City of Cupertino

The Westport Mixed-Use Project
Environmental Review Committee

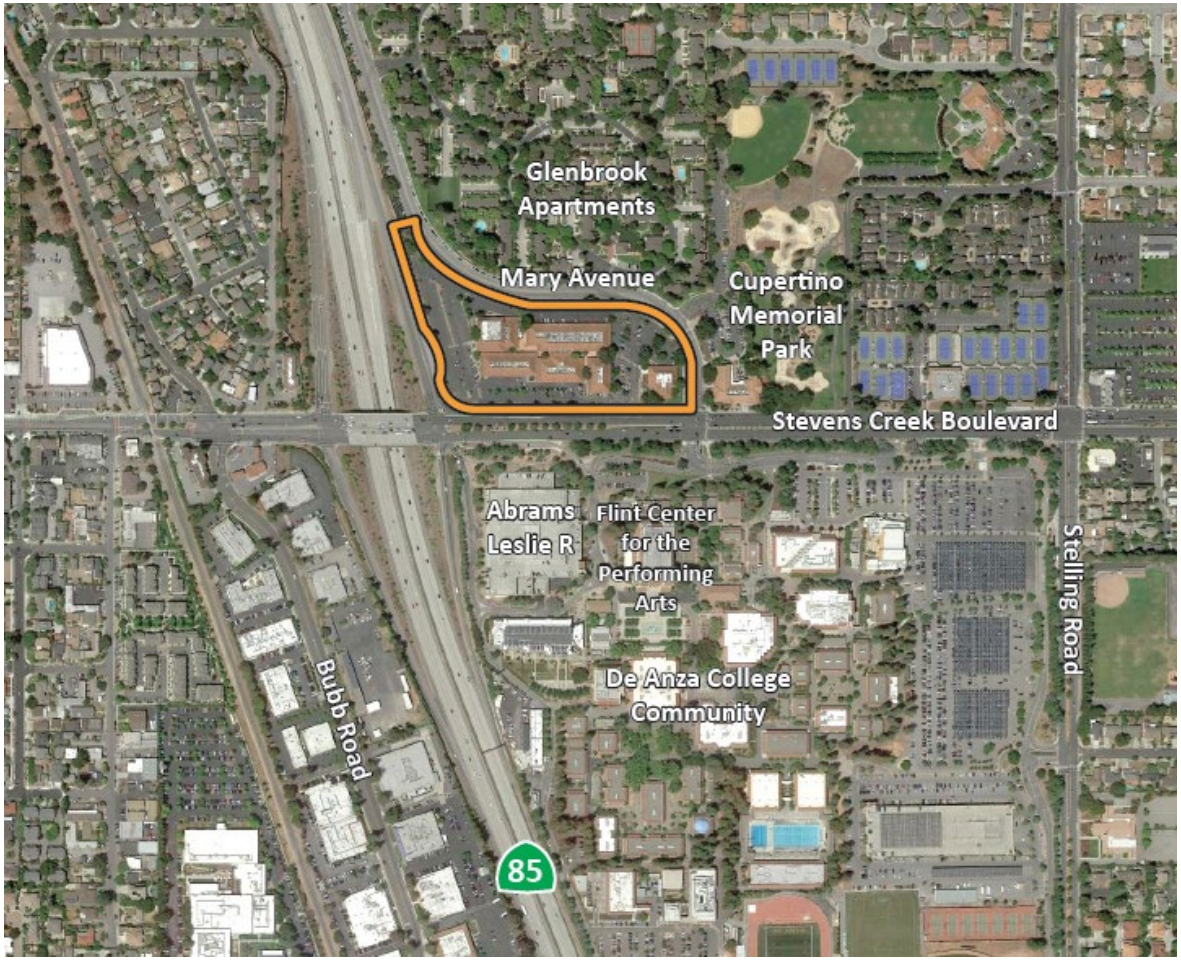
Thursday, April 16, 2020

PROJECT CONTACTS

- **City of Cupertino**
  - Gian Martire, Senior Planner
- **KT Urban/Kimley-Horn/C2K**
  - Mark Tersini
- **Environmental Consultant**
  - Terri McCracken, Associate Principal
  - Brian Jackson, Senior Associate, Hexagon Transportation

PROJECT SITE

- 21267 Stevens Creek Boulevard
- 8.1-acre site
- Priority Housing Element Site



CITY OF CUPERTINO

PROJECT OVERVIEW

- **Residential Buildings**
  - 3 rowhouse buildings (19 units)
  - 13 townhome buildings (69 units)
- **Residential-Retail Building 1**
  - 17,600 square feet retail
  - 115 market rate units
- **Residential-Retail Building 2**
  - 2,400 square feet retail
  - 39 senior housing units
- **Population and Employment**
  - 695 new residents
  - 45 new employees

PROPOSED SITE PLAN

CITY OF CUPERTINO

PROJECT OVERVIEW

- **Open Space**
  - 60 to 375 square feet for residential units
  - 37,601 square feet of common open space
  - 2,400 square feet of common retail open space
- **Landscaping**
  - 85,278 square feet of landscaping
  - 400 additional trees
  - 10,565 square feet of bioretention areas

REQUIRED PERMITS AND APPROVALS

- Certification of the EIR
- Development Permit
- Architectural and Site Approval Permit
- Tree Removal Permit
- Use Permit
- Tentative Map
- Heart of the City Exception

INITIAL STUDY: ENVIRONMENTAL ISSUES ANALYZED

The Initial Study listed below the environmental factors that could be affected by the proposed project, involving at least one impact that is a Potentially Significant Impact:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazardous Materials
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

INITIAL STUDY & THE ERC

Evaluate the Initial Study to confirm that the project may have a significant effect on the environment, requiring preparation of the EIR

ENVIRONMENTAL ISSUES ANALYZED

Based on the analysis in the Initial Study and comments received during the scoping process, the following topics were evaluated in the Draft EIR:

- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazardous Materials
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

CEQA & EIR

- **An informational document**
  - Discloses information about the effects a proposed project could have on the environment
  - Identifies mitigation measures
  - Describes feasible alternatives to the proposed project
  - Must be certified prior to project approval

CEQA & EIR

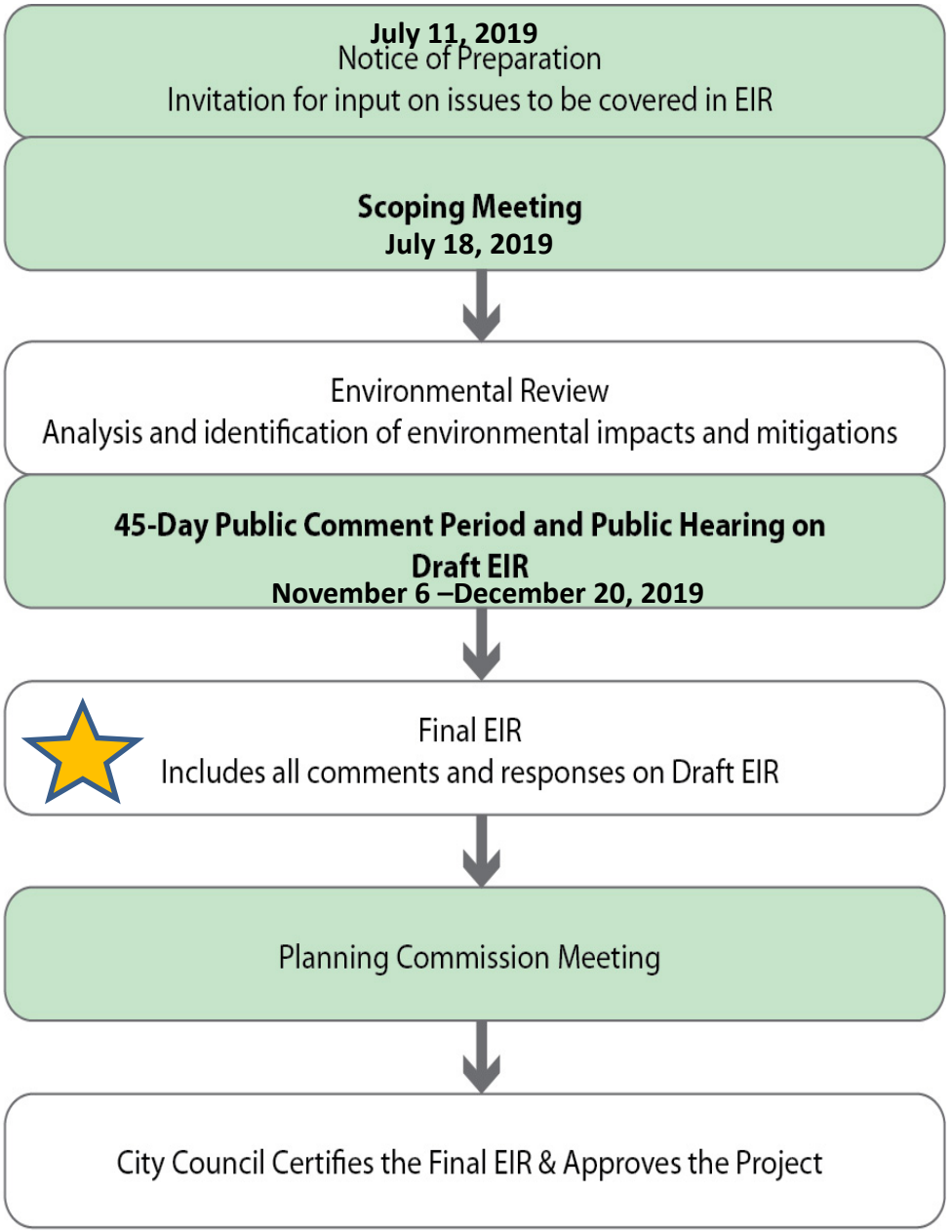
- **An EIR does not approve or deny a project**
  - Decision makers can deny/modify a project, even if no impacts are found
  - Where significant environmental impacts are identified in EIR, mitigation measures must be considered as part of project action to avoid or reduce impacts

THE EIR PROCESS

This chart shows the opportunities for public input during the EIR process.

