

# Project Approved Pursuant to SB 35 Streamlining Procedures Survives Court Challenge

## Key Points

- Cupertino Vallco Mall Project clears major hurdle thanks to California court's denial of writ of mandate petition from anti-housing group.
- Another favorable SB 35 ruling may embolden further use of the procedure for streamlining housing development in California.

In a much-anticipated decision involving an anti-housing group's attempt to stymie a major development project in Cupertino, California, housing advocates will be pleased to learn that California courts—or at least one California court in particular—are giving teeth to the implementation of Senate Bill 35. The order, [available here](#), is the second favorable ruling on the issue in recent weeks—both orders were issued by the same judge in Santa Clara County Superior Court. ([Our previous alert on the prior decision can be found here](#).)

As noted in our prior alert, the Legislature's intent in passing SB 35, codified at Government Code section 65913.4, was to increase housing production in California by streamlining the process for approval of certain projects, especially in areas where cities and counties fail to meet targets for state-mandated housing construction. The bill, enacted over 2.5 years ago, was designed to encourage localities to either increase housing development and construction on their own, or be compelled to accept housing developments that meet certain state-mandated criteria after a streamlined, ministerial review. The initial wave of test-case challenges to projects submitted pursuant to SB 35 are just now working their way through the courts.

One such challenge, and the subject of this alert, was in response to a proposal to turn the now-defunct Vallco Fashion Mall in Cupertino (the "Project") into 2,402 apartments (half of those units would be designated as below-market rate housing), 400,000 square feet of retail, and 1.8 million square feet of office space on the 50-acre site. The challenge was brought by Friends of Better Cupertino ("Petitioner"), a non-profit group that opposed the redevelopment of the Vallco mall by developer Sand Hill Property Company and its subsidiary Vallco Property Owner LLC ("Developer"), after the City of Cupertino (the "City") reviewed

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and approved the Project under the guidelines established by SB 35.<sup>1</sup> Petitioner requested a writ directing the City to set aside its approval and issue a notice that the Project was ineligible for streamlining, on the grounds that the Project failed to meet certain "objective planning standards" as set forth in section 65913.4 (a). In its lengthy, detailed, and thoroughly-reasoned order, the Court methodically addressed each of Petitioner's arguments one-by-one: Petitioner argued that the Project did not qualify for SB 35 streamlining because the project allegedly did not meet the two-thirds residential use requirement under section 65913.4 (a)(2)(C), was on a hazardous waste site (id. at subd. (a)(6)(e)), and violated the Subdivision Map Act (§ 66410 et seq.). The Court dismissed each of these arguments, finding that the City was correct to deem the project eligible for streamlined review because the Project was in fact compliant with objective planning standards.

Petitioners also argued that, even if the Project was eligible for streamline review, it should not have been approved because it conflicted with local objective design and zoning standards with respect to standards for building height, parkland, below-market-rate units, and set-backs. The Court found the arguments unpersuasive, finding that Petitioner did not establish that the Project failed to comport with any local objective design or zoning standard, nor that the City had acted improperly in approving the Project pursuant to SB 35 guidelines. Particularly in conjunction with the recent Los Altos decision upholding a developer's challenge to a city's failure to follow SB 35, this ruling bodes well for housing advocates, as well as all others interested in streamlining approvals in order to address local housing shortages. The Court was unwilling to read implied loopholes into SB 35, applying the text literally and in favor of the Legislature's expressed purpose to increase the supply of housing in the state.

*Hanson Bridgett attorneys were pleased to file an amicus curiae brief in support of Real Party in Interest Vallco Property Owner, LLC on behalf of the following organizations:*

- Bay Area Council
- San Francisco Housing Action Commission
- First Community Housing
- Habitat for Humanity
- Housing Leadership Council San Mateo County
- Housing Trust Silicon Valley
- Joint Venture Silicon Valley
- Nonprofit Housing
- The Redwood-City San Mateo County Chamber of Commerce
- Silicon Valley at Home
- Silicon Valley Leadership Group
- The Silicon Valley Organization
- YIMBY Action

<sup>1</sup> The City remained officially neutral throughout the course of the lawsuit, but several City officials have expressed concerns with the Project.

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