

APPENDIX I – SUPPLEMENTAL RESPONSES TO CITY OF CUPERTINO'S SB 35 APPLICATION FORM

GENERAL NOTES: The City has previously approved the SB 35 Approval and the subsequent SB 35 2022 Modification Approval (as those terms are defined under **Appendix II, Modification Request Project Description**), and the scope of this modification request is limited to design changes (e.g., architectural updates, circulation refinements, etc.) and associated updates within the same Project site as covered by those prior SB 35 determinations. SB 35 establishes a unique framework for the City's role in evaluating this modification request application that differs from its review of the original SB 35 Application. In particular, the City's review of the modification request is "strictly limited" to determining whether the modification affects the approved project's consistency with objective planning standards and "shall not reconsider prior determinations that are not affected by the modification." (§ 65913.4(g)(4).) In doing so, the City must use the same "assumptions and analytical methodology" originally used to assess consistency with objective planning standards. (§ 65913.4(g)(1)(C).)

With this legal background, this modification request provides the same level of detail, scale and scope of information as was provided originally, meaning that some information requested in the City's new SB 35 Application Form is not included. Where information is not provided, that is noted in the checklist below. Further, it does not address certain topics listed in the new form if the modification request does not impact the City's prior conclusions regarding those issues. For example, all of the "site" criteria are unaffected by the modification because the site is the same.

Lastly, note that missing information is not a basis for denial if there is sufficient information for a reasonable person to confirm consistency with the applicable objective standards. (See Gov. Code § 65913.4(c)(3); see also HCD SB 35 Guidelines § 301(b)(1)). As such, whether or not this application includes all of the information requested by the City as stated in its SB 35 Application Form or elsewhere is not an appropriate basis for denial as long as this requirement is met. The modification request application package includes sufficient information for a reasonable person to confirm consistency with the applicable objective standards to the Project.

INFORMATION PROVIDED BELOW: This **Appendix I** provides supplemental responses to items listed in the City's SB 35 Application Form, including indicating the items for which information is either (i) not being provided because it is not applicable to the modification request or (ii) being provided at the same level of detail or form as was provided in the 2018 SB 35 Application materials, but which differs from what is requested in the City's current SB 35 Application Form (e.g., plan sets provided at the same scale as previously provided, which is different than requested in the City's SB 35 Application Form). This approach is consistent with the legal framework described above. Several items are marked as "N/A" because, while they may have been relevant questions to address in the initial SB 35 application, they are not applicable in the SB 35 modification context because they relate to topics that have not changed, such as the site location.

SECTION I – PROJECT INFORMATION (CITY SB 35 APPLICATION FORM P. 1-3)		
ITEM #	TOPIC	APPLICANT RESPONSE
#1 - Type of Multifamily Housing Development Proposed	A. Multifamily rental; residential only with no proposed subdivision.	Not applicable (N/A) because no changes proposed to project uses
	B. Multifamily residential with proposed subdivision (must qualify for exception to subdivision exclusion)	N/A because no change to project uses or to the fact that there is a subdivision
	C. Mixed-use: at least 2/3 of gross square footage (including additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to Density Bonus Law and excluding any underground space) must be designated for residential use. If a subdivision is included, the development must qualify for exception to subdivision exclusion.	Yes , modified project continues to include at least 2/3 of gross square footage designated for residential use
#2 - Number of Parking Spaces Proposed	A. Number of Parking Spaces Proposed	N/A because the Project site is located within one-half mile of public transit, parking standards are not applicable to the Project, including this modification request. (See Gov. Code § 65913.4(e)(1).) Nonetheless, the Project continues to provide parking to adequately meet the demands of the various uses, as described below for informational purposes. See Appendix II, Modification Request Project Description and Appendix IV, Modification