= Current phase

= Opportunities for public input



LESS THAN SIGNIFICANT IMPACTS

- **Air Quality**
  - Would not conflict with the regional air quality plan
  - Would not expose sensitive receptors to substantial pollutant concentrations
- **Cultural**
  - Would not disturb any human remains, including those interred outside of formal cemeteries
- **Greenhouse Gas Emissions**
  - Would not directly or indirectly generate GHG emissions that may have a significant impact on the environment
  - Would not conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of GHGs

LESS THAN SIGNIFICANT IMPACTS

- **Hazardous Materials**
  - Would not create a significant hazard through the routine transport, use or disposal of hazardous materials during construction
  - Would not emit hazardous emissions or handle hazardous materials, substances or waste within 0.25 miles of an existing or proposed school
- **Noise**
  - Would not generate excessive groundborne noise levels
- **Transportation**
  - Would not conflict with a program plan, ordinance or policy addressing the circulation system
  - Would not conflict or be inconsistent with CEQA Guidelines for transportation impacts (i.e., vehicle miles traveled or VMT)

LESS THAN SIGNIFICANT IMPACTS WITH MITIGATION

- Air Quality (construction)
- Biological Resources (nesting birds, tree removal)
- Cultural & Tribal Cultural Resources (unknown resources)
- Geology and Soils (unknown paleontological resources)
- Noise (construction)
- Tribal Cultural Resources (unknown resources)
- Utilities and Service Systems (wastewater)

ALTERNATIVES TO THE PROPOSED PROJECT

- **No Project Alternative:** No changes
- **No Retail development Alternative:** Eliminate retail component of the proposed project
- **Reduced Retail Development Alternative:** 50 percent reduction in retail (10,000 square feet of retail)
- **Senior Housing Development Alternative:** Reduction of retail and conversion of high density housing to senior housing (Total Units 294)

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

- When compared to the proposed project, the Reduced Retail Development Alternative would have less impacts in the following categories:
  - cultural resources,
  - geology and soils, and
  - utilities and service systems.
- All other environmental impacts would be similar to those of the proposed project.

RECOMMENDED ACTION

- Conduct the public meeting and receive public comment.
- Determine that the project may have a significant impact on the environment requiring preparation of an EIR for City Council to consider approving.

NEXT STEPS (TENTATIVE TIMELINE)

- Planning Commission: **May 12, 2020**
- City Council: **June 2, 2020**

REGNART CREEK TRAIL PROJECT
Initial Study/Mitigated Negative Declaration

City of Cupertino Environmental Review Committee

April 16, 2020

Demetri Loukas
Principal Project Manager

DAVID J. POWERS & ASSOCIATES, INC.
ENVIRONMENTAL CONSULTANTS & PLANNERS

Purpose of the Meeting

- Conduct a public hearing

- Make a recommendation to the City Council regarding adoption of a Mitigated Negative Declaration for Regnart Creek Trail

Topics

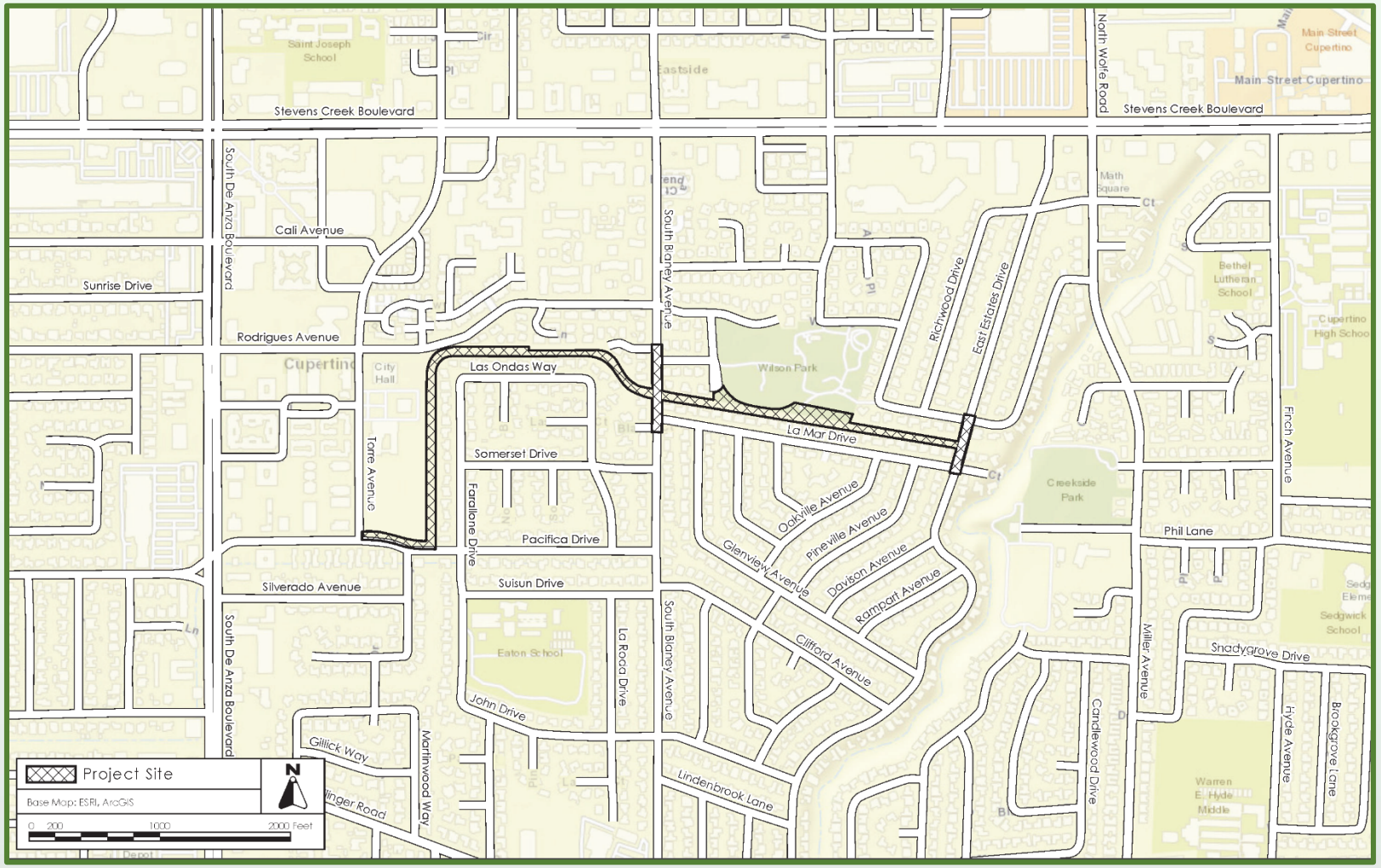
- Project overview
- Summary of process
- Summary of potential impacts
- Issues raised during public review
- Next steps
- Recommended Action

Project Overview

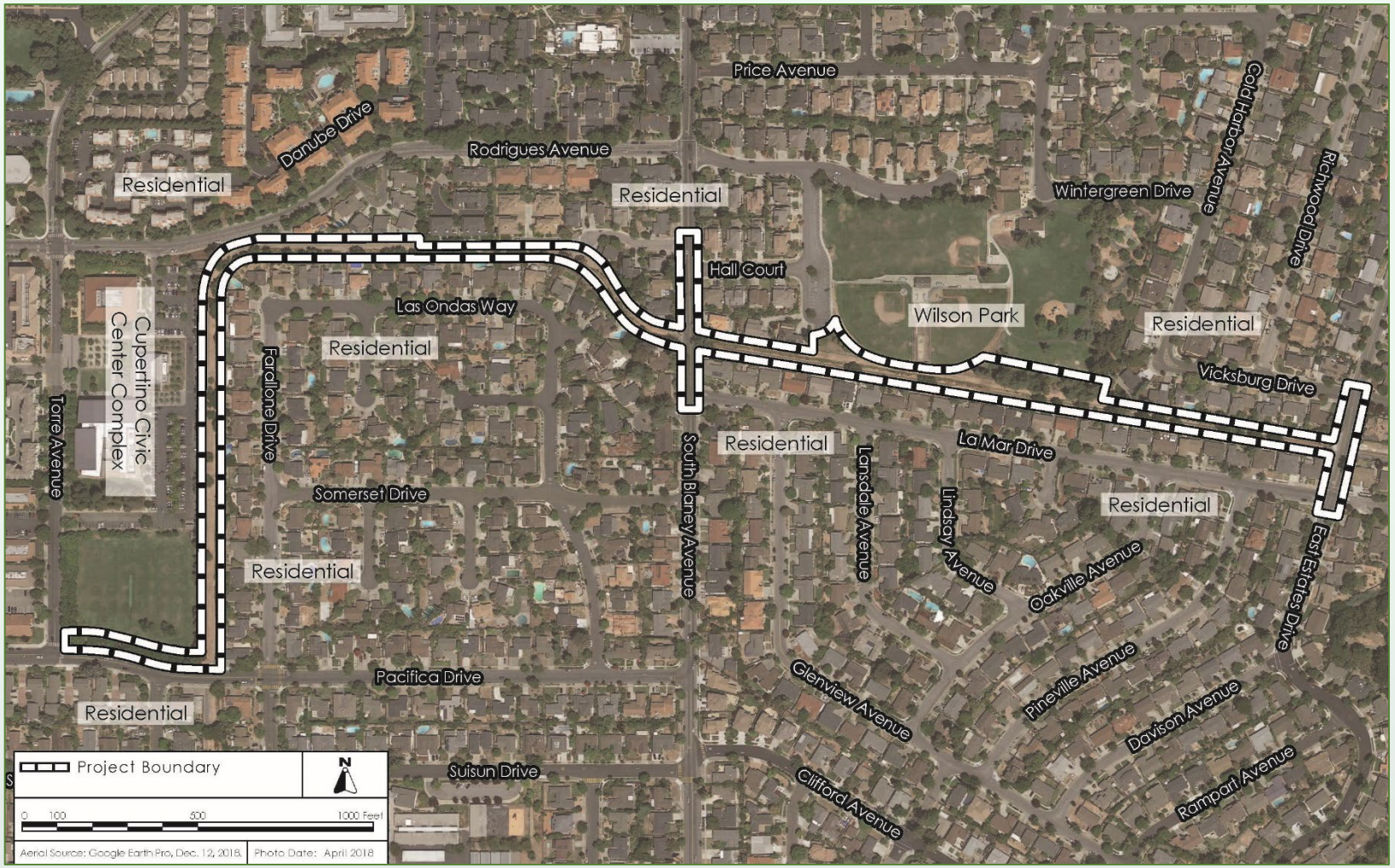
Project Description:

- *A 0.8-mile shared-use trail extending from Torre Avenue to East Estates Drive in the City of Cupertino, providing a connection from the Cupertino Civic Center complex to the west with Wilson and Creekside Parks to the east.*
- *Trail would be 10 feet wide and surfaced with decomposed granite. For most of its reach, the trail would be constructed on the existing Valley Water maintenance road along Regnart Creek.*
- *Project would relocate the existing concrete Valley Water maintenance ramp located along the proposed trail alignment to the north side of the creek.*
- *Project includes ancillary trail components and features along the trail alignment at specific locations, including curb and gutter improvements, fence replacements, chain link gates at trail access points, removable railings, chain link fencing, and a pedestrian bridge at Wilson Park.*
- *Project includes pedestrian and bicycle improvements on the surrounding roadways to provide better access to and from the proposed trail.*

Project Map


Stevens Creek Boulevard
South De Anza Boulevard
Cali Avenue
Sunrise Drive
Rodrigues Avenue
Cupertino
City Hall
Las Ondas Way
Torre Avenue
Somerset Drive
Farallone Drive
Pacifica Drive
Silverado Avenue
Suisun Drive
Eaton School
La Roda Drive
John Drive
Gillick Way
Martinwood Way
Lindenbrook Lane
South Blaney Avenue
Wilson Park
Richwood Drive
East Estates Drive
La Mar Drive
Oakville Avenue
Pineville Avenue
Glenview Avenue
Davison Avenue
Rampart Avenue
Clifford Avenue
North Wolfe Road
Main Street Cupertino
Math Square
Bethel Lutheran School
Cupertino High School
Creekside Park
Finch Avenue
Phil Lane
Miller Avenue
Snadygrove Drive
Candlewood Drive
Hyde Avenue
Brookgrove Lane
Project Site
Base Map: ESRI, ArcGIS
0 200 1000 2000 Feet
N

Project Map


Price Avenue
Danube Drive
Rodrigues Avenue
Residential
Residential
Wintergreen Drive
Cold Harbor Avenue
Richwood Drive
Hall Court
Las Ondas Way
Wilson Park
Residential
Vicksburg Drive
Cupertino Civic Center Complex
Torre Avenue
Farallone Drive
Residential
South Blaney Avenue
Residential
La Mar Drive
Lansdale Avenue
Lindsay Avenue
Somerset Drive
Residential
Oakville Avenue
East Estates Drive
Residential
Pacifica Drive
Glenview Avenue
Pineville Avenue
Residential
Davison Avenue
Suisun Drive
Clifford Avenue
Rampart Avenue
Project Boundary
N
0 100 500 1000 Feet
Aerial Source: Google Earth Pro, Dec. 12, 2018
Photo Date: April 2018

Initial Study/MND Process

Project Kickoff

Complete technical analyses (biological resources, cultural resources, noise)

Prepare “Administrative Draft” IS/MND and revise

Circulate IS/MND to public

Comments received from public and agencies

Prepare Responses to Comments/Final IS/MND

Final IS/MND posted

ERC Meeting

City Council considers adoption of IS/MND

Primary Project Environmental Issues Identified in the IS/MND

Biological Resources

- Potential impacts to special status wildlife species - western pond turtle and dusky-footed woodrat
- Potential impacts to riparian ruderal grassland habitat
- Potential construction-related impacts to nesting birds during nesting season (February – August)

Primary Project Environmental Issues Identified in the IS/MND

Cultural Resources

- Potential impacts to archaeological impacts (if present on site)

Hazards and Hazardous Materials

- Construction of the project could disturb pesticides and chemicals from historical agricultural operations on the site (if present on site). This could result in the exposure of workers and the environment to such hazardous materials.

Primary Project Environmental Issues Identified in the IS/MND

Noise

- Construction of the project could generate vibration levels in exceedance of thresholds at nearby sensitive uses.

Mitigation Measures

- Potentially significant impacts identified in the Initial Study
- Mitigation and/or avoidance measures provided for each potentially significant impact
- Measures provided for
  - Biological resources
  - Cultural resources
  - Hazards and hazardous materials
  - Noise

Issues Raised During Public Review Period

- Crosswalk location/pedestrian and bicycle safety
- Preservation of duck habitat
- Noise generated by trail usage/location of noise measurements taken
- Noise from use of motorized scooters or other emerging personal transport
- Residents' desire for a sound wall
- Biological impacts from project construction and operation
- Review period discrepancy between MND and City webpage

Issues Raised During Public Review Period

- Loss of riparian habitat in ramp area
- Substitute meadow barley for another species (non-foxtail) in seed mix
- Timing of nesting surveys
- Removal of nesting substrate
- Status of archaeological mechanical testing
- Mitigation to protect residents from noise and dust

Next Steps

- City Council Hearing on Adoption of MND (date TBD; tentatively May 19, 2020)

Recommended Action

Conduct the public hearing and:

- Recommend that the City Council adopt a Mitigated Negative Declaration

- Tentative City Council hearing: May 19, 2020

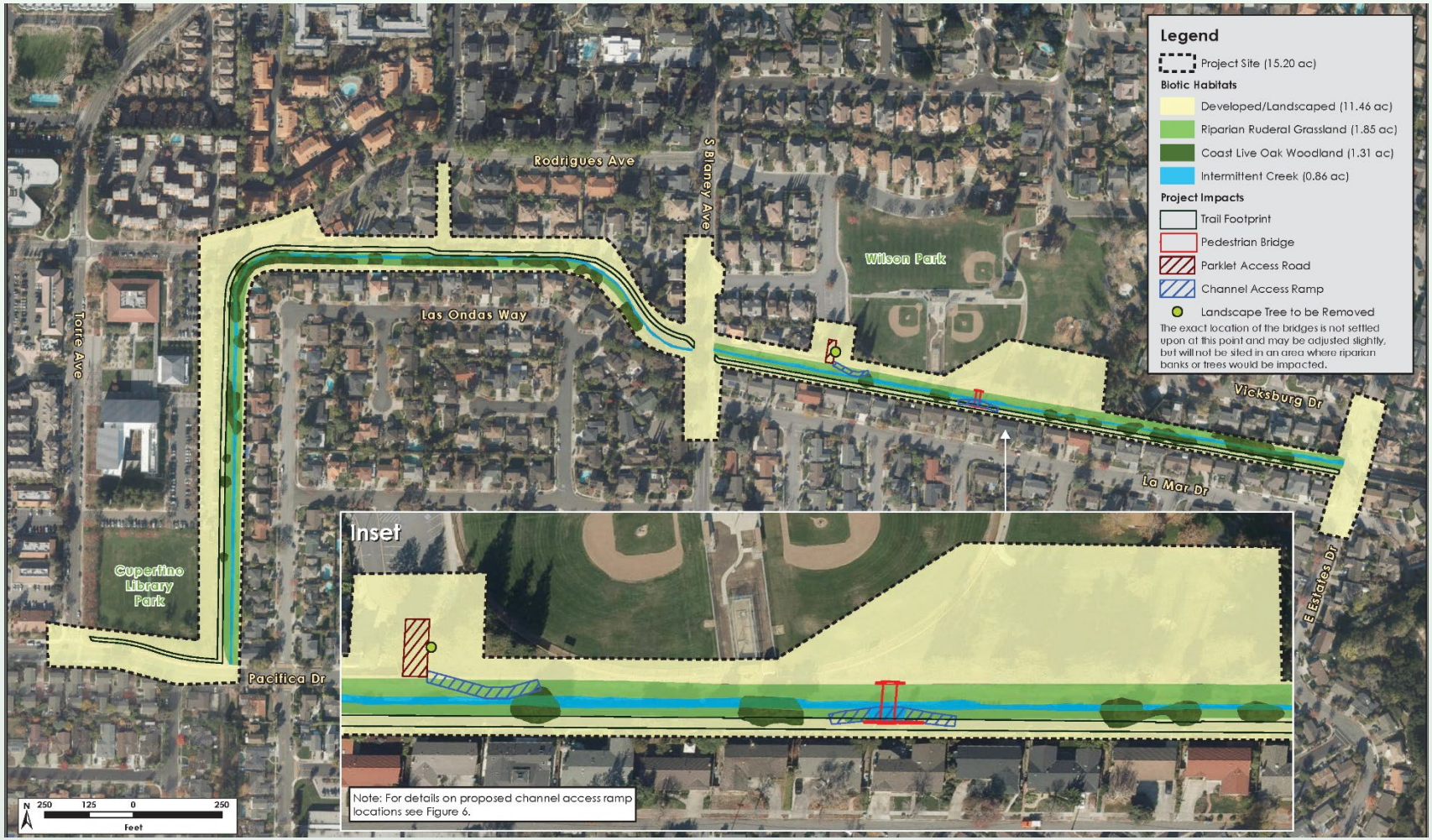
END SLIDE

REGNART CREEK TRAIL PROJECT
Initial Study/Mitigated Negative Declaration

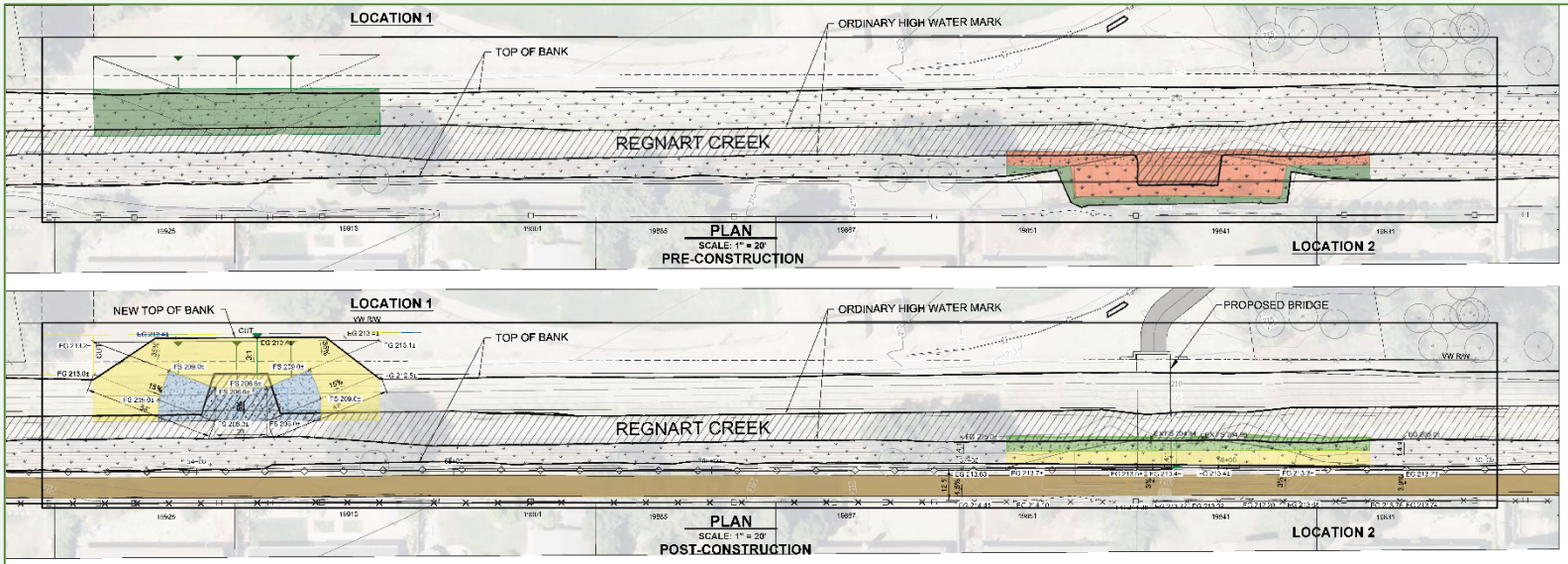
City of Cupertino Environmental Review Committee

April 16, 2020

BIOTIC HABITATS



RAMP RELOCATION IMPACTS



DISTURBED NATIVE SOIL

EXISTING CONCRETE

USACE 404 (BELOW OHWM)

RWQCB 401/CDFW (BELOW TOB)

PROPOSED NATIVE SOIL

PROPOSED CONCRETE*

PROPOSED CONCRETE TO REPLACE EXISTING CONCRETE

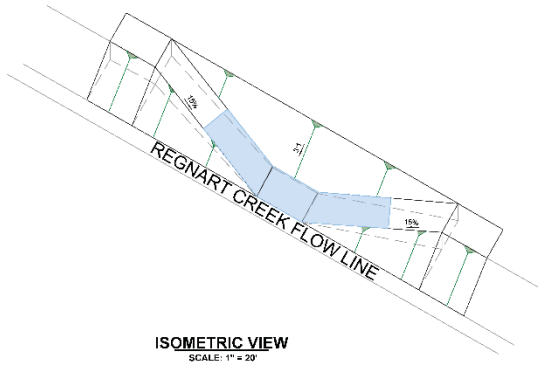
*CONCRETE CAN BE REPLACED WITH DIFFERENT SLOPE STABILIZATION MATERIAL

TABLE 1

JURISDICTIONAL AREA	PRE-CONSTRUCTION CONDITION (AC)	POST-CONSTRUCTION CONDITION (AC)
USACE 404 (BELOW OHWM)	0.152	0.153
RWQCB 401/CDFW (BELOW TOB)	0.312	0.326
NON-JURISDICTIONAL AREA	0.466	0.451
TOTAL	0.930	0.930
NOTE: THE AREA EVALUATED IN THESE CALCULATIONS INCLUDES THE WORK AREA ENCOMPASSING THE EXISTING AND PROPOSED RAMPS AS SHOWN ABOVE		

TABLE 2: AREA OF CONCRETE AND NATIVE SOIL IN JURISDICTIONAL AREAS IN THE PRE- AND POST-CONSTRUCTION

	PRE-CONSTRUCTION (SF)	POST-CONSTRUCTION (SF)
AREA OF CONCRETE BELOW OHWM	599	674
AREA OF CONCRETE BELOW TOB	1166	1017
AREA OF NATIVE SOIL BELOW OHWM	312	256
AREA OF NATIVE SOIL BELOW TOB	2006	2800
NOTE: THE AREA OF GROUNDCOVER TYPE IN THESE CALCULATIONS ONLY INCLUDES THE WORK AREA		



ISOMETRIC VIEW
SCALE: 1" = 20'

1 INCH = 20 FEET

Responses to Comments

Responses to Comments

Regnart Creek Trail
Initial Study/Mitigated Negative Declaration

CUPERTINO

April 2020

Responses to Comments

SECTION 1 LIST OF AGENCIES AND PERSONS COMMENTING ON THE IS/MND

Letter Number	Commenter	Date	Page Number
1	Sabari Sanjeevi	March 5, 2020	3
2	Valley Water	March 6, 2020	3
3	Gary Wong	March 8, 2020	4
4	Ilango Ganga	March 9, 2020	6
5	Vigi Ilango	March 9, 2020	8
6	Jeonghee Yi	March 9, 2020	8

Responses to Comments

SECTION 2 RESPONSES TO COMMENTS RECEIVED ON THE IS/MND

1. RESPONSE TO COMMENT LETTTER 1 FROM SABARI SANJEEVI, DATED MARCH 5, 2020

Comment 1.1: We recently purchased the property at 10301 S. Blanely Ave Cupertino. Our driveway is few feet from the Regnart creek/bridge. Given the location of the proposed crosswalk and barrier in the middle of the road any car or passenger van backing out of our driveway have to go over the pedestrian crossing. In the initial report section 4.17.2, "Impact TRN-3" states that, the geometric design has "less than significant impact". We have serious concern about the location of the crosswalk on the safety of pedestrians, especially children on bicycle. We are concerned about children crossing in bicycle and vehicles backing out of the cross walk at same time. Safety can be improved significantly by locating the proposed cross walk away from the driveway entrance. That give enough space between the pedestrian crossing and vehicle backing out of the driveway. We are hoping our concern is addressed for the safety of all.

Response 1.1: As stated in the Initial Study project description (Section 3.1.2.3), a high visibility pedestrian crosswalk with Rectangular Rapid Flash Beacons (RRFBs) and Americans with Disabilities Act (ADA) ramp and curb improvements would be constructed at the South Blancy Avenue trail crossing. The approximate location of the proposed South Blancy Avenue crosswalk is shown on Figure 3.1-1 of the Initial Study and is generally in line with the creek channel. Through use of AutoTurn, a software used for vehicle swept path evaluation, it was determined that there is adequate space for a passenger vehicle to reverse out of the driveway into the northbound direction and head southbound without encroaching the proposed crosswalk.

2. RESPONSE TO COMMENT LETTER 2 FROM VALLEY WATER, DATED MARCH 6, 2020

Comment 2.1: Santa Clara Valley Water District (Valley Water) staff has reviewed the Mitigated Negative Declaration (MND) for the subject project, received on February 19, 2020. As the project requires Valley Water approvals for the portions of the project located on its fee title right of way for Regnart Creek. Valley Water is a Responsible Agency under the California Environmental Quality Act. Valley Water's interests relative to Regnart Creek are stream stewardship and flood protection.

The MND addresses stream stewardship and flood protection impacts in the biological resources and hydrology and water quality sections. The MND includes appropriate mitigation measures addressing those impacts resulting from construction and operation of the trail, maintenance ramp relocation and pedestrian bridge.

We appreciate the opportunity to provide comments. I may be reached at (408) 630-2319 or via e-mail at yarroyo@valleywater.org, if you have any questions.

Responses to Comments

Response 2.1: The comment is noted. This comment will be considered as part of the project decision process. No additional response is required as the comment does not raise environmental issues or questions about the adequacy of the Initial Study.

3. RESPONSE TO COMMENT LETTER 3 FROM GARY WONG, DATED MARCH 8, 2020

Comment 3.1: This is a response to the Notice of Intent to Adopt a Mitigated Negative Declaration pertaining to Regnart Creek Trail and the Public Review Period.

These are a few of my observations or questions pertaining to the MND.

1. Page 33, Sensitive Habitat Regulations. I am unsure whether ducks are part of the definitions for birds or not, but ducks have long used the Creek as an area of refuge and activity. With the construction and use of the Creek as a trail, such activity will disrupt this "habitat" for them. The MND is silent on this matter. Attached is a photo of ducks who use the Lozano property as a gateway to the Creek. The Creek also has numerous dens in the Creek and I could not find any discussion of this or impact thereto.

Response 3.1: Potential project impacts upon biological resources are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report prepared for the project and included as Appendix A to the Initial Study. As stated on page 36 of the Initial Study, Regnart Creek provides habitat for some urban-adapted species associated with aquatic habitats. As discussed on pages 49 and 50 of the Initial Study, project construction and operation could disrupt wildlife movement through the Regnart Creek corridor. However, the common terrestrial wildlife and bird species that occur on-site are expected to continue to use the area during the night and other hours of the day when human activity is relatively low, such as early mornings and evenings. Further, the common species of birds that nest along the creek are highly tolerant of human disturbance and are expected to habituate to any increase in disturbance due to trail use.

As discussed on page 50, construction disturbance during the avian breeding season (February 1 through August 31, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests on or near the project alignment. Therefore, the project includes mitigation measures to avoid impacts to nesting birds during construction. These measures are listed on pages 50 and 51 of the Initial Study and include completing project construction outside of the nesting season, completing preconstruction nesting bird surveys when construction occurs during the nesting season, and subsequent measures if an active nest is found near construction activities. For these reasons and those stated above, the Initial Study concludes on page 51 the project would not result in substantial adverse impacts to wildlife using the creek.

