



FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT SENATE BILL 35 AND VALLCO TOWN CENTER APPLICATION UPDATED April 2019

California Senate Bill 35 (“SB 35”) (Government Code Section 65913.4) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB 35 applies to cities and counties that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower income levels as mandated by the State. SB 35 requires cities and counties to streamline the review and approval of certain affordable housing projects by providing a ministerial process.

The California Department of Housing and Community Development (“HCD”) determined that the City of Cupertino made sufficient progress toward their above – moderate income housing goals but made insufficient progress toward their lower (very low- and low-) income housing goals. Therefore, HCD determined that the City is subject to SB 35 streamlining for such projects. See the SB 35 Statewide Determination Summary [here](#).

Vallco Property Owner, LLC (“Applicant”) submitted to the City the “Vallco Town Center Project Application pursuant to SB 35” on March 27, 2018 and submitted clarifying information on June 1, 2018 and on June 19, 2018 (“collectively referred to as the “VTC SB 35 Application” hereafter.) The VTC SB 35 Application proposes 2,402 dwelling units (1,201 units are affordable to very-low and low income households). The project also proposes approximately 400,000 sq. ft. of retail and 1.8 million sq. ft. of office uses.

The purpose of these Frequently Asked Questions (“FAQs”) is to inform the community on SB 35 and explain how it relates to the VTC SB 35 Application. These FAQs first provide background information on SB 35 and then provide responses to specific questions from the public regarding the Application.

BACKGROUND INFORMATION ON SB 35

1. WHAT IS A STREAMLINED, MINISTERIAL APPROVAL PROCESS UNDER SB 35?

SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects by providing a ministerial approval process, exempting such projects from environmental review under the California Environmental Quality Act ("CEQA"). This process does not allow public hearings; only design review or public oversight is allowed, which must be objective and strictly focused on assessing compliance with criteria required for streamlined projects as well as objective design review of the project.

Depending on the number of housing units proposed in the project, the city has a short timeframe to review the application to determine if it is eligible for processing under SB 35. If it is determined that the project is eligible, SB 35 specifies the timeframes within which the city has to make a final decision on the application. These timeframes are discussed in more detail below.

An applicant may propose a project under this streamlined, ministerial approval process but must meet the eligibility criteria identified in SB 35.

2. WHAT ARE THE ELIGIBILITY CRITERIA FOR THE SB 35 STREAMLINED, MINISTERIAL APPROVAL PROCESS?

State housing law requires cities and counties to report their housing production annually according to the number of building permits issued within the jurisdiction by income level. SB 35 applies to cities that are unable to issue sufficient number of building permits to meet their regional housing needs allocation ("RHNA") goals for both above income and lower income units. At this time, Cupertino has issued enough building permits to meet its RHNA goal for construction of above-moderate income housing. However, there has not been enough construction activity leading to the issuance of building permits for lower income units.

Projects providing affordable housing for low income levels are eligible for the streamlined, ministerial approval process if they meet all of the following criteria:

- a. **Urban Infill.** Be located in an urban area, with 75% of the site's perimeter already developed.
- b. **Number of Units.** Propose at least two residential units.

- c. **Designated for Residential Uses.** Have a general plan and/or zoning designation that allows residential or mixed-use with at least two-thirds of the square footage as residential use.
- d. **Location.** Cannot be located on property within any of the following areas: a coastal zone, prime farmland, wetlands, very high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, flood plain, floodway, community conservation plan area, habitat for protected species, under a conservation easement, or located on a qualifying mobile home site.
- e. **Demolition of Residential Units.** The development would not demolish any housing units that have been occupied by tenants in the last 10 years; are subject to any form of rent or price control, or are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
- f. **Historic Buildings.** The development would not demolish a historic structure that is on a national, state, or local historic register.
- g. **Consistent with Objective Planning Standards.** Must meet all objective general plan, zoning and design review standards in effect at the time the application is submitted. Note: SB 35 defines objective standards as those standards that involve no personal or subjective judgment by a public official, and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.
- h. **Prevailing Wages.** If the development is not in its entirety a public work, as defined in Government Code Section 65913.4(a)(8)(A), all construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
- i. **Skilled and Trained Workforce Provisions.** A skilled and trained workforce, as defined in Government Code Section 65913.4(a)(8)(B)iii, must complete the development if the project consists of 75 or more units that are not 100 percent subsidized affordable housing.
- j. **Subdivisions.** Does not involve a subdivision subject to the California Subdivision Map Act, unless the development either (i) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or (ii) is subject to the requirements to pay prevailing wages and to use a skilled and trained workforce.
- k. **Parking.** The project must provide at least one parking space per unit; however, no parking may be required if 1) the project is located within a) one half mile of a