		<i>Request Plan Sets</i> for details regarding vehicle parking counts.
	B. Is the site within one-half mile of public transit?	N/A because no change to project location
	C. Is the site within an architecturally and historically significant historic district?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit
	D. Are on-street parking permits required but not offered to the occupants of the project?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit
	E. Is the site within one block of a car share vehicle station?	N/A because no change to project location and previously determined that project qualifies for parking exemption due to proximity to transit
#3 - Does the project propose 2 or more residential units?	Does the project propose 2 or more residential units?	Yes , the Project includes 2,669 units
	A. Has the applicant certified compliance with affordability requirements?	N/A because the City has previously confirmed the Project's compliance with these requirements through both its 90-Day SB 35 Determination Letter dated June 22, 2018, and the SB 35 Approval, and the project continues to include 50% of its total base density units at below market rates as required under SB 35; nonetheless, the application includes a signed copy of the certification form.
#4	Does the project include more than 10 units?	Yes , the Project includes 2,669 units
	Is the project a public work?	N/A because no change in public work status

#5	A. If it is a public work, has the applicant certified to the City that the entirety of the development is a public work?	N/A because no change in public work status
	B. If it is not a public work, has the applicant certified compliance with prevailing wage requirements?	N/A because no change in public work status and certification letter previously submitted; nonetheless, the application includes a signed copy of the certification form.
#6	Does the project propose 75 units or more? (Subject to change Jan. 1, 2022)	N/A because this provision is now inconsistent with SB 35, as set forth in Gov. Code § 65913.4(a)(8)(B), which as of January 1, 2022, imposes skilled and trained workforce requirements to qualifying projects of 25 units or more. Nonetheless, the Project meets those requirements as further described below.
	A. If yes, has the applicant certified compliance with skilled and trained workforce requirements?	N/A, The project previously certified compliance with skilled and trained workforce requirements; nonetheless, the application includes a signed copy of the certification form.
#7	Does the project involve a subdivision of land?	Yes, see Appendix II, Modification Request Project Description ; see also Appendix IV, Modification Request Plan Sets
	A. Is the development consistent with all objective standards in the subdivision ordinance?	Yes, the modification request includes an updated Tentative Map providing for further subdivision of the project site, along with revisions to the specific location of easements and dedication areas. See Appendix II, Modification Request Project Description and Appendix IV, Modification Request Plan Sets for details. The revisions to the

		Tentative Map do not impact its consistency with any applicable objective subdivision standards.
	B. Is the project financed with low-income housing tax credits?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements; nonetheless, the application includes a signed copy of the certification form.
	C. Has the applicant certified compliance with prevailing wage requirements?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements; nonetheless, an updated certification is included in this application
	D. Has the applicant certified compliance with skilled and trained workforce requirements?	N/A because previously certified compliance with prevailing wage and skilled/trained requirements; nonetheless, an updated certification is included in this application
#8 - Would the development require demolition of any of the following types of housing?	A. Housing subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.	N/A because no change to project location
	B. Housing that is subject to any form or rent or price control.	N/A because no change to project location
	C. Housing that has been occupied by tenants within the past 10 years.	N/A because no change to project location
#9	Was the site previously used for housing that was occupied by tenants that was demolished within 10 years before the application was submitted?	N/A because no change to project location
#10	Does the property contain housing units that are occupied by tenants, and units at the property are, or were, subsequently	N/A because no change to project location

	offered for sale to the general public by the subdivider or subsequent owner of the property?	
#11	Would the development require demolition of a historic structure that was placed on a national, state, or local historic register?	N/A because no change to project location
#12	Is the project site within a very high fire hazard severity zone?	N/A because no change to project location
	A. If yes, are there adopted fire hazard mitigation measures applicable to the development?	N/A because no change to project location
#13	Is the project site a hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356 of the Health and Safety Code?	N/A because no change to project location
	A. If the site has been so listed or designated, has the applicant provided evidence that the site has received the required clearance from the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control for development as a residential use or residential mixed-use?	N/A because no change to project location
#14	Is the project site within a delineated earthquake fault zone?	N/A because no change to project location
	A. If yes, does the development comply with all applicable seismic protection building code standards?	N/A because no change to project location
#15	Is the project site habitat for protected species, identified in an adopted natural community conservation plan, or under a conservation easement?	N/A because no change to project location
#16	Does the project site contain wetlands?	N/A because no change to project location

