Disposition and Development Agreement for APN 326-27-053 Project CEQA Exemption

City of Cupertino

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SOURCES

All documents cited in this report and used in its preparation are hereby incorporated by reference into this document. Copies of documents referenced herein are available for review at the City of Cupertino Community Development Department at 10300 Torre Avenue, Cupertino, California 95014.

1. INTRODUCTION

This section describes the standards for determining a significant effect on the environment from the approval of the proposed Disposition and Development Agreement (DDA) for Assessor's Parcel Number (APN) 326-27-053 Project (proposed DDA project or proposed project), pursuant to the requirements of the California Environmental Quality Act (CEQA).[1] The DDA is not a development project; however, it would facilitate the construction and operation of a future 100 percent affordable housing development (future development) in Cupertino that is exempt from CEQA pursuant to Public Resources Code (PRC) Section 21159.23, *Low-Income Housing Exemption*. Accordingly, this section also describes the City of Cupertino Municipal Code (CMC) Chapter 17.04, *Cupertino Standard Environmental Protection Requirements,* that apply to all development projects in Cupertino regardless of CEQA compliance and, therefore, apply to the future development.

Because the subject of this document is a DDA that would facilitate the future development, the "project site" referenced in this document is the location of the future development, herein referred to as "development site."

1.1 CATEGORICAL EXEMPTION

Article 19 (Categorical Exemptions) of the State CEQA Guidelines[2] includes, as required by CEQA Section 21084 (List of Exempt Classes of Projects; Projects Damaging Scenic Resources), a list of classes of projects that have been determined not to have a significant effect on the environment and, as a result, are exempt from review under CEQA. This document has been prepared to demonstrate CEQA compliance as it pertains to the approval of the proposed project. This document also provides information to decision makers regarding a finding that the proposed project is exempt under CEQA.

This document describes how the proposed DDA project qualifies for a Class 32 CEQA Exemption pursuant to State CEQA Guidelines Section 15332 (Infill Development Projects), which requires that:

(a) The development is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable Zoning designations and regulations;

[1] The CEQA Statute is found at Public Resources Code, Division 13, *Environmental Quality*, Sections 21000 to 21189.

[2] The CEQA Guidelines are found at California Code of Regulations, Title 14, *Natural Resources*, Division 6, *Resources Agency*, Chapter 3, *Guidelines for Implementation of the California Environmental Quality Act*, Sections 15000 to 15387.

(b) Development occurs within the city limits on a site of less than 5 acres in size that is substantially surrounded by urban uses;
(c) The development site has no value for endangered, rare or threatened species;
(d) The development would not result in any significant effects related to traffic, noise, air quality or water quality; and
(e) The development site can be adequately served by all required utilities and public services.

In addition, this document demonstrates that none of the exceptions to categorical exemptions apply pursuant to State CEQA Guidelines Section 15300.2 (Exceptions), which are based on the following:

(a) The development would not be located within a sensitive environment;
(b) There would be no cumulative impacts;
(c) There would be no significant effects on the environment due to an unusual circumstance;
(d) There would be no impacts to a scenic highway;
(e) The development site is not located on a hazardous waste site pursuant to Government Code Section 65962.5 (Cortese List); and
(f) There would be no impacts to historical resources.

1.2 STANDARD ENVIRONMENTAL PROTECTION REQUIREMENTS

In addition to the standards identified in Section 1.1, *Categorical Exemption*, all projects in Cupertino are required to comply with the CMC Chapter 17.04, *Standard Environmental Protection Requirements,* pursuant to CMC Section 17.04.030(A). Pursuant to CMC Section 17.04.030(B)(1), because the proposed project would facilitate a future development with more than four units, compliance must be demonstrated through submittal and implementation of a construction management plan and/or permit plans, as applicable, prior to issuance of a discretionary approval, to the satisfaction of the City. Pursuant to CMC Chapter 17.04.04, *Standard Environmental Protection Technical Report Submittal Requirements*, development projects must submit technical reports for air quality, hazardous materials, vehicle miles traveled (VMT), and construction vibration, as applicable. These reports may be subject to peer review by the City's third-party reviewers. CMC Chapter 17.04.050*, Standard Environmental Protection Permit Submittal Requirements*, also includes nine permit submittal requirements:

1. Air Quality
2. Hazardous Materials
3. Greenhouse Gas Emissions and Energy
4. Biologic Resources
5. Cultural Resources
6. Hydrology and Water Quality
7. Noise and Vibration
8. Paleontological Resources
9. Utilities and Service Systems

2. PROJECT DESCRIPTION

2.1 DISPOSITION AND DEVELOPMENT AGREEMENT

A DDA is an agreement that sets forth the terms surrounding the sale, lease, exchange, or disposal of property. The DDA states the terms and conditions that must be followed to ensure that contract parties follow the agreed-upon rules. The proposed project is a DDA between the City and Charities Housing. The DDA would address the transfer of APN 326-27-053 on Mary Avenue in the Garden Gate neighborhood to Charities Housing, who would develop the 100 percent affordable housing development in partnership with the Cupertino Rotary and Housing Choices Coalition. The DDA would facilitate a housing development of 40 units in two buildings adjoined by a central surface parking area, described further in Section 2.3, *Development Summary.*

2.2 DEVELOPMENT SITE LOCATION AND EXISTING CONDITIONS

The site that is the subject of the DDA (development site) is in the city of Cupertino, which is approximately 38 miles southeast of San Francisco. Cupertino is on the western edge of Santa Clara County and west of the city of San Jose, south of the city of Sunnyvale, and north of the city of Saratoga. Regional access to the development site is provided by Interstate 280 (I-280) via North Wolfe Road to the north, and by Highway 85 via Stevens Creek Boulevard to the west.

The development site does not currently have an address but can be identified as a portion of Santa Clara County APN 326-27-030. The development site is currently undeveloped and is owned by the City of Cupertino. The site is situated on a narrow 0.79-acre lot on Mary Avenue at the intersection of Mary Avenue and Parkwood Drive in the central region of the city. The project site is in a built-up and urbanized area, with the Mary Avenue Dog Park to the north, residential development to the east, undeveloped land to the south, and Highway 85 to the west beyond a sound wall. The project site is bounded by the Mary Avene Dog Park to the north, Mary Avenue to the east, undeveloped land to the south, and the sound wall to the west.

Sensitive receptors[3] within 0.25 miles (1,320 feet)[4] of the future residential development site include residential units across Mary Avenue, approximately 0.01 miles (100 feet) to the east.

The development site is identified as Housing Site 10 in the City's adopted Housing Element. The development site has a Residential Very High Density General Plan land use designation and R-4 zoning. The density standard for the development site is 65 units per acre.

The development site is flat and currently developed with street parking, sidewalks, and trees. There are no structures on the site. According to the Vegetation Map shown in the Environmental Resources and Sustainability Element of the Cupertino General Plan, the project site is within the urban forest (i.e., trees in the city).[5] The City recognizes that every tree on both public and private property is an important part of Cupertino's urban forest and contributes significant economic, environmental, and aesthetic benefits of the community.[6] There are existing trees on the site.

Existing transit would service the project vicinity. Bus stops nearest to the development site include a Route 51 stop (2,100 feet), Route 55 stop (3,600 feet), Route 25 stop (3,700 feet), Route 23 stop (2,600 feet) and Rapid 523 stop (3,700 feet).

Existing pedestrian facilities in the vicinity of the development site consist of sidewalks, Americans with Disabilities Act (ADA) compliant curb ramps, and crosswalks at many of the nearby intersections. Continuous sidewalks exist along the east side of Mary Avenue and both sides of Stevens Creek Boulevard, Campus Drive, and Stelling Road. Existing bicycle facilities in the vicinity include bike lanes and bike routes.

[3] Sensitive receptors include places with people that have an increased sensitivity to air pollution, noise, or environmental contaminants. These sites can include schools, parks and playgrounds, day care centers, hotels, senior housing, nursing homes, hospitals, and residential dwelling units.

[4] This distance is consistent with CEQA Guidelines topic *Hazards and Hazardous Materials*, which asks "Would the project emit hazardous emissions or handle hazardous materials, substances or waste within 0.25 miles of an existing or proposed school?"

[5] City of Cupertino, May 2024, *Cupertino General Plan Community Vision 2015-2040, Chapter 6: Environmental Resources and Sustainability Element, Figure ES-1, Vegetation*, https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/General-Plan/General-Plan-Community-Vision, accessed January 2, 2026.

[6] City of Cupertino, 2025, Tree Protection & Tree Removal, https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/Residential-Planning/Tree-Protection-Removal, accessed January 2, 2026.

2.3 DEVELOPMENT SUMMARY

The DDA would facilitate the future development of 40 dwelling units in two buildings adjoined by a central surface parking area. The 40 units would be a mix of studio, one-bedroom, and two-bedroom apartments to accommodate various household needs and targeted populations, including those with intellectual and developmental disabilities (IDD), non-IDD residents, and a staff apartment. The future development would also include a community center and leasing office. The future development would include two 2-way driveways on Mary Avenue: one opposite Parkwood Drive and the other approximately 180 feet south of the first driveway.

2.3.1 Utilities

The utility infrastructure for the development site would connect to the existing water, sewer, storm drain system, and electricity network in the area, and would be served by an existing solid waste landfill.

The development site is within the Cupertino Water Service (CWS) area, leased to San José Water (SJW). Water service to the development site would be provided by the existing water line across Mary Avenue. Domestic water would be installed to connect to the existing water lines. It is also within the Cupertino Sanitary District (CSD) service area, and wastewater would be treated at the San Jose/Santa Clara Water Pollution Control Plant (SJ/SCWPCD). Wastewater generated at the project site would be collected by the existing sanitary sewer lines on Mary Avenue.

The future development would result in impervious surfaces coverage. Stormwater would be treated on site as required to meet municipal stormwater permit requirements. The future development is required to comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program C.3 requirements, which include minimization of impervious surfaces, measures to detain or infiltrate runoff from peak flows to match pre-development conditions, and agreements to ensure that the stormwater treatment and flow control facilities are maintained in perpetuity. The future development must also comply with CMC Chapter 9.18, *Stormwater Pollution Prevention and Watershed Protection*, which is intended to provide regulations and give legal effect to certain requirements of the National Pollutant Discharge Elimination System (NPDES) permit issued to the City.

The future development would be all electric, and Pacific Gas & Electric (PG&E) would supply electricity to the project site via existing infrastructure. Electric, cable, and telephone service would connect to existing service lines along the western property line. There are no existing overhead lines on the development site. New on-site utilities would be placed underground. The source of electricity would be provided through a partnership of Silicon Valley Clean Energy

(SVCE), which provides a standard electricity offering from a 50 percent renewable portfolio, and PG&E. SVCE also offers a 100 percent renewable option that electricity customers can opt into. As previously stated, the future development would comply with the City's adopted green building requirements, which includes the California Green Building Standards Code and is required to be Green Points Rated certified.

Recology South Bay would provide curbside recycling, garbage, and compost and landscaping waste service to the project site. All non-hazardous solid waste collected under the Recology franchise agreement is taken to Newby Island Sanitary Landfill for processing. Under the agreement between the City and Recology, Recology also handles recyclable materials.