public transit stop, b) an architecturally and historically significant historic district, c) one block of a car share vehicle station, or 2) on-street parking permits are required but not offered to the development occupants.

3. WHAT IS THE REVIEW AND APPROVAL TIMELINE FOR THE SB 35 PROCESS?

Projects that elect to take advantage of this process must submit a planning application indicating the applications requested and the project's eligibility under SB 35. A city must determine whether the project is eligible for streamlining within 60 days of application submittal for projects with 150 or fewer units, and 90 days for projects with more than 150 units. Thereafter, project design review and consideration of any information requested of the applicant must be completed in 90 days from project application submittal for projects with 150 or fewer units and 180 days from project submittal for projects with more than 150 units.

4. ARE PUBLIC HEARINGS ALLOWED FOR SB 35 PROJECTS?

Public hearings are not allowed on SB 35 projects because they are ministerial projects which do not require public hearings. SB 35 allows "design review or public oversight" to occur if a city so chooses. This process may be conducted by the planning commission or equivalent board or commission responsible for review and approval of development projects, or the city council. Design review or public oversight must be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards that were in effect before the application was submitted. This process may not in any way "inhibit, chill, or preclude the ministerial approval" allowed by SB 35.

5. CAN STUDIES ANALYZING THE POTENTIAL IMPACTS ON THE ENVIRONMENT OR COMMUNITY BE REQUIRED?

Projects eligible for the streamlining provisions of SB 35 are considered ministerial. Ministerial projects are not subject to CEQA. Therefore, an applicant of an SB 35 project cannot be required to prepare any studies that would be required under CEQA (i.e., traffic, air quality, noise, etc.)

A city can only require an applicant to abide by objective planning standards that were in effect at the time the SB 35 application was submitted. If an objective planning standard requires certain studies to be performed and there are objective standards to address the preparation and results of those studies, then the applicant would be required to prepare and implement those requirements.

6. WHEN DOES A SB 35 PROJECT APPROVAL EXPIRE?

The expiration dates for projects approved under SB 35 are as follows:

- a. Projects that include public investment in housing affordability will not expire where 50% of the units are affordable to households making below 80% of the area median income (below moderate income levels).
- b. Projects that do not include 50% of the units as affordable to households making below 80% of the area median income (below moderate income levels) automatically expire after three years except a one-time, one-year extension may be granted if progress is being made toward construction, such as filing a building permit application.
- c. Projects shall remain valid for three years and shall remain in effect as long as vertical construction has begun and is in progress. A one-year extension to the original three year period may be granted if making progress toward construction.

7. WHAT IS THE RELATIONSHIP BETWEEN SB 35 AND DENSITY BONUS LAWS?

SB 35 projects can utilize benefits under the density bonus laws. State Density Bonus Law, which can be found at California Government Code section 65915 *et seq.*, requires all cities and counties to offer a density bonus, allow concessions, incentives and waivers of development standards to housing developments that include either a certain percentage of affordable housing or housing for qualified individuals. The City has a density bonus ordinance, which can be found at Cupertino Municipal Code Chapter 19.56. The State Density Bonus Law has been amended after the adoption of the City's density bonus ordinance. The State Density Bonus Law prevails in the event of any inconsistencies between the state law and local ordinance. See discussion below.

