



**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3308 • FAX: (408) 777-3333
CUPERTINO.ORG

February 16, 2024

Via Electronic and Regular Mail

Reed Moulds, Managing Director
Vallco Property Owner LLC
965 Page Mill Road
Palo Alto, CA 94304

**SUBJECT: APPROVAL LETTER – THE RISE SB 35 DEVELOPMENT (FORMERLY
VALLCO TOWN CENTER) – SECOND MODIFICATION APPLICATION**

This letter serves as ministerial approval (“Approval”) of the “The Rise SB 35 Application” (“Application”), requesting modification of the Vallco Town Center project approved pursuant to Government Code Section 65913.4 under Senate Bill 35 (“SB 35”). The Application, which included four requested project entitlements, was submitted to the City by Vallco Property Owner, LLC (“Applicant”) on December 5, 2023 for the 50.82-acre Vallco Mall property located between Interstate 280 and Steven’s Creek Boulevard and on both sides of North Wolfe Road.

This Approval is based on the Application and the additional updated plans and responses, in response to comments from the City, submitted by the Applicant on February 6 and February 14, together which is referred to as the “Project Application.”

I. Project Approval

The following entitlements are approved:

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

Under the State’s and City’s Density Bonus Laws, the Applicant requests a 50% density bonus in compliance with State Law provisions in place on the date of Application. This allows an increase in the unit count in the project from 2,402 units to 2,669 units.

The Applicant continues to request three concessions under the Density Bonus Laws, due to the amount of affordable housing proposed in the Project Application. These concessions have been modified and are as follows:

1. A concession to allow the Below Market Rate (BMR) units to deviate from the requirement that unit types be comparable to the market rate units within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4 (A);
2. A concession to allow the studio and one-bedroom BMR 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
3. A concession to allow 200,000 square feet of retail, a reduction of 400,000 square feet, where 600,000 square feet is required in the General Plan pursuant to Strategy LU-19.1.4.

In 2018 and 2022, the City determined that these three concessions: a) will result in identifiable and actual costs to provide for affordable housing costs; b) will not result in specific, adverse impacts upon public health or safety or the physical environment or any property that is listed in the California Register of Historical Resources; and c) will not be contrary to state or federal law. (Gov. Code, § 65915(d)(1)(A)-(C). The award of the density bonus and concessions are not affected by the request for modification of the approved project.

In addition to the density bonus, density bonus concessions, with this Application, the applicant is additionally requesting a density bonus waiver. A density bonus waiver is to a development standard that the project cannot meet due to the proposed design, and if the project were required to meet the standard, it would cause the project to lose units in the housing development. State law disallows the City to reject the request for a waiver under the presumption that a differently designed project could meet the existing standard.

The applicant is proposing to not meet the 1:1 setback to height (slope line) standard established in the General Plan in Figure LU-2 (Community Form Diagram). This would allow structures as proposed in Blocks 2, 5, 8, 10, 11, 13, 14 and 15 to encroach into this setback. The encroachment is identified in the plan set in Sheet P-508 and P-508.1. These diagrams indicate that imposition of the slope line standard would cause the project as designed to lose residential units. As a result, the City must grant the proposed density bonus waiver.

These Approvals, including the density bonus, the three concessions and the waiver identified above, are collectively referred to as the "Project," and are reflected in the plan set included in Attachment "A."

This Approval does not cover encroachments or other improvements within the public right-of-way, including but not limited to, the proposed intersection located between Vallco Parkway and Highway 280 (right of way encroachments are subject to the City's permitting review process) or proposed tree removals within the public right of way. In addition, this Approval does not cover any signage, sign programs, construction permits, or final map(s). Subsequent applications for these permits will be reviewed prior to approval, consistent with the City's permit approval processes and the requirements of Government Code section 65913.4.

II. Basis for Approval

Government Code Section 65913.4 (SB 35, as amended) sets forth a streamlined, ministerial approval process for certain housing developments in jurisdictions that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower income levels as mandated by the State. The California Department of Housing and Community Development ("HCD") determined that the City made sufficient progress toward its above moderate income housing goals but made insufficient progress toward its lower (very low and low) income housing goals. Therefore, HCD determined that the City is subject to the streamlined, ministerial review and approval provisions in Government Code Section 65913.4 for very low and low income housing projects.

