

CC 2-03-2026

Oral
Communications

Written Comments

From: [Rhoda Fry](#)
To: [Public Comments](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#); [City Attorney's Office](#)
Subject: February 3 City Council Meeting, non-agenda oral comms, Lehigh and Stevens Creek Quarries
Date: Saturday, January 31, 2026 12:49:01 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

Lehigh and Stevens Creek Quarries

PUBLIC NUSSANCE

I am asking that the City of Cupertino take some action pertaining to the **public nuisance** of truck traffic in the middle of the night affecting our residents (I am not personally affected). A couple of months ago, I spoke with our District 5 County Supervisor Abe-Koga who said that they're monitoring the issue. On Thursday, January 29, two Cupertino residents addressed the County Planning Commission with their concerns, which were dismissed without empathy. They said that the operation is "vested" and there's nothing that you can do. But I believe there is.

Being "vested" means that the operation is exempt from modern zoning rules that would otherwise dictate hours of operation. It is like being "grandfathered in." I believe that the new aggregate business is not vested because: 1. It was abandoned for over 10 years. 2. The old equipment was removed and later replaced with other equipment. 3. Lehigh exported rock to Stevens Creek for aggregate processing, further confirming its abandonment of aggregate processing. Aside from the question as to whether the operation is vested, there is the separate issue of public nuisance. Please protect our residents!

ANTICIPATED FUTURE TRUCK TRAFFIC FROM LEHIGH'S PERMANENTE QUARRY

Separately, I am concerned about the amount of rock that is being exported. Consider that every truck of exported rock means more imported rock during reclamation, which is now expected to take up to 30 years with 600 trucks a day of trucks, when instead, the quarry should be using available materials onsite for reclamation per the 2012 Reclamation Plan.

STEVENS CREEK QUARRY WISHING TO ANNEX CUPERTINO LAND INTO COUNTY

Regarding Stevens Creek Quarry. At the January 29 Planning Commission meeting, we learned that Stevens Creek Quarry is wanting to have land that is in jurisdictional Cupertino, to be annexed to the County and that LAFCO would be involved. **Is our City Council aware of this?** I am still awaiting to get information back from the County on this issue.

There are three parcels, owned by Lehigh (aka Heidelberg Cement), that Stevens Creek

Quarry intends to include in its reclamation plan. Two of them are in jurisdictional Cupertino and are referred to as “The Licensed Area” in the County’s “Notice of Preparation.” Here are the APNs for land in Cupertino’s jurisdiction, owned by Lehigh, that Stevens Creek Quarry wishes to include in its reclamation plan area: 351-10-017 (40 acres) and 351-10-039 (35.5 acres). Looking at the proposed reclamation plan area, it appears that only a portion of these parcels would be affected. My recommendation is that if the City is considering giving up its jurisdiction, that the lots be split so that only the area outlined in the reclamation area goes to the County.

One 4.4-acre Cupertino parcel is owned by Stevens Creek Quarry 351-10-040 and, its use has been adjudicated by the County under SMARA since an August 2008 agreement (I don’t know whether it is being considered for annexation to the county).

ANTICIPATED FUTURE TRUCK TRAFFIC FROM STEVENS CREEK QUARRY

Finally, I’d like you to be aware that the Stevens Creek Quarry is intending to import either 11.7M cubic yards of fill or 20.5M cubic yards of fill AND intends to dig the quarry deeper than is currently allowed. The reason for needing fill for reclamation is to stabilize the over-mined quarry walls. You can find more information pertaining to the proposed plans from a variety of linked documents here: <https://plandev.santaclaracounty.gov/programs-and-studies/smara/stevens-creek-quarry>

Regards,
Rhoda Fry

From: [Anne Ezzat](#)
To: [Public Comments](#)
Subject: Fwd: Item #2 on the Agenda for January 27, 2026
Date: Tuesday, January 27, 2026 10:56:42 AM

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----- Forwarded message -----

From: **Anne Ezzat** <aezzat95014@gmail.com>
Date: Tue, Jan 27, 2026 at 5:13 AM
Subject: Item #2 on the Agenda for January 27, 2026
To: <planningcommission@cupertino.gov>

Dear Commissioners,

I am writing in hopes that you will reject the proposed terracing of the yard that abuts the preserve at McClellan Ranch. There are simply too many issues with the proposal.

- 1) The property borders one of the few open spaces in the city. This project could be damaging to the wildlife and is not appropriate for a riparian area. What sort of environmental study was done to justify this project?
- 2) Where will the construction equipment and material be staged? Will it be staged at the top of the property to annoy the neighbors? Or will it be placed on city property at the bottom of the hill to annoy residents walking through McClellan Ranch and potentially damage the environment? If the latter, the city should charge rent for the use of their property.
- 3) The removal of the oaks is particularly problematic because again, older trees will be removed for a construction project. There is no reason to believe that based on the plans, there will be room to replace them. So, they will just pay "in lieu" of fees.
- 4) The current owners of the property were aware of the limitations of the property when they purchased it. It is my understanding that they have lived in the property, so they have had adequate time to decide to live with the limitations or list it for sale. Modifications to any property should not be done with solely the needs of the owners in mind unless it is a safety issue; in this case, the neighbors and public need to be considered.

For the above reasons and more, I hope that you will reject this proposal.

Best regards,

Brooke Ezzat

From: Kitty Moore <KMoore@cupertino.gov>
Sent: Monday, February 2, 2026 7:10 PM
To: Lauren Sapudar <LaurenS@cupertino.gov>; Kirsten Squarcia <KirstenS@cupertino.gov>
Cc: Tina Kapoor <TinaK@cupertino.gov>
Subject: Trip Report for the 2/3 meeting

Hi,

I think I am required to turn in or state a trip report for the 2/3 meeting according to the Brown Act.

Attached is my report for Oral Communications.

Kitty





CITY COUNCILMEMBER REPORT

Meeting: February 3, 2026

Reporting Councilmember: Mayor Kitty Moore

Report Dates: 1/26/26 to 1/30/26

Item Date, Title, and Description:

January 26, 2026. Audit Committee Meeting. The Audit Committee received the OPEB and Pension Section 115 Trust Performance Report for Q2 and received the Q2 Treasurer's Investment Report. The change in balances since 2022 was discussed with a focus on LAIF and investment strategies along with the new cash management policy in effect. The Committee had a robust discussion on the OPEB and Section 115 Trust Investment Policy and whether to include environmental investment policy language (Environmental and Social Governance, ESG) and whether to add Global Infrastructure as a new investment category. It was noted that the environmental (ESG) investments could be in conflict with Global Infrastructure investments. For example, in reducing fossil fuel investments from an environmental (ESG) policy, Global Infrastructure could include expansion of fossil fuel production, use, or transport. The Committee received the Internal Audit and Fraud, Waste and Abuse update and the proposed Audit Committee Workplan, requesting the addition of budget auditing.

Per the Brown Act, trips must be reported at the next Regular Meeting. The following is a trip report:

January 27, 2026. Travel to the 94th U.S. Conference of Mayors in Washington, D.C. View from plane:



January 28, 2026. Jogged very early to the Mall in about 16F temperatures in the snow to snap some photos before the agenda started.



Note: Many of these sessions live-streamed on C-SPAN.

Attended “**Opening Plenary Session**” followed by **Breakout Session: “Mayors Water Council”** regarding water and wastewater issues including PFAS and funding reductions particularly in a partisan way regarding infrastructure.

“**How Cities are shaping Global Affairs**” with Washington D.C. Mayor Muriel Bowser as Moderator, regarding international partnerships. Participated in televised **Press Conference**.

“Plenary Lunch” with multiple speakers including Dr. Frank Luntz regarding the Words that Work. Special guest students from West Point joined us at our table. They had traveled 5 hours to be a part of the conference and visit D.C.

“The State of Federal Housing Legislation” had some concerning legislation with a carrot and stick approach to cities to take away their CDBG funding.

“AI Powered Cities” breakout session with an AI overview which included Boston Mayor Michelle Wu.

“Mayors-Only Session: Keeping Mayors Safe” followed by an “Opening Reception” where a representative from Keep America Beautiful shared their grant opportunities.



January 29, 2026. “Mayors and Business Leaders Plenary Session”,

a combined session. One of the highlights of this session was an appearance by FIFA President Giovanni Infantino along with the World Cup Trophy. The Fifa President informed us that this year’s World Cup will be the largest sporting event in world history. He was presented with a shirt signed by all of the Mayors and President Infantino gave a FIFA World Cup Soccer Ball to the U.S. Council of Mayors President David Holt.



Minneapolis Mayor Jacob Frey was a surprise speaker who came to speak about Minneapolis and ICE, receiving two standing ovations and making national news. There was a large press conference outside of the conference room afterwards for him.



Break-out session: “Generosity and Leadership in Times of Crisis” shared information about disaster relief and GoFundme campaigns. World Central Kitchen, which has supported many disaster relief efforts, has been an early aid

effort in disasters and has helped teach how to scale up food providers. Mayors from Baltimore, MD and Asheville, NC shared their experiences and offered advice on disaster preparedness.

“**America 250**” session discussed ways to join in the national semiquincentennial celebration. Several activities for July 4th were presented along with reading the Declaration of Independence and September 11, 25 years later, tribute. We were asked to video an America 250 reflections spot which will be compiled and shared with the cities.

“**Healthy and Sustainable Cities**” **plenary lunch**. This had several speakers and some awards from the beverage council. There was a surprise visit from Mayor Frey of Minneapolis who received two standing ovations and had a large press conference afterwards.

Breakout Session: “Cities and and Universities: Building Partnerships for Innovation and Workforce Readiness” This session had an emphasis on university research and how the focus has changed under the current administration.



“Mayors Game Changer – Transforming Cities in Sports and Entertainment” This lively meeting shared information on how cities can become sports and entertainment hubs. Oklahoma City’s rowing center was highlighted as an example of a transformation of a river which was usually dry, into a rowing and sports complex. The river was dammed to create a long and narrow reservoir suitable for rowing and facilities were built around it. Arshay Cooper, Author of “A Most Beautiful Thing” who grew up in a rugged part of Chicago, and became Captain of the first All-black high school rowing team and now helps youth out through rowing, spoke about his history and autographed copies of his book.



“Welcome to Washington, D.C. Reception” at the Embassy of the Republic of Singapore. Hosted by the Honorable Lui Tuck Yew, Singapore’s Ambassador to the United States.



After a slightly difficult bus ride due to heavy snow, we were greeted at the embassy and provided Singaporean hors d'oeuvres, music provided by two students of the New England Conservatory, and two lively dragons came in and one ate a head of lettuce hanging from the ceiling from a red rope. The hosts spoke, along with D.C. Mayor Bowers, and Council of Mayors President Holt thanking and welcoming everyone.



Images inside the Singapore Embassy:



January 30, 2026. "Honoring Leadership in the Arts Plenary Session" This was an awards ceremony for local leadership in the arts which have helped seniors suffering Parkinson's, inmates; pediatric awards for bringing the arts to hospitalized children, wounded soldiers and veterans, and how doctors are now prescribing arts as part of therapy.

- Arts are a \$1.2 Trillion economic activity
- 5% of US GDP
- 5.6 M jobs
- For every \$1 invested in the arts there is a \$9 return

- The NEA budget was restored
- 76% of Americans believe arts are important to them

“Current Issues Relating to FEMA and Disaster Management”. This session was livestreamed on C-SPAN. The session covered an update on the FEMA Review Council: 1) Changed the threshold for per capita index, 2) Change the cost share, currently at 75%, pushing more costs to states, 3) Block grant proposal to help streamline reimbursements, 4) potential privatization of National Flood Insurance, 5) How to close out prior disaster because some are 10-20 years old and are still on the books, could have a settlement agreement, 6) Future Mitigation Funding. 3

“Wildcards” are 1) parametric insurance such as wind speed, flood level, or earthquake size could trigger an auto payout for instance, 2) Reconsider deductible model with possibly incentives, and 3) Category changes such as public buildings which may not be funded by the Feds. This will be an iterative process.

The return on investment for mitigations is great, for every \$1 spent there is an \$11 savings in disaster repair costs. Meaning mitigating a home prior to a disaster saves money when a flood or fire strikes.

Next, the discussion moved to the Fix FEMA Act which has 6 elements: 1) elevate it to a Cabinet-level agency, 2) States should play a larger role, including cost share, expend their own funds for mitigations, 3) Permitting reform so that mitigations are not problematic, 4) align survivor’s expectations. Have a common application process, 5) Mitigation for resilience. Consider formula-based grants and pre-approved lists, and 6) Transparency in regulatory reform. It is recommended to fix the current program rather than wait for an overhaul.

“Energy Certainty in American Cities” This was another session which mentioned data centers. The example city was Mesa, AZ. The distance that battery storage may be from a residential area under new safety and battery standards, which are unlike the batteries at the Moss Landing fires of 2025, is 1000.’ Other potential microgrid power sources mentioned besides solar included fuel cells and nuclear. The U.S. Conference of Mayors Energy Policy Resolutions are due in May for the Annual Conference and energy is a priority.

“Closing Plenary Lunch” This session focussed on housing issues. Former President Bill Clinton provided closing remarks via recorded message which again centered on ICE in Minneapolis.

This session ended with the adjournment of the Council.

Return Travel January 30, 2026.

From: [Connie-Comcast Swim5am](#)
To: [City Clerk](#)
Subject: 2026-02-03 CC orals - protect immigrants
Date: Tuesday, February 3, 2026 7:21:37 PM
Attachments: [2026-02-03 CC ORALS-Help Us .docx](#)

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Please add this communication to the Written Record. Connie
From Connie's iPhone

Feb 3, 2026 Oral Communications

Honorable Mayor, Vice Mayor, Councilmembers, City Manager, all here in the audience in the room and on Zoom: My name is Connie Cunningham, Chair, Housing Commission, speaking for myself only.

It is wonderful to have this time at Council meetings to express information that is important for residents.

The Mercury News today, Feb 3, had an article today about protest in San Jose on Monday. Under the topic: Super Bowl LX Week. It was about a protest rally against ICE immigration raids. The juxtaposition is jarring.

I have attended and been heartened by rallies and protests against ICE, and expressing support to Protect Immigrants.

But I have been afraid recently that California is going to become a target for ICE raids because overall we are a blue state. And there is the Super Bowl attracting people from all over the country. Immigrant workers and sports fans alike can be targeted.

Fortunately, I heard about the Santa Clara County Rapid Response Network RRN Training last month at our Cupertino Library. It helped a lot to have knowledge and techniques to use in this scary situation.

That is my reason to be here tonight. This phone number is the one you call in Santa Clara County to alert the Rapid Response Network of something that needs their attention.

408-290-1144

Rapid Response Network offers legal defense, observation of ICE operations and accompaniment to ICE appointments.

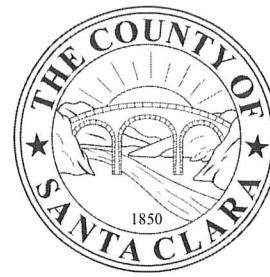
408-290-1144

you can put the number in your phone

Also I have a few cards to carry with you.

RRN Rebeca Armendariz said, "Our community is ready. Every day, we have dozens of new allies and community members signing up to peak up, to bear witness and to protect their community from attacks, from ICE,...from DHS....We're ready, and we're out there."

County of Santa Clara
Department of Planning and Development
County Government Center, East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110



**NOTICE OF PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR THE
STEVENS CREEK QUARRY
USE PERMIT AND RECLAMATION PLAN AMENDMENT PROJECT**

Project Applicant: Stevens Creek Quarry Inc.
File Number: PLN20-119
Application For: Use Permit and Reclamation Plan Amendment

The County of Santa Clara (“County”) will be the Lead Agency and will prepare an Environmental Impact Report (EIR) for the use permit and reclamation plan amendment proposed by Stevens Creek Quarry Inc. (“project”). The County requests your input on the scope and content of the environmental information to be included in the EIR that is germane to your agency’s statutory responsibilities in connection with the proposed project. A brief description of the project, its site boundary, and a summary of the potential environmental effects are provided on the following pages. Approval of the project will require actions by the County of Santa Clara, including the preparation and certification of an EIR and issuance of a use permit and reclamation plan amendment. The EIR also may be used by your agency when considering approvals for the project.