#17	Is the project site within a special flood hazard area?	N/A because no change to project location
	A. If yes, has the site been subject to a Letter of Map Revision or does the site meet Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria?	N/A because no change to project location
#18	Is the project site within a regulatory floodway?	N/A because no change to project location
	A. If yes, has the project received a no-rise certification?	N/A because no change to project location
#19	Is the project site located on lands under a conservation easement?	N/A because no change to project location
#20	Is the project seeking a density bonus and/or any incentive, concession, waiver, or reduction of parking standards under state Density Bonus Law?	Yes, the Project qualifies for and seeks a 50% density bonus, totaling 2,669 units. The modification request retains each of the three previously granted concessions, although includes both (1) minor revisions to two of the granted concessions and (2) a waiver request for relief from General Plan primary building bulk requirements along arterial/boulevard curb line(s). Additional details are provided in Appendix III, Density Bonus Application Materials .
	A. If yes, does the project proponent demonstrate how the requested concession, waiver or reduction of standards is the least amount necessary to develop the proposed affordable housing?	N/A because this provision is inconsistent with state Density Bonus Law requirements, as set forth in Gov. Code §§ 65915(d), (e). See Section III(c) below and Appendix III, Density Bonus Application Materials for details regarding density bonus request information.
#21	Are the project's affordable units distributed throughout the development and of comparable size, both in terms of the square	Yes, regarding unit distribution; see Appendix IV, Modification Request Plan Sets for details.

	<p>footage and the number of bedrooms, and quality to the market rate units with access to the same common areas and amenities?</p>	<p>N/A regarding unit size and type because previously approved Density Bonus Law concessions continue to apply to this modification request, as requested to be revised in the Appendix III, Density Bonus Application Materials. See Section III(c) below.</p>
--	--	---

<p align="center">SECTION II – CERTIFICATIONS & ACKNOWLEDGMENTS (CITY SB 35 APPLICATION FORM P. 4-6)</p>	
<p align="center">TOPIC</p>	<p align="center">APPLICANT RESPONSE</p>
<p>Certification of Compliance with SB 35 Eligibility Requirements</p>	<p>N/A. This modification request does not affect the Project’s compliance with the SB 35 eligibility requirements in this form. The City has previously confirmed the Project’s compliance with these requirements through both its 90-Day SB 35 Determination Letter dated June 22, 2018, the SB 35 Approval, and the 2022 Modification Approval. Nonetheless, this application includes an updated certification.</p>
<p>Indemnification Clause Acknowledgement</p>	<p>N/A. In connection with the 2022 Modification, Applicant and City entered into a reimbursement agreement, titled <i>“Agreement Between the City of Cupertino and Vallco Property Owner LLC for Reimbursement of City Costs for Processing The Rise (Vallco Town Center) Development Project Applications”</i> (the “Reimbursement Agreement”), which includes an executed copy of the Indemnification Clause Acknowledgment as <u>Exhibit C</u> to that Agreement. Therefore, the Reimbursement Agreement remains in effect, so no further indemnification acknowledgement is required.</p>
<p>Acknowledgement of Public Records</p>	<p>Completed. See attached form.</p>
<p>Copyright Materials Release</p>	<p>Completed. See attached form.</p>