Responses to Comments

Comment 3.2: 2. Appendix C Noise and Vibration Assessment. This section discusses acoustical terms and noise levels. It spends a large portion of the assessment on construction noise. When assessing noise levels of trail use, it concludes that from time to time, noise levels could exceed common indoor activity, but concludes that this noise is limited in duration, and thus, not a concern. However, if the trail is heavily used, as suggested in the City's Bike and Pedestrian Plans, the study is silent on the impact of a steady stream of users on residences along the trail. What volume of traffic or usage of the Trail was assumed? Some assumption of usage must have been made to design the bridge.

Response 3.2: The Noise and Vibration Assessment completed for the proposed project evaluates continual trail use based on noise measurements completed along local and regional trails throughout the Bay Area. As discussed in Section 4.13 Noise on page 96 of the Initial Study and pages 20 and 21 of the Noise and Vibration Assessment, activities expected along the proposed trail would include bicycling, walking, and jogging. The Noise and Vibration Assessment does not state noise from trail operations would be minimal because of limited trail use. The Noise and Vibration Assessment states noise levels generated by activity along the trail would be minimal because, due to the nature of trail activities (i.e., trail users normally move along the trail), the length of time nearby residences would be exposed to noise from individual trail activities would be short in duration (i.e., as the users pass by a residence). It is for this reason the Noise and Vibration Assessment and Initial Study conclude trail operational noise would meet daytime and nighttime thresholds at residential property lines and, therefore, not result in a significant impact.

Comment 3.3: Also, the study is silent on changes of mode of transport. For instance, it does not discuss the use of motorized scooters or other emerging personal transport.

Response 3.3: Gas-powered scooters/transports will be prohibited on the trail.

Comment 3.4: The study discusses the effectiveness of a sound wall, but states it should only be implemented as a last resort due to cost. Construction is estimated to be 10 months, with mitigation efforts to limit the hours of construction to existing City guidelines. Given the benefits of a sound wall, residents would welcome that this option be retained for noise, privacy and security reasons.

Response 3.4: The proposed project is expected to be constructed in approximately 10 months, which would be less than the one-year threshold that defines a temporary noise increase. Furthermore, no one receptor would be exposed to construction over the entire project duration due to the length of the project corridor and the fact that construction activities would advance along the corridor. This would reduce the cumulative amount of time that individual receptors would be exposed to elevated construction noise levels. As discussed on pages 94 and 95 of the Initial Study, project construction would be completed in accordance with the provisions of the City's Municipal Code (e.g., construction work limited to daytime hours, Monday through Friday) and, as a Standard Permit Condition, the project shall develop and implement a construction noise control plan. For these reasons, the Initial Study concludes the increase in ambient noise levels due to project construction would be less than significant. Neither the Initial Study nor Noise and Vibration Assessment

Responses to Comments

recommend installing a sound wall or state a sound wall should only be implemented as a last resort due to cost.

4. RESPONSE TO COMMENT LETTER 4 FROM ILANGO GANGA, DATED MARCH 9, 2020

Comment 4.1: 1. Section: 4.13.1.3: Noise measurement locations and noise levels: Long term noise measurements were not performed on the sections of the path behind the Lamar Drive from Blancy to East Estates drive and behind De Palma Lane. Long term noise measurements should be performed and noise level trends to be plotted for this section of the trail as well.

Response 4.1: A noise monitoring survey was completed at the site on January 2, 2019 through January 4, 2019. The survey included two long-term (LT-1 and LT-2) and two short-term (ST-1 and ST-2) noise measurements. The purpose of the noise monitoring survey was to accurately describe existing ambient noise levels in the project area. Based on the survey, the community noise equivalent level along the proposed trail alignment ranges from 52 to 54 dBA CNEL. The noise environment in the project vicinity is dominated by traffic noise along the local roadways that run parallel to or cross the proposed trail alignment (e.g., Pacifica Drive and South Blancy Avenue) and local neighborhood activities. A short-term noise measurement was completed behind the residences along La Mar Drive, which confirmed the long-term measurement data accurately reflects ambient noise levels at this location. Therefore, the additional long-term measurements requested in this comment are not necessary.

Comment 4.2: 2. Section 4.13.2.1 Operational noise: The analysis assumes nearest residential property line would be approximately 6 ft from the center of the trail. However, the trail is a bidirectional trail with people biking, walking, jogging on both direction that may be as close as or less than 2ft from the property line. The analysis should include noise sources 2ft or less from the property line and the nose source could be as tall as or taller than 5-6 ft that is the height of the fences.

Response 4.2: The Initial Study and Noise and Vibration Assessment correctly estimates trail construction and operation noise levels from the trail centerline, which represents the average distance between the noise source and nearest property line. As stated on pages 94 and 96 of the Initial Study, trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. For these reasons, the additional analysis requested in this comment is not necessary.

Comment 4.3: 3. The analysis shows the noise level of 50-55dBA at 20ft for noise sources (people talking, etc..). The noise level at less than 20 feet and as close as 2 ft to the residential properties should be shown as well.

Response 4.3: The Initial Study and Noise and Vibration Assessment correctly estimates trail construction and operation noise levels at a distance of 6 feet, which represents the average distance between the noise source and nearest property line. As stated on page 96 of the Initial Study, at a distance of 6 feet from the property line, talking or laughing would

Responses to Comments

generate noise levels of 61 to 66 dBA assuming no attenuation from a property line fence. Whistles, bells, or shouting would generate unattenuated noise levels of 76 to 81 dBA at the nearest residential property line.

Comment 4.4: 4. At a distance of 6 ft from noise source talking and laughing would generate 61-66 dBA and shouting, etc., would generate up to 81 dBA at the nearest property line. This analysis does not show the aggregate noise due to the number of people walking, jogging, biking along the trail and duration of the traffic and peak and average periods during the day. The analysis/model does not take into account the number of people that will be generating this noise and the time of the day. The city has projected hundreds of people walking/biking and using this trail. So the analysis/model should include the projected number of people using the trail and calculate the aggregate noise generated during various periods. It makes a subjective assessment that the activities would be "short" along the trail, however there will volumes of people moving along the trail, projection for current and future growth of traffic should be estimated and used for the analysis.

Response 4.4: The Noise and Vibration Assessment completed for the proposed project evaluates continual trail use throughout the day. Please refer to Response 3.2 for a detailed response to the issues raised in this comment.

Comment 4.5: **5.** The analysis shows the wooden fencing would have 5dBA reduction however during to varying grade levels and the noise source being elevated 5-6 feet from the ground level would have line of sight or closer to the top fence line, hence the attenuation of 5dBA is not applicable for all properties along the trail. The analysis should be more specific to show and illustrate the noise sources, attenuation, distance from property lines and actual or projected noise level for different residential units along the trail path.

Response 4.5: As stated on pages 94 and 96 of the Initial Study, trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. For these reasons, the additional analysis requested in this comment is not necessary.

Comment 4.6: 6. The noise analysis does not show the biological impact to habitat, species along the trail. The biological impact of operational noise and as well as impact due to construction should be analyzed and documented in the study.

Response 4.6: Potential project impacts upon biological resources during construction and operation are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report prepared for the project and included as Appendix A to the Initial Study. Please refer to Response 3.1 for more information regarding project biological resource impacts.

Comment 4.7: 7. The study shows that existing fences will provide 5dBA attenuation during construction, however this is not applicable to all the residential units. So barriers should be used to attenuate the noise to the residential units to adequate levels during construction.

Responses to Comments

Response 4.7: Trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. Please refer to Response 4.5.

5. RESPONSE TO COMMENT LETTER 5 FROM VIJI ILANGO, DATED MARCH 9, 2020

Comment 5.1: I noticed a discrepancy in the public review end date for Initial Study/Mitigated Negative Declaration of Regnart Creek Trail. The City's Regnart Creek webpage, the notice mailed to the residents, and the MND document says March 8th 2020, Sunday as the review end period. Sunday cannot be a review end date because it is not a business day. However, CEQA webpage in ca.gov says March 9th, 2020 Monday as the review end period. See below

https://ceqanet.opr.ca.gov/2020020179/2

There is a discrepancy between MND document and what is posted in CEQA page in ca.gov. The last date in the IS/MND document seems to be incorrect.

Response 5.1: The 30-day comment period started Friday, February 7. Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day.

Comment 5.2: Thanks for your prompt reply. Good to know that the comment period ends today. How will the residents/public know that they can submit comments today, March 9th 2020 when it's been advertised everywhere that March 8th is the deadline?

Please take this email as my comment to IS/MND document.

Response 5.2: The 30-day comment period started Friday, February 7. Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day.

6. RESPONSE TO COMMENT LETTER 6 FROM JEONGHEE YI, DATED MARCH 9, 2020

Comment 6.1: 1. Item MM BIO-2.1. page 4, Draft Mitigated Negative Declaration:
The proposed site of ramp relocation is probably some of the most friendly places for riparian habitat such as frogs and amphibians along the section of RCT parallel to La Mar Dr with grass and shades from mature trees, while the site of the existing ramp do not provide equally friendly environment for them. No matter how much effort is made to minimize the footprint of the new ramp, substantial amount of the preferable site for their habitation would be destroyed.
Does the city have any plan to compensate such loss for the riparian habitats ?

Response 6.1: Potential project impacts upon biological resources during construction and operation are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report

Responses to Comments

prepared for the project and included as Appendix A to the Initial Study. The mitigation measures for project impacts to riparian habitat (i.e., mitigation measures MM BIO-2.1 through MM BIO-2.6) are listed on pages 46 and 47 of the Initial Study.

Comment 6.2: 2. Item MM BIO-2.5, pp 4-5, Draft Mitigated Negative Declaration:
I observed Meadow Barley (or something similar to it) around the bank along RCT. Though this might be natural habitat of this area, their seeds form foxtail or foxtail-like clusters that are very sharp and spiky when it gets dry and hardened in the fall. They are very dangerous to animals walking over them because the needle could intrude into their skin. Though they are seeded on the ramp area where pedestrians are prohibited to walk on, it is quite possible for them to migrate over time to nearby sites in Wilson Park and/or for the foxtail to be blown to the pathways in Wilson Park where pets are walking.
Please consider substituting Meadow Barley to something else.

