

By Marisa Kendall, *The Mercury News*, May 7, 2020

“Plans to turn the old Vallco Shopping Mall into a housing, office, and retail complex can proceed after the developer won a decisive victory in court May 6.

“Concluding a lengthy battle over the project — which would bring 2,402 apartments, 400,000 square feet of retail, and 1.8 million square feet of office space to Cupertino — Santa Clara County Superior Court Judge Helen Williams ruled city officials did not err when they approved the development and gave it fast-track status.



Approved Vallco proposal. Source: City of Cupertino, <https://bit.ly/2ZaY6US>

“ ‘This is a gigantic win for housing advocates specifically and a huge win for proponents of development in general,’ said J.R. Fruen, co-founder of the housing advocacy group Cupertino 4 All, which was not a party in the litigation.

“Cupertino approved the Vallco project in 2018 under Senate Bill 35, which requires cities to approve and expedite certain residential and mixed-use developments. Friends of Better Cupertino sued the city, claiming officials had failed to do their duty by approving a project that didn’t meet the standards of SB35.



Second SB 35 ruling lets Vallco project proceed

“But in a 62-page ruling, Judge Williams made clear the project qualified for the special status and that the claims of Friends of Better Cupertino — which she said multiple times misinterpreted the law and made convoluted arguments — didn’t have merit. The group claimed the project was disqualified because it is located on a hazardous waste site, exceeds the city’s height limits, does not have sufficient space designated to residential development, and lacks a park.

“Williams also rejected their argument that a city has a duty to deny a faulty SB35 project application. That means community groups like Friends of Better Cupertino have no grounds to block SB35 projects in court, Fruen said. Although Williams’ trial court decision does not set legally binding precedent, it likely will influence other judges, he said.

“The Vallco ruling comes a week after Williams ruled in favor of another SB35 project in Los Altos, finding the city had no grounds to reject that development,” Kendall writes.

In that April 28 ruling against Los Altos, [the Court held](#) “that Developer’s project was deemed to comply with applicable standards under SB 35 and that the City must rescind its decision to deny and instead approve and permit the project at the requested density.” In addition, the parties agreed “to rescind the existing [city] decision and permit the project within 60 days as compared to remanding the matter for further consideration.”

Bill Fulton, [writing in CP&DR](#), notes that “Both cases revolve around the question of how cities must apply objective design standards in an SB 35 case — and the rulings suggest that cities apply objective design and planning standards in a very clear way in order to stay out of legal trouble.”

This is a developing story. “It is unknown at this point whether either of Judge Williams’s rulings will be appealed,” wrote Fulton on May 10. “The Los Altos City Council was scheduled to meet in closed session Monday night [May 12] to consider an appeal. As for the Vallco project in Cupertino, the neighbors’ case is just one of several fronts on which the battle is being fought. Subsequent to the events discussed in Judge Williams’ ruling, Cupertino changed its general plan to eliminate the 2 million square feet of office space contained in the project, and the developer [subsequently filed both a lawsuit and a claim against the city.](#)”

[You can read Marisa Kendall’s Vallco article here.](#)