not share the listing. AND, the DEIR shows no HAZ impacts. It is only by careful reading that the item is found. I want the Impact HAZ-2 to be changed to SIGNIFICANT and listed in the Impact Summary. It was not included in the Impact Summary and so its significance is not easily noticed.

Additionally, site at 19333 Valco Parkway is prohibited from housing, there has been no testing of the Valco site to determine if there was any spread of material on the site or previous dumping. Please notice the grave error in excavation depth, Valco SB 35 plan shows three levels below existing sidewalk grade on the east side of Wolfe Rd. This is at elevation 180' approximately. The parking lot on the north side of JC Penney is at elevation 200'.



Architectural Plans Part 3, P-0853 show the finished floor elevation at 143.0, and there would be excavation a few feet below that level for the foundation. Let's be generous and say they only need to excavate 1' below the basement level of the garage, so the depth of excavation on the east side will be to 142.0'.

Where are the Property Lines? They do not show them.



Now, recall that the ENTIRE property will sit at one level of underground parking, they are claiming incorrectly that there will be only 20 to 30 feet of excavation for underground parking when it will be a **MINIMUM 38' to a MAXIMUM 78'**. This has to be communicated and fixed in the DEIR.



Are you aware of these excavation depths? I am wondering if the soil excavation calculations are correct, I have seen no actual cross sections of cut and do not want to run them myself... As stated above the site is not eligible for SB 35 Ca. Gov. Code Section 65913.4(a)(6)(E) due to being on the hazardous materials list pursuant to Ca. Gov. Code Section 65962.5. Please, due to its significance, the listing must be moved into the Significant Impacts section of the DEIR and they can demonstrate how this would be remedied.

Please read pages 140-143 of the Valco DEIR:

Impact HAZ-1: The project (and General Plan Buildout with Maximum Residential Alternative and Retail and Residential Alternative) would not create a significant hazard to the public or the environment through routine transport, use, disposal, or foreseeable upset of hazardous materials; or emit hazardous emissions or hazardous materials within one-quarter mile of an existing or proposed school. (Less than Significant Impact with Mitigation Incorporated)

Project

As described in Section 3.9.1.2 (and discussed in more detail in Appendix E: Phase I Environmental Site Assessment), potential on-site sources of contamination relate to historic and/or existing agricultural use, chemical storage and use, underground storage tanks, oil-water separators and acid neutralization chambers, hydraulic lifts, lead-based paint, and ACMs. There is a potential for on-site soil, soil vapor, and groundwater contamination above regulatory screening levels for residential and commercial uses due to historic and existing hazardous materials use, generation, and storage.

Construction of the project (and the General Plan Buildout with Maximum Residential Alternative and Retail and Residential Alternative) would result in the demolition of existing structures and excavations up to a maximum depth of 20 to 30 feet for below ground parking. Unless properly handled and disposed of, the removal and transport of on-site hazardous materials could present a risk to the environment (including LP Collins Elementary School/Bright Horizons at Cupertino Pre-School, which are within 0.25 miles of the project site to the west), construction workers, and future occupants.

The proposed project (and project alternatives) do not propose any on-site use of hazardous materials other than small quantities of herbicides and pesticides for landscaping maintenance and cleaning and pool chemicals. The use, storage, and transportation and disposal of pool cleaning and maintenance chemicals would be managed in accordance with federal, state, and local laws and regulations that ensure on-site use, storage, transportation and disposal of chemicals will result in a less than significant impact. These laws and regulations include the Hazardous Materials Transportation Act which protects the public and environment from the risks associated with the transportation of hazardous materials, Department of Transportation 49 Code of Federal Regulations (CFR) 173.3 which specify how hazardous materials are to be contained, EPA 40 CFR 264.175 which specifies how hazardous materials are to be contained, and OSHA 29 CFR 1910.106 (a)(2)(iii) which specifies how hazardous materials are to be transferred safely. No other routine use, storage, transportation, or disposal of hazardous materials is anticipated as part of the project (and project alternatives).

Mitigation Measures:

MM HAZ-1.1: A Site Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared and implemented for demolition and redevelopment activities under the proposed project (and the General Plan Buildout with Maximum Residential Alternative and Retail and Residential Alternative). The purpose of the SMP and HSP is to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater or other materials that may potentially be encountered during construction activities, especially in areas of former

Vallejo Special Area Specific Plan 140 Draft Environmental Impact Report
City of Cupertino May 2018

hazardous materials storage and use, and the profiling of soil planned for off-site disposal and/or reuse on-site. The SMP shall document former and suspect UST locations, hazardous materials transfer logs, oil-water separators, neutralization chambers, and hydraulic lifts, etc. The SMP shall also identify the protocols for accepting imported fill materials, if needed. The SMP shall be submitted to the City and CCDEH for approval prior to commencement of construction (including demolition) activities.