Response 6.2: As stated in MM BIO-2.5 on page 47 of the Initial Study, disturbed areas shall be seeded with native species seed. The seed mix shall consist of the California native grasses and forbs including Meadow barley, or native species otherwise acceptable to involved agencies. The comment will be taken into consideration.

Comment 6.3: 3. Item MM BIO-2.2 on p.4 and MM BIO-4.1, Draft Mitigated Negative Declaration:
Item MM BIO-4.1 indicates that demolition and construction should avoid between 2/1~8/31 in order to avoid nesting season of birds, yet they are scheduled to happen during the nesting season: 5/15~10/31.
Why is the City taking the potential disturbance ? Even if they city conduct surveys for nesting birds before the start of the construction, how do we know there are no birds migrating after the time the surveys are conducted ?

Response 6.3: The non-nesting season (i.e., September 1 through January 31) coincides with the rainy season. There would be a higher potential for erosion and sedimentation impacts to Regnart Creek if project construction occurred during the rainy season. As described under mitigation measure MM BIO-4.2 and consistent with California Department of Fish and Wildlife recommendations for construction activities during the nesting season, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist no more than seven days prior to the initiation of construction activities. With implementation of MM BIO-4.2, potential impacts to nesting birds resulting from project construction activities are considered less than significant.

Comment 6.4: 4. Item MM BIO-4.3 on p.6, Draft Mitigated Negative Declaration:
What if active nests are discovered on the construction site itself ? Does it require for the construction to stop until the nesting season is completed ?

Response 6.4: As stated under mitigation measure MM BIO-4.3 on page 51 of the Initial Study, if an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to

Responses to Comments

ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

If an active nest is found within the footprint of construction activities, construction activities may have to stop if a viable solution cannot be implemented that ensures the success of the reproductive effort.

Comment 6.5: 5. Item MM BIO-4.4 on p.6 Draft Mitigated Negative Declaration:
We've already passed the deadline of removing potential nesting substrates before starting the construction for year 2020. Has the city removed the potential nesting substrates ? If not, does it make the start of construction to be postponed to be 2021, or 9/1 after the nesting season ?

Response 6.5: Mitigation measure MM BIO-4.4 states, "[i]f construction activities will not be initiated until after the start of nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1st). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates."

The City has not removed potential nesting substrates within the proposed alignment or otherwise begun implementing the project. While MM BIO-4.4 allows for the City to obtain approval to begin removal of nesting substrate in advance of the start of construction, if there is not sufficient time to obtain the necessary approvals for substrate removal, for construction activities that will be conducted outside of the time period between September 1st and January 31st, MM BIO-4.2 requires pre-construction surveys for nesting birds to be "completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation . . .[and] no more than seven days prior to initiation of construction activities," and MM BIO-4.3 requires that if an active nest is found sufficiently close to a work area to be disturbed by construction activities, "the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species) to ensure that no nests of species protected by the MBA and California Fish and Game Code are disturbed during project implementation." Therefore, advance removal of potential nesting substrate would not delay the potential start of project construction activities, but the measures taken in compliance with mitigation measures BIO-4.2 and BIO-4.3 will reduce the potential impact to a less-than-significant level.

Comment 6.6: 6. Item MM CUL-2.1 on p.6, Draft Mitigated Negative Declaration:
Has the mechanical coring investigation by qualified archaeologist been completed yet ? Is so, what is the results ? If not done yet, when is it scheduled for ? Would the city release the report and findings ?

Response 6.6: The mechanical coring investigation has not yet been completed and has not been scheduled. The results of the mechanical coring activities shall be submitted to the Director of Public Works or his or her designee for review and acceptance prior to issuance of any Notice to Proceed for construction. Because the report could contain sensitive

Responses to Comments

information (e.g., archaeological site locations), the report may not be a be available for public review.

Comment 6.7: 7. Item MM CUL-2.2 on p.6, Draft Mitigated Negative Declaration:
If the work items described on MM Cut-2.2, how much additional time and budget do they required ?

Response 6.7: If archaeological resources are discovered during the mechanical coring investigation, the project shall retain a qualified archaeologist to prepare a treatment plan. The scope, budget, and schedule to implement the treatment plan depends on the type of archaeological resource discovered.

Comment 6.8: 8. What are the mitigations the city is planning for to protect residents along the construction site from the noise and dust ?

Response 6.8: The construction noise and dust control measures to be implemented by the project are listed in Initial Study Sections 4.13 Noise and 4.3 Air Quality, respectively. As discussed on pages 94 and 95 of the Initial Study, project construction would be completed in accordance with the provisions of the City's Municipal Code (e.g., construction work limited to daytime hours, Monday through Friday) and, as a Standard Permit Condition, the project shall develop and implement a construction noise control plan. As discussed on pages 31 and 32 of the Initial Study, the project would implement Bay Area Air Quality Management (BAAQMD) Basic Construction Measures during all phases of construction to control dust and exhaust as a Standard Permit Condition.

1222157.4

Mitigated Negative Declaration

CUPERTINO

PUBLIC WORKS DEPARTMENT
Roger Lee, Director

CITY HALL
10300 TORRE AVENUE ~ CUPERTINO, CA 95014-3266
(408) 777-3354 ~ FAX (408) 777-3333

DRAFT
CITY OF CUPERTINO
MITIGATED NEGATIVE DECLARATION

As provided by the Environmental Assessment Procedure adopted by the City Council of the City of Cupertino on May 27, 1973, and amended on March 4, 1974, January 17, 1977, May 1, 1978, and July 7, 1980, the City of Cupertino City Council has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project implementation. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affect by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance (CEQA Guidelines Section 15382).

PROJECT INFORMATION AND LOCATION

Project Name:	Regnart Creek Trail
Applicant:	City of Cupertino
Location:	City of Cupertino

PROJECT DESCRIPTION

The project proposes to construct a 0.8-mile shared-use trail extending from Torre Avenue to East Estates Drive in the City of Cupertino. The project location is shown on regional, vicinity, and aerial maps on Figures 2.2-1, 2.2-2, and 2.2-3, respectively, in the attached Initial Study. The proposed trail would provide a connection from the Cupertino Civic Center complex to the west with Wilson and Creekside Parks to the east. For most of its reach, the trail would be constructed on the existing Valley Water maintenance road along Regnart Creek. The trail would be 10 feet wide and surfaced with decomposed granite. The project would relocate the existing concrete Valley Water maintenance ramp located along the proposed trail alignment to the north side of the creek. Various ancillary trail components and features are proposed along the trail alignment at specific locations, including curb and gutter improvements, fence replacements, chain link gates at trail access points, removable railings, chain link fencing, and a

Mitigated Negative Declaration

pedestrian bridge at Wilson Park. Additionally, the project includes pedestrian and bicycle improvements on the surrounding roadways to provide better access to and from the proposed trail.

FINDINGS OF DECISIONMAKING BODY

The City Council finds the project described is consistent with the General Plan and will not have a significant effect on the environment based on the analysis completed in the attached Initial Study. The City, before the public release of this draft Mitigated Negative Declaration (MND), has agreed to make project revisions that mitigate the project's effects to a less than significant level. The City agrees to implement the mitigation measures identified in the attached Initial Study and summarized below.

Biological Resources

MM BIO-1.1: A qualified biologist shall conduct a preconstruction survey of the work area for pond turtles within 48 hours prior to the start of work activities. If a western pond turtle is observed within the work area at any time before or during proposed construction activities, all activities shall cease until such time that either: (1) the pond turtle leaves the area, or; (2) the qualified biologist can capture and relocate the animal to suitable habitat away from project activities.

MM BIO-1.2: A qualified wildlife ecologist shall conduct a preconstruction survey for active nests of San Francisco dusky-footed woodrats within the project construction area within 30 days prior to the start of construction within non-developed habitats on the project site. If active woodrat nests are determined to be present in, or within 10 feet of, project work areas, Mitigation Measures MM BIO-1.3 and BIO-1.4 below will be implemented, as appropriate.

MM BIO-1.3: Active woodrat nests that are detected within project construction areas shall be avoided to the extent feasible. A minimum 10-foot buffer shall be maintained between project construction activities and woodrat nests to avoid disturbance. In some situations, a smaller buffer may be allowed if, in the opinion of a qualified biologist, nest relocation (Measure MM BIO-1.4 below) would represent a greater disturbance to the woodrats than the adjacent work activities.

MM BIO-1.4: If avoidance of active woodrat nests within and immediately adjacent to (within 10 feet of) the construction areas is not feasible, then nest materials will be relocated to suitable habitat as close to the project site as possible (ideally, within or immediately adjacent to the site). One or both of the following two relocation measures will be implemented, depending on whether existing woodrat nest sites are connected by suitable dispersal habitat to the nest relocation sites.

Mitigated Negative Declaration

- If the woodrat nest site and the proposed relocation area are connected by suitable dispersal habitat for the woodrat, as determined by a qualified biologist, the following relocation methodology shall be used. Prior to the start of construction activities, a qualified biologist will disturb the woodrat nest to the degree that all woodrats leave the nest and seek refuge outside of the construction area. Relocation efforts shall avoid the peak nesting season (February–July) to the maximum extent feasible. Disturbance of the woodrat nest shall be initiated no earlier than one hour before dusk to minimize the exposure of woodrats to diurnal predators. Subsequently, the biologist will dismantle and relocate the nest material by hand. During the deconstruction process, the biologist will attempt to assess if there are juveniles in the nest. If immobile juveniles are observed, the deconstruction process shall be discontinued until a time when the biologist believes the juveniles will be capable of independent survival (typically after 2 to 3 weeks). A no-disturbance buffer shall be established around the nest until the juveniles are mobile. The nest may be dismantled once the biologist has determined that adverse impacts on the juveniles would not occur.

- If a qualified biologist determines that the woodrat relocation area is separated from the nest site by major impediments, or a complete barrier, to woodrat movement, trapping for woodrats shall be conducted prior to relocation of nest material. Prior to the start of nest relocation activities, artificial pine box shelters will be placed at each of the sites selected for relocation of nest materials. The dimensions of the artificial shelters will be approximately 8-inch long by 8-inch wide by 6-inch high. Each shelter will include two interior chambers connected by an opening. At the relocation sites, the artificial pine box shelters will provide basement structures for the relocated woodrat nest materials, allowing woodrats to enter, use, and modify the relocated nests.