A density bonus is an increase in the number of housing units allowed under a general plan and/or zoning ("base density,") to encourage the production of affordable housing. Depending on the amount and affordability of the proposed affordable housing, a project may be allowed a density bonus between 5% and 35% above the base density.

In addition to a density bonus, concessions and incentives can be requested by an applicant to help the project provide affordable units. Depending on the percentage of affordable housing provided, a project may be eligible to receive to receive up to three concessions and incentives. A concession or incentive is a reduction in a site development standard or modification of zoning or architectural requirements, or any

other regulatory incentives or concessions that would result in identifiable and actual cost reductions to provide affordable housing.

State Density Bonus Law also allows an applicant to request waivers of any city development standard (setback, height, etc.) that would “physically preclude” construction of the project.

Read about the State Density Bonus Law in detail [here](#).

PROJECT SPECIFIC QUESTIONS

8. DOES THE VTC SB 35 APPLICATION MEET THE ELIGIBILITY CRITERIA FOR STREAMLINED PROCESSING?

Yes. On June 22, 2018, the City issued a letter to the Applicant determining that the VTC SB 35 Application met the eligibility criteria established under SB 35 and requested additional information to allow the City to continue processing the Application. This letter can be found on the City's website [here](#).

9. WHAT WAS THE DEADLINE TO DETERMINE ELIGIBILITY UNDER SB 35?

Since the VTC SB 35 Application includes more than 150 units, the City had 90 days from the date of application to determine whether the project met the eligibility criteria. The VTC SB 35 Application was submitted on March 27, 2018 and the City issued the eligibility letter within the required 90 day timeframe.

10. DID THE CITY APPROVE THE APPLICATION IN ISSUING ITS JUNE 22 LETTER?

No. Under SB 35 the City first needs to determine if the Application meets the eligibility criteria to allow review under the streamlining provisions of SB 35. The City, in its letter dated June 22, 2018, determined that the Applicant met the eligibility requirements under SB 35.

11. WHEN MUST THE CITY MAKE A DECISION ON THE VTC SB 35 APPLICATION?

Since the Application includes more than 150 housing units, the City has 180 days from the date of application to make a decision on the project. The VTC SB 35 Application was submitted on Tuesday, March 27, 2018; the City has until September 23, 2018 to make a decision on the project.

12. THE CUPERTINO GENERAL PLAN COMMUNITY VISION 2015-2040 STATES THAT HOUSING ONLY BECOMES AVAILABLE WHEN A SPECIFIC PLAN IS ADOPTED. MUST THE CITY FIRST APPROVE A SPECIFIC PLAN ALLOWING HOUSING BEFORE HOUSING CAN BE CONSIDERED ON THE SITE?

While the Cupertino General Plan states that housing on the site may only be approved with adoption of a specific plan, the site has a General Plan land use designation: Commercial/Office/Residential as reflected in the General Plan Land Use Map online at www.cupertino.org/gis. This land use designation allows mixed-use projects with commercial, (including retail and hotel uses), office and residential uses. SB 35 allows an eligible project to be proposed on any site with either a land use designation or a zoning designation that allows residential or residential mixed-uses.

13. HOW DOES THE VTC SB 35 APPLICATION MEET THE TWO-THIRDS RESIDENTIAL USE REQUIREMENT?

After thorough review and consideration, the City determined that the VTC SB 35 Application proposes 2/3 residential uses. Refer to the City's June 22, 2018 letter and the supplemental project information dated June 19, 2018 to substantiate the 2/3 residential use requirement on the City's website at www.cupertino.org/vallcosb35.

14. DO THE SEARS AUTOMOTIVE CENTER AND JC PENNY SITES WITHIN THE PROPOSED PROJECT SITE QUALIFY AS "HAZARDOUS WASTE SITES" REFERENCED IN THE SB 35 ELIGIBILITY CRITERIA?