SECTION III — SB 35 APPLICATION CHECKLIST (CITY SB 35 APPLICATION FORM P. 6-16)		
ITEM #	TOPIC	APPLICANT RESPONSE
#1	Application Form	Completed, subject to these Appendix I – <i>Supplemental Responses</i> . See completed City Application form.
#2	Power of Attorney [Required if application is being made by a person other than the property owner]	N/A
#3	Filing Fee of Reimbursement Agreement	N/A. The Reimbursement Agreement (further described in Section II above) applies to costs and fees incurred by the City for “Project Approvals,” which is defined to include further modification applications. As such, fees and costs incurred by the City in connection with review of this modification request are subject to the terms of that Agreement. An additional deposit of \$145,000 has been provided for purposes of the City’s review of this modification request application. This deposit amount is consistent with fees incurred in connection with the City’s review of the 2022 Modification.
#4	Certification of Compliance with Eligibility Requirements	See Section II response above.
#5	Indemnification Acknowledgement	See Section II response above.
#6	Title Report	N/A. Title report was previously submitted in connection with the original SB 35 Application. Modification request does not impact title, so no further information is required here. Nonetheless, the application includes an updated title report dated September 2023 for informational purposes; see Appendix VII, Updated Title Report .
#7	Arborist Report	See Appendix VIII, Updated Arborist Report . The Tree Removal Permit amendment will be required to account for removal of additional on-site tree removals consistent with Condition 30, which states that a Tree Removal Permit is required for removal of additional on-site protected trees. The proposed tree removals are shown in the tree disposition plan in Appendix IV, Modification Request Plan Sets ,

		Sheets P-0101 and P-0602A-B , and are further analyzed in the Appendix VIII, Updated Arborist Report . Tree replacements on the Project site will continue to exceed City requirements.
#8	Environmental Site Assessment (ESA) Reports	N/A . The modification request does not affect the Project location or ground disturbance as contemplated under the SB 35 Approval, so no additional information required. In addition, VPO has entered into a Voluntary Remediation Agreement with the Santa Clara County Department of Environmental Health (“DEH”), which subsequently approved a Soil Management Plan for the Project site in December 2022, an update to which will be submitted to DEH shortly to reflect the updates set forth in this modification request. Additional information is available on Geotracker.
#9	Fiscal Impact Analysis	N/A . Fiscal Impact Analysis is not necessary to confirm consistency with the applicable objective standards. (See Gov. Code § 65913.4(c)(3).)
#10	Preliminary Trash Management Plan	See Appendix IX, Updated Preliminary Waste Management Plan .
#11	Project Description	See Appendix II, Modification Request Project Description .
#12	Affordable Housing Plan	See Appendix VI, Updated Preliminary Affordable Housing Plan .
#13	Statement of Consistency with Objective Standards	See Appendix V, Updated Objective Standards Analysis .
#14	Statement of Design Intent	N/A . The City’s 90-Day SB 35 Determination Letter dated June 22, 2018, confirmed that there are no “objective design review standards” applicable to the Project, so a statement of design intent does not relate to any objective standards. Further, such a statement was not required in connection with the SB 35 Approval or 2022 Modification, so such information is not required for this modification request. However, certain details regarding design are provided in Appendix II, Modification Request Project Description , which includes a discussion of the modification request design elements; in addition, Appendix V, Updated Objective Standards Consistency Analysis includes discussion of relevant Project design element consistency with applicable objective standards.
#15	Development Plan Sets	General Note: Unless otherwise stated, Appendix IV, Modification Request Plan Sets includes all information listed under Item 15 “Development Plan Sets” of the City’s SB 35 Application Form.