2.3.2 Landscaping

All planting and irrigation would conform with the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which require water conservation and require new buildings to reduce water consumption by 20 percent. CMC Sections 16.58.100 through 16.58.140 set forth the standards for green building requirements by type of building. As shown on Table 101.10 in CMC Section 16.58.230, new construction greater than nine homes is required to be Green Points Rated certified at minimum 50 points, Silver in Leadership in Energy & Environmental Design (LEED) (City's preferred method), or Alternate Reference Standard pursuant to Section 101.10.2. The future development would be conditioned to meet one of these mandatory standards at the building permit phase. The LEED rating system encourages water use reduction. Specifically, in LEED v4.1 for Building Design and Construction (BD+C), Outdoor Water Use Reduction, Indoor Water Use Reduction, and Building-Level Water Metering are prerequisites for achieving Water Efficiency credits.

2.3.3 Construction

The future development tree removal, grading, and construction would occur between 2026 and 2028. Demolition and construction work would be conducted between 7:00 a.m. to 8:00 p.m. on weekdays, as provided for in CMC Section 10.48.053, *Grading, Construction and Demolition.* Demolition and construction is not permitted on weekends or holidays for sites within 750 feet of other residential properties.[7] Demolition debris would be off-hauled for disposal in accordance with the City of Cupertino's Recycling and Diversion of Construction and Demolition Waste Ordinance.[8] Typical equipment to be used for demolition and site preparation

[7] Cupertino Municipal Code, Title 10, *Public Peace, Safety and Morals*, Chapter 10.48, *Community Noise Control*, Section 10.48.053, *Grading, Construction and Demolition*.

[8] Cupertino Municipal Code, Title 16, *Building and Construction*, Chapter 16.72, *Recycling and Diversion of Construction and Demolition Waste.*

would include concrete/industrial saws, rubber-tired dozers, tractors, loaders, backhoes, graders, and scrapers.

No pile driving, rock blasting, or crushing would occur during the construction phase. Typical equipment to be used during construction would include cranes, forklifts, generator sets, tractors, loaders, backhoes, welders, cement and mortar mixers, pavers, paving equipment, and rollers.

During demolition and construction, vehicles, equipment, and materials would be staged and stored on a portion of the project site when practical. The construction staging would be reduced in size and equipment needs as the site is built out. The project developer would be conditioned to restrict any long-term staging of equipment from being off of the site adjacent to existing residential uses. Due to the size and location of the development site, some staging may occur in the public right-of-way; however, the construction site and staging areas would be clearly marked, and construction fencing would be installed to prevent disturbance and safety hazards. A combination of on- and off-site parking facilities for construction workers would be identified during demolition, grading, and construction.

2.3.4 Approvals

As a Housing Element site with greater than 20 percent low income housing and a density of 20 units or more per acre, the entitlement is required to have by-right approval per the City's Code and State law. Following adoption of the CEQA Categorical Exemption, Streamlined Review, and the approval of the proposed project by the City Council, the following discretionary approvals from the City would be required for the proposed project.

ARCHITECTURAL AND SITE APPROVAL PERMIT

Permits for demolition, grading, and building and the certificate of occupancy will be required from the City. Encroachment permits from the City will also be required for any work performed in the public right-of-way.

Other agencies that also have discretionary authority related to the project are PG&E, who will authorize the connection/reconnection of electric utilities; San José Water, who will authorize the installation of a water meter connection; and CSD, who will be responsible for authorizing the sanitary sewer line.

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3. EXEMPTION

As stated in Section 1, *Introduction*, of this document, Article 19 of the State CEQA Guidelines includes a list of classes (1 through 33) of projects that have been determined not to have a significant effect on the environment and, as a result, are exempt from review under CEQA. This document has been prepared to serve as the basis for compliance with CEQA as it pertains to the proposed DDA project, and to demonstrate that the proposed DDA project qualifies for a CEQA Exemption under Sections 15332 and 15300.2 of the State CEQA Guidelines. Specifically, the information provided herein shows that:

- The proposed DDA project qualifies for an exemption under State CEQA Guidelines Section 15332 (Class 32: Infill Development Projects) and, as a result, would not have a significant effect on the environment.

No exceptions to the infill exemption, as identified in State CEQA Guidelines Section 15300.2, apply to the proposed project.

3.1 STATE CEQA GUIDELINES SECTION 15332(A): GENERAL PLAN AND ZONING CONSISTENCY

For the reasons stated herein, the proposed DDA project, which would facilitate the construction and operation of a future development, is consistent with the applicable General Plan designation and all applicable General Plan policies, as well as the applicable zoning designations and regulations at the time of project application, and therefore meets the criteria for State CEQA Guidelines Section 15332(a).

The project site's General Plan land use designation is Residential Very-High Density and the zoning district is R-4. The density standard for the site is 65 to 80 units per acre. Future development facilitated by the proposed DDA project would have a density of 50.6 units per acre, which would be below the City's density standards for the site.

However, the development site is identified as Housing Site 10 in Table B4-7, *Priority Housing Sites in Residential Zones,* in the City of Cupertino, 2023-2031 Housing Element, which was adopted on May 14, 2024.[9] When assigning realistic capacity needs to the Housing Element sites, the project site was the one exception due to the active 100 percent affordable housing

[9] City of Cupertino, 2023-2031 Housing Element, Appendix B: Housing Element Technical Report, Page B4-13, adopted May 14, 2024.

proposal, not yet entitled. Accordingly, the City assumed a realistic capacity and affordability based on the tentative plans for this future development,[10] and the project site was evaluated with a maximum density of 65 dwelling units per acre in the Environmental Assessment included as Appendix G of the General Plan. Thus, the future development facilitated by the proposed DDA project would have a density consistent with the General Plan.

Furthermore, Housing Element Table B4-8, *Priority Housing Sites in Residential Zones: Additional Site Details*, describes the development site as a new parcel carved out from unused right-of-way, owned by the City of Cupertino, and adjacent to Highway 85 in the Garden Gate neighborhood. Site 10 includes some on-street parking, and neighboring uses include multi-family residential uses, a dog park, condominiums, and Highway 85. In response to an October 2022 request for projects for this property, the site was identified as having an active proposal for a 40-unit, two-story affordable housing (100 percent Low and Very Low Income) project developed by Cupertino Rotary Housing Corporation, Housing Choices Coalition, and Charities Housing. The description states that the future project would include 19 units for residents with intellectual or developmental disabilities.

Because the proposed DDA project would facilitate the construction and operation of a future development that would be consistent with the General Plan land use designation and zoning for the site, and because the Housing Element identifies the site is a priority Housing Element site and recognized the potential future development of the 100 percent affordable housing development, approval of the DDA project would not introduce a new incompatible land use to the project site.

3.2 STATE CEQA GUIDELINES SECTION 15332(B): PROJECT LOCATION, SIZE, AND CONTEXT

For the reasons stated herein, the future development facilitated by the proposed DDA project would occur within city limits on a site of no more than five acres substantially surrounded by urban uses, and therefore meets the criteria of State CEQA Guidelines Section 15332(b).

The development site is within city limits on a 0.79-acre site. The development site is surrounded by urban uses and paved public streets, including commercial and residential uses. The development site is centrally located in the city. Accordingly, the future development facilitated by the proposed project meets the criteria of State CEQA Guidelines Section 15332(b).

[10] City of Cupertino, 2023-2031 Housing Element, Appendix B: Housing Element Technical Report, Page B4-6, adopted May 14, 2024.

3.3 STATE CEQA GUIDELINES SECTION 15332(C): ENDANGERED, RARE, OR THREATENED SPECIES

For the reasons stated herein, which includes compliance with the standard condition of approval protecting nesting birds and glass and lighting standards to reduce bird mortality from windows, other specific glass features, and certain lighting elements listed herein, the development site has no value for endangered, rare, or threatened species and therefore meets the criteria of State CEQA Guidelines Section 15332(c).

The development site and surrounding area are developed with urban uses. Using data from the Classification and Assessment with Landsat of Visible Ecological Groupings (CALVEG)[11] habitat mapping program, the site is classified as an "urban area." Property with this classification tends to have low to poor wildlife habitat value due to replacement of natural communities, fragmentation of remaining open space areas and parks, and intensive human disturbance. The California Natural Diversity Database (CNDDB) has no record of special-status plant and animal species on the project site or urbanized areas within a one-mile area surrounding the project site.[12] There are no natural lands within a one-mile area of the project site. For these reasons, the project site has no value as habitat for endangered, rare, or threatened species.

While there are currently only trees on the development site, they would be removed and new trees and other landscaping would be planted as a part of the future development. Migratory birds, which are protected under the Migratory Bird Treaty Act, may use vegetation, including existing trees, on or near the project site for nesting. The future developer would be required to comply with CMC Chapter 17.04, *Standard Environmental Protection Requirements*. Specifically, the future development facilitated by the proposed project would be required to comply with CMC Section 17.05.050(D)(1) requirements, listed below, which would minimize potential impacts to nesting birds during tree removal and construction:

> **CMC Section 17.04.050(D)(1), *Avoid Nesting Birds During Construction*.** For all projects that involve removal of a tree (either protected or unprotected) or other vegetation suitable for nesting birds, or construction or ground-disturbing activities defined in CMC Section 17.04.020, the project applicant shall comply with, and the construction contractor shall indicate the following on all construction plans, when required to ensure the following

[11] The CALVEG system was initiated in January 1978 by the Region 5 Ecology Group of the US Forest Service to classify California's existing vegetation communities for use in statewide resource planning. CALVEG maps use a hierarchical classification on the following categories: forest, woodland, chaparral, shrubs, and herbaceous.

[12] California Natural Diversity Database, 2025, CNDDB Maps and Data, https://wildlife.ca.gov/Data/CNDDB/Maps-and-Data, accessed January 2, 2026.

measures are performed to avoid inadvertent take of bird nests protected under the federal Migratory Bird Treaty Act and California Fish and Game Code when in active use:

a. Demolition, construction, ground-disturbing, and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, construction, ground-disturbing, or tree removal/pruning activities shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31. Preconstruction surveys (described below) are not required for construction, ground-disturbing, or tree removal/pruning activities outside the nesting period.

b. If demolition, construction, ground-disturbing, or tree removal/pruning activities occur during the nesting season (February 1 through August 31), preconstruction surveys shall be conducted as follows:

    i. No more than seven days prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities to identify any active nests with eggs or young birds on the site and surrounding area within 100 feet of construction or tree removal activities.

    ii. Preconstruction surveys shall be repeated at 14-day intervals until demolition, construction, ground-disturbing, or tree removal/pruning activities have been initiated in the area, after which surveys can be stopped. As part of the preconstruction survey(s), the surveyor shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for active nests, while ensuring that they do not disturb the nests as follows:

        1. For projects that require the demolition or construction of one single-family residence, ground-disturbing activities affecting areas of up to 500 square feet, or the removal of up to three trees, the property owner or a tree removal contractor, if necessary, is permitted to conduct preconstruction surveys to identify if there are any active nests. If any active nests with eggs or young birds are identified, the project applicant shall retain a qualified ornithologist or biologist to identify protective measures.