No portion of the project site is part of a hazardous waste site. The state of California requires that certain sites with environmental contamination be included on what is known as the "Cortese List". California agencies (Department of Toxic Substance Control ("DTSC") and the State Water Resources Control Board ("SWRCB")), that are responsible for overseeing the investigation and clean-up of contaminated sites, must include certain contaminated sites on the Cortese List.

SB 35 makes an application ineligible for processing if the project site is identified as a hazardous waste site on the Cortese List or list maintained by DTSC. These listed sites are available online on the DTSC's Envirostor and the SWRCB Geotracker databases. Both the databases include: i) active cases that are on the Cortese List; and ii) closed cases, where all required investigation and clean-up have been completed. Sites are no longer considered "active" when the appropriate regulatory agency has determined

that no further action is required. This is because actions were taken to adequately remediate the release, or because the release was minor, presents no environmental risk, or because no remedial action is necessary. In these cases, the sites are listed as “closed” or deleted from the Cortese List. The DTSC also removes sites from the Cortese List where response actions have been completed and no operation or maintenance activities are required. See the list of closed DTSC sites and closed SWRCB sites [here](#). The SWRCB’s website contains information on two closed leaking underground storage tank (“LUST”) cases at the former Sears and JC Penney Automotive centers for which closure letters were issued by the Santa Clara Valley Water District.

The closure letters, issued in 1994 and 1999, respectively, indicate that there are no restrictions on changes to the land use at these sites and therefore, are no longer considered hazardous waste sites. More information on the closed LUST sites, including the closure letters, is available [here](#).

15. CAN THE CITY REQUIRE THE APPLICANT TO PREPARE A TRAFFIC ANALYSIS?

No. Like most cities and counties, Cupertino does not have objective planning standards that mandate the preparation and implementation of a traffic study outside of CEQA (See #2(g) above for definition of “objective standards.”) Only studies that are required by an objective planning standard can be required.

16. WHO WILL REVIEW THE WATER DEMAND ASSESSMENT SUBMITTED WITH THE APPLICATION AND WHEN?

Pursuant to the Subdivision Map Act, the city will require proof that a sufficient water supply is available. California Water Company, the water supplier for the site, will review the water demand assessment submitted with the application.

17. WHICH OBJECTIVE STANDARDS ARE APPLICABLE TO THE VTC APPLICATION?

After thorough review and consideration, the City determined that the VTC SB 35 Application meets applicable objective standards as defined by SB 35. Refer to the City’s June 22, 2018 letter, available on the City’s website at www.cupertino.org/vallcosb35 for a discussion about the applicable objective standards.

18. IS THE APPLICANT REQUIRED TO ABIDE BY HEIGHT REQUIREMENTS IN THE ZONING CODE?

No. The General Plan in Figure LU-2 sets forth the height requirements for all the Special Areas and Neighborhoods in the City. Figure LU-2 identifies the project site as the "Vallco Shopping District Special Area." The height requirements for the Vallco Shopping District Special Area is "Per Specific Plan." A specific plan for this Special Area has yet to be adopted so there are no height requirements for the project site.

19. WHAT ARE THE PARKING REQUIREMENTS FOR THE VTC SB 35 APPLICATION?

Pursuant to SB 35, the City is not allowed to impose any parking standards on the VTC SB 35 Application since it is located within one-half mile from public transit. The VTA runs several bus lines along Stevens Creek Boulevard and N. Wolfe Road which qualify this site for the parking reduction allowed under SB 35.

20. IS THE APPLICANT SEEKING A DENSITY BONUS?

Yes. The Application seeks a 35% density bonus. The proposed project includes 1,201 affordable units, 360 units at very-low income level and 841 units at the low income level, qualifying it for a 35% bonus.

		BMR Units	Market Rate Units	Total Units*
Base Density	= 50.82 acres x 35 units/acre			1,779
<i>Very-low income units</i>	<i>20% of base yield</i>	360		
<i>Low income units</i>	<i>47% of base yield</i>	841		
<i>Balance of units</i>			578	
Bonus Units	= 35% * 1,779 units		623	623
Total Yield		1,201	1,201	2,402

(* All calculations must be rounded up per State Density Bonus Law.)