A Public Scoping/Community Meeting to solicit input for the Notice of Preparation will be held virtually via Zoom on Tuesday, June 6, 2023, from 6:00 p.m. to 8:00 p.m. The deadline for your response is Thursday, June 29, 2023, at 5:00 p.m.; however, an earlier response, if possible, would be appreciated. Please send your response to:

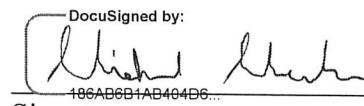
County of Santa Clara Planning Office
Attention: Robert Salisbury
County Government Center
70 West Hedding, 7th Floor, East Wing, San Jose CA 95110
E-mail: Robert.Salisbury@pln.sccgov.org

Prepared by:
Robert Salisbury
Principal Planner

Robert Salisbury
Signature

May 25, 2023
Date

Approved by:
Michael Meehan
Principal Planner


Signature

5/25/2023
Date

Introduction

As the lead agency, the County plans to analyze the potential environmental impacts associated with use permit and reclamation plan amendment applications submitted by Stevens Creek Quarry Inc. (SCQ) pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.) and its implementing regulations, the CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq.). SCQ and its predecessors have long mined and processed sand, gravel, and crushed stone (collectively, "aggregates") at the Stevens Creek Quarry ("Quarry") and SCQ is operating under an existing reclamation plan that was last amended in 2008. SCQ now seeks a use permit and reclamation plan amendment from the County of Santa Clara ("County") to continue these activities for an additional 20 years, and then to reclaim the Quarry consistent with its proposed end use. This action, the proposed Stevens Creek Quarry Use Permit and Reclamation Plan Amendment, is referred to as the "Project."

Project Location

The Quarry is located on Stevens Canyon Road, approximately 3 miles south of I-280 and approximately 10 miles west-southwest of San José. The Quarry occupies approximately 170 acres, of which approximately 147 acres is included in the current reclamation plan. The Project site consists of three areas within the Quarry: Parcel A, Parcel B, and an area licensed from Lehigh Southwest Cement Company (the "Licensed Area") that is adjacent to Parcel A and B. Parcel A consists of one irregularly shaped parcel (APN 351-18-048). Parcel B consists of two rectangular parcels and a third narrow wedge-shaped parcel (APNs 351-10-019, 351-10-044, and 351-10-040, respectively). The Licensed Area consists of a portion of APN 351-11-001, and APNs 351-10-017 and 351-10-039.

Lehigh Cupertino

Most of the Quarry parcels are located in an unincorporated area of Santa Clara County, California. The remaining, approximately 9.5-acre area is located within the jurisdictional boundaries of the City of Cupertino (City). Quarry operations have been under the County's oversight since operations began, and the City lacks a surface mining ordinance necessary to regulate mining operations. Therefore, in August 2008, the two jurisdictions agreed (pursuant to the Surface Mining and Reclamation Act [SMARA]) that a limited area along the east wall of Parcel B that is under the City's jurisdiction is subject to County approval and regulation under SMARA.

Project Description

The use permit would authorize a revised mine plan and provide use permit coverage to include Parcel A, Parcel B, and the Licensed Area. The use permit would allow excavation deeper within Parcel B than is currently authorized by the approved Reclamation Plan and relocation of the concrete recycling activities to Parcel B from where they currently exist on Parcel A. Some existing Quarry buildings would remain, while others would be removed as part of the Project. No active quarrying, stockpiling, or processing of materials is proposed to occur in the Licensed Area. However, SCQ is requesting that the Licensed Area be included within the boundaries of the Reclamation Plan Amendment to allow further latitude in slope stability to the east of and in the northwest corner of Parcel B.

The proposed reclamation plan amendment includes a revised slope design to correct the potential slope instability identified in the western pit slope, updated plans for stormwater flow, and builds on the existing, approved approach to reclaim the quarry pit to meet the final reclaimed site elevations by backfilling it via a combination of using overburden excavated on-site during mining activities and fill materials imported from offsite locations. Because it cannot now be known with sufficient certainty how much fill material will be available for import from offsite locations, the Project includes two options for the reclaimed slopes: Option A

would be associated with 11.7 million cubic yards of fill; Option B would be associated with 20.5 million cubic yards of fill.

No changes are proposed relative to operational parameters (e.g., production rates or truck trips) or to the processing facilities and equipment currently used for mining.

Required Project Approvals and Processes

In addition to County certification of an EIR, issuance of a use permit, and approval of a reclamation plan amendment and updated financial assurances, the Project would likely require a Clean Water Act Section 401 certification from the State Water Resources Control Board and/or the San Francisco Bay Regional Water Quality Control Board, a Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), a Clean Water Act Section 404 nationwide permit from the U.S. Army Corps of Engineers (the “Corps”), and Federal Endangered Species Act Section 7 consultation by the Corps with the U.S. Fish and Wildlife Service (USFWS) regarding effects on federally listed species.

Potential Environmental Effects of the Project

All of the environmental considerations in the CEQA Guidelines Appendix G environmental checklist will be considered; however, the EIR is expected to focus on the following specific environmental topics:

- **Aesthetics** – The Project site is located at the southwestern limits of Santa Clara County in Monte Bello Ridge Canyon. The EIR will describe existing scenic vistas, visual character, scenic resources, and lighting in the vicinity of the Project site and will determine whether the Project would cause a significant impact to such resources.
- **Air Quality** – The air quality analysis presented in the EIR will address regional air quality conditions and air-pollutant sensitive receptors (including land uses or activities) in the vicinity of the Project site and determine whether the Project would cause a potential significant air quality impact. The County will prepare an Air Quality and Greenhouse Gas Emissions Technical Study and will seek input from the Bay Area Air Quality Management District as part of the EIR process.
- **Biological Resources** – The EIR will present information on applicable biological resources in the Project area, including special-status wildlife and plant species, natural communities, and wetlands or other jurisdictional waters and will evaluate whether the proposed extension of activities and reclamation plan amendment would result in potential significant impact to biological resources. The County will seek input from CDFW and USFWS as part of this effort.
- **Cultural Resources and Tribal Cultural Resources** – The EIR will present relevant cultural resources information, including data from a cultural resources inventory and evaluation report, and will assess whether the Project would cause a potential significant impact to historical resources, archaeological and unique paleontological resources, tribal cultural resources, or potential disturbance of human remains. Input will be sought from Tribes culturally affiliated with the Project area to inform the analysis.
- **Energy Conservation** – The EIR will evaluate the potential energy impacts of the proposed extension of quarrying activities and reclamation plan amendment to determine whether the Project would result in a potential significant impact to energy.
- **Geology and Soils** – The EIR will present relevant information about geology, soil conditions, and seismicity at the Project site and will evaluate whether the Project would result in a potential significant impact to such resources.

- **Greenhouse Gas Emissions** – Informed by an Air Quality and Greenhouse Gas Emissions Technical Study to be prepared by the County, the EIR will assess whether the Project would cause a potential significant impact relating to GHG emissions.
- **Hazardous Materials and Hazards** – The EIR will evaluate hazardous materials use on the Project site and whether the Project would result in a potential significant impact to public health and safety or hazardous materials due to the routine transport, use, or disposal of hazardous materials, reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment, or related considerations.
- **Hydrology and Water Quality** – The EIR will generally describe hydrology and water quality conditions in and around the Project site and will evaluate whether the Project would result in a potential significant impact to surface or groundwater quality, groundwater supplies or recharge, existing drainage patterns, or related considerations. The County will seek input from the RWQCB, the Corps, and the Santa Clara Valley Water District as part of this effort.
- **Noise** – The EIR will describe the existing noise environment in the vicinity of the Project site and evaluate whether the Project would result in a potential significant impact to sensitive receptors due to Project-generated noise and vibration.
- **Cumulative Impacts** – The EIR will evaluate whether the impacts of the Project, in combination with impacts of past, present, and reasonably foreseeable future projects, could cause or contribute to significant cumulative effects.
- **Alternatives to the Project.** CEQA requires an EIR to describe a range of reasonable alternatives to a project (or project location) that would feasibly attain most of the objectives of the project and that could avoid or substantially reduce at least one significant environmental impact. The EIR will evaluate a No Project Alternative and a reasonable range of other alternatives that meet these screening criteria, provide a comparative analysis, and identify an environmentally superior alternative.
- **Other CEQA Considerations** – The EIR also will include other information typically considered in an EIR, including an analysis of the Project’s potential to cause growth inducing impacts, significant unavoidable impacts, and significant irreversible environmental changes. It will discuss the Project’s consistency with relevant plans and policies, provide information about reference materials relied upon in the analysis, and identify the preparers of the EIR. Site-specific, project-specific technical reports will be provided as appendices.

The County welcomes all input on the scope and content of the EIR in response to this Notice of Preparation, and especially welcomes responses that will assist the County in:

1. Identifying significant environmental issues raised by the proposed extension of mining activities and the reclamation plan amendment;
2. Identifying and evaluating potential alternatives to the Project as proposed; and
3. Identifying past, present, and reasonably foreseeable future projects whose impacts should be considered in the cumulative effects analysis; and
4. Confirming which agencies will be a responsible and/or trustee agency for this Project and providing information germane to these agencies’ statutory responsibilities as they relate to the County’s CEQA analysis.



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E-mail: Robert.Salisbury@pln.sccgov.org

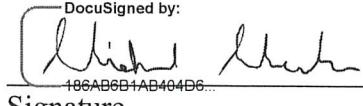
Prepared by:
Robert Salisbury
Principal Planner

Robert Salisbury

Signature

May 25, 2023
Date

Approved by:
Michael Meehan
Principal Planner


DocuSigned by:
106AB6D1AB404D6...

Signature

5/25/2023
Date

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Project Location

The Quarry is located on Stevens Canyon Road, approximately 3 miles south of I-280 and approximately 10 miles west-southwest of San José. The Quarry occupies approximately 170 acres, of which approximately 147 acres is included in the current reclamation plan. The Project site consists of three areas within the Quarry: Parcel A, Parcel B, and an area licensed from Lehigh Southwest Cement Company (the “Licensed Area”) that is adjacent to Parcel A and B. Parcel A consists of one irregularly shaped parcel (APN 351-18-048). Parcel B consists of two rectangular parcels and a third narrow wedge-shaped parcel (APNs 351-10-019, 351-10-044, and 351-10-040, respectively). The Licensed Area consists of a portion of APN 351-11-001, and APNs 351-10-017 and 351-10-039.

Most of the Quarry parcels are located in an unincorporated area of Santa Clara County, California. The remaining, approximately 9.5-acre area is located within the jurisdictional boundaries of the City of Cupertino (City). Quarry operations have been under the County’s oversight since operations began, and the City lacks a surface mining ordinance necessary to regulate mining operations. Therefore, in August 2008, the two jurisdictions agreed (pursuant to the Surface Mining and Reclamation Act [SMARA]) that a limited area along the east wall of Parcel B that is under the City’s jurisdiction is subject to County approval and regulation under SMARA.

Project Description

The use permit would authorize a revised mine plan and provide use permit coverage to include Parcel A, Parcel B, and the Licensed Area. The use permit would allow excavation deeper within Parcel B than is currently authorized by the approved Reclamation Plan and relocation of the concrete recycling activities to Parcel B from where they currently exist on Parcel A. Some existing Quarry buildings would remain, while others would be removed as part of the Project. No active quarrying, stockpiling, or processing of materials is proposed to occur in the Licensed Area. However, SCQ is requesting that the Licensed Area be included within the boundaries of the Reclamation Plan Amendment to allow further latitude in slope stability to the east of and in the northwest corner of Parcel B.

The proposed reclamation plan amendment includes a revised slope design to correct the potential slope instability identified in the western pit slope, updated plans for stormwater flow, and builds on the existing, approved approach to reclaim the quarry pit to meet the final reclaimed site elevations by backfilling it via a combination of using overburden excavated on-site during mining activities and fill materials imported from offsite locations. Because it cannot now be known with sufficient certainty how much fill material will be available for import from offsite locations, the Project includes two options for the reclaimed slopes: Option A

would be associated with 11.7 million cubic yards of fill; Option B would be associated with 20.5 million cubic yards of fill.

No changes are proposed relative to operational parameters (e.g., production rates or truck trips) or to the processing facilities and equipment currently used for mining.

Required Project Approvals and Processes

In addition to County certification of an EIR, issuance of a use permit, and approval of a reclamation plan amendment and updated financial assurances, the Project would likely require a Clean Water Act Section 401 certification from the State Water Resources Control Board and/or the San Francisco Bay Regional Water Quality Control Board, a Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), a Clean Water Act Section 404 nationwide permit from the U.S. Army Corps of Engineers (the “Corps”), and Federal Endangered Species Act Section 7 consultation by the Corps with the U.S. Fish and Wildlife Service (USFWS) regarding effects on federally listed species.

Potential Environmental Effects of the Project

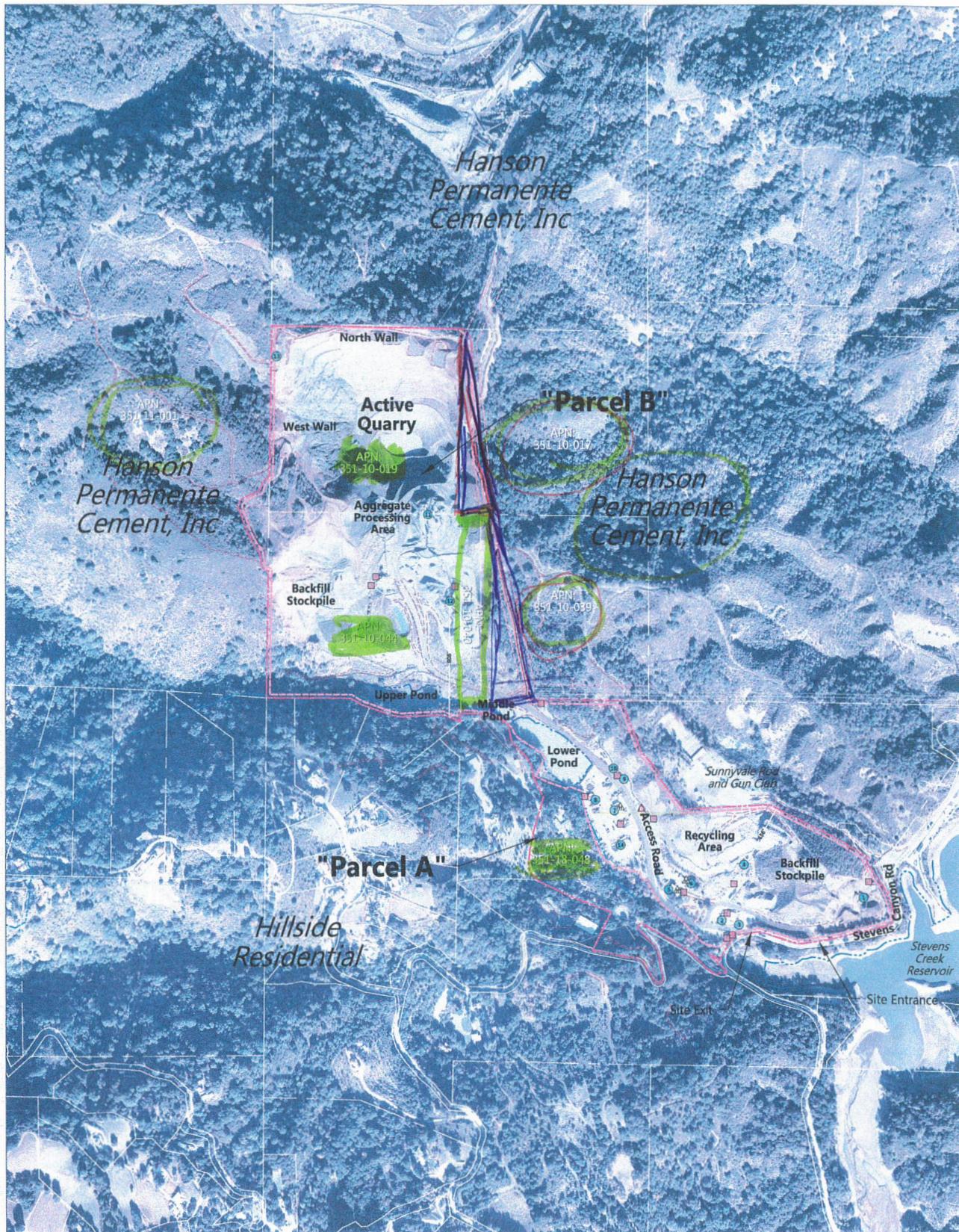
All of the environmental considerations in the CEQA Guidelines Appendix G environmental checklist will be considered; however, the EIR is expected to focus on the following specific environmental topics:

- **Aesthetics** – The Project site is located at the southwestern limits of Santa Clara County in Monte Bello Ridge Canyon. The EIR will describe existing scenic vistas, visual character, scenic resources, and lighting in the vicinity of the Project site and will determine whether the Project would cause a significant impact to such resources.
- **Air Quality** – The air quality analysis presented in the EIR will address regional air quality conditions and air-pollutant sensitive receptors (including land uses or activities) in the vicinity of the Project site and determine whether the Project would cause a potential significant air quality impact. The County will prepare an Air Quality and Greenhouse Gas Emissions Technical Study and will seek input from the Bay Area Air Quality Management District as part of the EIR process.
- **Biological Resources** – The EIR will present information on applicable biological resources in the Project area, including special-status wildlife and plant species, natural communities, and wetlands or other jurisdictional waters and will evaluate whether the proposed extension of activities and reclamation plan amendment would result in potential significant impact to biological resources. The County will seek input from CDFW and USFWS as part of this effort.
- **Cultural Resources and Tribal Cultural Resources** – The EIR will present relevant cultural resources information, including data from a cultural resources inventory and evaluation report, and will assess whether the Project would cause a potential significant impact to historical resources, archaeological and unique paleontological resources, tribal cultural resources, or potential disturbance of human remains. Input will be sought from Tribes culturally affiliated with the Project area to inform the analysis.
- **Energy Conservation** – The EIR will evaluate the potential energy impacts of the proposed extension of quarrying activities and reclamation plan amendment to determine whether the Project would result in a potential significant impact to energy.
- **Geology and Soils** – The EIR will present relevant information about geology, soil conditions, and seismicity at the Project site and will evaluate whether the Project would result in a potential significant impact to such resources.