        2. For any other demolition, construction, and ground-disturbing activity or the removal of four or more trees, a qualified ornithologist or biologist shall be retained by the project applicant to conduct the preconstruction surveys.

c. If the preconstruction survey does not identify any active nests with eggs or young birds that would be affected by demolition, construction, or ground-disturbing or tree removal/pruning activities, no further mitigating action is required. If an active nest containing eggs or young birds is found sufficiently close to work areas to be disturbed by these activities, their locations shall be documented, and the qualified ornithologist

or biologist shall identify protective measures to be implemented under their direction until the nests no longer contain eggs or young birds.

d. Protective measures may include, but are not limited to, establishment of clearly delineated exclusion zones (i.e., demarcated by identifiable fencing, such as orange construction fencing or equivalent) around each nest location as determined by the qualified ornithologist or biologist, taking into account the species of birds nesting, their tolerance for disturbance, and proximity to existing development. In general, exclusion zones shall be a minimum of 300 feet for raptors and 75 feet for passerines and other birds. The active nest within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify signs of disturbance and confirm nesting status. The radius of an exclusion zone may be increased by the qualified ornithologist or biologist, if project activities are determined to be adversely affecting the nesting birds. Exclusion zones may be reduced by the qualified ornithologist or biologist only in consultation with California Department of Fish and Wildlife. The protection measures and buffers shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active.

   A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be prepared by the qualified ornithologist or biologist; submitted to the Director of Community Development or his or her designee through the appropriate permit review process (e.g., demolition, construction, tree removal); and completed to the satisfaction of the Community Development Director prior to the start of demolition, construction, ground-disturbing, or tree removal/pruning activities.

Furthermore, the future developer would be required to comply with CMC Chapter 19.102, *Glass and Lighting Standards*, which establishes regulations to reduce bird mortality from windows, other specific glass features, and certain lighting elements that are known to increase the risk of bird collisions. No more than 10 percent of the surface area of the façade would be untreated glass. The future development would avoid the funneling of flight paths along buildings or trees toward a building façade; avoid use of highly reflective glass or highly transparent glass; and not include skyways or walkways, balconies, freestanding walls, or building corners made of untreated glass or other transparent materials, or any other design elements that are untreated and through which trees, landscape areas, water features, or the sky are visible from the exterior or from one side of the transparent element to the other. All outdoor lighting would be fully shielded fixtures, directed downward to meet the particular need, and away from adjacent properties and rights-of-way to avoid light trespass.

Accordingly, the future development facilitated by the proposed project meets the criteria of State CEQA Guidelines Section 15332(c).

3.4 STATE CEQA GUIDELINES SECTION 15332(D): TRAFFIC, NOISE, AIR QUALITY, OR WATER QUALITY

For the reasons stated herein, the proposed DDA project, which would facilitate the construction and operation of a future development, would not result in any significant effects related to traffic, noise, air quality, or water quality and therefore meets the criteria of State CEQA Guidelines Section 15332(d).

3.4.1 Traffic

Regional access to the development site is provided by I-280 via North Stelling Road to the north, and by Highway 85 via Stevens Creek Boulevard to the west. Vehicular access to the development site would be provided via two 2-way driveways on Mary Avenue. Existing transit would continue to service the project vicinity and the bus stops nearest to the development site, which are all in walking distance and include a Route 51 stop (2,100 feet), Route 55 stop (3,600 feet), Route 25 stop (3,700 feet), Route 23 stop (2,600 feet), and Rapid 523 stop (3,700 feet). Pedestrian facilities consist of sidewalks, ADA-compliant curb ramps, and crosswalks at many of the nearby intersections. In the vicinity of the development site, continuous sidewalks exist along the east side of Mary Avenue and both sides of Stevens Creek Boulevard, Campus Drive, and Stelling Road. Bicycle facilities in the development site vicinity include bike lanes and bike routes. Bike lanes are lanes on roadways designated for use by bicycles with special lane markings, pavement legends, and signage.

CONSISTENCY WITH CIRCULATION SYSTEM PROGRAMS AND PLANS

Plan Bay Area 2050 is the Bay Area's Regional Transportation Plan (RTP) and Sustainable Community Strategy (SCS) that identifies the sustainable vision for the Bay Area. An overarching goal of the regional plan is to concentrate development in areas where there are existing services and infrastructure rather than allocate new growth to outlying areas where substantial transportation investments would be necessary to achieve VMT reductions. The future development is an infill development project that would result in a change in land use from City right-of-way and parking to residential use in a portion of the city that has access to existing infrastructure and services. Therefore, the proposed project would not conflict with *Plan Bay Area 2050*.

The future development would increase the population at the development site, but not such that it would result in a large number of vehicular trips since most residents of the future development would not likely own cars, and caretakers or assistants would generate most of the trips. According to an estimate prepared by Hexagon Transportation Consultants and reviewed by the City, the future development is estimated to generate 163 daily vehicle trips, with 12 trips (3 inbound and 9 outbound) during the morning (AM) peak hour and 15 trips (9 inbound and 6 outbound) during the evening (PM) peak hour. This level of increased trips compared to existing conditions would not decrease the performance or safety of pedestrian, bicycle, or public transit facilities or cause a substantial increase in transit demand that cannot be accommodated by existing or proposed transit capacity or alternative travel modes. Therefore, the proposed DDA, which would facilitate a future development, would not result in changes to the City's transportation and circulation system that could conflict with adopted policies, plans, or programs regarding transit, bicycle, or pedestrian facilities.

VEHICLE MILES TRAVELED

CMC Chapter 17.08, *Evaluation of Transportation Impacts Under the California Environmental Quality Act*, provides screening criteria and VMT thresholds for land use development projects, transportation projects, and other projects pursuant to CEQA. Under CMC Chapter 17.08, a project would be screened out from more detailed VMT analysis if the project is consistent with applicable General Plan policies and supported by substantial evidence demonstrating cumulative VMT is declining. This is also consistent with the City's 2025 Transportation Study Guidelines. Project screening may be used for projects that meet one or more of the following criteria:

- A project located within one-quarter mile of a High-Quality Transit Corridor or transit stop as defined by CEQA.
- Local-serving retail of 50,000 square feet or less.
- Land-use projects consisting of 100 percent affordable housing.

The proposed project would facilitate a future development that is 100 percent affordable housing; thus, the proposed project would be screened out from a VMT analysis.

Transportation and environmental strategies that support active and shared modes, combined with a transit-supportive land use pattern, are forecast to lower the share of Bay Area residents that drive to work alone from over 50 percent in 2015 to 36 percent in 2050. Accordingly, development consistent with *Plan Bay Area 2050* demonstrates a cumulative decline of VMT in the city and region. Pursuant to the City's Project Activity Map, the City is processing multiple

applications for housing consistent with *Plan Bay Area 2050*.[13] Therefore, these projects, along with the future development, demonstrate a cumulative decline in VMT. As such, the proposed project qualifies for the TPA screening criteria, and no VMT-related impacts would occur.

DESIGN FEATURE OR INCOMPATIBLE USE HAZARDS

The future development facilitated by the proposed project would not alter any streets in the area. The future development's driveways and the internal aisles on the development site would be designed in accordance with CMC roadway standards. The proposed project would facilitate future development that would generate mostly passenger vehicles, and the surrounding roadway system is designed to accommodate these vehicles. Therefore, the proposed project would not worsen existing geometric hazards or create new geometric hazards.

The future development project driveways would be free and clear of any obstructions to provide adequate sight distance, thereby ensuring that exiting vehicles can see pedestrians on the sidewalk and vehicles and bicycles traveling along Mary Avenue. Any landscaping and signage would be located in such a way to ensure an unobstructed view for drivers exiting the site and turning onto Mary Avenue. The future development would include trees planted along the Mary Avenue frontage near the driveways and would be required to comply with CMC standards so as to not impede the view of exiting drivers.

The minimum acceptable sight distance is considered the Caltrans stopping sight distance. Sight distance requirements vary depending on roadway speeds. Mary Avenue has a speed limit of 30 mph, so the Caltrans stopping sight distance is 250 feet (based on a design speed of 35 mph). Accordingly, a driver must be able to see 250 feet along Mary Avenue to stop and avoid a collision. Based on the site plan and narrow travel lanes on Mary Avenue, on-street parking next to the project driveways would potentially block the line of sight of exiting drivers. The City would confirm that the recommendations provided in the Transportation Study by Hexagon Transportation Consultants are followed prior to Building Permit approval to ensure drivers have adequate lines of sight. Therefore, no significant hazards in the area would occur due to the future development.

During the construction period, the future development would result in temporary changes to existing transportation conditions. Temporary traffic would be generated by construction employees and construction activities, including haul trucks. As discussed in Section 2.3.3, *Construction*, during demolition and construction, vehicle, equipment, and materials would be staged and stored on a portion of the development site. The construction site and staging areas

[13] City of Cupertino, Major Projects, https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/Major-Projects.

would be clearly marked, and construction fencing would be installed to prevent disturbance and safety hazards. Therefore, no significant hazards in the area would occur during the construction phase.

EMERGENCY ACCESS

The City of Cupertino Fire Department requires a minimum driveway width of 20 feet, requires turnarounds for driveways more than 150 feet in length, and requires a minimum of 13.5 feet of vertical clearance. The development site has a maximum depth of 42 feet from Mary Avenue. Therefore, Mary Avenue would serve as the project's fire access road, and the future development facilitated by the proposed project would not result in inadequate emergency access.

3.4.2 Noise

Pursuant to the CEQA Statute (PRC) Section 21085, for residential projects, the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment. Accordingly, this section evaluates the noise from construction equipment, buildings, and vehicles.

The noise environment in the project vicinity is primarily characterized by vehicular traffic along Mary Avenue and Highway 85 to the east and west of the development site, respectively. Operations and activities from adjacent residential uses also contribute to the existing noise environment in the project vicinity. The closest existing noise-sensitive receptors to the project site are the adjacent residences to the east of the project site along Mary Avenue.

AMBIENT NOISE

The development site is adjacent to Highway 85, behind a soundwall. Vehicular noise on Highway 85 would be the dominant noise source for the future development. Road noise from May Avenue would be a secondary noise source.

Construction Impacts

According to CMC Section 10.48.053, *Grading, Construction and Demolition*, construction is allowed during "daytime hours" (7:00 a.m. to 8:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on weekends) and is exempt from the City's daytime and nighttime maximum noise level limits, provided that such construction activities do not exceed 80 dBA at the nearest affected property or individual equipment items do not exceed 87 dBA at 25 feet. Only one of these two criteria must be met. In addition, construction is prohibited on holidays and within 750 feet of residential areas on weekends, holidays, and during the nighttime, unless a special

exception has been granted and nighttime noise level standards are met. Even with these restrictions, project construction would temporarily increase ambient noise. However, temporary increases from project construction activities would completely cease after construction is completed.

Noise generated by on-site construction equipment is based on the type of equipment used, its location relative to sensitive receptors, and the timing and duration of noise-generating activities. Each stage of construction involves different kinds of equipment and has distinct noise characteristics. Noise levels from construction activities are typically dominated by the loudest pieces of equipment. The dominant noise source of construction equipment is typically the engine, although work-piece noise (such as dropping of materials) can also be noticeable.