21. IS THE APPLICANT SEEKING CONCESSIONS UNDER THE DENSITY BONUS LAW?

Yes. The VTC SB 35 Application proposes 35% of the total units in the project to be affordable to low income households and qualifies for three concessions. The Application identifies a concession to allow a reduction in the minimum amount of

retail square footage required in the project (the General Plan requires a minimum of 600,000 square feet; the Application proposes 400,000 square feet) and a second concession for relief from the requirement in the City Density Bonus Ordinance section 19.56.050(G) for affordable units to be of identical design as the market rate units.

In its June 22, 2018 letter, the City informed the Applicant that the following three concessions are required to implement the project:

- a. A concession to allow the affordable units to be studios and one bedroom units instead of a mix of units comparable to the units within the project pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (A);
- b. A concession to allow the studio and one bedroom affordable units to be smaller in size than the studio and one bedroom market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (B); and
- c. A concession to allow 400,000 square feet of retail, a reduction of 200,000 square feet, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.

22. WHAT INFORMATION DID THE APPLICANT PROVIDE TO SUPPORT THE CONCESSION FOR THE REDUCTION IN RETAIL AND THOSE REQUIRED ON THE AFFORDABLE UNITS?

State Density Bonus Law requires the City to grant a requested concession unless it determines that the requested concession does not result in an identifiable and actual cost reduction to provide the affordable units (Gov't Code sect. 65915(d)(1).) The City bears the burden of proof for the denial of a requested concession (Gov't Code sect. 65915(d)(4).)

The applicant submitted additional information on June 19, 2018 to substantiate the identifiable and actual cost reductions resulting from the reduction in the required amount of retail space to allow the provision of affordable units (see, June 19, 2018 letter, Exhibit B "Analysis of Cost Reductions Associated With Reduced Retail"). The information can be found on the City's website [here](#). The information submitted by the Applicant for this concession is adequate for the City to grant this concession.

This supplemental information also includes adequate information to substantiate the concessions required to allow 1) studios and one bedroom units as the affordable units instead of a mix of units comparable to the units within the development, and 2) the studio and one bedroom affordable units to be smaller in size than the studio and one bedroom market rate units.

23. CAN THE CITY REQUEST A FINANCIAL PRO-FORMA TO SUPPORT A REQUESTED CONCESSION?

No. On January 1, 2017, the State Density Bonus Law was amended to relax the requirements to substantiate a request for a concession. Financial pro-formas and third-party reviews may no longer be required. The City's Density Bonus Ordinance requires information to be provided in excess of that allowed under state law in granting concessions (i.e., financial reports/pro forma/appraisal reports) (CMC Section 19:56.060(B)(8).) Where a conflict exists between state and local law, state law prevails.

24. CAN THE CITY REQUIRE THE AFFORDABLE UNITS TO BE BUILT AT THE SAME TIME AS THE MARKET RATE UNITS?

Yes. The affordable units must be built concurrent with the market rate units pursuant to Cupertino Municipal Code Section 19.56.050 (F). The City will ensure this through the Affordable Housing Plan and final inspections for each of the buildings.

25. IS A CONCESSION REQUIRED FOR THE APPLICANT NOT TO PROVIDE "IDENTICAL DESIGNS" FOR THE AFFORDABLE UNITS AND THE MARKET RATE UNITS?

No. Both the City's Density Bonus ordinance (CMC Section 19.56.050(G)(2)) and BMR Housing Mitigation Manual (Section 2.3.4(C)) allow for affordable units to have different interior finishes than market rate units, subject to the approval of the City Council. The City Council's deliberation regarding the interior finishes would be discretionary, which is not allowed under SB 35. Moreover, since there are no objective planning standards, the applicant may provide different interior finishes for the affordable units. Since the affordable units are integrated with the market rate units, the quality of the exterior finishes of the two types of units would be the same, but the interior finishes may be different. (See #2(g) above for the definition of "objective standards.")