  A qualified biologist will set two traps around each of the woodrat nests to be relocated. Traps will be set within one hour prior to sunset, and baited with a mixture of peanut butter, oats, and apples. Traps will also be equipped with cotton bedding and covered with cardboard. The traps will be checked the following morning, within one-and-a-half hours of sunrise. If a woodrat is captured it will be placed in a quiet area while its nest material is relocated; the animal will then be released at the relocated nest. If no woodrats are captured after the first night, the biologist will set the traps for one additional evening to increase the probability of capturing an animal and ensuring a safe relocation. If no woodrats are captured at a given location after two nights, it will be assumed that the nest is not currently occupied.

  Trapping shall only be conducted outside the peak breeding season, which is from February through the end of July. If a litter of young is found or suspected while dismantling a nest for relocation, the nest material will be replaced, any trapped

Mitigated Negative Declaration

woodrats will be returned to the nest, and the nest will be left alone for 2 to 3 weeks, after which time the nest would be rechecked to verify that the young are capable of independent survival, as determined by the biologist, before proceeding with nest dismantling.

MM BIO-2.1: To minimize impacts to riparian habitat, soil disturbance shall be kept to the minimum footprint necessary to abandon the existing ramp and install the proposed ramp. The ramp relocation has been designed to minimize the area of disturbance to riparian ruderal grassland habitat in the existing ramp location. In addition, the proposed ramp location has been designed to have as minimal a footprint as possible.

MM BIO-2.2: The proposed maintenance ramp relocation work shall occur between May 15 and October 31 when the channel bed is dry. This will prevent unintended sediment runoff into creek waters and will ensure that there are no adverse effects to any aquatic life that may be seasonally present in the intermittent creek. Work shall halt if there is an out-of-season storm that deposits more than 0.5 inches of rain in 24 hours until the site has dried.

MM BIO-2.3: To protect on-site vegetation and water quality, the staging area for the ramp relocation shall be located on the access road to the north of the channel in Wilson Park, at least 100 feet outside the top of bank, in an area that currently supports either hardscape, landscaping, or ruderal vegetation. Similarly, all equipment and materials (e.g., road rock and project spoil) shall be contained within existing disturbed areas outside of the riparian zone in a pre-determined staging area. Erosion control measures shall be installed around the staging area to prevent runoff from the staging areas to enter the Regnart Creek channel. Any landscape areas that are affected by staging shall be restored. No staging shall occur within driplines of trees to remain.

MM BIO-2.4: The ramp relocation shall be fully designed to prevent bank failure. Following construction and to further prevent potential downstream erosion impacts, the site design shall provide proactive protection of vulnerable areas within the reach of the worksite. Such measures could include, but are not limited to, appropriately keyed-in coir logs, strategic placement of rock, and flow deflectors. Bank stabilization shall include transition designs upstream and downstream of the work site to prevent potential erosion impacts.

MM BIO-2.5: Following ramp relocation all non-hardscaped areas that have exposed soil shall be stabilized to prevent erosion. These areas shall be seeded with native species seed down to the OHWM as soon as is appropriate following completion of the project. Grassland revegetation will be most effective if the seed is applied in the fall (after September 1 and before December 1). Until that time, the area shall achieve erosion control through use of temporary measures, which are BMPs such as jute netting, fiber rolls, or other equally effective measures. These BMPs shall be removed prior to seeding. The seed mix will be broadcast seeded onto

Mitigated Negative Declaration

prepared (decompacted and scarified) soil surface and then lightly raked to maximize seed/soil contact. The seed mix shall consist of the California native grasses and forbs and application rates as shown in the following table, or native species and application rates as otherwise acceptable to involved agencies.

Scientific Name[1]	Common Name	Application Rate (pounds PLS/acre)[2]
Elymus glaucus	Blue wildrye	4.0
Eschscholzia californica	California poppy	1.0
Festuca microstachys	Small fescue	6.0
Hordeum brachyantherum	Meadow barley	10.0
Lupinus bicolor	Annual lupine	1.0

[1] Names derived from The Jepson Manual (Baldwin et al. 2012).
[2] PLS (pure live seed) = the proportion of total seed that is pure and viable. To find the total weight of raw seed needed to achieve the application rate in the table, find %PLS as follows: [(% purity of seed lot) (% germination rate of species)/100]. Then divide the application rate in the table (pounds) by the %PLS (expressed as a decimal) to find total weight of raw seed applied per acre for each species.

MM BIO-2.6: The City shall monitor the reseeded riparian bank areas annually for two years to ensure that the percent vegetation cover reaches at least 75 percent of the cover in the adjacent undisturbed reaches, and shall control any infestations of Cal-IPC rated moderate or high weeds comprising greater than five percent of the total cover in the recovering areas. If after two years, these success criteria have not been met, the City shall implement remedial measures, such as re-seeding the area and monitoring for an additional two years.

MM BIO-4.1: Construction activities (or at least the commencement of such activities) shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1st through August 31st.

MM BIO-4.2: If it is not possible to schedule demolition and construction between September 1st and January 31st, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys shall be completed no more than seven days prior to the initiation of construction activities. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, grasslands, buildings) in and immediately adjacent to the impact areas for nests.

Mitigated Negative Declaration

MM BIO-4.3: If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

MM BIO-4.4: If construction activities will not be initiated until after the start of nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1st). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates.

Cultural Resources

MM CUL-2.1: Prior to any project-related construction or ground disturbing activities, a qualified archaeologist shall complete mechanical coring to explore for archaeological resources. Coring shall be completed near the proposed eastern terminus and in specific locations that will be impacted by the proposed improvements, such as the proposed new maintenance ramp and bridge abutment locations. The results of the mechanical coring activities shall be submitted to the Director of Public Works or his or her designee for review and acceptance prior to issuance of any Notice to Proceed for construction. If archaeological resources are discovered during the mechanical coring investigation, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist.

MM CUL-2.2: If archaeological resources are discovered during the mechanical coring investigation, the project shall retain a qualified archaeologist to prepare a treatment plan that reflects the project details pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Public Works for review/approval and shall be implemented prior to proceeding with any grading work for the project. The plan may require archaeological data recovery excavations to address treatment of the resource along with subsequent laboratory processing and analysis. If appropriate, the archaeologist may conduct archaeological monitoring on all or part of the site. An archaeological report shall be written detailing all archaeological finds and submitted to the City and the Northwest Information Center.

MM CUL-2.3 If archaeological resources are not discovered during the mechanical coring investigation, project construction shall proceed under the presumption that upon discovery of possible buried prehistoric or historic cultural materials, work within 25 feet of the find must be halted and mitigation measure MM CUL-2.2 shall be implemented.

Mitigated Negative Declaration

Hazards and Hazardous Materials

MM HAZ-2.1: Prior to excavation, shallow soil samples shall be taken along the proposed trial alignment and other areas of disturbance to determine if contaminated soil is located on-site with concentrations above established construction/trench worker thresholds.

MM HAZ-2.2: Once soil sampling is complete, a report of findings shall be provided to the SCCDEH (or other appropriate agency) for review. If no contaminants are found above established thresholds, no further action is required.

MM HAZ-2.3: If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) shall be prepared and implemented to manage the cleanup of potential contamination. The SMP shall be prepared prior to construction to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of contaminated soils. Contaminated soil removed from the site shall be hauled off-site and disposed at a licensed hazardous materials disposal site in accordance with applicable regulations.

The SMP shall be submitted to the SCCDEH (or other appropriate agency) for review and acceptance. A copy of the accepted SMP shall be submitted to the City of Cupertino Public Works Department and shall be implemented prior to the commencement of grading activities on the site.

Noise

MM NOI-2.1: The following measures shall be implemented where vibration levels due to construction activities would exceed 0.3 inch per second PPV at nearby sensitive uses:

- Comply with the construction noise ordinance to limit hours of exposure. The City's Municipal Code allows construction activities during daytime hours, Monday through Friday. Construction is prohibited on weekends and all holidays.
- Prohibit the use of heavy vibration-generating construction equipment within 20 feet of the structures located along the project corridor.
- The contractor shall alert heavy equipment operators in close proximity of the adjacent structures so they can exercise extra care.

Mitigated Negative Declaration

PUBLIC REVIEW PERIOD

The 30-day public circulation period for the Initial Study and draft MND began on February 7, 2020 and ended on March 8, 2020.

Mitigation Measures

pedestrian bridge at Wilson Park. Additionally, the project includes pedestrian and bicycle improvements on the surrounding roadways to provide better access to and from the proposed trail.

FINDINGS OF DECISIONMAKING BODY

The City Council finds the project described is consistent with the General Plan and will not have a significant effect on the environment based on the analysis completed in the attached Initial Study. The City, before the public release of this draft Mitigated Negative Declaration (MND), has agreed to make project revisions that mitigate the project's effects to a less than significant level. The City agrees to implement the mitigation measures identified in the attached Initial Study and summarized below.

Biological Resources

MM BIO-1.1: A qualified biologist shall conduct a preconstruction survey of the work area for pond turtles within 48 hours prior to the start of work activities. If a western pond turtle is observed within the work area at any time before or during proposed construction activities, all activities shall cease until such time that either: (1) the pond turtle leaves the area, or; (2) the qualified biologist can capture and relocate the animal to suitable habitat away from project activities.

MM BIO-1.2: A qualified wildlife ecologist shall conduct a preconstruction survey for active nests of San Francisco dusky-footed woodrats within the project construction area within 30 days prior to the start of construction within non-developed habitats on the project site. If active woodrat nests are determined to be present in, or within 10 feet of, project work areas, Mitigation Measures MM BIO-1.3 and BIO-1.4 below will be implemented, as appropriate.

MM BIO-1.3: Active woodrat nests that are detected within project construction areas shall be avoided to the extent feasible. A minimum 10-foot buffer shall be maintained between project construction activities and woodrat nests to avoid disturbance. In some situations, a smaller buffer may be allowed if, in the opinion of a qualified biologist, nest relocation (Measure MM BIO-1.4 below) would represent a greater disturbance to the woodrats than the adjacent work activities.