The noise produced at each construction stage is determined by combining the contributions from each piece of equipment used at a given time, while accounting for the on-going time-variations of noise emissions (commonly referred to as the usage factor) to determine the L_{eq} noise levels. Heavy equipment, such as a bulldozer, can have maximum, short-duration noise levels of up to 85 dBA at 50 feet. However, overall noise emissions vary considerably, depending on what specific activity is being performed at any given moment. Noise attenuation due to distance, the number and type of equipment, and the load and power requirements to accomplish tasks for each construction phase would result in different noise levels from construction activities at a given receptor. Since noise from construction equipment is intermittent and diminishes at a rate of at least 6 dBA per doubling of distance (conservatively ignoring other attenuation effects from air absorption, ground effects, and/or shielding/scattering effects), the average noise levels at noise-sensitive receptors could vary considerably, because mobile construction equipment would move around the site with different loads and power requirements. Noise levels from project-related construction activities were calculated from the simultaneous use of all applicable construction equipment at spatially averaged distances (i.e., from the acoustical center of the general construction site or phase) to the property line of the nearest receptors. Although construction may occur across the entire phase area, the center of construction activities best represents the potential construction-related noise levels from multiple pieces of equipment at the various sensitive receptors. This is represented by the center of the entire construction site for activities such as paving, demolition, site preparation, and grading, which are expected to take place across the entire site. Other activities, such as building construction and architectural coating are expected to occur in a focused area of the construction site.

CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Sections 17.04.050(G)(1) and 17.04.050(G)(2) as listed below, which will minimize impacts related to construction noise:

CMC Section 17.04.050(G)(1), *Notice and Signage.* At least 10 days prior to the start of any demolition, ground disturbing, or construction activities, because the project site is between 0.25 to 0.5 acres, the project applicant shall send notices shall be sent to off-site businesses and residents within 250 feet of the project site. The notification shall include a brief description of the project, the activities that would occur, the hours when activity would occur, and the construction period's overall duration. The notification should include the telephone numbers of the contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. The project applicant shall provide the City with evidence of mailing of the notice, upon request. Additionally, at least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, which includes permitted construction days and hours, as well as the telephone numbers of the City's and contractor's authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor's representative receives a complaint, they shall investigate, take appropriate corrective action, and report the action to the City within three business days of receiving the complaint.

CMC Section 17.04.050(G)(2), *Manage Noise During Construction*.

a. The project applicant and contractors shall prepare and submit a Construction Noise Control Plan to the City's Planning Department for review and approval prior to issuance of the first permit. The Construction Noise Plan shall demonstrate compliance with daytime and nighttime decibel limits pursuant to Chapter 10.48 (Community Noise Control) of Cupertino Municipal Code. The details of the Construction Noise Control Plan shall be included in the applicable construction documents and implemented by the on-site Construction Manager. Noise reduction measures selected and implemented shall be based on the type of construction equipment used on the site, distance of construction activities from sensitive receptor(s), site terrain, and other features on and surrounding the site (e.g., trees, built environment). Measures may include, but are not limited to, temporary construction noise attenuation walls, high quality mufflers. During the entire active construction period, the Construction Noise Control Plan shall demonstrate that compliance with the specified noise control requirements for construction equipment and tools will reduce construction noise in compliance with the City's daytime and nighttime decibel limits.

b. Select haul routes that avoid the greatest amount of sensitive use areas and submit to the City of Cupertino Public Works Department for approval prior to the start of the construction phase.

c. Signs will be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment will be turned off if not in use for more than 5 minutes.

d. During the entire active construction period and to the extent feasible, the use of noise producing signals, including horns, whistles, alarms, and bells will be for safety warning purposes only. The construction manager will use smart back-up alarms, which automatically adjust the alarm level based on the background noise level or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and law.

Pursuant to CMC Section 17.04.050(G)(2), the future development would be required to prepare and implement a noise control plan to ensure compliance with daytime and nighttime decibel limits in the CMC. Therefore, the proposed project, which would facilitate the future development, would not increase ambient noise levels in the vicinity of the development site in excess of standards established in the CMC during the construction phase.

Operational Impact

Stationary-Source Noise

Noise from sources such as people talking and using outdoor common areas or property maintenance may contribute to the total noise environment within the direct vicinity of the development site. However, these types of noise are commonly associated with uses that already exist on the project site and surrounding uses. CMC Section 10.48.040, *Daytime and Nighttime Maximum Noise Levels*, sets the maximum noise level at the site of a receiving residential property to be 60 dBA during the daytime and 50 dBA during the nighttime and 65 dBA during the daytime and 55 dBA during the nighttime at the site of a receiving nonresidential property. Noise associated with landscape maintenance activities is exempt from the provisions of the CMC, provided said activities take place between the hours of 7:00 a.m. to 8:00 p.m. on weekdays, and 9:00 a.m. to 6:00 p.m. on weekends and holidays.

The future development would not provide common open space where groups of people would gather but would have small outdoor decks fronting Mary Avenue. A typical conversation between two people 3 feet apart is 60 dBA.[14] At a distance of 100 feet, noise levels would attenuate to approximately 30 dBA. Therefore, noise from typical use of the small deck spaces

[14] Engineering ToolBox, 2005, Voice Level at Distance, https://www.engineeringtoolbox.com/voice-level-d_938.html, accessed January 2, 2026.

would result in noise levels less than the CMC Section 10.48.040 nighttime 50 dBA limit for residential uses. Additionally, as previously described, pursuant to the CEQA Statute (PRC) Section 21085, for residential projects, the effects of noise generated by project occupants and their guests on human beings is not considered a significant effect on the environment under CEQA.

The future development is anticipated to have mechanical heating, ventilation, and air conditioning (HVAC) equipment on the ground next to units. The exterior mechanical and HVAC equipment associated with this type of development are expected to be similar to the existing commercial uses on the site or quieter. Because mechanical specifications for the future development are not yet available, it is conservatively assumed that noise from these units would be up to 72 dBA L_{eq} at a distance of 3 feet and that they could be located within approximately 45 feet from the nearest residential property lines to the east. At this distance, the sound pressure level associated with a common HVAC unit would be approximately 49 dBA at the nearest noise sensitive receptor. Therefore, the noise level associated with HVAC in the backyards of future residential units would not exceed the CMC Section 10.48.040 standards, which limit daytime and nighttime noise to 50 dBA at nearby residential uses.

Traffic Noise

Mary Avenue currently experiences an average traffic volume of 2,605 daily trips.[15] The future development would generate an increase of 163 net new trips per day with 12 new AM peak hour trips and 15 new PM trips. A project will normally have a significant effect on the environment related to traffic noise if it substantially increases the ambient noise levels for adjoining areas. Most people can detect changes in sound levels of approximately 3 dBA under normal, quiet conditions, and changes of 1 to 3 dBA under quiet, controlled conditions. Changes of less than 1 dBA are usually indiscernible. A change of 5 dBA is readily discernible to most people in an outdoor environment. Noise levels above 65 dBA CNEL are normally unacceptable at sensitive receptor locations such as residences, schools, and noise environments in these areas would be considered degraded. Based on this, a significant impact would occur if traffic noise increases by 3 dBA. The addition of 163 new trips along Mary Avenue would not cause a doubling of existing traffic volumes required to result in a 3 dBA increase over ambient traffic noise levels. Therefore, the proposed project, which would facilitate a future development, would not generate traffic volumes that would result in a significant noise impact.

[15] City of Cupertino, 2025, Cupertino Traffic Flow Map, https://experience.arcgis.com/experience/aedd536ab2e14a348650ceed761db18b#data_s=id%3AdataSource_1-1999c757922-layer-2%3A26, accessed January 26, 2026.

GROUNDBORNE VIBRATION

Potential vibration impacts associated with construction projects are usually related to the use of heavy construction equipment during the demolition phase of construction. Construction can generate varying degrees of ground vibration depending on the construction procedures and equipment. Construction equipment generates vibration that spreads through the ground and diminishes with distance from the source. The effect on buildings in the vicinity of the construction site varies depending on soil type, ground strata, and receptor-building construction. The effects from vibration can range from no perceptible effects at the lowest vibration levels, to low rumbling sounds and perceptible vibrations at moderate levels, to slight structural damage at the highest levels. Vibration from construction activities rarely reaches the levels that can damage structures. Table 3-1, *Vibration Levels at Nearby Structures,* summarizes vibration levels for typical construction equipment at the nearest structures to the project site. As noted in Table 3-1, the vibratory roller, which would be used during paving activities on project streets, would produce the highest levels of vibration. Therefore, the distances shown in Table 3-1 reflect the distance from the nearest off-site buildings to the nearest paved street area shown on the proposed site plan.

Table 3-1 Vibration Levels at Nearby Structures

Equipment	Residential Receptor to the East (80 Feet) Inches/Second Peak Particle Velocity
Vibratory Roller	0.037
Hoe Ram	0.016
Caisson Drilling	0.016
Loaded Trucks	0.013
Small Bulldozer	0.006
Jackhammer	0.001

Note: As measured from the center of the nearest street on the development site to the nearest off-site building.
Source: Federal Transit Administration, September 2018, *Transit Noise and Vibration Impact Assessment Manual*, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf.

The nearest structure to the site's construction activities, the residential neighborhood to the east, is approximately 80 feet from the nearest future development construction activities. At this distance, construction vibration would attenuate to 0.037 inch per second peak particle velocity (in/sec PPV) or less. Therefore, construction activities associated with the future development facilitated by the proposed project would not exceed the City's vibration standard of 0.2 in/sec PPV or 0.12 in/sec PPV (for historic structures) at nearby off-site structures.

CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Section 17.04.050(G)(3), which will minimize impacts related to construction vibration.

CMC Section 17.04.050(G)(3), ***Manage Vibrations During Construction.*** In the event pile driving is required, the project applicant shall:

a. Notify all vibration-sensitive receptors within 300 feet of the project site of the schedule 10 days prior to its commencement and include the contact information for the person responsible for responding to complaints on site.

b. The project applicant shall retain a qualified acoustical consultant or structural engineer, to prepare and implement a Construction Vibration Monitoring Plan, which is subject to third-party peer review under the direction of the City at the applicant's cost, for areas within 100 feet for pile driving, 25 feet for vibratory roller, or 15 feet for other heavy equipment (e.g., bulldozer); and for historical structures: within 135 feet for pile driving, 40 feet for vibratory roller, or 20 feet for other heavy equipment. The plan shall include surveying the condition of existing structures; and determining the number, type, and location of vibration sensors and establish a vibration velocity limit (as determined based on a detailed review of the proposed building), method (including locations and instrumentation) for monitoring vibrations during construction, location of notices displaying the contact information for on-site coordination and complaints on site, and method for alerting responsible persons who have the authority to halt construction should limits be exceeded or damaged observed.

c. Submit final monitoring reports to the City upon completion of vibration related construction activities.

d. Conduct a post-survey on any structure where either monitoring has indicated high vibration levels or complaints that damage has occurred are received.

e. The project applicant shall be responsible for appropriate repairs as determined by the qualified acoustical consultant or structural engineer where damage has occurred as a result of construction activities.