26. DOES THE VTC SB 35 PROJECT DISPERSE THE AFFORDABLE UNITS THROUGHOUT THE PROJECT?

The affordable units are dispersed throughout the residential buildings.

27. ARE THE PARK LAND DEDICATION REQUIREMENTS BEING MET ON THE VTC SB 35 APPLICATION?

Yes. The City's Housing Element (*Policy HE-2.3.6 – Incentives for Affordable Housing Development*) allows the City to waive park dedication fees for affordable housing. The

City's BMR Housing Mitigation Manual also allows waivers for affordable units. Therefore, parkland dedication requirements apply only to the above-moderate income units. The Project includes up to 26 acres of publicly-accessible open space, including 4 acres of at-grade park space and two plazas.

Cupertino Municipal Code Section 13.08 governs park land dedication and park land in lieu fee requirements for projects. The section also describes how parkland dedication credits may be allowed against the requirement of land dedication or payment of fees in lieu thereof when certain required and optional recreational elements are included in the project. The project will be reviewed to ensure compliance with the parkland dedication requirements and the appropriate criteria prior to the determination of whether it is entitled to a parkland dedication credit.

28. WHAT APPLICATION PERMITS HAS THE APPLICANT SUBMITTED FOR THE SB 35 PROJECT?

With the VTC SB 35 Application, the applicant has applied for the following permits:

- a. Development Permit - Major
- b. Architectural and Site Approval - Major
- c. Tentative Subdivision Map for Condominium Purposes
- d. Tree Removal Permit

Since the City has determined that the project is eligible for SB 35 streamlined, ministerial review, it has until September 23, 2018 to review the above listed permits and make a determination on the Application.

29. IS A TREE REMOVAL PERMIT REQUIRED TO BE SUBMITTED WITH THE VTC SB 35 APPLICATION?

Yes. A Tree Removal permit is required for all Protected Trees on private property (*Cupertino Municipal Code Chapter 14.18 – Protected Trees.*) Trees within the right-of-way will be reviewed and permitted by the Public Works Department with an encroachment permit (*Cupertino Municipal Code Chapter 14.12 - Trees.*)

30. WHAT ADDITIONAL PERMITS ARE REQUIRED TO ALLOW CONSTRUCTION OF THE VTC PROJECT, SHOULD THE PROJECT BE APPROVED?

Should the project be approved, the Applicant will have to obtain additional ministerial permits which would not involve public hearings, including but not limited to:

- a. Demolition Permits

- b. Grading Permits
- c. Encroachment Permits
- d. Building Permits

31. IF APPROVED, HOW LONG WILL THE VTC SB 35 APPLICATION APPROVAL BE VALID?

The project approved under the VTC SB 35 Application will remain valid for three years from the date of the final action establishing that approval and will remain valid so long as vertical construction has begun and is in progress. A one-time one-year extension can be granted by the City to the original three-year period.

UPDATE April 18, 2019

32. WHAT IS THE STATUS OF THE COMPLAINT FILED WITH THE SANTA CLARA DEPARTMENT OF ENVIRONMENTAL HEALTH (SCCDEH) REGARDING A SUSPECTED ABANDONED LEAKING UNDERGROUND STORAGE TANK (LUST) AT THE FORMER SEARS AUTOMOTIVE CENTER?

The project applicant has provided documentation to the Santa Clara Department of Environmental Health (SCCDEH) addressing the complaint related to a suspected abandoned leaking underground storage tank (LUST). The reports appear to indicate that a LUST does not exist at this location. The SCCDEH is reviewing these documents. These documents were also provided to the City and are available.

[Letter to DEH – Complaint Resolution](#)
[Site Characterization Report Part 1 of 2](#)
[Site Characterization Report Part 2 of 2](#)
[Peer Review of Site Characterization Report](#)
[Description of Field Activities](#)
[Closure Plan Sears Automotive Center](#)