- **Greenhouse Gas Emissions** – Informed by an Air Quality and Greenhouse Gas Emissions Technical Study to be prepared by the County, the EIR will assess whether the Project would cause a potential significant impact relating to GHG emissions.
- **Hazardous Materials and Hazards** – The EIR will evaluate hazardous materials use on the Project site and whether the Project would result in a potential significant impact to public health and safety or hazardous materials due to the routine transport, use, or disposal of hazardous materials, reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment, or related considerations.
- **Hydrology and Water Quality** – The EIR will generally describe hydrology and water quality conditions in and around the Project site and will evaluate whether the Project would result in a potential significant impact to surface or groundwater quality, groundwater supplies or recharge, existing drainage patterns, or related considerations. The County will seek input from the RWQCB, the Corps, and the Santa Clara Valley Water District as part of this effort.
- **Noise** – The EIR will describe the existing noise environment in the vicinity of the Project site and evaluate whether the Project would result in a potential significant impact to sensitive receptors due to Project-generated noise and vibration.
- **Cumulative Impacts** – The EIR will evaluate whether the impacts of the Project, in combination with impacts of past, present, and reasonably foreseeable future projects, could cause or contribute to significant cumulative effects.
- **Alternatives to the Project.** CEQA requires an EIR to describe a range of reasonable alternatives to a project (or project location) that would feasibly attain most of the objectives of the project and that could avoid or substantially reduce at least one significant environmental impact. The EIR will evaluate a No Project Alternative and a reasonable range of other alternatives that meet these screening criteria, provide a comparative analysis, and identify an environmentally superior alternative.
- **Other CEQA Considerations** – The EIR also will include other information typically considered in an EIR, including an analysis of the Project's potential to cause growth inducing impacts, significant unavoidable impacts, and significant irreversible environmental changes. It will discuss the Project's consistency with relevant plans and policies, provide information about reference materials relied upon in the analysis, and identify the preparers of the EIR. Site-specific, project-specific technical reports will be provided as appendices.

The County welcomes all input on the scope and content of the EIR in response to this Notice of Preparation, and especially welcomes responses that will assist the County in:

1. Identifying significant environmental issues raised by the proposed extension of mining activities and the reclamation plan amendment;
2. Identifying and evaluating potential alternatives to the Project as proposed; and
3. Identifying past, present, and reasonably foreseeable future projects whose impacts should be considered in the cumulative effects analysis; and
4. Confirming which agencies will be a responsible and/or trustee agency for this Project and providing information germane to these agencies' statutory responsibilities as they relate to the County's CEQA analysis.



SOURCE: Aerial & Site Parcel Lines-Muir Consulting Inc, flown and surveyed 8-13-2020. Other Parcel Lines-Parcel Quest, accessed December 2020 & Santa Clara Interactive Map, accessed December 2020; compiled by Benchmark Resources in 2020.

NOTES:

1. Parcel boundaries, orthophotography and topographic survey data prepared by Muir Consulting, Inc. Aerial survey date: 6-18-2020.
2. See Appendix D for stamped and signed Professional Land Surveyor stamped drawings.

	Site Boundary	±170 acres		Portable Bathroom Facilities (no onsite septic)
	Reclamation Plan Boundary	±147 acres		Above Ground Diesel Fuel Storage with Secondary Containment
	Parcel Line & Assessor's Parcel Number			Hazardous Materials Storage
	100-foot Power Line Easement			Distance from Loading Point to nearest Parcel Line
	Existing Building/Mining Equipment/Other Facilities (See list below for callouts shown)			Dirt Road
				Asphalt Road
				Access Road
				Water Border
				Swiss Creek
				Cross Section

1. Top Soil Plant
2. Main Office
3. Lower Scale House
4. Recycle Plant
5. Tractor Shop
6. Maintenance Shop
7. Truck Shop
8. Maintenance Shop
9. Upper Scale
10. Maintenance Shop Office
11. Rock Plant
12. Radio Tower (Press)
13. Radio Tower
14. Equipment Storage

Existing Conditions Aerial Photograph

STEVENS CREEK QUARRY
PROJECT DESCRIPTION

Figure 3

CC 2-03-2026

#8

Mary Ave Villas Project

Written Communications

From: [Paul Krupka](#)
To: [City of Cupertino Planning Commission; Public Comments](#)
Cc: [Brian Avery; Lina Meng](#)
Subject: Public Comment – January 27, 2026 – Mary Avenue Public Right-of-Way
Date: Tuesday, January 27, 2026 2:28:38 PM
Attachments: [krupka Georgia t 50.png](#)
[Cupertino PC re Mary Avenue Villas 012726.pdf](#)

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Dear Planning Commission Members:

Please accept and consider my attached public comment letter during your deliberations on January 27, 2026.

Thank you!

Sincerely,

Paul Krupka

Paul J. Krupka, PE
(he/him/his)
KRUPKA CONSULTING
Trusted Advisor | Transportation
650.504.2299
paul@pkrupkaconsulting.com

krupka.

krupka.

January 27, 2026

by email only > planningcommission@cupertino.gov & publiccomment@cupertino.gov

Planning Commission Members
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

RE: Public Comment – January 27, 2026 – Mary Avenue Public Right-of-Way

Dear Planning Commission Members:

I am supporting Brian Avery, owner of the Glenbrook Apartments, and Lina Meng, a neighbor, both of whom represent the Garden Gate Neighborhood Group, in providing transportation advisory services and a professional opinion on the Mary Avenue Villas Project. Please see my attached letter to the City Council Members, dated December 11, 2025, which presents my opinion that the Mary Avenue Villas Project will have a significant impact on parking, for which appropriate mitigations have not been adequately studied.

I appreciate your consideration.

Sincerely,
KRUPKA CONSULTING

Paul Krupka

Paul Krupka, P.E.
Owner

Attachment

Cc: Brian Avery (with attachment)
Lina Meng (with attachment)

krupka.

December 11, 2025

City Council Members
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

by email only > publiccomment@cupertino.gov

RE: Public Comment – Special Meeting on December 12, 2025 – Study Session on the Mary Avenue Project (“Project”)

Dear City Council Members:

I am supporting Brian Avery, owner of the Glenbrook Apartments, and Lina Meng, a neighbor, both of whom represent the Garden Gate Neighborhood Group, in providing transportation advisory services and a professional opinion on the Mary Avenue Villas Project. I offer the following information and comments for your consideration.

Qualifications

I am a registered Civil Engineer and Traffic Engineer in California and have over 40 years of diverse experience across all phases of project delivery, including preliminary assessment, conceptual planning, feasibility analysis, design, and construction. I have demonstrated expertise in transportation, traffic, and transit planning, engineering, and design related to transit-oriented development, transit facilities, parking facilities, roadway and highway improvements, large and small development projects, neighborhood, community, downtown, city, subarea, county, and sub-regional plans, and transit and highway corridors.

Comments

I have visited the Project site and surroundings, observed traffic and parking activities, surveyed peak parking occupancy on Mary Avenue and at Memorial Park, and reviewed recent photographic evidence of related parking conditions during Memorial Park events. I have reviewed the Transportation Study for Proposed Affordable Housing Project on Mary Avenue (Hexagon Transportation Consultants, Inc., November 13, 2025, the Memorial Park Specific Plan (City of Cupertino, February 2024), including the Memorial Park Parking Study (City of Cupertino, January 2024), the Westport Mixed-Use Project Environmental Impact Report Addendum No. 1 (PlaceWorks, December 2024), and information on current and planned development at De Anza College.

The Project will have a significant impact by removing 89 spaces of public on-street parking on Mary Avenue (95 spaces with recommended Project changes in the aforementioned Transportation Study), amid heavy observed demand for this parking (upwards of 60 percent occupied) during many major events at Memorial Park. This 37+% reduction in on-street parking supply will affect residents who rely on it, spreading parking demand further into residential neighborhoods. This impact was documented in the formal Project application in April 2025. It was acknowledged in the aforementioned Transportation Study. Still, it was seemingly dismissed with this simple conclusion – “With the Project, there would be 152 on-street

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parking spaces..., which would still provide enough spaces to meet the anticipated parking demand...along the project frontage." The anticipated parking demand noted was only 37 spaces, which reflects a non-Memorial Park event condition.

My peak parking occupancy survey on Saturday, November 1, 2025, found a demand of 42 spaces (17% occupied (42/241)) on Mary Avenue (total parking supply of 241 spaces). The photographic evidence I cited above indicated a demand of approximately 140 spaces (58% occupied) during Memorial Park events. **With the Project, this level of demand would equal 96% of the total parking supply (146 spaces).**

Other approved and planned developments will exacerbate this significant impact.

- **Memorial Park enhancements**, intended to serve existing and new patrons, *will increase parking demand in the neighborhood and on Mary Avenue*. While the aforementioned parking study did not include Mary Avenue, it cited "Maintain Current Parking Configuration along Mary Avenue" as a recommended management strategy.
- **Completion of the Westport Mixed-Use Project** will reduce residential and retail areas, associated vehicle trips, and the total parking supply, but *will require accommodating the resulting parking demand off-site along Mary Avenue*.
- **The replacement of the Flint Center at De Anza College** will enhance opportunities for public and on-campus entertainment and increase public reliance on off-site parking on Mary Avenue.

Conclusion

The project's significant impact has not been adequately studied to determine appropriate mitigations.

It is in your community's best interests that you strongly consider doing so.

I appreciate your consideration.

Sincerely,
KRUPKA CONSULTING



Paul Krupka, P.E.
Owner

Cc: Brian Avery
Lina Meng

From: [Joshua Safran](#)
To: [City Council](#)
Cc: [Caitlyn Grady](#); [Tina Kapoor](#); [Cupertino City Manager's Office](#); [Kirsten Squarcia](#); [Lauren Sapudar](#); [City Clerk](#); [Benjamin Fu](#); [City of Cupertino Planning Dept.](#); fandrews@awattorneys.com; [City Attorney's Office](#)
Subject: Demand Letter to City Council of Cupertino re Mary Avenue Villas Project (February 1, 2026)
Date: Sunday, February 1, 2026 11:58:06 PM
Attachments: [Demand Letter to City Council of Cupertino re Mary Avenue Villas Project \(February 1, 2026\).pdf](#)

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Dear Mayor Moore and Members of the City Council,

Please find attached our Request for Compliance with Law and Objections to Unlawful Proposed Approvals for Mary Avenue Villas Project (File #: 26-14737) for Item #8 of the City Council Agenda of February 3, 2026 for due Council consideration and inclusion in the public record.

All the best,

Joshua

STRATEGY LAW LLP

Joshua Safran, Esq.

One Almaden Boulevard, Suite 700

San Jose, California 95113

Phone: 510.384.7627

Email: jsafran@strategylaw.com

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P: (408) 478-4100 F: (408) 295-4100 www.strategylaw.com

February 1, 2026

JOSHUA SAFRAN, ESQ.
jsafran@strategylaw.com

Cupertino City Council
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

By Email (citycouncil@cupertino.gov)

**Request for Compliance with Law and Objections to Unlawful Proposed Approvals for
Mary Avenue Villas Project (File #: 26-14737)
Item #8 of City Council Agenda of February 3, 2026**

Dear Mayor Moore and Members of the City Council:

We represent the Garden Gate Coalition for Mary Avenue Safety (the “Coalition”), an unincorporated association of residents and community members directly and adversely affected by the proposed Mary Avenue Villas Project (File #: 26-14737) (the “Project”), scheduled for consideration as Agenda Item No. 8 at the February 3, 2026 City Council meeting.

On behalf of themselves and on behalf of the broader Cupertino community and the public at large in furtherance of the California Environmental Quality Act’s (“CEQA”) core purposes of informed public decision-making, meaningful participation, and protection of public safety and environmental resources, we submit this request that the City comply with law and our legal objections to the City’s proposed approvals for the Project and related actions, including but not limited to the City’s determination that the Project is exempt from CEQA, the proposed vacation of public rights-of-way, the declaration of exempt surplus land, and approval of the Disposition and Development Agreement (“DDA”).

As detailed below, the City of Cupertino’s (“City”) current proposed course of action exposes it to multiple, independent violations of state law, any one of which is sufficient to invalidate the Project approvals. If the City proceeds as currently proposed, it will do so with actual notice of these defects, and its actions will be subject to prompt judicial challenge.

I. Approval of the Project Will Violate CEQA

A. The City Has Failed to Carry Its Burden to Establish a Valid CEQA Exemption

The core mandate of CEQA is that California public agencies, such as the City, fully consider and evaluate the environmental consequences of their decisions *before* those decisions are made, not discovered after the damage is already done. It is for this reason that CEQA exemptions are narrowly construed, and that the City bears the burden of demonstrating that an exemption applies

and that no exception forecloses its use. *See* CEQA Guidelines, §15300; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249.

Here, the City relies primarily on CEQA Guidelines section 15332 (Class 32 - Infill Development), while also asserting (incorrectly and interchangeably) that certain approvals are “not a CEQA project,” are exempt under statutory housing provisions, or are “within the scope” of prior determinations.

None of these assertions withstand basic scrutiny.

Class 32 applies only where all five criteria are satisfied, including the requirement that the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. *See* CEQA Guidelines, § 15332(c). The City’s CEQA Exemption Memorandum asserts this criterion is met based largely on a parking demand assumption divorced from actual observed conditions, and by treating the loss of public parking as legally irrelevant. That position is unsupported by substantial evidence and contradicted by expert analysis already in the record. *See Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192 (holding that where the record contains evidence supporting a fair argument of environmental impact, an agency may not rely on a categorical exemption by dismissing or disputing that evidence).

B. Substantial Evidence Supports a Fair Argument of Significant Environmental Impacts

Under CEQA’s “fair argument” standard, environmental review is required whenever there is substantial evidence, in light of the whole record, that a project *may* have a significant environmental effect. *See* Pub. Resources Code, §21080(d); CEQA Guidelines, § 15064(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

That standard is easily met here.