Should the future development require the use of the construction equipment listed in CMC Section 17.04.050(G)(3)(b) within the specified distances to receptors, it would be required to prepare a Construction and Vibration Monitoring Plan by a qualified acoustical consultant to ensure that no damage due to vibration from construction equipment would occur. Therefore, the proposed project would not result in an increase in excessive ground-borne vibration.

AIRPORT NOISE

The nearest airports to the project site, Moffett Federal Airfield and San Jose Mineta International, are approximately 5.4 miles to the north and 6.7 miles to the east, respectively. Because the development site is not within two miles of a private or public use airport, which is the standard for assessing noise impacts under CEQA, the proposed project would not result in the exposure of people residing or working in the project area to excessive noise levels associated with the proximity of an airport.

3.4.3 Air Quality

The analysis of the air quality impacts follows the guidance and methodologies recommended in the Bay Area Air District (Air District) *2022 CEQA Air Quality Guidelines*. CEQA allows the significance criteria established by the applicable air quality management or air pollution control district to be used to assess impacts of a project on air quality. The guidelines provide recommended procedures for evaluating potential air impacts during the environmental review process, consistent with CEQA requirements, and include recommended thresholds of significance, mitigation measures, and background air quality information.

Attainment Status of the Air Basin

The development site is in the San Francisco Bay Area Air Basin (Air Basin) under the jurisdiction of the Air District, which regulates air quality in the San Francisco Bay Area. Within the Air Basin, Ambient Air Quality Standards (AAQS) for ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), particulate matter (PM_{10}, $PM_{2.5}$), and lead (Pb) have been set by both the State of California and the federal government. The State has also set standards for sulfates, hydrogen sulfide, and visibility-reducing particles. The Air Basin is under State nonattainment status for ozone and particulate matter (both PM_{10} and $PM_{2.5}$) standards. The Air Basin is classified as nonattainment for the federal ozone 8-hour standard and nonattainment for the federal 24-hour standard for $PM_{2.5}$.[16]

Air Quality Plans

The Air District is directly responsible for reducing emissions from area, stationary, and mobile sources in the Air Basin to achieve national and California AAQS. The Air District's *2017 Clean Air Plan* is a regional and multiagency effort to reduce air pollution in the Air Basin and stands as the Air District's latest regional air quality management plan.[17] A consistency determination

[16] Bay Area Air District, 2025, Air Quality Standards and Attainment Status, https://www.baaqmd.gov/about-air-quality/research-and-data/air-quality-standards-and-attainment-status, accessed January 21, 2026.

[17] Bay Area Air District. April 19, 2017, Final 2017 Clean Air Plan, https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf.

with the air quality management plan plays an important role in local agency project review by linking local planning and individual projects to the *2017 Clean Air Plan*. It fulfills the CEQA goal of informing decision makers of the environmental efforts of the project under consideration early enough to ensure that air quality concerns are fully addressed. It also provides the local agency with ongoing information as to whether they are contributing to the clean air goals in the *2017 Clean Air Plan*.

Significance Thresholds

The potential air quality impacts for the proposed project would be well below the project level air quality thresholds of significance provided by the Air District and shown in Table 3-2, *Air Quality Thresholds of Significance*.

Table 3-2 Air Quality Thresholds of Significance

Pollutant	Construction Related[1]	Operation	
	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Maximum Annual Emissions (tpy)
ROG	54	54	10
NO_x	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
$PM_{10}/PM_{2.5}$ (fugitive dust)	Best management Practices[2]	None	None
Local CO	None	9.0 ppm (8-hour average), 20.0 ppm (1-hour average	9.0 ppm (8-hour average), 20.0 ppm (1-hour average

Source: Bay Area Air Quality Management District. 2023, April. 2022 California Environmental Quality Act Guidelines Chapters. https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

Notes:

1. The Air District recommends for construction projects that require less than 1 year to complete, lead agencies should annualize impacts over the scope of actual days that peak impacts would occur rather than over the full year. Additionally, for phased projects that results in concurrent construction and operational emissions. Construction-related exhaust emissions should be combined with operational emissions for all phases where construction and operations overlap.
2. $PM_{10}/PM_{2.5}$ (fugitive dust) is also recognized to impact local communities. The Air District strongly recommends implementing all feasible fugitive dust management practices especially when construction projects are located near sensitive communities, including schools, residential areas, or other sensitive land uses.

CONSISTENCY WITH APPLICABLE AIR QUALITY PLANS

Projects that are consistent with the local general plan are considered consistent with the air quality-related regional plan. Large projects that exceed regional employment, population, and housing planning projections have the potential to be inconsistent with the regional inventory compiled as part of the *2017 Clean Air Plan*. The future development would be consistent with the land use designation of the General Plan. Additionally, the future development would serve the existing community and not induce substantial unplanned population growth. Future development facilitated by the proposed project, which would be predominantly residential in nature, would not be considered by the Air District to be a substantial emitter of criteria air pollutants. Therefore, the proposed project, which would facilitate a future development, would not conflict with or obstruct implementation of the *2017 Clean Air Plan*.

CUMULATIVELY CONSIDERABLE NET INCREASE CRITERIA POLLUTANT

Construction Impacts

Construction activities produce combustion emissions from various sources, such as on-site heavy-duty construction vehicles, vehicles hauling materials to and from the site, and motor vehicles transporting the construction crew. Site preparation activities produce coarse fugitive dust (PM_{10}) and fine fugitive dust ($PM_{2.5}$) from demolition and soil-disturbing activities, such as grading and excavation. Air pollutant emissions from construction activities on-site would vary daily as construction activity levels change. Construction activities associated with the future development would result in emissions of ROG, NO_X, PM_{10}, and $PM_{2.5}$.

CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Sections 17.04.050(A)(1) and 17.04.050(A)(4) requirements, which will minimize impacts from construction:

> **CMC Section 17.04.050(A)(1), *Control Fugitive Dust During Construction*.** Projects shall implement the Bay Area Air Quality Management District Basic Control Measures included in the latest version of BAAQMD's CEQA Air Quality Guidelines, as subsequently revised, supplemented, or replaced, to control fugitive dust (i.e., particulate matter, $PM_{2.5}$ and PM_{10}) during demolition, ground-disturbing activities, and/or construction. The project applicant shall include these measures in the applicable construction documents, prior to issuance of the first permit.

CMC Section 17.04.050(A)(4), *Control Volatile Organic Compound Emissions from Paint.* Project shall use low VOC-paint (i.e., 50 grams per [g/l] or less) for interior and exterior wall architectural coatings. The project applicant shall include the use of low-VOC paint in the applicable construction documents prior to issuance of the first permit.

In reference to CMC Section 17.04.050(A)(1), the Air District considers all impacts related to fugitive dust emissions from construction to be less than significant with implementation of the Air District's best management practices. The current best management practices that are recommended to be implemented by the future development are:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- A publicly visible sign shall be posted with the telephone number and person to contact at the City of Cupertino regarding dust complaints. This person shall respond and take corrective action within 48 hours. The phone number shall also be visible to ensure compliance with applicable regulations.

Pursuant to CMC Section 17.04.050(A)(1), the future development facilitated by the proposed project would be required to adhere to the Air District's recommended dust control measures for construction.

Based on the Air District's screening criteria, while the future development facilitated by the proposed project would result in the generation of construction-related criteria air pollutants or precursors, the size of the future development (i.e., 40 housing units) would be below Air

District's screening level of 416 apartment units for construction-related criteria air pollutant impacts, would not result in demolition, and would not result in extensive site preparation or soul hauling.[18] Therefore, the proposed project, which would facilitate the future development, would not result in the generation of construction-related criteria air pollutants or precursors that exceed the thresholds of significance.

Operational Impacts

Typical long-term air pollutant emissions are generated by area sources (e.g., landscape fuel use, aerosols, architectural coatings, and asphalt pavement), energy use (natural gas), and mobile sources (i.e., on-road vehicles). Types of land uses that typically generate substantial quantities of criteria air pollutants and toxic air contaminants include industrial (stationary sources), manufacturing, and warehousing (truck idling) land uses. These types of major air pollutant emissions sources are not included as part of the future development. The future development would be designed as 100 percent electric, which would also be a condition of approval, and would not include stationary sources that emit toxic air contaminants or generate a significant amount of heavy-duty truck trips (a source of diesel particulate matter). Additionally, the future development of 40 housing units would not exceed the Air District's screening level of 638 apartment units for operational criteria air pollutants or precursors,[19] and thus the proposed project would not result in substantial operational emissions that have the potential to exceed the Air District's regional significance thresholds.

Carbon Monoxide Hotspots

Areas of vehicle congestion have the potential to create pockets of CO, called hotspots. These pockets have the potential to exceed the State's 1-hour standard of 20 parts per million (ppm) or the 8-hour standard of 9 ppm. Under existing and future vehicle emission rates, a project would have to increase traffic volumes at a single intersection to more than 44,000 vehicles per hour—or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited—to generate a significant CO impact. The future development would result in a maximum of 15 peak hours vehicle trips.[20] Thus, the proposed project would not cause traffic volumes at affected intersections to exceed 44,000 vehicles per hour or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited.[21] The future development

[18] Bay Area Air Quality Management District. 2023, April. 2022 California Environmental Quality Act Guidelines Chapters. https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act
-ceqa/updated-ceqa-guidelines

[19] Bay Area Air Quality Management District. 2023, April. 2022 California Environmental Quality Act Guidelines Chapters. https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act
-ceqa/updated-ceqa-guidelines

[20] Hexagon Transportation Consultants, Inc., September 24, 2025, *Transportation Analysis for the Proposed Residential Development at 10065-10075 East Estates Drive in Cupertino, CA*.

[21] Bay Area Air District, 2022, *California Environmental Quality Act Air Quality Guidelines.*

would not have the potential to substantially increase CO hotspots at intersections in the project vicinity. Therefore, the proposed project would not result in CO concentration hotspots.

SENSITIVE RECEPTORS

Project impacts related to increased health risk can occur by generating emissions of TACs and air pollutants. Construction activity due to the future development facilitated by the proposed project would generate dust and equipment exhaust that can affect nearby sensitive receptors. The closest existing sensitive receptors to the development site are at the adjacent residences to the east. As described above, CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Sections 17.04.050(A)(1), 17.04.050(A)(3), and 17.04.050(A)(4), which would minimize impacts to sensitive receptors from construction activities.

ODORS

Construction activities could also generate odors from construction equipment, such as diesel exhaust, and VOCs from architectural coatings and paving activities. However, these odors would be temporary and limited to the construction period. By the time such emissions reach any sensitive receptor sites, they would be diluted well below any level of air quality concern. The future development facilitated by the proposed project would be residential, which is not considered a land use typically associated in generating objectionable odors that would affect a substantial number of people. Therefore, the proposed project would not create objectionable odors affecting a substantial number of people.

GREENHOUSE GAS EMISSIONS

A project does not generate enough greenhouse gas (GHG) emissions on its own to influence global climate change; therefore, this section measures the proposed project contribution to the cumulative environmental impact associated with GHG emissions. Implementation of the future development would contribute to climate change through direct and indirect GHG emissions from the construction activities needed to implement the development, which would generate a short-term increase in GHG emissions.