MM BIO-1.4: If avoidance of active woodrat nests within and immediately adjacent to (within 10 feet of) the construction areas is not feasible, then nest materials will be relocated to suitable habitat as close to the project site as possible (ideally, within or immediately adjacent to the site). One or both of the following two relocation measures will be implemented, depending on whether existing woodrat nest sites are connected by suitable dispersal habitat to the nest relocation sites.

Mitigation Measures

- If the woodrat nest site and the proposed relocation area are connected by suitable dispersal habitat for the woodrat, as determined by a qualified biologist, the following relocation methodology shall be used. Prior to the start of construction activities, a qualified biologist will disturb the woodrat nest to the degree that all woodrats leave the nest and seek refuge outside of the construction area. Relocation efforts shall avoid the peak nesting season (February–July) to the maximum extent feasible. Disturbance of the woodrat nest shall be initiated no earlier than one hour before dusk to minimize the exposure of woodrats to diurnal predators. Subsequently, the biologist will dismantle and relocate the nest material by hand. During the deconstruction process, the biologist will attempt to assess if there are juveniles in the nest. If immobile juveniles are observed, the deconstruction process shall be discontinued until a time when the biologist believes the juveniles will be capable of independent survival (typically after 2 to 3 weeks). A no-disturbance buffer shall be established around the nest until the juveniles are mobile. The nest may be dismantled once the biologist has determined that adverse impacts on the juveniles would not occur.

- If a qualified biologist determines that the woodrat relocation area is separated from the nest site by major impediments, or a complete barrier, to woodrat movement, trapping for woodrats shall be conducted prior to relocation of nest material. Prior to the start of nest relocation activities, artificial pine box shelters will be placed at each of the sites selected for relocation of nest materials. The dimensions of the artificial shelters will be approximately 8-inch long by 8-inch wide by 6-inch high. Each shelter will include two interior chambers connected by an opening. At the relocation sites, the artificial pine box shelters will provide basement structures for the relocated woodrat nest materials, allowing woodrats to enter, use, and modify the relocated nests.

  A qualified biologist will set two traps around each of the woodrat nests to be relocated. Traps will be set within one hour prior to sunset, and baited with a mixture of peanut butter, oats, and apples. Traps will also be equipped with cotton bedding and covered with cardboard. The traps will be checked the following morning, within one-and-a-half hours of sunrise. If a woodrat is captured it will be placed in a quiet area while its nest material is relocated; the animal will then be released at the relocated nest. If no woodrats are captured after the first night, the biologist will set the traps for one additional evening to increase the probability of capturing an animal and ensuring a safe relocation. If no woodrats are captured at a given location after two nights, it will be assumed that the nest is not currently occupied.

  Trapping shall only be conducted outside the peak breeding season, which is from February through the end of July. If a litter of young is found or suspected while dismantling a nest for relocation, the nest material will be replaced, any trapped

Mitigation Measures

woodrats will be returned to the nest, and the nest will be left alone for 2 to 3 weeks, after which time the nest would be rechecked to verify that the young are capable of independent survival, as determined by the biologist, before proceeding with nest dismantling.

MM BIO-2.1: To minimize impacts to riparian habitat, soil disturbance shall be kept to the minimum footprint necessary to abandon the existing ramp and install the proposed ramp. The ramp relocation has been designed to minimize the area of disturbance to riparian ruderal grassland habitat in the existing ramp location. In addition, the proposed ramp location has been designed to have as minimal a footprint as possible.

MM BIO-2.2: The proposed maintenance ramp relocation work shall occur between May 15 and October 31 when the channel bed is dry. This will prevent unintended sediment runoff into creek waters and will ensure that there are no adverse effects to any aquatic life that may be seasonally present in the intermittent creek. Work shall halt if there is an out-of-season storm that deposits more than 0.5 inches of rain in 24 hours until the site has dried.

MM BIO-2.3: To protect on-site vegetation and water quality, the staging area for the ramp relocation shall be located on the access road to the north of the channel in Wilson Park, at least 100 feet outside the top of bank, in an area that currently supports either hardscape, landscaping, or ruderal vegetation. Similarly, all equipment and materials (e.g., road rock and project spoil) shall be contained within existing disturbed areas outside of the riparian zone in a pre-determined staging area. Erosion control measures shall be installed around the staging area to prevent runoff from the staging areas to enter the Regnart Creek channel. Any landscape areas that are affected by staging shall be restored. No staging shall occur within driplines of trees to remain.

MM BIO-2.4: The ramp relocation shall be fully designed to prevent bank failure. Following construction and to further prevent potential downstream erosion impacts, the site design shall provide proactive protection of vulnerable areas within the reach of the worksite. Such measures could include, but are not limited to, appropriately keyed-in coir logs, strategic placement of rock, and flow deflectors. Bank stabilization shall include transition designs upstream and downstream of the work site to prevent potential erosion impacts.

MM BIO-2.5: Following ramp relocation all non-hardscaped areas that have exposed soil shall be stabilized to prevent erosion. These areas shall be seeded with native species seed down to the OHWM as soon as is appropriate following completion of the project. Grassland revegetation will be most effective if the seed is applied in the fall (after September 1 and before December 1), Until that time, the area shall achieve erosion control through use of temporary measures, which are BMPs such as jute netting, fiber rolls, or other equally effective measures. These BMPs shall be removed prior to seeding. The seed mix will be broadcast seeded onto

Mitigation Measures

prepared (decompacted and scarified) soil surface and then lightly raked to maximize seed/soil contact. The seed mix shall consist of the California native grasses and forbs and application rates as shown in the following table, or native species and application rates as otherwise acceptable to involved agencies.

Scientific Name[1]	Common Name	Application Rate (pounds PLS/acre)[2]
Elymus glaucus	Blue wildrye	4.0
Eschscholzia californica	California poppy	1.0
Festuca microstachys	Small fescue	6.0
Hordeum brachyantherum	Meadow barley	10.0
Lupinus bicolor	Annual lupine	1.0

[1] Names derived from The Jepson Manual (Baldwin et al. 2012).
[2] PLS (pure live seed) = the proportion of total seed that is pure and viable. To find the total weight of raw seed needed to achieve the application rate in the table, find %PLS as follows: [(% purity of seed lot) (% germination rate of species)/100]. Then divide the application rate in the table (pounds) by the %PLS (expressed as a decimal) to find total weight of raw seed applied per acre for each species.

MM BIO-2.6: The City shall monitor the reseeded riparian bank areas annually for two years to ensure that the percent vegetation cover reaches at least 75 percent of the cover in the adjacent undisturbed reaches, and shall control any infestations of Cal-IPC rated moderate or high weeds comprising greater than five percent of the total cover in the recovering areas. If after two years, these success criteria have not been met, the City shall implement remedial measures, such as re-seeding the area and monitoring for an additional two years.

MM BIO-4.1: Construction activities (or at least the commencement of such activities) shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1st through August 31st.

MM BIO-4.2: If it is not possible to schedule demolition and construction between September 1st and January 31st, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys shall be completed no more than seven days prior to the initiation of construction activities. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, grasslands, buildings) in and immediately adjacent to the impact areas for nests.

Mitigation Measures

MM BIO-4.3: If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

MM BIO-4.4: If construction activities will not be initiated until after the start of nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1st). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates.

Cultural Resources

MM CUL-2.1: Prior to any project-related construction or ground disturbing activities, a qualified archaeologist shall complete mechanical coring to explore for archaeological resources. Coring shall be completed near the proposed eastern terminus and in specific locations that will be impacted by the proposed improvements, such as the proposed new maintenance ramp and bridge abutment locations. The results of the mechanical coring activities shall be submitted to the Director of Public Works or his or her designee for review and acceptance prior to issuance of any Notice to Proceed for construction. If archaeological resources are discovered during the mechanical coring investigation, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist.

MM CUL-2.2: If archaeological resources are discovered during the mechanical coring investigation, the project shall retain a qualified archaeologist to prepare a treatment plan that reflects the project details pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Public Works for review/approval and shall be implemented prior to proceeding with any grading work for the project. The plan may require archaeological data recovery excavations to address treatment of the resource along with subsequent laboratory processing and analysis. If appropriate, the archaeologist may conduct archaeological monitoring on all or part of the site. An archaeological report shall be written detailing all archaeological finds and submitted to the City and the Northwest Information Center.

MM CUL-2.3 If archaeological resources are not discovered during the mechanical coring investigation, project construction shall proceed under the presumption that upon discovery of possible buried prehistoric or historic cultural materials, work within 25 feet of the find must be halted and mitigation measure MM CUL-2.2 shall be implemented.

Mitigation Measures

Hazards and Hazardous Materials

MM HAZ-2.1: Prior to excavation, shallow soil samples shall be taken along the proposed trial alignment and other areas of disturbance to determine if contaminated soil is located on-site with concentrations above established construction/trench worker thresholds.

MM HAZ-2.2: Once soil sampling is complete, a report of findings shall be provided to the SCCDEH (or other appropriate agency) for review. If no contaminants are found above established thresholds, no further action is required.

MM HAZ-2.3: If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) shall be prepared and implemented to manage the cleanup of potential contamination. The SMP shall be prepared prior to construction to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of contaminated soils. Contaminated soil removed from the site shall be hauled off-site and disposed at a licensed hazardous materials disposal site in accordance with applicable regulations.

The SMP shall be submitted to the SCCDEH (or other appropriate agency) for review and acceptance. A copy of the accepted SMP shall be submitted to the City of Cupertino Public Works Department and shall be implemented prior to the commencement of grading activities on the site.

Noise

MM NOI-2.1: The following measures shall be implemented where vibration levels due to construction activities would exceed 0.3 inch per second PPV at nearby sensitive uses:

- Comply with the construction noise ordinance to limit hours of exposure. The City's Municipal Code allows construction activities during daytime hours, Monday through Friday. Construction is prohibited on weekends and all holidays.
- Prohibit the use of heavy vibration-generating construction equipment within 20 feet of the structures located along the project corridor.
- The contractor shall alert heavy equipment operators in close proximity of the adjacent structures so they can exercise extra care.