On September 21, 2018, the Vallco Town Center project was approved pursuant to SB 35, which was subsequently modified in 2022. The Applicant submitted a second request for modification of the approved project on December 5, 2023. In addition to the Project Plans, the Project Application supporting information provided by the Applicant that the City reviewed in making this determination is available on the City's website.

The Applicant's modification request is subject to a limited scope of review under Government Code section 65913.4(h) unless the modification changes the total number of residential units or total square footage of construction by 15 percent or more, not including underground space. (Gov. Code, § 65913.4(h)(3).) The scope of review of a qualified modification request under section 65913.4(h) is limited to determining whether the modified project meets the statutory criteria for SB 35 eligibility and whether the project complies with objective planning standards in effect at the time the original project application was submitted. (Gov. Code, § 65913.4(h)(1)(B).) Staff generally may not apply objective planning standards adopted after the March 2018 submittal date of the original Vallco SB 35 application if these requirements are met. In addition, the City may not reconsider "prior determinations that are not affected by the modification" (Gov. Code, § 65913.4(h)(4)) and must use "the same assumptions and

analytical methodology” that it used in approving the original application. (Gov. Code, § 65913.4(h)(1)(C).)

The modification request also includes a request for modification of the approved tentative subdivision map for the project. The streamlined approval provisions of SB 35 apply to approval of the tentative subdivision map. (Gov. Code, §65913.4(d)(2)). Under Government Code section 65913.4(h), review must be limited to objective subdivision standards that were in place at the time of the original application.

Under Government Code section 65913.4(h)(2), the City must complete ministerial review of the proposed modification request within 60 days. The deadline for completing review of the Vallco/Rise modification request was February 5, 2024. However, the Applicant agreed to an extension of time, until February 16, 2024, in review of the proposed modification to allow additional time for coordination between the Applicant, the City and other local agencies. This letter, which serves as notice of the Approval of the modification request pursuant to Government Code section 65913.4(h), is being issued within that time period.

The City has identified its basis for approval of the project in Attachment B.

III. Standard Project Requirements and Project Implementation Requirements

The Project Application is approved subject to the Standard Project Requirements and Project Implementation Requirements (collectively “Requirements”) set forth in Attachment B. These Requirements identify objective General Plan, zoning, and/or objective design review standards that were applied to the project at the time the original Application was submitted to the City on March 27, 2018. These Requirements are uniformly applied to similar entitlement applications and are within the City’s rules and regulations, including its General Plan, General Plan Environmental Impact Report, Municipal Code (including the zoning, subdivision and density bonus provisions), BMR Housing Mitigation Procedural Manual, and other applicable permit application forms and approvals, or reflect legal requirements imposed by other agencies and/or state law.

Further, Government Code Section 65913.4 contains specific requirements and criteria for a project to be subject to the streamlined, ministerial review and approval process. In order to assure the Approval is implemented as required by Government Code Section 65913.4, the City has included those in the Requirements in Attachment C.

IV. California Environmental Quality Act

This Approval is exempt from the California Environmental Quality Act ("CEQA") due to its ministerial nature. (Gov. Code, § 65913.4 (a); Pub. Resources Code, § 21080(b)(1).)

V. Term of Approval

The term of this modified project approval shall be determined in accordance with the requirements of Government Code section 65913.4(g).

Sincerely,



Benjamin Fu
Director of Community Development

- cc: Pamela Wu, City Manager (email)
Christopher Jensen, City Attorney (email)
Chad Mosley, Director of Public Works (email)
Piu Ghosh, Planning Manager (email)

Enclosures:

- Attachment A – Approved Plans dated February 16, 2024 (due to size, copies are available at the Community Development Department Planning Division)
Attachment B – Basis for Approval
Attachment C – Standard Project Requirements and Project Implementation Requirements