The Air District does not have thresholds of significance for construction-related GHG emissions, which are one-time, short-term emissions and therefore will not significantly contribute to the long-term cumulative GHG emissions impacts of the proposed project.

The future development is a 40-unit, 100 percent affordable housing project. According to the California Air Resources Board's (CARB) 2022 Scoping Plan, Appendix D, *Local Actions*, affordable housing projects with at least 20 percent of units are affordable to lower-income residents are the types of project that reduce GHG emissions.[22] Additionally, the Air District has the following thresholds for land use projects in analyzing GHG emissions impacts; projects must include conditions listed under either Criterion A or B:

A. Projects must include, at a minimum, the following project design elements:
    1. Buildings
        a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
        b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
    2. Transportation
        a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Land Use and Climate Innovation's Technical Advisory on Evaluating Transportation Impacts in CEQA:
            i. Residential projects: 15 percent below the existing VMT per capita
            ii. Office projects: 15 percent below the existing VMT per employee
            iii. Retail projects: no net increase in existing VMT
        b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.

B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

As described herein, the future development would meet the conditions listed under Criterion B for being consistent with a locally adopted GHG reduction strategy, *Cupertino Climate Action Plan* 2.0 (CAP 2.0).

[22] California Air Resources Board. 2022, December. 2022 Scoping Plan for Achieving Carbon Neutrality (2022 Scoping Plan). https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents

CAP 2.0 is a strategic planning document that identifies sources of GHG emissions in the city's boundaries; presents current and future emissions estimates; identifies a GHG reduction target for future years; and presents strategic goals, measures, and actions to reduce emissions from the energy, transportation, land use, water, solid waste, and green infrastructure sectors.

A specific project proposal is considered consistent with the Cupertino CAP 2.0 if it does not conflict with the required GHG reduction measures contained in the adopted CAP. Project consistency with the adopted GHG reduction measures is shown in Table 3-3, *Cupertino Climate Action Plan Consistency Matrix*.

Table 3-3 Cupertino Climate Action Plan Consistency Matrix

Measure	Consistency
Measure BE-1 Reduce non-SVCE usage rate to 2 percent for residential and 10 percent for commercial by 2030 and maintain through 2040.	**Consistent.** The future development facilitated by the proposed project would comply with the current California Building and Energy Efficiency Standards to reduce energy consumptions.
Measure BE-4 Require new residential and commercial development to be all-electric at time of construction.	**Consistent.** The future development facilitated by the proposed project would be fully electric.
Measure TR-1 Develop and implement an Active Transportation Plan to achieve 15 percent of active transportation mode share by 2030 and 23 percent by 2040.	**Consistent.** The City is the responsible party for this measure. The site is accessible from the existing pedestrian and bicycle lanes. As such, the future development facilitated by the proposed project would not conflict with the City's 2016 *Bicycle Transportation Plan*. Pedestrians would also have access to the site via the existing sidewalks that connect to the pedestrian network surrounding the development site. Therefore, the future development would promote and would not obstruct these alternative modes of transportation.
Measure TR-2 Implement public and shared transit programs to achieve 29 percent of public transit mode share by 2030 and maintain through 2040.	**Consistent.** The City is the party responsible for this measure. The development site is within walking distance of multiple bus stops.
Measure TR-3 Increase zero-emission vehicle (ZEV) adoption to 35 percent for passenger vehicles and 20 percent for commercial vehicles by 2030 and 100 percent for all vehicles by 2040.	**Consistent.** The future development facilitated by the proposed project would result in an increase in land use intensity in a portion of the city that has access to existing transportation infrastructure and services. To encourage transition to electric vehicles (EVs), the future development would be required to install EV charging stations pursuant to the City's code and therefore would

Table 3-3 Cupertino Climate Action Plan Consistency Matrix

Measure	Consistency
	be consistent with this standard to provide the minimum of EV-capable charging spaces to comply with the voluntary Tier 2 standards of CALGreen, as required by the Air District.
Measure W-1 Implement SB 1383 requirements and reduce communitywide landfilled organics 75 percent by 2025 and inorganic waste 35 percent by 2030 and reduce all waste 90 percent by 2040.	**Consistent.** The City is the party responsible for implementing this measure. The future development facilitated by the proposed project would not conflict with implementation of this measure.
Measure W-2 Reduce overall waste disposed to garbage, recycling, and compost per capita by 15 percent by 2035.	**Consistent.** The City is the party responsible for implementing this measure. The future development facilitated by the proposed project would not conflict with implementation of this measure.
Measure W-3 Meet or exceed the SB 1383 recycled organics products procurement requirements and sequester or avoid at least 0.018 MT CO_2e per person by through 2045.	**Consistent.** The City is the party responsible for implementing this measure. The future development facilitated by the proposed project would not conflict with implementation of this measure.
Measure WW-2 Reduce per capita water consumption 15 percent compared to 2019 levels by 2030 and maintain through 2040	**Consistent.** The future development would incorporate low water-use groundcovers, shrubs, and trees throughout the development site. All landscape zones would be irrigated as required by the Cupertino Landscape Ordinance, and water uses would be tailored to meet CALGreen Building Standards, which require water conservation and require new buildings to reduce water consumption by 20 percent. The future development facilitated by the proposed project would not conflict with implementation of this measure.
Measure CS-1 Increase carbon sequestration through tree planting by developing and implementing an Urban Forest Management Plan.	**Consistent.** The City is the party responsible for this measure. The future development facilitated by the proposed project would plant trees and would not conflict with implementation of this measure.

Notes: Measures BE-2 and BE-3 apply to existing development and are not applicable. Measure TR-4 is a city measure to re-focus transportation infrastructure in the city that is not applicable on a project-level. Measure CS-2 is for open space projects that can sequester carbon dioxide (CO_2), and therefore is not directly applicable to the project.

Source: City of Cupertino, August 2022, *City of Cupertino Climate Action Plan 2.0*.

Development in Cupertino, including the future development facilitated by the proposed project, is required to adhere to City-adopted policy provisions, including those contained in the adopted CAP 2.0. The City ensures that the provisions of the Cupertino CAP 2.0 are incorporated into projects and their permits through development review and applications of conditions of approval as applicable. Additionally, as previously stated, the proposed project would construct buildings that achieve the most recent California Building and Energy-Efficiency Standards and water-efficiency standards.

Furthermore, CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Section 17.04.050(C), which will minimize GHG emissions.

> **CMC Section 17.04.050(C), *Reduce Greenhouse Gas Emissions (GHG) and Energy Use*.** The project applicant shall complete the City of Cupertino Climate Action Plan: Development Project Consistency Checklist, for review and approval by the City Environment and Sustainability Department prior to issuance of the first permit, to demonstrate how the project is consistent with the Cupertino Climate Action Plan, as subsequently revised, supplemented, or replaced, in order to reduce greenhouse gas emissions and conserve energy.

Therefore, the proposed project would be consistent with Cupertino CAP 2.0.

3.4.4 Water Quality

WATER QUALITY STANDARDS

The City, as a participant in the Santa Clara Valley Urban Runoff Pollution Prevention Program, which is regulated by the NPDES Program, is committed to reducing pollutants entering waterways. Below is a discussion of the proposed project's compliance with water quality standards.

Construction Impacts

The future development is not greater than one acre, so it would not be required to comply with the General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activity (Construction General Permit). The proposed project would also be required to comply with the Regional Water Board Municipal Regional Permit (MRP) because it would create more than 10,000 square feet of impervious surfaces. The proposed project would required to comply with the Santa Clara Valley Urban Runoff Pollution Prevention Program C.3,

which include minimization of impervious surfaces, measures to detain or infiltrate runoff from peak flows to match pre-development conditions, and agreements to ensure that the stormwater treatment and flow-control facilities are maintained in perpetuity. Compliance with applicable regulations would ensure that the proposed project would not result in adverse impacts to water quality during the construction period.

Operational Impacts

As stated previously, the proposed project would be required to comply with the MRP. Furthermore, stormwater from the development site would be directed to the existing stormwater system. Therefore, the proposed project would minimize pollutant runoff from the development site and would not result in adverse water quality impacts during operation.

GROUNDWATER

The future development facilitated by the proposed project would connect to the existing water lines on-site and would not use groundwater. Therefore, the proposed project would not deplete groundwater supplies or interfere substantially with groundwater recharge.

DRAINAGE PATTERNS

Stormwater runoff from the development site is channeled into an existing storm drain along Mary Avenue. Stormwater from Cupertino is eventually discharged into San Francisco Bay. The future development facilitated by the proposed project would be required to comply with Santa Clara Valley Urban Runoff Pollution Prevention Program C.3, which includes minimization of impervious surfaces, measures to detain or infiltrate runoff from peak flows to match pre-development conditions, and agreements to ensure that the stormwater treatment and flow-control facilities are maintained in perpetuity.

Additionally, CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Section 17.04.050(F), which will minimize stormwater runoff.

> **CMC Section 17.04.050(F), *Control Stormwater Runoff Contamination*.** The project applicant shall demonstrate compliance with Chapter 9.18 (Stormwater Pollution Prevention and Watershed Protection) of the Cupertino Municipal Code, to the satisfaction of the City of Cupertino. All identified stormwater runoff control measures shall be included in the applicable construction documents.

CMC Chapter 9.18 is intended to provide regulations and give legal effect to certain requirements of the NPDES permit, which requires erosion and siltation-control measures, issued to the City. Therefore, compliance with the CMC and Santa Clara Valley Urban Runoff Pollution Prevention Program C.3 requirements would ensure that the future development would not substantially alter the existing drainage pattern of the site or area.

INUNDATION

The project site is not in a 100-year flood zone or special flood hazard area as mapped by the Federal Emergency Management Agency (FEMA). Additionally, the development site is not in an area subject to tsunami, seiche, or dam failure inundation. Therefore, the proposed project would not risk release of pollutants due to project inundation.

3.5 STATE CEQA GUIDELINES SECTION 15332(E): UTILITIES AND PUBLIC SERVICES

For the following reasons, the development site can be adequately served by all required utilities and public services and therefore meets the criteria of State CEQA Guidelines Section 15332(e).

The development site is in an urban area already served by all necessary municipal utilities (i.e., stormwater, water, wastewater, solid waste) and public services (i.e., police and fire).

3.5.1 Stormwater

The development site is served by existing stormwater sewer systems, and the proposed project would not require additional or modified stormwater sewer systems. The future development would provide approximately 46,400 square feet of impervious area and 8,300 square feet of pervious area. Additionally, there would be approximately 1,800 square feet of bioretention areas. Therefore, the proposed project would not result in significant impacts to stormwater utilities.

3.5.2 Water

The project site is in the CWS service area. Water service to the project site would be provided by the existing water lines on Mary Avenue with additional domestic water lines to connect to the existing water lines. As shown in the water supply evaluation in Appendix G, *Environmental Assessment,* of the Cupertino General Plan, which evaluated the project site being developed at

a greater density (65 dwelling units per acre) than what is proposed (50 dwelling units per acre), CWS predicts that there will be sufficient water supplies to meet citywide demand through year 2040 during normal, single-dry, and multiple-dry years.[23] Furthermore, the project applicant for the future development would be required to comply with CMC Chapter 17.04, *Standard Environmental Protection Requirements*. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Section 17.04.050(I)(2), which will ensure adequate water supply and infrastructure.