1. Traffic, Parking, and Circulation Impacts

It is undisputed that the Project will permanently eliminate at least 89 publicly available on-street parking spaces on Mary Avenue, with the City’s own transportation consultant acknowledging that recommended line-of-sight modifications could increase that loss to 95 spaces. The City’s CEQA Exemption Memorandum nevertheless concludes that the Project will not result in significant traffic or parking impacts by relying on an “anticipated parking demand” of only 37 spaces, an estimate that expressly excludes Memorial Park event conditions and peak-use scenarios.

Paul Krupka, P.E. of Krupka Consulting, a licensed civil and traffic engineer with more than 40 years of experience, submitted an expert opinion which is in the record before the Council documenting that:

- Peak parking demand on Mary Avenue during Memorial Park events reaches approximately 140 vehicles, representing 58% occupancy of the existing supply;
- With the Project in place, that same level of demand would consume approximately 96% of the remaining parking supply, resulting in near-total functional failure; and,
- Displaced demand will necessarily spill into surrounding residential neighborhoods, impairing access, safety, and circulation.

This expert opinion is based on site visits, parking occupancy surveys, photographic evidence, and review of City-adopted planning documents, including the Memorial Park Parking Study, the Westport Mixed-Use Project environmental analysis, and planned development at De Anza College. It directly rebuts the City's unsupported assumption that non-event conditions control the significance analysis.

Further, the City's attempt to minimize the right-of-way vacation is contradicted by the record itself: multiple written submissions to the Council quantify the Project as effecting a net loss of approximately 19.5 feet (roughly 26%) of the existing Mary Avenue public right-of-way, a physical change that materially alters circulation geometry, parking configuration

Parking displacement and circulation impacts are cognizable CEQA impacts where, as here, they have secondary effects on neighborhood safety, emergency access, and livability. *See San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 697-698. The City may not dismiss contrary expert evidence simply because it conflicts with staff's preferred outcome. *See Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1112.

2. Construction Impacts and Unusual Site Conditions

The City's CEQA Exemption Memorandum repeatedly characterizes the Project as routine "urban infill," while simultaneously acknowledging that it is located within a narrow former (or not so former) public right-of-way, immediately adjacent to an arterial roadway, a freeway on-ramp, a public park, and existing residential uses.

Construction will require reconfiguration of Mary Avenue itself, use of the public right-of-way for staging, and prolonged activity adjacent to sensitive receptors. These conditions are not typical of ordinary infill housing, and they materially undermine the City's conclusory finding that construction impacts will be insignificant.

3. Known Soil Contamination and Ongoing Monitoring

The Project approvals expressly acknowledge lead contamination in site soils, requiring investigation, remediation, and potentially long-term engineering controls or monitoring prior to residential occupancy. The City's CEQA Exemption Memorandum attempts to neutralize this issue by deferring analysis to future permitting and regulatory clearance.

That approach violates CEQA. A project dependent on unresolved contamination clearance, and potentially ongoing mitigation, cannot be deemed exempt where remediation activities themselves may cause environmental impacts. *See Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.

C. Multiple CEQA Exceptions Independently Bar Reliance on Any Categorical Exemption

Even assuming arguendo that the Project could otherwise qualify for a categorical exemption, multiple exceptions under CEQA Guidelines section 15300.2 apply, notwithstanding the City's conclusory assertions to the contrary.

1. Unusual Circumstances Exception (Guidelines, §15300.2(c))

The City's CEQA Exemption Memorandum lazily asserts, without analysis, that no unusual circumstances exist. That assertion ignores the Project's defining characteristics: placement of a 40-unit residential development within an active roadway corridor, elimination of a substantial portion of public parking, reliance on density bonus waivers eliminating all private open space, and adjacency to a freeway and public park.

The record also raises a site-specific air quality and health-risk issue that the City does not address. It is not disputed that the Project is immediately adjacent to Highway 280 and inconsistent with California Air Resources Board's *Air Quality and Land Use Handbook* and related technical advisories recommending a 500-foot buffer between freeways and sensitive residential uses. The Project is specifically intended to house developmentally disabled residents, a population for whom exposure risks may be heightened.¹ The City's exemption determination offers no Health Risk Assessment or reasoned analysis demonstrating why freeway-adjacent pollutant exposure is insignificant here. That is exactly the kind of site-specific condition that triggers the unusual circumstances exception and defeats the City's attempt to treat this as routine infill.

Where unusual circumstances are present and there is a reasonable possibility of significant environmental effects, as demonstrated by expert evidence here, the exemption is unavailable. *Berkeley Hillside Preservation*, *supra*, 60 Cal.4th at 1105.

¹ To the extent that the City resorts to the trite and bad faith retort that "CEQA evaluates how the project affects the environment, not how the environment affects the project," we would advise the City that this formulation is incomplete and legally misleading in the air quality context. While it is true that CEQA generally assesses a project's effects on the environment, Courts have also made clear that agencies must consider whether existing environmental conditions cause or exacerbate significant impacts of the project itself (e.g., exposure of future residents to existing pollution), particularly where those conditions are inherently tied to the project's design, location, and population of future users. The proximity of residential land uses to high-volume roadways is exactly the kind of site-specific circumstance that must be evaluated in the environmental review, not ignored under an exemption.

2. Cumulative Impacts Exception (Guidelines, §15300.2(b))

The City's CEQA Exemption Memorandum dismisses cumulative impacts by isolating the Project from surrounding development. That approach is legally impermissible.

The administrative record identifies multiple nearby projects and planned improvements, including Memorial Park enhancements, the Westport Mixed-Use Project, and future redevelopment at De Anza College, that will increase parking demand and traffic pressure on Mary Avenue. CEQA prohibits reliance on a categorical exemption where cumulative impacts may be significant, even if each project is individually modest. *See Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1318.

3. Scenic and Aesthetic Impacts

While the City blithely asserts that aesthetic impacts are inherently insignificant, courts have repeatedly held otherwise. Mary Avenue functions as a visual corridor and neighborhood edge, and the Project's linear massing, fencing, lighting, and elimination of open space raise legitimate aesthetic concerns. Whether the City chooses to recognize it or not, aesthetic impacts are environmental impacts under CEQA. *See, e.g., Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401.

D. The Notice of Exemption Is Independently Legally Deficient

Even apart from the substantive flaws in the City's reliance on a categorical exemption, the Notice of Exemption ("NOE") and the City's related findings are independently unlawful because they fail to comply with CEQA's most basic procedural and informational requirements.

1. The NOE Fails to Accurately Describe the "Whole of the Action"

CEQA requires the City to evaluate the entire project, defined as the "whole of the action" that may result in a physical change to the environment. CEQA Guidelines, §15378; *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1225. The City may not segment interdependent approvals or obscure the scope of its action through artful labeling.²

Here, the NOE and supporting resolutions fail to accurately describe the Project. They treat the Project primarily as an architectural site approval, while characterizing the following actions as either outside CEQA or "within the scope" of prior determinations:

² We also note that the project description literally fails to describe the Project. *I.e.*, it does not meaningfully explain to the public the full range of physical changes to the environment that will be integral to development of the Project. For example, the public is not adequately informed what the impacts on street parking will be. Will public parking be eliminated from the east side of Mary Avenue? Or will public parking be eliminated across from the dog park? We do not know. This underscores our conclusion that the City has not presented a stable, intelligible Project description sufficient to support an exemption determination.

- Vacation of an active public right-of-way;
- Declaration of exempt surplus land;
- Conveyance of public property at nominal value; and,
- Approval of a binding Disposition and Development Agreement committing the City to a fixed course of conduct.

These actions are not ministerial, nor are they legally or practically severable. Each is a discretionary approval that enables, facilitates, and commits the City to the Project. By omitting or minimizing these actions in the NOE, the City has failed to describe the Project accurately, rendering the NOE invalid. *See County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963 (NOE defective where it failed to encompass full scope of project approvals).

2. The City’s “Within the Scope” Findings Are Conclusory and Unsupported

Both the surplus land resolution and the DDA resolution state, without analysis, that their approvals are “within the scope” of the environmental determination adopted for the architectural approval.

CEQA does not permit such conclusory incorporation by reference. Where an agency relies on a prior exemption or determination, it must demonstrate, based on evidence, that the later approval does not introduce new discretionary commitments, new impacts, or new legal consequences. *See Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 952.

Here, the City has made no findings explaining how irrevocable commitments of public land, public funds, and public infrastructure can plausibly be treated as mere implementation details of an architectural permit. Nor has it explained why these actions do not foreclose meaningful consideration of alternatives or mitigation.

Absent such findings, the City’s “within the scope” assertions are legally meaningless.

3. The City Improperly Conflates “Not a CEQA Project” With “Categorically Exempt”

The City’s agenda materials inconsistently assert that certain approvals are either “not a CEQA project” or categorically exempt. That internal inconsistency is not a harmless drafting error; it reflects a fundamental misapplication of CEQA.

An action that is “not a project” under CEQA is one that has no potential for physical environmental change. *See* CEQA Guidelines, §15378(a). By contrast, a categorical exemption applies only to actions that are projects but are deemed exempt under defined criteria.

Approvals that convey land, vacate rights-of-way, and bind the City through a long-term development agreement plainly constitute “projects” under CEQA. The City cannot avoid CEQA review by oscillating between mutually exclusive legal theories. *See Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.

4. The NOE Lacks the Evidentiary Support Required by CEQA

CEQA requires that a NOE be supported by substantial evidence demonstrating the applicability of the claimed exemption. *See* CEQA Guidelines, §15061(d). Boilerplate recitations of exemption classes do not suffice.

Here, the NOE and CEQA Exemption Memorandum rely on generalized conclusions regarding traffic, parking, construction, and site conditions, while ignoring or discounting contrary evidence, including expert analysis, already in the administrative record. That is precisely what CEQA forbids. *See Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1112.

An NOE issued in the face of unresolved factual disputes regarding environmental impacts is legally defective and must be set aside.

5. These Defects Independently Require Invalidation of the NOE

Courts have repeatedly held that a NOE must be vacated where it misdescribes the project, relies on improper segmentation, or lacks evidentiary support, regardless of whether the agency might ultimately prevail on the merits after proper review. *See Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110.

Accordingly, even if the City could substantively justify a CEQA exemption, which it cannot, the NOE and related approvals would still fail as a matter of law.

II. The Proposed Vacation of the Mary Avenue Right-of-Way Is Unlawful

The Project is expressly predicated on the partial or complete vacation of an active public right-of-way along Mary Avenue, yet the City has failed to comply with the substantive and procedural requirements governing such an action under state law and General Plan law. These failures are not technical or curable after the fact; they go to the City’s fundamental authority to approve the vacation at all.

A. The City Has Failed to Make the Findings Required by the Streets and Highways Code

Under Streets and Highways Code sections 8300-8325, a city may vacate a public right-of-way only upon making express findings, supported by substantial evidence, that the right-of-way is unnecessary for present or prospective public use. This statutory requirement is mandatory and strictly construed. *See Beals v. City of Los Angeles* (1943) 23 Cal.2d 381; *Bacich v. Board of Control* (1943) 23 Cal.2d 343.

Here, the City has not merely failed to support such findings, the administrative record affirmatively contradicts and precludes such findings.

The record indisputably establishes that the Mary Avenue right-of-way currently serves multiple ongoing public functions, including:

- Extensive public on-street parking relied upon by Memorial Park patrons and nearby residents;
- Vehicular circulation and queuing adjacent to a freeway on-ramp; and
- A functional buffer between established residential neighborhoods and regional infrastructure.

Neither the staff report nor the draft resolutions meaningfully analyze these existing public uses. They do not explain why these uses are no longer necessary, how their elimination serves the public interest, or why the foreseeable displacement of their impacts into surrounding neighborhoods is legally permissible. Instead, the City appears to assume that elimination of these public uses is justified simply because the Project requires it. That is not the legal standard.

Courts have long held that a street may not be vacated where it continues to serve public convenience or necessity, even if the agency believes a private redevelopment would be beneficial. *See Beals v. City of Los Angeles* (1943) 23 Cal.2d 381, 386. Nor may a vacation proceed where it materially impairs access or circulation for adjacent properties without careful, evidence-based justification. *Bacich v. Board of Control* (1943) 23 Cal.2d 343, 349-350.

Because the City has failed to make, and cannot support, the findings required by the Streets and Highways Code, the proposed vacation is unlawful.

B. The City Failed to Comply with Government Code Section 65402(a)

Independently, the proposed vacation is procedurally invalid because the City failed to comply with Government Code section 65402(a).

That statute provides that no real property may be disposed of by a public agency unless the disposition has first been submitted to and reported upon by the planning agency as to conformity with the adopted General Plan. A vacation of a public right-of-way constitutes a disposition of real property for purposes of section 65402(a), because it permanently removes land from public use and control.

Here, the City Council is poised to approve the vacation without any prior determination by the Planning Commission that the right-of-way vacation is in conformance with the City's General

Plan, including its Circulation Element. No Planning Commission resolution, report, or finding addressing the vacation exists in the administrative record.³

This omission is fatal. Section 65402(a) assigns the Planning Commission an independent, antecedent role in determining General Plan conformity. That statutory requirement cannot be satisfied by staff analysis embedded in a City Council report, nor can it be cured by a conclusory conformity statement adopted by the Council itself. Where a city fails to follow mandatory procedural prerequisites imposed by statute, its approval exceeds its jurisdiction and must be set aside. Code Civ. Proc. §1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

C. The City Has Failed to Identify Any Local Authority Excusing Compliance

Notably, neither the staff report nor the draft resolutions cite any provision of the Cupertino Municipal Code purporting to authorize the City Council to approve a right-of-way vacation without prior Planning Commission review or a General Plan conformity report. Nor do they cite any local ordinance reallocating or waiving the Planning Commission's role under Government Code section 65402(a).

That silence is dispositive. The City bears the burden of demonstrating compliance with the procedural prerequisites for its actions, including identifying the legal authority under which it proceeds. Where, as here, the administrative record contains no citation to local law excusing or modifying statutory requirements, the City cannot retroactively supply that authority through post hoc argument.

D. The Vacation Cannot Be Treated as Ancillary or Ministerial

The City's agenda materials improperly attempt to characterize the right-of-way vacation as an ancillary or implementation detail "within the scope" of other Project approvals. That framing is legally incorrect.

A right-of-way vacation is a discretionary land use decision with independent legal consequences, including permanent loss of public access, parking, and circulation capacity. It cannot lawfully be treated as ministerial, nor can it be subsumed into an architectural or site approval without separate findings and procedures.

E. The Proposed Vacation Is, Therefore, Void

Because the City has failed to:

³ We note that the City's Planning Commission was scheduled to evaluate such findings at its meeting of January 27, 2026, but, after receiving written objections from this firm, cancelled the entire meeting.

1. Make and support findings that the right-of-way is unnecessary for present or prospective public use;
2. Obtain a Planning Commission determination of General Plan conformity as required by Government Code section 65402(a); and,
3. Identify any local authority excusing compliance with those requirements,

the proposed vacation of the Mary Avenue right-of-way is unlawful and void. Approval of the Project predicated on that vacation would likewise be invalid and subject to writ relief.

III. The City's Actions Violate the Surplus Land Act

The City's attempt to declare the Project site "exempt surplus land" under the Surplus Land Act (Gov. Code, § 54220 et seq.) ("SLA") suffers from the same foundational defect: the absence of required findings supported by evidence.

The SLA requires a public agency to determine, in good faith, that property is not necessary for its present or foreseeable public use before it may be declared surplus or exempt surplus land. That determination must be grounded in the actual, functional use of the property, not in aspirational redevelopment goals. Gov. Code, § 54220–54221; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 584.

Here, the City's draft resolution recites the statutory language but does not engage in the required analysis. It does not explain how land currently functioning as an active public right-of-way and public parking resource is suddenly unnecessary for public purposes. Nor does it reconcile that conclusion with the City's own acknowledgment of substantial ongoing public use. This kind of conclusory surplus declaration must be rejected, and the City must recognize that statutory land disposition requirements exist to protect public assets from expedient disposal without genuine necessity.