MM HAZ-1.2: The site contains equipment and facilities associated with past activities that are known to or may contain residual hazardous materials. The following measures shall be implemented under the proposed project (and the General Plan Buildout with Maximum Residential Alternative and Retail and Residential Alternative) during building demolition and shall be indicated on demolition plans:

- Sears and JC Penney Automotive Centers:
 - Sears: Remnant piping that appears to have formerly distributed grease, oil and transmission fluid from storage locations to the service bays located along interior building walls, ceilings and within the basement shall be properly removed and disposed, and stains and residual oil shall be cleaned from the interior building surfaces. This work shall be coordinated with the SCCFD.
 - Sears: The below ground oil-water separator (connected to floor drains within the building) and an acid neutralization chamber (connected to drains within a former battery storage room) shall be cleaned and removed. This work shall be coordinated with the SCCFD and SCCDEH. Soil quality below each of the structures shall be evaluated via sampling and laboratory analyses.
 - Sears: The potential presence of a waste oil UST shall be further investigation by removing the access cover and, if uncertainty remains, the subsequent performance of a geophysical survey. If a UST is identified, it shall be removed in coordination with the SCCFD and SCCDEH, and underlying soil quality shall be evaluated. If no UST is identified, soil quality at the location of the waste oil UST, as depicted on the 1969 building plan, shall be evaluated via the collection of soil samples from borings for laboratory analyses.
 - Sears and JC Penney: Each of the below-ground lift casings and any associated hydraulic fluid piping and reservoirs from hydraulic lifts shall be removed and properly disposed. An Environmental Professional shall be retained to observe the removal activities and, if evidence of leakage is identified, soil sampling and laboratory analyses shall be conducted.
 - JC Penney: The 750 gallon oil-water separator shall be properly removed and appropriately disposed during redevelopment activities.

Vallejo Special Area Specific Plan 141 Draft Environmental Impact Report
City of Cupertino May 2018

- Existing staining and spilled oil on-site, including at the Sears Automotive Center and Cupertino Ice Center, shall be properly cleaned. When these facilities are demolished, an Environmental Professional shall be present to observe underlying soil for evidence of potential impacts and, if observed, collect soil samples for laboratory analyses.
- If the lead-based paint on-site is flaking, peeling, or blistering, it shall be removed prior to demolition. Applicable OSHA regulations shall be followed, these include requirements for worker training and air monitoring and dust control. Any debris containing lead shall be disposed appropriately.
- An asbestos survey shall be completed of the buildings prior to their demolition in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) guidelines. NESHAP guidelines require the removal of potentially friable ACMs prior to building demolition or renovation that may disturb the ACM.
- Once existing buildings and improvements are removed, soil sampling shall be completed to evaluate if agricultural chemicals and lead are present. The agricultural pesticide sampling shall focus on former orchard and row crop areas, as well as in the vicinity of outbuilding (barns and sheds) that were formerly located of the southeast portion of the site. Testing for lead contamination shall be completed at the former structure locations. The sampling, which shall follow commonly accepted environmental protocols, shall be performed prior to soil excavation activities in order to appropriately profile the soil for off-haul to a disposal facility. The analytical data shall be compared to either residential screening levels and/or the specific acceptance criteria of the accepting facility. If this soil is planned to be reused on-site, it shall be compared to residential screening levels and/or natural background levels of metals.

MM HAZ-1.3: Prior to issuance of demolition and/or grading permits, groundwater monitoring wells shall be properly destroyed in accordance with the SCVWD Ordinance 90-1.

MM HAZ-1.4: As part of the facility closure process for occupants that use and/or store hazardous materials, the SCCFD and SCCDEH typically require that a closure plan be submitted by the occupant that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices, among others. Facility closures shall be coordinated with the Fire Department and SCCDEH to ensure that required closure activities are completed prior to issuance of demolition and/or grading permits.

Implementation of the proposed project (and General Plan Buildout with Maximum Residential Alternative, and Retail and Residential Alternative), with the implementation of mitigation measures MM HAZ-1.1 through -1.4, would reduce on-site hazardous materials impacts from demolition,

Valpo Special Area Specific Plan 143 Draft Environmental Impact Report
City of Cupertino May 2018

excavation, and construction to a less than significant level by creating and implementing an SMP and HSP to establish practices for properly handling contaminated materials, implementing measures during demolition activities to identify, remove, and clean up hazardous materials on-site, properly closing groundwaters monitoring wells, and obtaining site closure from regulatory agencies. (Less Than Significant Impact with Mitigation Measures Incorporated)

General Plan Buildout with Maximum Residential Alternative

The General Plan Buildout with Maximum Residential Alternative would result in the same hazardous materials impacts as described above for the proposed project. See Impact HAZ-1 and mitigation measures MM HAZ-1.1 through -1.4. (Less than Significant Impact with Mitigation Incorporated)

Retail and Residential Alternative

The Retail and Residential Alternative would result in the same hazardous materials impacts as described above for the proposed project. See Impact HAZ-1 and mitigation measures MM HAZ-1.1 through -1.4. (Less than Significant Impact with Mitigation Incorporated)

Occupied Re-Tenanted Mall Alternative

The Occupied Re-Tenanted Mall Alternative assumes no buildings would be demolished. This alternative would include exterior and interior tenant improvements, however. The exterior and interior building improvements would be subject to the existing regulations of the SCCFD, SCCDEH, OSHA, NESHAP, and SCVWD, as described above for the proposed project.

A discussion of this alternative is provided in the EIR for informational purposes only. This alternative is a permitted land use, and can be implemented without further discretionary approvals from the City or environmental review under CEQA. (Less than Significant Impact; Not a CEQA Impact)

Impact HAZ-2: The project (and project alternatives) is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 66942.5; however, the project (and project alternatives) would not create a significant hazard to the public or the environment as a result. (Less than Significant Impact)

Project and All Project Alternatives

The project site does not contain any open hazardous materials cases listed on the Cortese list database, although the closest UST cases at the Sears Automotive Center and JC Penney are identified. Therefore, the existence of a Cortese list site in the Specific Plan area would not result in any hazardous material impacts different from the impacts discussed in Impact HAZ-1. (Less than Significant Impact)

Valpo Special Area Specific Plan 143 Draft Environmental Impact Report
City of Cupertino May 2018

Sincerely,
Kitty Moore

Local Control Panel

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From: [\[REDACTED\]](#)

You received this message because the sender is on your allow list

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