> **CMC Section 17.04.050(I)(2), *Ensure Adequate Water Supply and Infrastructure*.** The project applicant shall obtain written approval from the appropriate water service provider for water connections, service capability, and location and layout of water lines and backflow preventers, prior to issuance of the first permit.

This will ensure that the existing system can support the future development. Therefore, the proposed project would not result in significant impacts to water utilities.

3.5.3 Wastewater

The project site is in the CSD service area, and wastewater would be treated at SJ/SCWPCP. Wastewater generated by the proposed project would be collected by the existing sanitary sewer main along Mary Avenue. CSD has sufficient capacity for buildout of the General Plan, as shown in the wastewater evaluation in Appendix G, *Environmental Assessment,* of the Cupertino General Plan, which evaluated the project site being developed at a greater density (65 dwelling units per acre) than what is proposed (50 dwelling units per acre). The increase in wastewater demand due to future potential development from the General Plan is estimated to be approximately 0.41 million gallons per day (mgd). As of 2020, the SJ/SCWPCP is treating 110 mgd with a permitted capacity of 167 mgd. Therefore, the wastewater treatment facility has a residual capacity of 57 mgd, and the addition of 0.41 mgd from implementation of the General Plan buildout is only 0.7 percent of the residual capacity.[24]

The project applicant for the future development would be required to comply with CMC Chapter 17.04, *Standard Environmental Protection Requirements*. Specifically, the project applicant for the future development facilitated by the proposed project would be required to

[23] City of Cupertino, April 2024, *Cupertino General Plan Community Vision 2015-2040,* Appendix G*, General Plan 2040 and Zoning Code Amendments Environmental Assessment*, Table 4.15-3, *Cal Water PAS Supply and Demand Comparison: 2025 to 2040 (AFY)*, https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/General-Plan/General-Plan-Community-Vision, accessed January 21, 2026.

[24] City of Cupertino, April 2024, *Cupertino General Plan Community Vision 2015-2040,* Appendix G*, General Plan 2040 and Zoning Code Amendments Environmental Assessment*, Table 4.15-6, *Increase in Wastewater Demand with Proposed Modified Project,* https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/General-Plan/General-Plan-Community-Vision, accessed January 21, 2026.

comply with CMC Section 17.04.050(I)(1), which would minimize potential impacts to the sewer system.

CMC Section 17.04.050(I)(1), *Manage Wastewater Inflow and Infiltration to Sewer System*. Project applicants shall implement the following measures to reduce wastewater flow:

a. The project applicant shall demonstrate, to the satisfaction of the City of Cupertino and Cupertino Sanitary District (CSD) that the project would not exceed the peak wet weather flow capacity of the Santa Clara sanitary sewer system by implementing one or more of the following methods:

    i. Reduce inflow and infiltration in the CSD system to reduce peak wet weather flows, or

    ii. Increase on-site water reuse, such as increased grey water use, or reduce water consumption of the fixtures used within the proposed project, or other methods that are measurable and reduce sewer generation rates to acceptable levels, to the satisfaction of the CSD.

b. The project's estimated wastewater generation shall be calculated using the current generation rates used by the CSD unless alternative (i.e., lower) generation rates achieved by the project are substantiated by the project applicant based on evidence to the satisfaction of the CSD.

c. The project applicant shall obtain a letter of clearance from the Cupertino Sanitary District and provide a copy of the letter of clearance to the City prior to issuance of the first permit.

This would ensure that the existing system can support the future development. Therefore, the proposed project would not result in significant impacts to wastewater utilities.

3.5.4 Solid Waste

The City contracts with Recology to provide solid waste collection services to residents in the city. Solid waste is collected by Recology and deposited at the Newby Island Sanitary Landfill in Milpitas. The future development would also be served by Recology. As shown in the solid waste evaluation in Appendix G, *Environmental Assessment,* of the Cupertino General Plan, which evaluated the project site being developed at a greater density (65 dwelling units per acre) than what is proposed (50 dwelling units per acre), the Newby Island Sanitary Landfill has sufficient capacity for buildout of the General Plan. As shown, an increase of 8.8 tons per day from implementation of the General Plan buildout would be 0.4 percent of the current residual

capacity of Newby Island Sanitary Landfill.[25] The proposed project, which would facilitate a future development, would not result in an excess of solid waste that would not be able to be accommodated under existing services.

3.5.5 Public Services Providers

The primary purpose of the public services impact analysis is to examine the impacts associated with physical improvements to public service facilities required to maintain acceptable service ratios, response times, or other performance objectives. Public service facilities need improvements (i.e., construction, renovation, or expansion) as demand for services increase. Increased demand is typically driven by increases in population. The future development would have a significant environmental impact if it exceeds the ability of public service providers to adequately serve residents, thereby requiring construction of new facilities or modification of existing facilities.

The future development is in an area already served by public service providers. Through developer impact fees, future development would support the City's public services funds that are used, in part, to maintain City services. Likewise, and pursuant to SB 50,[26] the project applicant for the future development facilitated by the proposed project would be required to pay the school impact fees required for residential development to offset impacts to the school district. As shown in the public services evaluation in Appendix G, *Environmental Assessment,* of the Cupertino General Plan, which evaluated the project site being developed at a greater density (65 dwelling units per acre) than what is proposed (50 dwelling units per acre), impacts to public service providers (fire protection, police, schools, libraries, and parks) were found to be less than significant at General Plan buildout. Therefore, the proposed project, which would facilitate a future development, would not result in an increase in demand that would prevent public service providers from adequately serving residents.

[25] City of Cupertino, April 2024, *Cupertino General Plan Community Vision 2015-2040,* Appendix G*, General Plan 2040 and Zoning Code Amendments Environmental Assessment*, Table 4.15-7, *Increase in Solid Waste Generation with Proposed Modified Project,* https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/General-Plan/General-Plan-Community-Vision, accessed January 21, 2026.

[26] Senate Bill 50 amended California Government Code Section 65995, which contains limitations on Education Code Section 17620, the statute that authorizes school districts to assess development fees within school district boundaries.

4. EXCEPTIONS

In addition to analyzing the applicability of State CEQA Guidelines Section 15332 (Class 32), this document assesses whether any of the exceptions to categorical exemptions identified in State CEQA Guidelines Section 15300.2 (Exceptions) apply to the proposed project. The following analysis compares the criteria in State CEQA Guidelines Section 15300.2 (Exceptions) to the proposed project, and concludes, based on substantial evidence, that none of the exceptions are applicable to the proposed project, and that the proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15300 and 15332.

4.1 STATE CEQA GUIDELINES SECTION 15300.2(A): LOCATION

Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply to all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies.

The proposed project does not qualify for an exemption under Classes 3, 4, 5, 6, or 11. Therefore, this exception does not apply to the proposed project. Further, the project site is in an urban developed area and is not in a sensitive environment, and the proposed project would not result in any impacts on an environmental resource of hazardous or critical concern. Therefore, the exception under State CEQA Guidelines Section 15300.2(a) does not apply to the proposed project.

4.2 STATE CEQA GUIDELINES SECTION 15300.2(B): CUMULATIVE IMPACT

All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time, is significant.

The development site is adjacent to a developed urban neighborhood that is already served by utilities and public services, as well as transportation. As discussed in Section 3.4, *State CEQA Guidelines Section 15332(d): Traffic, Noise, Air Quality, or Water Quality*, the proposed project

would not result in significant impacts pertaining to traffic, noise, air quality, or water quality. Any construction effects would be temporary, confined to the project vicinity, and reduced to the extent feasible through compliance with the CMC and applicable regulations. Therefore, the exception under State CEQA Guidelines Section 15300.2(b) does not apply to the proposed project.

4.3 STATE CEQA GUIDELINES SECTION 15300.2(C): SIGNIFICANT EFFECT

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Neither the CEQA Statute nor the State CEQA Guidelines provide a definition of "unusual circumstances." However, the courts have provided guidance in determining what constitutes unusual circumstances. In *Berkeley Hillside Preservation et al v. City of Berkeley et al.* (2015), the California Supreme Court stated, "A party invoking the [Section 15300.2(c)] exception may establish an unusual circumstance without evidence of an environmental effect, by showing that *the project has some feature that distinguishes it from others in the exempt class, such as its size or location* [emphasis added]." This decision established a two-pronged test for determining whether the Section 15300.2(c) exception applies. Under this test, the lead agency must first determine whether an unusual circumstance exists, and if an unusual circumstance does exist, must apply the fair argument standard to determine whether there is a reasonable possibility that the proposed project would produce a significant effect due to that circumstance.

The proposed DDA project would facilitate a future development that would grade and clear the development site and construct 40 new residential units on a 0.79-acre project site in residential area of the city. The proposed DDA project would not result in a change in the existing land use or zoning designations or introduce a new activity to the area that could result in a significant effect on the environment. Therefore, neither the size nor the location of the project site is unusual.

With respect to the existing conditions, a Subsurface Investigation Report was prepared for the development site on April 24, 2025, by Professional Service Industries, Inc. The results show that low concentrations of lead, arsenic, and organochlorine pesticides were found across the development site. Based on the concentrations detected, arsenic and organochlorine pesticides are not contaminants of concern, but lead is considered to be a contaminant of concern. The proposed project would comply with the recommendations in the Subsurface Investigation Report to prepare a Soil Management Plan and a Site Specific Health and Safety Plan prior to

redevelopment, and therefore any lead-contaminated soils not capped as part of the project design would be excavated and removed as part of the future development.

Additionally, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Section 17.05.050(B), which regulates soil remediation.

> **CMC Section 17.04.050(B),** ***Hazardous Materials Permit Requirements*****.** Soil Remediation Required. If a Focused or other Phase II ESA, as required pursuant to Section 17.04.040(B)(1), identifies an unacceptable or a potentially unacceptable health risk, the project applicant shall, depending on the contaminant, contact either the Environmental Protection Agency (EPA), Department of Toxic Substances Control (DTSC), Regional Water Quality Control Board (RWQCB) or local Certified Unified Program Agency (CUPA). The project applicant shall enter into a regulatory agency oversight program with an appropriate regulatory agency, or an established voluntary oversight program alternative with an appropriate regulatory agency, as determined by the City, and follow the regulatory agency's recommended response actions until the agency reaches a no further action determination, prior to issuance of any permit for a project that allows ground disturbing activity.

With mandatory compliance with CMC Section 17.04.050(B), the future development facilitated by the proposed project would obtain written clearance from the Santa Clara County Department of Environmental Health prior to the issuance of any building permits confirming that the development site has been adequately investigated and remediated for contamination associated with the existing soil and would not have a significant effect on the environment due to site contamination. Therefore, the circumstance of the lead-contaminated soil would not create a significant effect, and the exception under CEQA Guidelines Section 15003.2(c) does not apply to the proposed project.