Moreover, the City's approach improperly bootstraps the surplus determination to the Project itself, treating the decision to redevelop as proof that the land is surplus. The SLA does not permit agencies to manufacture surplus status by first deciding to eliminate public use and then declaring it unnecessary.

Because compliance with the SLA is a condition precedent to lawful conveyance, the City's failure to make and support the required findings renders the proposed disposition invalid.

IV. The Disposition and Development Agreement Is Invalid

The DDA is not merely an implementation document; it is a substantive, discretionary approval that independently commits the City to convey public land, forego public value, and bind itself to

a fixed course of conduct. As such, it is subject to multiple, independent legal constraints that the City has failed to satisfy.

A. The DDA Constitutes an Unlawful Predetermination of Project Approvals

Through the DDA, the City agrees to convey City-owned real property, vacate public rights-of-way, provide substantial financial assistance, waive or defer fees, and limit its future regulatory discretion, all in service of a single private development proposal. These commitments are made before lawful completion of CEQA compliance, surplus land determinations, and right-of-way vacation findings, and are expressly contingent on approvals that the City purports to still be considering.

Courts have repeatedly held that such agreements constitute impermissible predetermination where they materially constrain an agency's discretion or commit it to a project outcome before completing required review. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138; *Santa Margarita Area Residents Together v. San Luis Obispo County Bd. of Supervisors* (2000) 84 Cal.App.4th 221, 233.

Because the DDA presupposes the legality of underlying approvals that are themselves defective, it cannot stand independently and must be set aside.

B. The City Has Failed to Demonstrate Compliance With Public Disposition and Bidding Requirements

The DDA provides for the conveyance of City-owned real property to a single, preselected developer without any competitive process, public solicitation, or findings explaining why such procedures are unnecessary or inapplicable.

While cities may, in limited circumstances, dispose of property without competitive bidding, such dispositions are lawful only where the agency identifies and complies with a statutory exception, and makes findings demonstrating that the disposition serves a valid public purpose and complies with applicable law.

Here, neither the staff report nor the DDA identifies any authority exempting the City from otherwise applicable public disposition or bidding requirements, nor do they explain why a sole-source conveyance is legally permissible. The City's silence on this point is especially problematic where the disposition involves public land formerly devoted to public use and is being transferred to facilitate a private development.

Absent clear statutory authority and supporting findings, the City's sole-source disposition of public property is unlawful.

C. The DDA Raises Serious Concerns Under the Constitutional Prohibition Against Gifts of Public Funds

Article XVI, section 6 of the California Constitution prohibits the City from making a gift of public funds or assets to a private party. While expenditures or conveyances serving a valid public purpose may be permissible in certain circumstances, the City must demonstrate, through findings supported by substantial evidence, that the public benefit received is commensurate with the value of the public assets conveyed.

The DDA commits the City to convey public land at a nominal price, provide substantial subsidies and financial assistance, and waive or defer fees, yet the record contains no analysis of fair market value, no appraisal, and no findings explaining how the consideration received by the City is reasonably proportional to what it gives up.

Courts have made clear that the absence of such analysis raises serious constitutional concerns. *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745 (public expenditures must serve a public purpose and not constitute a gift); *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 585–586.

While affordable housing may in certain circumstances serve a public purpose, that purpose does not relieve the City of its obligation to demonstrate that the terms of the transaction are fair, reasonable, and supported by evidence. The City has not done so here.

D. The City Has Failed to Make Required Findings Regarding Fair Market Value and Public Benefit

Relatedly, the City has failed to make findings, or even acknowledge the necessity of findings, regarding:

- The fair market value of the property being conveyed;
- The value of the public rights being relinquished through the right-of-way vacation;
- The cumulative value of subsidies, fee waivers, and other financial assistance; and
- Whether the public benefits cited justify the totality of public concessions made.

This failure is not academic. Without such findings, there is no basis for the City Council, or a reviewing Court, to conclude that the DDA complies with statutory and constitutional constraints on the disposition of public assets.

Courts have regularly invalidated public land transactions where agencies failed to make or support findings demonstrating adequate consideration and public benefit. *See, e.g., Orange County Foundation for Preservation of Public Property v. Irvine Co.* (1983) 139 Cal.App.3d 195, 200-201; *County of Alameda v. Janssen* (1940) 16 Cal.2d 276, 281.

E. The DDA Is, Therefore, Invalid and Cannot Be Approved

Because the City has failed to:

1. Avoid impermissible predetermination of Project approvals;
2. Identify lawful authority excusing competitive disposition procedures;
3. Demonstrate that the conveyance and subsidies do not constitute a gift of public assets; and
4. Make findings regarding fair market value and proportional public benefit,

the Disposition and Development Agreement is invalid as a matter of law. The City must withdraw the DDA and refrain from approving or implementing it unless and until it complies with these independent legal requirements.

V. The City Misapplies the Density Bonus Law and Housing Accountability Act

The City's approvals repeatedly invoke the Density Bonus Law (Gov. Code, §65915) and the Housing Accountability Act ("HAA") (Gov. Code, §65589.5) as justification for waivers, concessions, and completely ignoring adverse impacts. That reliance is misplaced and legally inappropriate.

Neither statute authorizes approval by incantation. The Density Bonus Law requires specific findings demonstrating that each waiver or concession is necessary to make the subject project economically feasible and that it does not result in a specific adverse impact upon public health or safety. The City has not made those findings in any meaningful way.

Similarly, the HAA limits a local agency's ability to deny or reduce housing density, but it does not exempt a project from compliance with other state laws or relieve the agency of its obligation to make a complete and accurate administrative record.

By treating these housing statutes as a substitute for CEQA review, surplus land compliance, and public infrastructure protections, the City has inverted their purpose. As Courts have made clear, housing laws do not authorize agencies to bypass independent statutory mandates or to approve projects without required findings. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138.

In sum, the City has treated the Density Bonus Law and HAA as a license to dispense with required findings and independent statutory obligations. No such license exists. Those statutes facilitate housing production; they do not authorize approval by fiat or excuse noncompliance with CEQA, General Plan law, surplus land requirements, or public infrastructure protections. The City's misapplication of these laws provides an additional, independent basis to set aside the Project approvals.

VI. Approval of the Project Will Inversely Condemn Private Property

Approval of the Project as currently formulated will necessarily give rise to non-speculative, legally cognizable, and meritorious inverse condemnation claims against the City.

While not every public action affecting access or parking is compensable, California law is clear that a public improvement may give rise to inverse condemnation liability where it substantially impairs access to private property or imposes a special and peculiar burden on a discrete group of property owners. *Bacich v. Board of Control* (1943) 23 Cal.2d 343, 349; *People ex rel. Dept. of Pub. Wks. v. Ayon* (1960) 54 Cal.2d 217, 223.

Here, the City proposes to permanently eliminate long-established on-street parking and reconfigure circulation along Mary Avenue as an integral component of the Project. For certain adjacent and nearby properties, that parking and circulation are not merely a convenience; they are a functional component of access, usability, and economic viability, particularly given the proximity to Memorial Park, freeway infrastructure, and the absence of reasonable alternatives.

Unlike the other generalized neighborhood impacts borne by the public at large, these effects will fall disproportionately and uniquely on a limited number of properties that have historically relied on the existing right-of-way configuration. Where a public action results in such a special and peculiar burden, compensation is required even in the absence of a physical appropriation. *Holtz v. Superior Court* (1970) 3 Cal.3d 296, 303.

Importantly, these impacts are not temporary construction inconveniences. They are the direct and permanent consequence of a deliberate public decision to vacate and redesign a functioning public right-of-way for the sole benefit of a new, specific development. Courts have recognized that permanent impairment of access and use presents a fundamentally different legal question than short-term disruption. *Ayon*, *supra*, 54 Cal.2d at 223.

At a minimum, the City was obligated to consider whether its actions give rise to compensable impacts and to make findings addressing that risk before committing to the Project and related agreements. The City has not done so. Its failure to analyze or acknowledge these inverse condemnation concerns further underscores the legally premature and procedurally defective nature of the proposed approvals.

VII. Demand for Immediate Compliance with Law and Suspension of Project Approvals

For all of the foregoing reasons the City cannot lawfully rely on the proposed Notice of Exemption or approve or implement the Mary Avenue Villas Project as currently proposed.

Accordingly, the Coalition hereby demands that the City:

1. Set aside the Notice of Exemption and suspend all Project approvals;
2. Refrain from vacating any portion of the Mary Avenue public right-of-way;

Demand Letter to Cupertino City Council re Mary Avenue Villas Project (File #: 26-14737)
Page 15

3. Set aside the proposed surplus land declaration and DDA; and
4. Conduct all required statutory analyses and make legally adequate findings before reconsidering any aspect of the Project.

If the City proceeds with approval of the Project at this time, notwithstanding these defects, the Coalition will have no choice but to pursue all available legal and equitable remedies on behalf of its members and the public generally as private attorneys general.

This letter is submitted without waiver of any rights or remedies, all of which are expressly reserved. The Coalition further reserves the right to challenge the adequacy of the agenda notice for this item under the Brown Act, as the agenda does not fairly describe the full scope of the actions proposed, including the disposition of City-owned land and vacation of a public right-of-way.

Thank you for your attention to this important matter.

Very truly yours,

STRATEGY LAW, LLP



Joshua Safran, Esq.

cc: Tina Kapoor, City Manager (Tinak@cupertino.gov; citymanager@cupertino.gov)
Kirsten Squarcia, Interim Deputy City Manager (kirstens@cupertino.gov;)
Lauren Sapudar, Acting City Clerk (LaurenS@cupertino.gov;
cityclerk@cupertino.gov)
Benjamin Fu, Director of Community Development (BenjaminF@cupertino.gov;
planning@cupertino.gov)
Floy Andrews, Interim City Attorney (fandrews@awattorneys.com;
cityattorney@cupertino.gov)

From: [Lina](#)
To: [Public Comments](#); [City Clerk](#)
Subject: Public Comment - Agenda Item #8 - Feb 3, 2026 City Council Meeting
Date: Monday, February 2, 2026 11:36:00 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mary Ave Villas Project Proposal CEQA Violations; Application no ASA 2025-006 Location APN: 326-27-053

Dear Mayor and Councilmembers.

My name is Lina and I live in the Garden Gate neighborhood. I'm writing because approving this project without environmental review would violate the California Environmental Quality Act, CEQA.

CEQA exists for a simple reason: before a city makes a decision that changes the physical environment, it has to actually study the impacts. Exemptions are supposed to be narrow, and the City, not the public, has the burden of proving that an exemption really applies.

Here, the City claims this project is exempt as routine "infill" housing. But that claim ignores what's actually in the record.

This project would permanently eliminate at least 89 public parking spaces, and possibly more, on a street that already experiences heavy demand. The City's exemption analysis assumes parking demand of just 37 cars and explicitly ignores peak conditions. That assumption is contradicted by a licensed traffic engineer who documented that parking demand regularly reaches around 140 vehicles, and that this project would push the area close to complete parking failure.

Under CEQA's "fair argument" standard, that kind of expert evidence alone is enough to require environmental review.

There are other issues too: construction in a narrow former right-of-way, next to a freeway and a park; acknowledged lead contamination in the soil that still requires investigation and remediation; and the loss of public circulation space. None of that is "routine infill."

Even if the City believed an exemption might apply, CEQA forbids using exemptions where there are unusual circumstances, cumulative impacts, or unresolved factual disputes. Those conditions are clearly present here.

Finally, the City's Notice of Exemption doesn't even describe the whole project. It leaves out key actions like vacating a public right-of-way and committing City land through a development agreement. CEQA requires agencies to evaluate the whole action, not pieces of it.

For all of these reasons, approving this project as exempt would violate CEQA and expose the City to serious legal risk.

We are simply asking the City to follow the law, do the required environmental review, and make an informed decision. Thank you.

Sincerely,

Lina
Garden Gate Cupertino resident

From: [Brian Avery](#)
To: [Public Comments](#); [City Clerk](#)
Subject: SERIOUS Request for Compliance with Law, and Objections to Unlawful Proposed Approvals: Mary Avenue Villas Project (File #: 26-14737) Item #8 of the City Council Agenda of February 3, 2026 for due Council consideration and inclusion in the public record.
Date: Monday, February 2, 2026 2:10:13 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Honorable Mayor and Councilmembers,

My name is Brian Avery and for 47 years I have represented the 1,000 person community at Glenbrook Apartments, 10100 Mary Avenue.

Glenbrook is a nationally award-winning property that my family constructed with our own crews, and manages with 30 of our own employees. I am at Glenbrook each week during the days, nights, and often on weekends. I have witnessed the confrontations that my staff has with:

- a. Daily confrontations with De Anza students seeking to avoid buying parking permits at De Anza; and
- b. Confrontations with outside parkers within our residential property due to 11 events at the Park next door; and
- c. ON A WEEKLY BASIS, there are confrontations with residents who have multiple vehicles in the new Westport Development across the street which is grossly under-parked.....supposedly the local bus system was going to prevent this from happening :)
- d. How do you think the future looks for us when the second half of Westport is constructed? Mathematically, this means the Westport population, which shoves overflow parking from an underparked development onto our property, will send us twice the number of confrontations and illegal parking incidents.



Approving the Mary Avenue FREEWAY SOUNDWALL housing project and the removal of 89 parking spaces (which reduces the street width) without environmental review would violate the California Environmental Quality Act, CEQA. CEQA exists for a simple reason: before a city makes a decision that changes the physical environment, it has to actually study the impacts. Exemptions are supposed to be narrow, and the City, not the public, has the burden of proving that an exemption really applies. Here, the City of Cupertino claims this project is exempt as routine “infill” housing. But that claim ignores what’s actually in the record.

This project would permanently eliminate at least 89 public parking spaces, and possibly more, on a street that already experiences heavy demand. And the City Council refuses to mathematically project the SIX future demands on Mary Avenue: second half of Westport soon under construction, three future buildings directly across the street at De Anza College, resumption of paid parking at De Anza, and the addition of amenities and usess withing Memorial Park.....a very large park that has a very VERY low # of parking stalls after excluding CITY STAFF parking, an RETIREMENT CENTER parking.

The City’s exemption analysis assumes parking demand of just 37 cars and explicitly ignores peak conditions. That assumption is contradicted by a licensed traffic engineer who documented that parking demand regularly reaches around 140 vehicles, and that this project would push the area close to complete parking failure.

De Anza college is building huge new facilities across the street from Mary

Avenue:

- a. Student Union/Student Services building; and
- b. Creative Arts Center building; and
- c. A large Events Center which is projected (in writing based on an in-depth study) to have a constant flow of events versus Flint Center that had a very limited number of events.
- d. The resumption of PAID PARKING at De Anza College (temporarily abandoned during Covid) means that we will have students who don't like buying parking permits OR paying daily parking rates! You know it! FOR DECADES, we have endured De Anza's growing student population and the use of more parking stalls on Mary Avenue, and even in our property where we have horrible confrontations with young students yelling and acting aggressive as they depart their cars to walk across the street to De Anza.

Under CEQA's "fair argument" standard, the above expert evidence alone is enough to require environmental review.

Other issues:

1. Construction in a narrow former right-of-way, a few feet from a Freeway Soundwall and a park; and
2. Acknowledged lead contamination in the soil and there is no comprehensive current investigation and remediation;
3. Loss of public circulation space. None of that is "routine infill."

TWO CONCLUSIONS STARING AT YOU:

- A. Even if the City believed an exemption might apply, CEQA forbids using exemptions where there are unusual circumstances, cumulative impacts, or unresolved factual disputes. Those conditions are clearly present here.
- B. The City's Notice of Exemption doesn't even describe the whole project. It omits key actions like vacating a public right-of-way and committing City land through a development agreement. CEQA requires agencies to evaluate the whole action, not pieces of it.

For all of these reasons, approving this project as exempt would violate CEQA and expose the City to serious legal risk.

GOING FORWARD:

- 1. You know this is a problematic proposal with legal problems.**
- 2. You know that the City of Cupertino submitted more future affordable units than required by the state of CA.**

This was confirmed in a meeting I was in with the City Manager and Council

Member at City Hall.