<p>(B)(ii) - Development Program [Mixed Use Projects]</p>	<p>The modification request remains in compliance with the SB 35 requirement that “at least two-thirds of the square footage of the development is designated for residential use.” See Appendix II, Modification Request Project Description and Appendix IV, Modification Request Plan Sets Sheets P-0106.01 through P-0106.08 for further details regarding floor plan areas.</p>
<p>(C) Density Bonus Plans</p>	<p>As further described in Appendix II, Modification Request Project Description, the Project qualified for and was granted a density bonus under the State Density Bonus Law (as implemented by the Cupertino Municipal Code). Under the SB 35 Approval, the City granted a density bonus of 35 percent, yielding 623 market rate bonus units, and granted three concessions, as further described in Item 15(c)(iii) below. Under the 2022 Modification Approval, due to amendments to the State Density Bonus Law, the Project qualified at that time for a 50% density bonus; despite that change in law, the 2022 Modification elected to maintain the 35% bonus as previously approved, and therefore proposed no change in unit count.</p> <p>This modification request remains eligible for a density bonus and three concessions, as it continues to provide 15% of the units affordable to at least 50% AMI households. This modification request now incorporates the 50% density bonus, yielding 890 additional market rate density bonus units in addition to the base density of 1,779 units, thereby totaling 2,669 units.</p> <p>This modification request retains each of the three previously granted concessions, although includes both (1) minor revisions to two of the granted concessions and (2) a waiver request for relief from General Plan building bulk requirements along arterial/boulevard curb line(s). Additional details are provided in Appendix III, Density Bonus Application Materials and Appendix IV, Modification Request Plan Sets.</p>
<p>(C)(iii) Density Bonus Plans [Additional Information Regarding Incentives/concessions]</p>	<p>Yes. The modification request generally maintains the three concessions that were granted by the City under its SB 35 Approval; however, the modification request includes a request for revisions to the concessions as further detailed in Appendix II, Project Description and Appendix III, Density Bonus Application Materials.</p>

(C)(iv) Density Bonus Plans [Additional Information Regarding Waivers]	The modification request includes a waiver request related to relief from General Plan primary building bulk requirements along arterial/boulevard curb line(s) as further detailed in Appendix III, Density Bonus Application Materials .
D. Site Plans	Appendix IV, Modification Request Plan Sets includes site plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials. Enlarged program distribution site plans are also provided at 1/100"=1'-0" scale, also consistent with the 2018 SB 35 Application.
F. Building Elevations	Appendix IV, Modification Request Plan Sets includes building elevations at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials.
G. Floor Plans	Appendix IV, Modification Request Plan Sets include floor plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials. Additionally, Appendix IV, Modification Request Plan Sets includes illustrative enlarged units plans of typical unit sizes at 1/4"=1'-0" scale, also consistent with the 2018 SB 35 Application.
H. Roof Plans	Appendix IV, Modification Request Plan Sets include roof plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials.
I. True Cross-Sections (Building and Site)	Appendix IV, Modification Request Plan Sets include cross-sections at the same 1"=10' scale and detail as provided in the 2018 SB 35 Application materials.
J. Landscape Plans	Appendix IV, Modification Request Plan Sets include landscape plans at the same 1/64"=1'-0" scale and detail as provided in the 2018 SB 35 Application materials. Enlarged detailed landscape sections are also provided at 1"=10' scale, also consistent with the 2018 SB 35 Application.
K. Fence Plan	N/A. Appendix IV, Modification Request Plan Sets does not include location of fences (i.e., structures that would be used for property protection or privacy) as those design components will be determined subsequently on a building-by-building basis, and details of which would be reviewed by the City in connection with building permit issuances. Details regarding Project fencing do not impact the Project's consistency with any applicable objective standards.

<p>N. Photo-Simulations</p>	<p>N/A. Photosimulations are not included in Appendix IV, <i>Modification Request Plan Sets</i>, consistent with the 2018 SB 35 Application materials.</p>
<p>O. Color and Materials Board</p>	<p>Appendix IV, <i>Modification Request Plan Sets</i> includes material types and colors at the same level of detail as provided in the 2018 SB 35 Application materials.</p>
<p>R. Utility Plan</p>	<p>Appendix IV, <i>Modification Request Plan Sets</i> include utility plan information at the same level of detail as provided in the 2018 SB 35 Application materials. Utility equipment will be screened, although specific design details are not included, consistent with the 2018 SB 35 Application.</p>
<p>S. Stormwater Management Plan T. NPDES Construction General Permit</p>	<p>See Appendix X, <i>Updated C.3 Data Sheets, Supporting NPDES Compliance Documentation, and Third-Party Compliance Letter</i></p>
<p>V. Additional Information to Determine Compliance with Eligibility Requirement</p>	<p>N/A. Project location remains unchanged under this modification request; no additional site information is required for purposes of processing this modification request application.</p>