4.4 STATE CEQA GUIDELINES SECTION 15300.2(D): SCENIC HIGHWAYS

A categorical exemption shall not be used for a project that may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements that are required as mitigation by an adopted negative declaration or certified environmental impact report (EIR).

The proposed DDA project would not affect a resource within a State Scenic Highway. The nearest scenic highway, State Route 9, is over five miles south of the project site. The nearest eligible State Scenic Highway, I-280, is approximately 0.4 miles north of the project site, with urban development between.[27] The development site is not visible from I-280. Therefore, no scenic resources within view of a State Scenic Highway would be altered as part of the proposed project, and the exception under CEQA Guidelines Section 15003.2(d) does not apply to the proposed project.

4.5 STATE CEQA GUIDELINES SECTION 15300.2(E): HAZARDOUS WASTE SITES

A categorical exemption shall not be used for a project on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code.

California Government Code Section 65962.5 requires the California Environmental Protection Agency (CalEPA) to compile, maintain, and update specified lists of hazardous material release sites. CEQA requires the lead agency to consult the lists compiled pursuant to Government Code Section 65962.5 to determine whether a project and any alternatives are identified.[28] The required lists of hazardous material release sites are commonly referred to as the "Cortese List" after the author of the legislation. Because the statute was enacted more than 20 years ago, some of the provisions refer to agency activities that were conducted many years ago and are no longer being implemented and, in some cases, the information required in the Cortese List does not exist. Those requesting a copy of the Cortese Lists are now referred directly to the appropriate information resources on internet websites hosted by the boards or departments referenced in the statute, including California Department of Toxic Substance Control's (DTSC) online EnviroStor database and the State Water Resources Control Board's (SWRCB) online GeoTracker database. These two databases include hazardous material release sites, along with other categories of sites or facilities specific to each agency's jurisdiction.

[27] California Department of Transportation, 2025, California State Scenic Highway System Map, https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa, accessed December 2, 2025.

[28] California Public Resources Code Section 21092.6.

The development site is not included on the Hazardous Waste and Substances Site List (Cortese) pursuant to Government Code Section 65962.5 as of January 2026.[29] Additionally, the project site is not listed on any of the following CalEPA's Cortese List Data Resources:[30]

- List of Hazardous Waste and Substances sites from DTSC EnviroStor database[31]
- List of Leaking Underground Storage Tank Sites from SWRCB's GeoTracker[32]
- List of solid waste disposal sites identified by SWRCB with waste constituents above hazardous waste levels outside the waste management unit[33]
- List of "active" Cease and Desist Orders and Cleanup and Abatement Orders from SWRCB[34]
- List of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code, identified by DTSC[35]

Therefore, the exception under State CEQA Guidelines Section 15300.2(e) does not apply to the proposed project.

[29] California Department of Toxic Substances Control, 2025, Hazardous Waste and Substances Site List (Cortese), https://www.envirostor.dtsc.ca.gov/public/search?cmd=search&reporttype=CORTESE&site_type=CSITES,FUDS&status=ACT,BKLG,COM&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST+%28CORTESE%29, accessed January 2, 2026.

[30] California Environmental Protection Agency, 2025, Cortese List Data Resources, https://calepa.ca.gov/SiteCleanup/CorteseList/, accessed January 2, 2026.

[31] California Department of Toxic Substances Control, 2025, Hazardous Waste and Substances Site List (Cortese), https://www.envirostor.dtsc.ca.gov/public/search?cmd=search&reporttype=CORTESE&site_type=CSITES,FUDS&status=ACT,BKLG,COM&reporttitle=HAZARDOUS+WASTE+AND+SUBSTANCES+SITE+LIST+%28CORTESE%29, accessed January 2, 2026.

[32] State Water Resources Control Board, 2025, GeoTracker, https://geotracker.waterboards.ca.gov/search?CMD=search&case_number=&business_name=&main_street_name=&city=&zip=&county=&SITE_TYPE=LUFT&oilfield=&STATUS=&BRANCH=&MASTER_BASE=&Search=Search, accessed January 2, 2026.

[33] California Environmental Protection Agency, 2025, Sites Identified with Waste Constituents Above Hazardous waste Levels Outside the Waste Management Unit, https://calepa.ca.gov/wp-content/uploads/2016/10/SiteCleanup-CorteseList-CurrentList.pdf, accessed January 2, 2026.

[34] California Environmental Protection Agency, 2025, List of "active" CDO and CAO from Water Board, https://calepa.ca.gov/wp-content/uploads/2016/10/SiteCleanup-CorteseList-CDOCAOList.xlsx, accessed January 2, 2026.

[35] California Environmental Protection Agency, 2025, Cortese List: Section 65962.5(a), https://calepa.ca.gov/sitecleanup/corteselist/section-65962-5a/, accessed January 2, 2026.

4.6 STATE CEQA GUIDELINES SECTION 15300.2(F): HISTORICAL RESOURCES

A categorical exemption shall not be used for a project that may cause a substantial adverse change in the significance of a historical resource.

No historic resources exist in the vicinity of the project site. There is also no known sensitivity for archaeological or paleontological resources on the site. However, the development site may contain previously unknown subsurface archaeological and paleontological deposits. The future development facilitated by the proposed project would comply with Land Use and Community Design Element Policy 2-72 in the General Plan, which requires compliance with City, State, and federal historic preservation laws, regulations, and codes, including laws related to archaeological resources. In particular, the future development would be required to comply with State CEQA Guidelines Section 15064.5(e), which specifies procedures to be used in the event of a discovery of Native American human remains on non-federal land. Additionally, CMC Chapter 17.04, *Standard Environmental Protection Requirements*, identifies standard environmental protection requirements that all construction projects must meet. Specifically, the project applicant for the future development facilitated by the proposed project would be required to comply with CMC Sections 17.04.050(E)(1), 17.04.050(E)(2), and 17.04.050(H), which would minimize impacts to archaeological resources, tribal cultural resources, and paleontological resources.

CMC Section 17.04.050(E)(1), *Protect Archaeological Resources and Tribal Cultural Resources*. For all projects requiring ground-disturbing activities on land with no known archaeological or tribal cultural resources that has not been previously disturbed and/or where ground-disturbing activities would occur at a greater depth or affect a greater area than previously disturbed, the following shall be required:

a. Areas with No Known Cultural Resources. For all projects within areas where there are no known cultural resources, prior to soil disturbance, the project applicant shall provide written verification, including the materials provided to contractors and construction crews, to the City confirming that contractors and construction crews have been notified of basic archaeological site indicators, the potential for discovery of archaeological resources, laws pertaining to these resources, and procedures for protecting these resources as follows:

    i. Basic archaeological site indicators that may include, but are not limited to, darker than surrounding soils of a friable nature; evidence of fires (ash, charcoal, fire affected rock or earth); concentrations of stone, bone, or shellfish; artifacts of stone, bone, or shellfish; evidence of living surfaces (e.g., floors); and burials, either human or animal.

ii. The potential for undiscovered archaeological resources or tribal cultural resources on site.

iii. The laws protecting these resources and associated penalties, including, but not limited to, the Native American Graves Protection and Repatriation Act of 1990, Public Resources Code Section 5097, and California Health and Safety Code Section 7050 and Section 7052.

iv. The protection procedures to follow should construction crews discover cultural resources during project-related earthwork, include the following:

1. All soil disturbing work within 25 feet of the find shall cease.
2. The project applicant shall retain a qualified archaeologist to provide and implement a plan for survey, subsurface investigation, as needed, to define the deposit, and assessment of the remainder of the site within the project area to determine whether the resource is significant and would be affected by the project.
3. Any potential archaeological or tribal cultural resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation forms by a qualified archaeologist. If the resource is a tribal cultural resource, the consulting archaeologist shall consult with the appropriate tribe, as determined by the Native American Heritage Commission, to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. The archeologist shall perform this evaluation in consultation with the tribe.

b. Areas with Known Cultural Resources. For all projects within areas of known cultural resources as documented in the 2015 General Plan EIR Table 4.4-2, Cultural Resources in the Project Study Area and Vicinity, as subsequently revised, supplemented, or replaced by the City, and the archaeological or tribal cultural resources cannot be avoided, in addition to the requirements in Section E.1.a for all construction projects with ground-disturbing activities, the following additional actions shall be implemented prior to ground disturbance:

i. The project applicant shall retain a qualified archaeologist to conduct a subsurface investigation of the project site, and to ascertain the extent of the deposit of any buried archaeological materials relative to the project's area of potential effects, in consultation with a tribal representative as applicable. The archaeologist shall prepare a site record and file it with the California Historical Resource Information System and the City of Cupertino.

ii. If the resource extends into the project's area of potential effects as determined by the archaeologist, the resource shall be evaluated by a qualified archaeologist to determine if the resource is eligible for listing on the California Register of Historical Resources. If the qualified archaeologist determines that the resource is not eligible, no further action is required unless there is a discovery of additional resources during construction (as required above for all construction projects with ground-disturbing activities). If the qualified archaeologist determines that the resource is eligible, the qualified archaeologist shall identify ways to minimize the effect which the project applicant shall implement. A written report of the results of investigations and mitigations shall be prepared by the qualified archaeologist and filed with the California Historic Resources Information System Northwest Information Center and the City of Cupertino.

CMC Section 17.04.050(E)(2), ***Protect Human Remains and Native American Burials*****.** The project applicant shall comply with California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

a. In the event of discovering human remains during construction activities, there shall be no further excavation or disturbance of the site within a 100-foot radius of the remains, or any nearby area reasonably suspected to overlie adjacent remains.

b. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are Native American.

c. If the Santa Clara County Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission (NAHC) within 24 hours.

d. The NAHC shall attempt to identify descendants (Most Likely Descendant) of the deceased Native American.

e. The Most Likely Descendant has 48 hours following access to the project site to make recommendations or preferences regarding the disposition of the remains. If the Most Likely Descendant does not make recommendations within 48 hours after being allowed access to the project site, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance and provide documentation about this determination and the location of the remains to the NAHC and the City of Cupertino. Alternatively, if the owner does not accept the Most Likely Descendant's recommendations, the owner or the descendent may request mediation by the NAHC. Construction shall halt until the mediation has concluded.

CMC Section 17.04.050(H), ***Protect Paleontological Resources During Construction.*** If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a qualified paleontologist, City staff, and property owner. Appropriate actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may include, but are not limited to, salvage of unearthed fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

With mandatory compliance with CMC Sections 17.04.050(E)(1), 17.04.050(E)(2), and 17.04.050(H), the proposed project would not result in significant impacts to unknown archaeological, tribal cultural, or paleontological resources. Therefore, the exception under State CEQA Guidelines Section 15003.2(f) does not apply to the proposed project.

4. EXCEPTIONS

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5. CONCLUSION

As discussed in Section 3, *Exemption*, of this document, the proposed DDA project meets the criteria for categorically exempt in-fill development projects in State CEQA Guidelines Section 15332. In addition, as discussed in Section 4, *Exceptions*, none of the exceptions to the categorical exemptions in State CEQA Guidelines Section 15300.2 apply. Therefore, the proposed project would not have a significant effect on the environment pursuant to CEQA, this analysis finds that a Notice of Exemption is appropriate for the proposed project.

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