3. We all love affordable housing and you can find a MORE LOGICAL and NON- FREEWAY SOUNDWALL site! For Pete's sake, none of you would take away 89 parking stalls and reduce street width in your own neighborhoodin the middle of big developments currently under construction, and the City's written plans to expand uses within Memorial Park BUT NOT ADD PARKING STALLS TO A SEVERELY underparked, large park.

4. I am glad to serve on a committee to find a good site for disabled housing. I am a founder of the Housing Industry Foundation, the most successful private charity in Santa Clara County & San Mateo County to supply short term loans to prevent homelessness and renovate emergency shelters, transitional housing, numerous shelters for battered women, etc. <https://www.hifinfo.org/>

Brian Avery, Property Manager and Managing Partner of Glenbrook Apartments
10100 Mary Avenue
Cupertino, CA 95014
brianbavery@gmail.com

From: [Linnea WICKSTROM](#)
To: [Public Comments](#)
Cc: [Per Email](#); [Gia Pham](#); [Linnea WICKSTROM](#)
Subject: YES to Mary Avenue Villas
Date: Sunday, February 1, 2026 1:35:57 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Members of the Cupertino City Council,

Though I cannot attend the Council meeting of February 3rd, I want to add my voice to the many voices of LeadUsHome in asking you to vote YES for the Mary Avenue Villas.

I'm a client of the San Andreas Regional Center, AbilityPath, and Housing Choices and I did speak at the January 21st Council meeting to advocate for the housing proposed for Mary Avenue.

As a person with intellectual and developmental disabilities, I was lucky to move into a studio apartment in Mountain View in 2015. The City of Mountain View, First Community Housing, and Housing Choices gave me the opportunity to begin living independently.

That is a huge step in life, especially for people like me.

On behalf of the 19 people with intellectual or developmental disabilities who we hope will be able to make a home in the Mary Avenue Villas, I ask you to commit to that development.

Thank you

Per Maresca

And Linnea Wickstrom

From: [Rhoda Fry](#)
To: [Public Comments](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#)
Subject: MORE COMMENT on February 3 City Council Meeting, agenda #8 Mary Ave
Date: Sunday, February 1, 2026 7:27:44 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

Regarding the Mary Avenue project.

It is my understanding that the money provided from our BMR fund is a loan to this project.
Am I correct?

What are the terms of the loan?

Is there a way to make sure that the repayment terms become more favorable if the project is sold to a for-profit within 55 years?

Thanks,
Rhoda Fry

From: [Rhoda Fry](#)
To: [Public Comments](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#); [City Attorney's Office](#)
Subject: February 3 City Council Meeting, agenda #8 Mary Ave
Date: Saturday, January 31, 2026 4:05:57 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

I am writing regarding February 3 City Council Meeting, agenda #8 Mary Ave.

1. Mary avenue was going to be on the Planning Commission Agenda prior to this meeting and that meeting was canceled. I just wonder whether we are putting the cart before the horse and needed to complete the Planning Commission Agenda item first before moving forward.
2. I am deeply troubled that after all these meetings, I see that buried in the resolutions, that this project can be sold in 55 years. The land that the City is giving away has value. And we're giving it away so that it can be sold at a profit at a future date. That is not okay with me. **What can you do to make sure that Cupertino is compensated for the land if the project sells?**

C – Draft Resolution excerpt:

“the City deems appropriate which includes, among other things, that the Property will be restricted by a regulatory agreement restricting the Property for affordable housing uses for 55 years to be recorded at the closing under the DDA”

**THIS IS IN DIRECT OPPOSITION TO THE HOUSING ELEMENT
REQUIRING 99 YEARS!!!**

WHAT IF THERE IS A LEGAL DISPUTE?

Excerpt see page H-28 (32nd pdf page):

<https://www.cupertino.gov/Your-City/Departments/Community-Development/Planning/Major-Projects/6th-Cycle-Housing-Element-Update#docaccess-43dac56f9771852d51ff4f1a89bb0478c6d728c5aa936bc4c8c1d1c327a71cc1>

BMR Term. Require BMR units to remain affordable for a minimum of 99 years; enforce the City's first right of refusal for BMR units and other means to ensure that BMR units remain affordable.

For more information on the 55 years, you might want to read up on California Tax Credit Allocation Committee
(CTCAC) <https://www.treasurer.ca.gov/ctcac/>

3. **We have had soooo many meetings and this clause has NEVER been mentioned.**

Parents who have their young-adult children there will not have the peace of mind that they are set for life. Cupertino cannot manufacture land. What will we do in 50 years? The City cannot manufacture land.

4. It seems that there has been a moving target on this project that has limited the number of organizations that can participate in bringing this project to fruition and that makes me terribly sad. Also, the unannounced loss of parking. And now, that we are giving away land that can be sold off at a profit in 55 years.

Regards,
Rhoda Fry

From: [Shaun Fong](#)
To: [City Council](#); [Public Comments](#); [City Clerk](#); [City Attorney's Office](#); [Cupertino City Manager's Office](#)
Subject: Concerns of City Council ramming through Public Right-of-Way Actions and bypassing Planning Commission
Date: Thursday, January 29, 2026 2:40:45 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor Moore and Members of the Cupertino City Council,

Residents of the Garden Gate neighborhood who are directly affected by the Mary Avenue housing project have repeatedly raised safety and legal concerns at City Council meetings. Unfortunately, many of these concerns have gone unaddressed. It is particularly disappointing that the newly appointed Mayor, whom many of us voted for, has declined to meet with affected residents or engage in substantive dialogue after multiple attempts.

This letter is submitted for inclusion in the official public record as formal notice of potential statutory noncompliance arising from City actions involving public right-of-way (ROW) property associated with the Mary Avenue project.

The issues outlined below raise material questions of law under controlling California statutes and established case law. These are threshold legal matters, not discretionary policy choices.

The City is requested to state its legal position, supported by specific statutory authority and judicial precedent, on the following questions:

1. Rezoning of Public Right-of-Way Prior to Lawful Vacation

Whether the City may rezone a public right-of-way to residential or private use prior to a lawful vacation conducted in accordance with Streets and Highways Code sections 8300–8333.

California courts have long held that public streets and rights-of-way are held in trust for public use and may not be diverted, conveyed, or repurposed for private use absent strict statutory compliance. (*People v. Russell* (1957) 48 Cal.2d 189; *County of Los Angeles v. Faus* (1957) 48 Cal.2d 672.)

2. Vacation Without Statutory Due Process

Whether a public right-of-way may be vacated without notice, public hearings, required findings, and a determination that the vacation serves the public interest, as mandated by Streets and Highways Code sections 8320, 8324, and 8330.

Courts have held that failure to comply with statutory vacation procedures renders such actions void and subject to judicial invalidation. (*City of Sacramento v. Jensen* (1963) 214 Cal.App.2d 45.)

3. Surplus or Exempt Surplus Designation While ROW Status Persists

Whether City-owned land that remains a public right-of-way may be designated as “surplus land” or “exempt surplus land” without first lawfully vacating the right-of-way and without compliance with the Surplus Land Act, Government Code sections 54220–54234, including mandatory notice to and review by the California Department of Housing and Community Development (HCD).

Courts have confirmed that sequencing actions to avoid or bypass the Surplus Land Act violates legislative intent and constitutes unlawful circumvention. (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2024) ____ Cal.App.5th ____.)

4. Disposition of Unvacated or Improperly Rezoned Right-of-Way

Whether the City may sell, transfer, encumber, or otherwise dispose of public right-of-way property that has not been lawfully vacated—or that was rezoned prior to vacation—without violating Streets and Highways Code sections 8353 and 8354 and Government Code section 54230.

Municipal actions exceeding statutory authority to convey public streets are *ultra vires* and void. (*City of Los Angeles v. San Pedro Boat Works* (1979) 92 Cal.App.3d 484.)

5. Pre-Designation or Exclusive Negotiations

Whether the City may engage in exclusive or single-party negotiations concerning public right-of-way property prior to a lawful determination of surplus or exempt surplus status, consistent with Government Code sections 54223 and 54233.

Courts have held that negotiations undertaken prior to lawful surplus designation undermine statutory safeguards and public transparency. (*Bell v. City of San Diego* (2011) 196 Cal.App.4th 102.)

Each of the above issues presents an independent basis for legal challenge, including, but not limited to, claims for writ, declaratory, and injunctive relief. Continued action without curing these defects may expose the City to judicial invalidation, mandatory reversal, and statutory penalties.

This letter provides notice of these concerns and preserves all rights and remedies available under California law. Written responses clearly identifying the City’s legal position—supported by specific statutory and case law authority—are respectfully requested for inclusion in the public record.

Sincerely,
Shaun Fong
Garden Gate Resident

From: [Walter Li](#)
To: [City Council](#); [Public Comments](#); [City Clerk](#); [City Attorney's Office](#); [Cupertino City Manager's Office](#)
Cc: [Lina](#); [Brian Avery](#); [Theresa Horng](#); [Shaun Fong](#); [Joshua Safran](#); [Roberta Murai](#)
Subject: Notice of Statutory Noncompliance and Preservation of Rights - Public Right-of-Way Actions
Date: Thursday, January 29, 2026 12:32:05 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mayor and Members of the Cupertino City Council,

This letter is submitted for inclusion in the official public record as formal notice of potential statutory noncompliance related to City actions involving public right-of-way (ROW) property.

The issues identified below raise material questions of law under controlling California statutes and case law. They are not discretionary policy matters.

The City is requested to state its legal position, supported by statutory authority and judicial precedent, on the following threshold questions:

1. Rezoning of Public Right-of-Way Prior to Lawful Vacation

Whether the City may rezone a public right-of-way to residential or private use prior to lawful vacation under Streets and Highways Code §§ 8300–8333.

California courts have long held that public streets and rights-of-way are held in trust for public use and may not be diverted, conveyed, or repurposed for private use absent strict statutory compliance. (People v. Russell (1957) 48 Cal.2d 189; County of Los Angeles v. Faus (1957) 48 Cal.2d 672.)

2. Vacation Without Statutory Due Process

Whether a public right-of-way may be vacated without noticed public hearings, required findings, and a determination that the vacation is in the public interest, as mandated by Streets and Highways Code §§ 8320, 8324, and 8330.

Courts have held that failure to comply with statutory vacation procedures renders the action void and subject to judicial invalidation. (City of Sacramento v. Jensen (1963) 214 Cal.App.2d 45.)

3. Surplus or Exempt Surplus Designation While ROW Status Persists

Whether City-owned land that remains a public right-of-way may be deemed “surplus land” or “exempt surplus land” without first vacating the right-of-way and without compliance with the Surplus Land Act, Government Code §§ 54220–54234, including mandatory notice and review by the California Department of Housing and Community Development (HCD).

Courts have confirmed that sequencing actions to avoid or bypass the Surplus Land Act violates legislative intent and constitutes unlawful circumvention. (California Renters Legal Advocacy & Education Fund v. City of San Mateo (2024) ___ Cal.App.5th ___.)

4. Disposition of Unvacated or Improperly Rezoned ROW

Whether the City may sell, transfer, encumber, or otherwise dispose of public right-of-way property that has not been lawfully vacated, or that was rezoned prior to vacation, without violating Streets and Highways Code §§ 8353 and 8354 and Government Code § 54230.

Municipal actions exceeding statutory authority to convey public streets are ultra vires and void. (City of Los Angeles v. San Pedro Boat Works (1979) 92 Cal.App.3d 484.)

5. Pre-Designation or Exclusive Negotiations

Whether the City may engage in exclusive or single-party negotiations concerning public right-of-way property prior to a lawful determination of surplus or exempt surplus status, consistent with Government Code §§ 54223 and 54233.

Courts have held that negotiations undertaken prior to lawful surplus designation undermine statutory safeguards and public transparency. (Bell v. City of San Diego (2011) 196 Cal.App.4th 102.)

Each of the above issues presents an independent basis for legal challenge, including but not limited to claims for writ relief, declaratory relief, and injunctive relief. Continued action without curing these defects may expose the City to judicial invalidation, mandatory reversal, and statutory penalties.

This letter provides notice of these concerns and preserves all rights and remedies available under California law. Written responses identifying the City's legal position, supported by specific statutory and case law authority, are requested for the public record. Previous notices to the City requesting for written responses had met with zero response, zero acknowledgements. Hopefully, under new mayor, this behavior will change.

Sincerely

Walter Li
Long time Cupertino Resident
408-781-7894

From: [Mahesh Gurikar](#)
To: [Public Comments](#)
Cc: [City Council](#); [City Clerk](#); [Tina Kapoor](#)
Subject: Mary Avenue Villas
Date: Thursday, January 29, 2026 7:09:17 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Clerk,
Please add this to Public Comments for February 3rd City Council meeting.
Thank you.

I strongly oppose City of Cupertino going ahead with the Mary Avenue Villas project despite concerns of residents in the neighborhood.

The Mary Ave Villas project is a financial and legal exposure for the city. These financial and legal risks must be fully studied and assessed. Hi
This project should not move to council until the financial and legal aspects of it are fully studied and the public hears the study results and can participate with input.

As City council members it is your duty to protect the city from financial and legal risks.

Please add to agenda the study sessions for this. Further please consider sending this to planning commission for study sessions and recommendations before sending it back to council for study sessions.

Finally a new council in November 2026 may decide to undo any hurried passing of this right now. Please consider the consequences of that and ensure that if you do proceed that any ground lease contract is written so that it could be terminated at any time and funding clawed back at any time with the recipient of the funding expected to be able to only drawdown on funding in stages and with ability to retract and claw back funding provided.

Please do not rush through approvals on Mary Ave Villas. Please send this first to planning commission for study sessions. Please allow the proceedings of planning commission study sessions to feed into further council study sessions. Please hold additional community meetings that are conducted by the city. I believe the city as the owner needs to hold these meetings and not Charities who are not owners of the land.

Thank you for paying careful attention to the financial and legal liabilities of this project to the city.

Thank you,
Mahesh Gurikar

From: [H Krishnapriyan](#)
To: [City of Cupertino Planning Commission](#); [City Clerk](#); [Luke Connolly](#); [City Council](#); [Public Comments](#)
Subject: Concerns regarding the proposed construction on Mary Avenue Parcel(APN 324-27-053
Date: Tuesday, January 27, 2026 3:41:47 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I had written earlier in November last year regarding this proposed construction. I write again to express my family's concern regarding this. The area is a busy artery serving residents in this area in getting to the expressways, to schools and access to Memorial park. Narrowing of the road and the loss of parking spaces in the area will have a big impact on the safety and convenience of the residents.

I request that these concerns be addressed before any action is taken.

Regards,
H. Krishnapriyan
21251 Gardena Drive
Cupertino CA 95014

From: [Walter Li](#)
To: [Public Comments](#); [City Clerk](#); [Luke Connolly](#); [City Council](#); [Santosh Rao](#); [Tracy Kosolcharoen](#); [David Fung](#); [Seema Lindskog](#); [Steven Scharf](#)
Subject: The City Has No Legal Authority to Give Public Streets to Private Developers
Date: Tuesday, January 27, 2026 12:30:34 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council and City Staff,

I am writing to formally object to the City's attempt to include public street parking areas and portions of a public avenue in a private development proposal. This action is not only inappropriate — it is legally impermissible.

A public street is not ordinary "city land." Under California law, a street or parking lane is a public right-of-way held in trust for the public, not a municipal asset that can be handed to private developers. The City has no authority to convert a right-of-way into private development land unless it first meets strict state-law requirements — requirements that have not been met.

The controlling law is the California Streets & Highways Code, Sections 8300–8363, which governs any attempt to abandon, repurpose, or transfer a public street. These statutes impose mandatory obligations on the City, including public findings that the street is unnecessary for present or future public use. No such findings have been made, and no lawful process has occurred.

Until the City complies with state law — which it has not — the right-of-way remains protected public property. It cannot be merged into a developer's site plan, used to satisfy private project requirements, or treated as a bargaining chip in negotiations.

Attempting to do so raises serious concerns about favoritism, misuse of public assets, and violation of the City's fiduciary duty to its residents. Public streets exist for public use, not for private enrichment.

I request that the City immediately remove all public right-of-way areas from the development proposal and provide a written explanation of the legal authority the City believes it has to include public streets in a private project. If no such authority exists — and none appears to — the City must halt this action.

Residents expect transparency, fairness, and compliance with state law. Anything less undermines public trust.

Sincerely,

Walter Li
Long Time Cupertino Resident
408-781-7894

From: [Paul Krupka](#)
To: [Public Comments](#)
Cc: [Lina Meng](#); [Brian Avery](#)
Subject: PUBLIC COMMENT - REGULAR MEETING - AGENDA ITEM 8 - FEBRUARY 3, 2026
Date: Tuesday, February 3, 2026 8:47:22 AM
Attachments: [krupka Georgia t 50.png](#)
[Cupertino City Council Public Comment Req Mtg 020306_Mary Avenue Villas_Itr 020326.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council Members:

Please accept and consider my attached public comment letter during your deliberations on December 12, 2025.

Thank you!

Sincerely,

Paul Krupka

Paul J. Krupka, PE
(he/him/his)
KRUPKA CONSULTING
Trusted Advisor | Transportation
650.504.2299
paul@pkrupkaconsulting.com

krupka.

krupka.

February 3, 2026

City Council Members
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

RE: Public Comment – Regular Meeting on February 3, 2026 – Mary Avenue Villas Project

Dear City Council Members:

I am supporting Brian Avery, owner of the Glenbrook Apartments, and Lina Meng, a neighbor, both of whom represent the Garden Gate Neighborhood Group, in providing transportation advisory services and a professional opinion on the Mary Avenue Villas Project (“Project”). I write today to offer my comments on the Transportation Study for Proposed Affordable Housing Project on Mary Avenue (Hexagon Transportation Consultants, Inc., November 13, 2025) (“Transportation Study”). This letter presents my summary qualifications, notes on preparation, comments on this document, and a conclusion.

Qualifications

I am a registered Civil Engineer and Traffic Engineer in California and have over 40 years of diverse experience across all phases of project delivery, including preliminary assessment, conceptual planning, feasibility analysis, design, and construction. I have demonstrated expertise in transportation, traffic, and transit planning, engineering, and design related to transit-oriented development, transit facilities, parking facilities, roadway and highway improvements, large and small development projects, neighborhood, community, downtown, city, subarea, county, and sub-regional plans, and transit and highway corridors.

Preparation

I have visited the Project site and surroundings, observed traffic and parking activities, surveyed peak parking occupancy on Mary Avenue and at Memorial Park, and reviewed recent photographic evidence of related parking conditions during Memorial Park events. I have reviewed the Transportation Study, the Memorial Park Specific Plan (City of Cupertino, February 2024), including the Memorial Park Parking Study (City of Cupertino, January 2024), the Westport Mixed-Use Project Environmental Impact Report Addendum No. 1 (PlaceWorks, December 2024), and information on current and planned development at De Anza College.

Comments on the Transportation Study

The parking evaluation describes typical conditions on Mary Avenue during three weekdays and one weekend day in April 2025. It documents the Project’s parking impact on Mary Avenue - a net loss of 89 spaces of public on-street parking, plus the recommended removal of six additional spaces to address a deficiency in driveway sight distance, resulting in a total net loss of 95 spaces on Mary Avenue. This 39% reduction in on-street parking supply

KRUPKA CONSULTING

431 Yale Drive | San Mateo, CA | 94402

650.504.2299 | paul@pkrupkaconsulting.com | pkrupkaconsulting.com

will directly affect residents who rely on it, spreading parking demand further into residential neighborhoods. It is surprising to me that the analyst simply notes that there "...would still be enough spaces to meet the anticipated parking demand along the Project frontage."

The parking evaluation does not address the parking conditions on Mary Avenue during a major festival at Memorial Park, when the street is effectively inundated with festival parking. *This is insufficient, given that six major festivals and numerous other events are held at Memorial Park each year and affected residents have voiced significant concerns to City staff and officials about the Project's impact in this light. Additional study is required to provide findings that inform the reader, City staff, other review agencies, and decision-makers about the Project's impact on parking and potential improvements to address it.*

I reviewed photographic evidence of parking conditions on Mary Avenue during major festivals and events at Memorial Park on Saturday, August 23, 2025 (Summer Concert Series), Friday, August 29, 2025 (Movies in the Park), September 13, 2025 (Silicon Valley Fall Festival) Saturday, September 20, 2025 (Heritage India Faire Festival), and Saturday, October 29, 2025 (Bay Area Diwali Festival). These sample photos provide drivers' views of vehicles parked end-to-end on Mary Avenue, from Stevens Creek Boulevard to Lubec Street, during these events.



Based on my review, I estimated that approximately 140 vehicles are parked on Mary Avenue during a major festival at Memorial Park. The following table presents this estimate, along with the existing parking conditions from the Transportation Study and the with-Project conditions.

ESTIMATED PROJECT PARKING IMPACT TYPICAL AND FESTIVAL CONDITIONS			
CONDITION	PARKING SUPPLY	PARKED VEHICLES	OCCUPANCY
TYPICAL EXISTING	241	37	15%
TYPICAL EXISTING <u>WITH PROJECT</u>	146	37	25%
FESTIVAL EXISTING	241	140	58%
FESTIVAL <u>WITH PROJECT</u>	146	140	96%

Sources:
Typical Conditions - Transportation Study
Festival Condition - Krupka Consulting

A major festival at Memorial Park has a dramatic effect on parking conditions on Mary Avenue without the Project. The Project impact - reduction in parking supply - creates an unsustainable deficiency that affects residents and visitors alike. Further study and development of alternative improvements are necessary to enable a fully informed decision on the Project.

Other approved and planned developments will exacerbate this Project deficiency.

- **Memorial Park enhancements**, intended to serve existing and new patrons, will increase parking demand in the neighborhood and on Mary Avenue. Notably, the Memorial Park Parking Study did not include Mary Avenue, even though it provides parking for Memorial Park, and it cited “Maintain Current Parking Configuration along Mary Avenue” as a recommended management strategy.
- Completion of the **Westport Mixed-Use Project** will reduce residential and retail areas, associated vehicle trips, and the total parking supply, *but will require accommodating the resulting parking demand off-site along Mary Avenue*.
- **The replacement of the Flint Center at De Anza College** will enhance opportunities for public and on-campus entertainment and increase public reliance on off-site parking on Mary Avenue.

Conclusion

The Project creates an unsustainable deficiency that requires further study and development of alternative improvements to allow a fully informed public review and decision-making process.

I appreciate your consideration.

Sincerely,
KRUPKA CONSULTING



Paul Krupka, P.E.
Owner

Cc: Brian Avery
Lina Meng

From: [George Zhu](#)
To: [City of Cupertino Planning Dept.](#); [City Clerk](#)
Cc: [Lauren Sapudar](#); [Melissa Robertson](#); [Lindsay Nelson](#); [Lakshmi Ramachandran](#)
Subject: Safety and Traffic Concerns Regarding Mary Avenue Villas/Charities Housing Project
Date: Monday, February 2, 2026 11:32:02 PM
Attachments: [attachment1.png](#)
[attachment2.png](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council Members and Planning Staff,

I am a homeowner in the Mary Avenue neighborhood writing to formally raise safety and traffic concerns regarding the proposed development of Mary Avenue Villas/Charities Housing.

Based on the currently published site plan and location, I would like to highlight the following issues:

1. Critical bicycle corridor

The proposed project is located directly along a heavily used bicycle route connecting the Highway 280 pedestrian/bicycle bridge to De Anza College. This corridor is used daily by commuters, students, and recreational cyclists and functions as an important north-south bicycle connection in the city.

2. Narrowest segment of Mary Avenue

The project site appears to be located at one of the narrowest points along Mary Avenue. Any roadway narrowing or reconfiguration at this location further constraints an already limited right-of-way and reduces safety margins for all road users.

3. Added traffic at an already congested intersection

The project adds vehicular traffic near the intersection serving the Glenbrook apartment complex, which already experiences high traffic volumes. Introducing additional turning movements and driveway access increases the potential for congestion and conflicts.

4. Forced bicycle merging into mixed traffic

The proposed site plan appears to require bicycles to merge from an existing well-separated bike lane into a shared roadway with motor vehicles. This transition creates a predictable and unsafe conflict point, particularly given the traffic volumes and proximity to freeway on- and off-ramps. (See attachment 1)

5. Existing collision history at the project location

According to the City of Cupertino's traffic collision heatmap, this area has already experienced multiple traffic collisions in the past, indicating that it is a known safety concern. Changes that reduce separation between bicycles and vehicles risk worsening an already documented problem area. (See attachment 2)

Given these factors, I respectfully request that these safety and traffic concerns be thoroughly analyzed and addressed before any alterations to the traffic configuration or bicycle facilities

on Mary Avenue are approved. At a minimum, the project should demonstrate that bicycle and pedestrian safety will be maintained or improved relative to existing conditions.

Thank you for your time and consideration of these important public safety issues.

Sincerely,
Wumengjian (George) Zhu
Mary Avenue Neighborhood Homeowner

--
Wumengjian (George) Zhu

MEDIUM DENSITY
(10-20 DU/Ac)
R3 (10-20)

MEDIUM DENSITY
(10-20 DU/Ac)
R3 (10-20)

Dangerous Traffic Merge Point

Increased Chances of
Congestion and Collision

PARKS AND
OPEN SPACE
PR

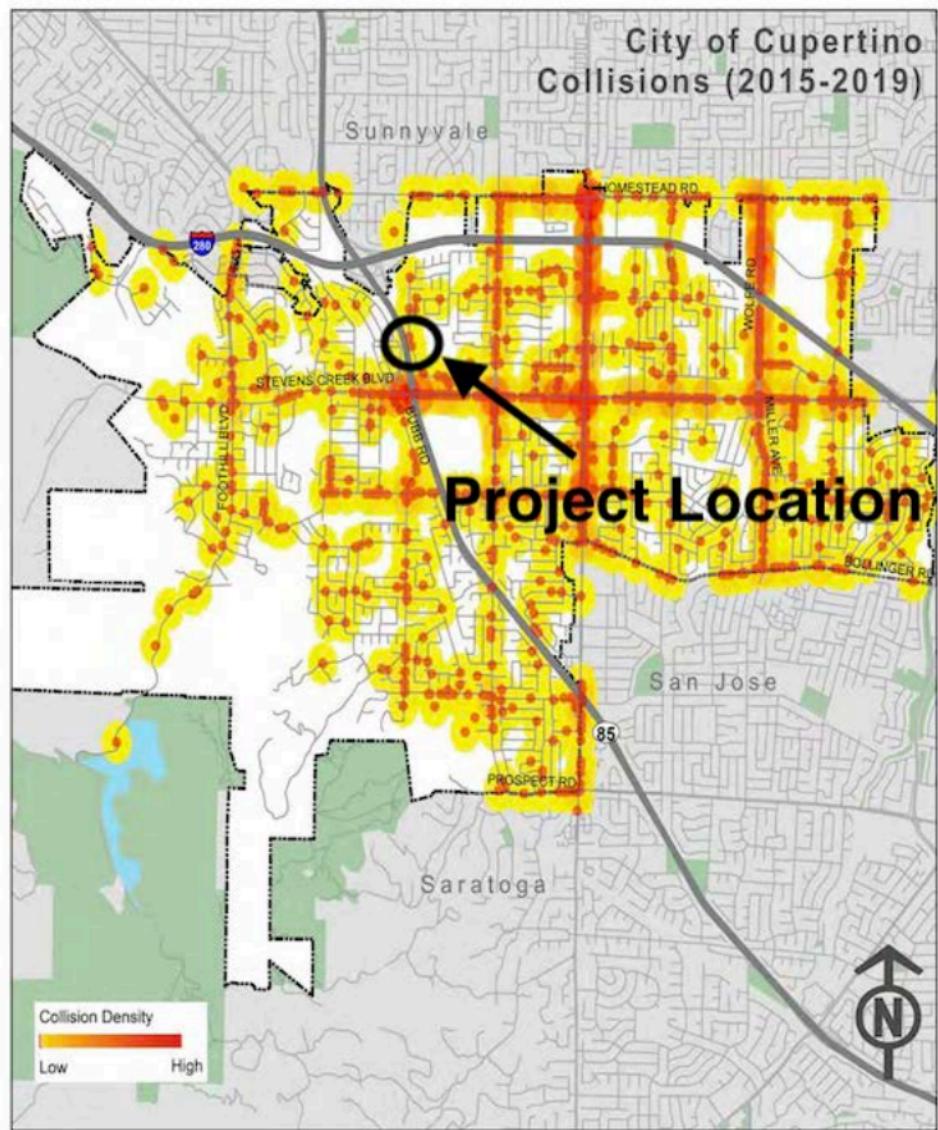
MARY AVENUE

PROPOSED 2 STORY BUILDING 2
HEIGHT: 23'0". AREA: 14,982 SQ. FT.

PROPOSED 2 STORY BUILDING 1
HEIGHT: 23'0". AREA: 14,883 SQ. FT.

ON-RAMP TO STATE ROUTE 85 NORTH
& INTERSTATE 280 NORTH

Figure 7. Heat Map of Collisions (COUNT) on City of Cupertino Roadways (2015-2019)



From: [Debbie Katz](#)
To: [Public Comments](#); [City Clerk](#)
Subject: Public Comment-Agenda Item #8- Feb. 3, 2026
Date: Tuesday, February 3, 2026 2:49:04 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good evening Mayor and Councilmembers,

My name is Debbie Katz, and I live on Anson Avenue. I'm here to speak about the Disposition and Development Agreement, the DDA.

This agreement is not a formality. It is a binding contract that commits the City to convey public land, vacate public rights-of-way, provide financial assistance, and limit its future discretion, all for this one project.

That is a problem, because those commitments are being made before the City has lawfully completed CEQA review, surplus land compliance, or right-of-way findings.

California courts are very clear: a city cannot tie its own hands or predetermine approvals while claiming it is still "considering" them. That is exactly what this agreement does.

There's more. The DDA provides for the transfer of public land to a single, preselected developer without any competitive process and without identifying any legal authority that allows that. The record contains no appraisal, no fair-market-value analysis, and no findings showing that the public is receiving proportional value.

That raises serious concerns under the California Constitution's prohibition on gifts of public assets.

Affordable housing can serve a public purpose, but that does not excuse the City from showing its work. Here, there are no findings explaining why these concessions are fair, necessary, or lawful.

Because of these defects, the DDA is invalid and should not be approved.

Thank you.

Debbie Katz

From: [Paul Krupka](#)
To: [Public Comments](#)
Cc: [Lina Meng](#); [Brian Avery](#)
Subject: Re: PUBLIC COMMENT - REGULAR MEETING - AGENDA ITEM 8 - FEBRUARY 3, 2026
Date: Tuesday, February 3, 2026 2:24:34 PM
Attachments: [krupka Georgia t 50.png](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Excuse my mistake! I meant February 3, 2026!

Paul J. Krupka, PE
(he/him/his)
KRUPKA CONSULTING
650.504.2299
sent by iPhone

On Feb 3, 2026, at 8:44 AM, Paul Krupka <paul@pkrupkaconsulting.com>
wrote:

Dear City Council Members:

Please accept and consider my attached public comment letter during your deliberations on December 12, 2025.

Thank you!

Sincerely,

Paul Krupka

Paul J. Krupka, PE
(he/him/his)
KRUPKA CONSULTING
Trusted Advisor | Transportation
650.504.2299
paul@pkrupkaconsulting.com

<krupka Georgia t 50.png>

<Cupertino City Council Public Comment_Reg Mtg 020306_Mary Avenue
Villas_ltr 020326.pdf>

From: orrinmahoney@comcast.net
To: [Kirsten Squarcia](mailto:Kirsten.Squarcia@cupertino.org)
Cc: [City Clerk](mailto:City.Clerk@cupertino.org); [Video Department](mailto:Video.Department@cupertino.org)
Subject: RE: Slides for Feb 3 Council meeting.
Date: Monday, February 2, 2026 4:19:11 PM
Attachments: [City Council 2-3-26-compressed.pptx](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Here you go.

Thanks,

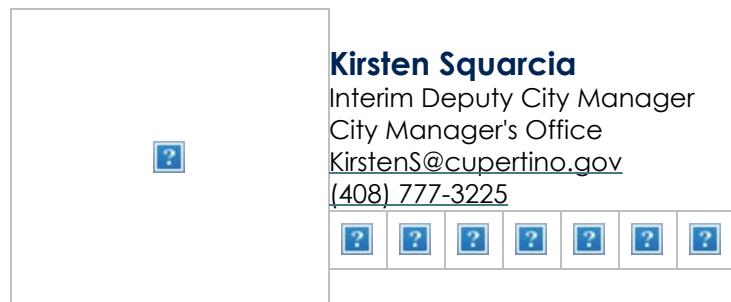
orrin

From: Kirsten Squarcia <KirstenS@cupertino.org>
Sent: Monday, February 2, 2026 3:18 PM
To: orrinmahoney@comcast.net
Cc: City Clerk <CityClerk@cupertino.gov>; Video Department <Video@cupertino.gov>
Subject: RE: Slides for Feb 3 Council meeting.

Hi Orrin,

Yes, you can run your own slides from the podium presenter. Would you be able to arrive a bit early to test your laptop and/or USB drive? I've copied the video team to coordinate the equipment test. Also, would you mind emailing your slides to the City Clerk as well? We can serve as a backup in case any issues arise.

Thanks, Kirsten



From: orrinmahoney@comcast.net <orrinmahoney@comcast.net>
Sent: Monday, February 2, 2026 10:50 AM
To: Kirsten Squarcia <KirstenS@cupertino.org>
Subject: Slides for Feb 3 Council meeting.

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Kirsten,

Is there any way for me to run my slides from the podium? With my own laptop?

I will be going through a few fast and hate the “next slide” delay.

Best,

Orrin

Project Background

State of the City Address 2019 (Lunchtime Event)



ELI Housing for the Developmentally Disabled

- Consider Underutilized City Land for ELI Housing
- Work with Nonprofits to Get Funding for Housing that is Reserved for those with Developmental Disabilities.



45-unit apartment building in Minneapolis-Saint Paul for adults with developmental disabilities, funded by Jewish Housing and Programming (J-HAP), Open to All Faiths.

Play (k)

With all the wealth in Silicon Valley we Need to Find a Way to Do This



Today's Plan



- 39 Units of affordable housing plus manager's unit
- 19 Units targeted for Adults with Intellectual and Developmental Disabilities (I/DD)
- Uses “surplus land” to reduce costs

Response to Community Issues

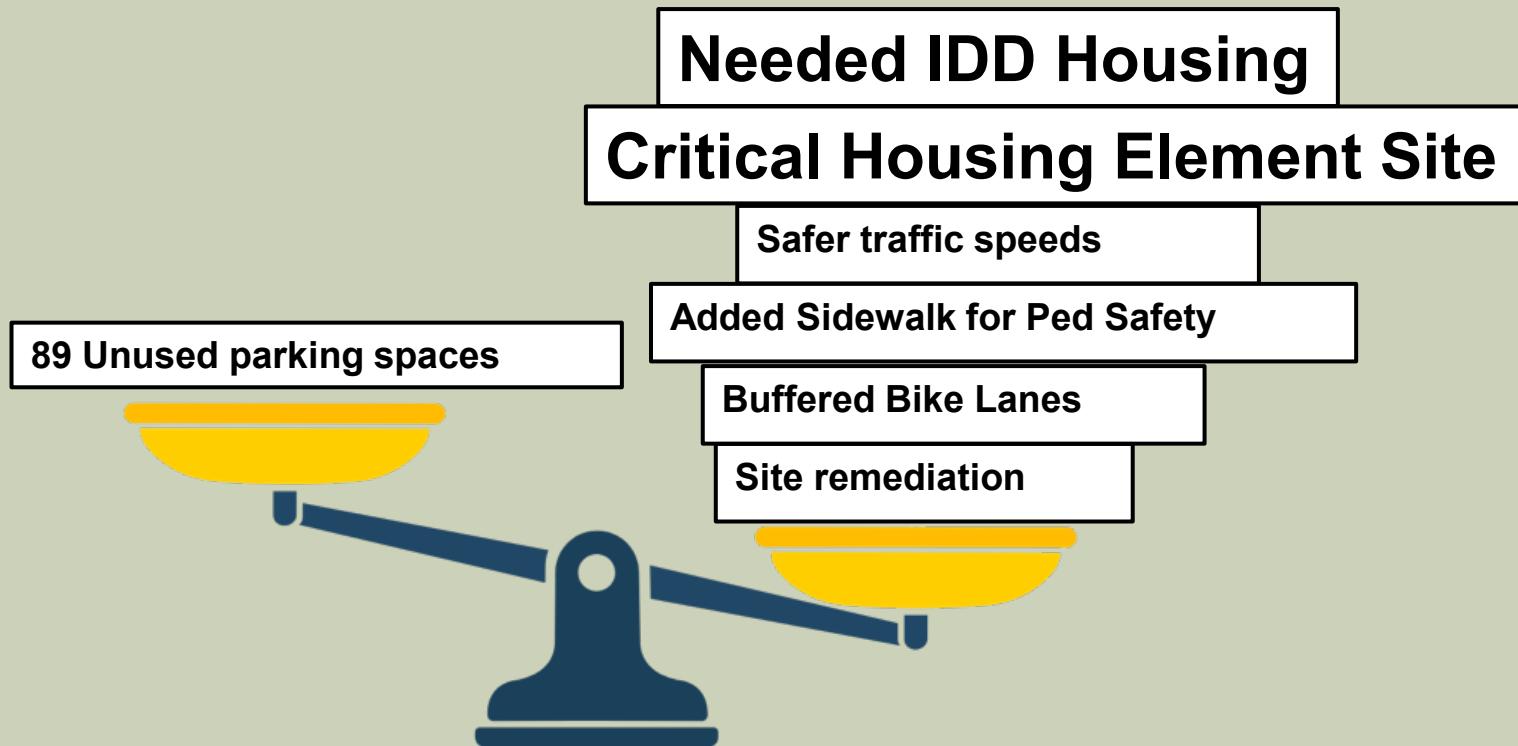
Fact Sheet:

Here is a sheet produced as a response to feedback obtained through our outreach, community listening sessions, and open house.

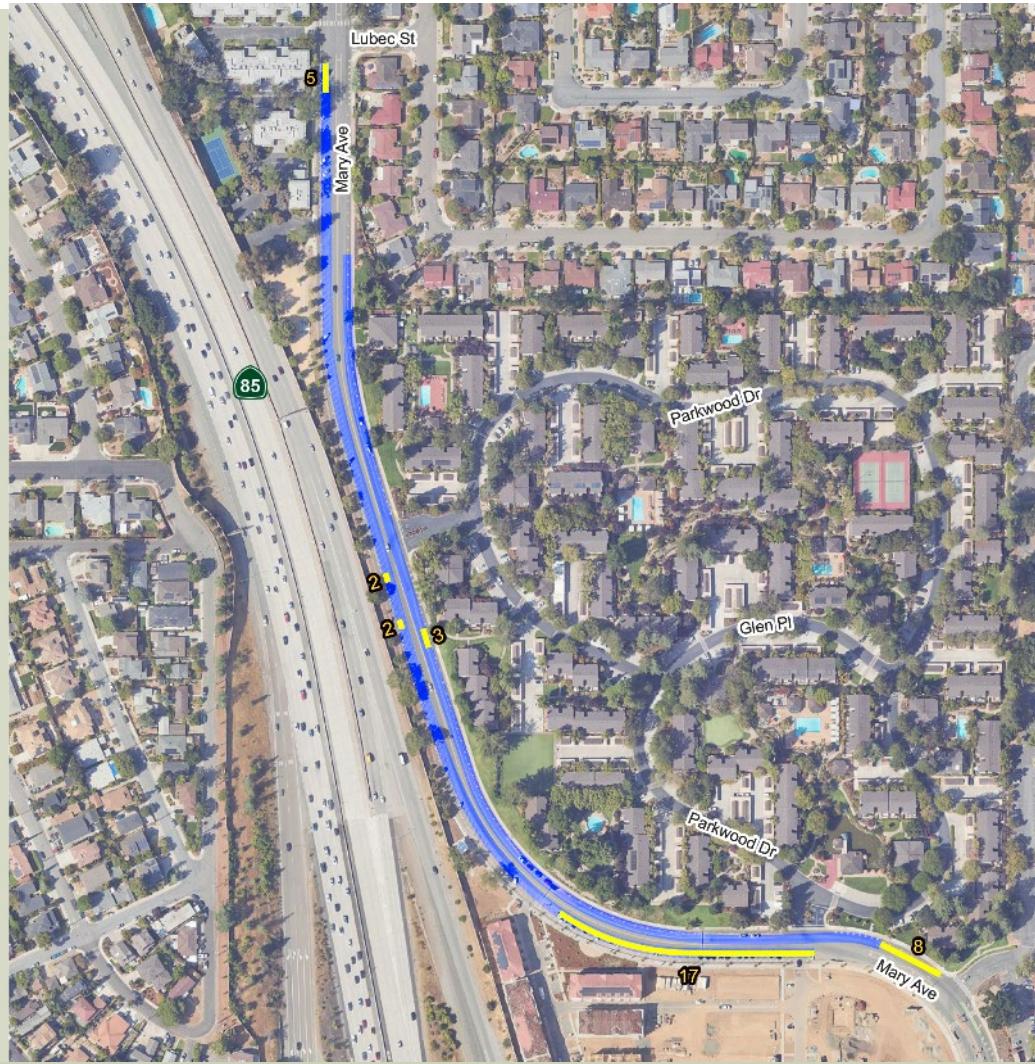
What we heard from our Outreach meetings	What are the facts
They were not notified early enough about this project	The ENA (Exclusive Negotiating Agreement) for this project was approved on 4/9/24. We held the first outreach meeting on 7/3/24 with a broad postcard distribution including most, if not all, of the Garden Gate neighborhood. We subsequently held two more outreach meetings on 1/28/25 and 9/11/25
They were not aware of having this property as a City Housing Element site	This site appeared on the Housing Element Community meeting held in September 2023. The final Housing Element was accepted by HCD in September 2024.
Mary Avenue currently has a traffic problem which the change in lanes will make worse	We have made some time-lapse videos on several weekdays and weekend days. These show no real traffic on Mary Avenues. See videos at A and B. We also have a trip analysis conducted by Hexagon Transportation Consultants (which was submitted to City Planning) that projects our development's added trips through the Mary Ave/Stevens Creek intersection will be 12 peak hour AM trips and 15 peak hour PM trips. See videos here: https://vimeo.com/manage/videos/1122378380 https://vimeo.com/manage/videos/1122653093
Traffic on Mary Avenue will be more dangerous for pedestrians	Even though the lanes remain the same, the reconfiguration will typically slow down vehicle speeds as the street will feel narrower. The time-lapse videos referenced above show that very few of the existing parking spaces are used today. This is confirmed in the Parking and Trip Generation Estimate performed by Hexagon Consultants in September 2025. The reduction will not cause any problem. In addition, the majority of opponents live in the Garden Gate area, more than 1/4 mile away from the project
That loss of parking spaces on Mary Avenue will be a major problem (non-Festival Days)	The parking spaces are used today on the few (8) Festival days. They do this even though all festivals are required to have De Anza supply free Festival parking. The opponents claim that all the parking spaces are used during Festivals today. Assuming

Mary Avenue housing

It should be an Easy Choice



Unused by the Traffic and Parking Study



Unused by Google Earth Pro street views



Unused by the Time Lapse Videos



Thank you for
your support

From: [Peggy Griffin](#)
To: [Lauren Sapudar](#)
Cc: [City Clerk](#)
Subject: RE: Peggy's Slides for ITEM 8 - Mary Ave UPDATED AGAIN SLIDE
Date: Tuesday, February 3, 2026 8:17:36 PM
Attachments: [Peggy's Slides-ITEM8 Mary Ave UPDATED.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lauren,

I messed up. I included the same old slide. Attached is the UPDATED slide.

Thank you for your help.

Peggy

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, February 3, 2026 8:02 PM
To: 'Lauren Sapudar' <LaurenS@cupertino.gov>
Cc: 'City Clerk' <CityClerk@cupertino.gov>
Subject: RE: Peggy's Slides for ITEM 8 - Mary Ave UPDATED SLIDE

Hi Lauren,

I'd like to use this slide instead based on what was just provided. Thank you!!

Peggy

From: Peggy Griffin <griffin@compuserve.com>
Sent: Tuesday, February 3, 2026 7:58 PM
To: 'Lauren Sapudar' <LaurenS@cupertino.gov>
Cc: 'City Clerk' <CityClerk@cupertino.gov>
Subject: Peggy's Slides for ITEM 8 - Mary Ave

Hi Lauren,

I plan to speak via ZOOM on Item 8 of this 2-3-2026 Council Meeting. I would appreciate it if you please show my slide when I speak tonight. It is attached to this email.

Thank you very much!

Peggy Griffin

2026-02-03 City Council Meeting – ITEM 8 MARY AVENUE VILLAS

CITY GIFT AMOUNTS FOR MARY AVE VILLAS

\$7,200,000 (value of land)

\$ 174,567 (CDBG Fund)

\$2,160,000 (Park Development Fees waiver)

TOTAL GIFT AMT = **\$9,534,567**

CITY LOAN AMOUNTS FOR MARY AVE VILLAS

\$3,000,000 (BMR Fund LOAN)

\$ 908,683 (Permanent Local Housing Fund LOAN)

TOTAL LOAN AMT = **\$3,908,683** LOAN is 30 years at an interest rate of 3%

TOTAL AMOUNT FROM CITY = **\$13,443,250 (GIFTS + LOANS)**

REQUESTS:

1. **Place a DEED RESTRICTION on the parcel(s) that RUNS WITH THE LAND to require** If sold to anyone other than the City of Cupertino, that the land must be used for low, very low, extremely low and IDD units.
2. **Repurchase price subtracts the Park Land Fee Waiver (\$2,160,000 plus inflation).**

From: [Gia Pham](#)
To: [Public Comments](#); [City Clerk](#); [Melissa Robertson](#); [Lauren Sapudar](#)
Subject: PUBLIC COMMENT - AGENDA ITEM #8 - 2/3/26
Date: Tuesday, February 3, 2026 5:08:50 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Cupertino City Council and Staff,

My name is Gia Pham and I am the Communications Coordinator at Housing Choices. I will be speaking on today, 2/3/26 on agenda item #8 Mary Avenue Vilas. I would like to show supplemental material with my public comment. I have attached it to this email.



[Item #8 Mary Avenue Villas - Gia Pham Public](#)

[Comment.mp4](#)

Thank you.

**Warm Regards,
Gia Pham**

SAVE THE DATE: San Mateo County Transition to Independence Fair. Saturday,

March 7 at 9:00AM at 101 Twin Dolphin Drive, Redwood City 94065

[Check Out the Workshops](#) - Don't Miss Out!

[RSVP NOW](#)



CC 2-03-2026

#9

Business License
Amnesty Program

Written Communications

From: [Rhoda Fry](#)
To: [Public Comments](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#); [Jonathan Orozco, CPA](#); [City Attorney's Office](#)
Subject: MORE: Feb 3 City Council Agenda item #9 WHAT IS A BUSINESS?
Date: Sunday, February 1, 2026 8:17:18 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi City Council,

I see that Cupertino already transitioned to HdL in September (I thought it hadn't happened yet).

Question: What is a business?

I went to the City website and could not easily find an answer.

<https://www.cupertino.gov/Business-and-Development/Business/Business-License-User-Guide>

Then I went to the new website and still could not find an answer.

<https://cupertino.hdlgov.com/>

If someone sells \$1000 in goods on eBay a business? What about \$10,000 or more?

If someone does pro-bono work, it is a business?

What if someone is selling home-made crafts at the local farmers' market and makes a \$500 profit?

This is one of the reasons that I think that we need a longer runway for compliance.

By the way, I had asked the previous City Attorney that when the City makes contracts with businesses that we should check for their business licenses. We check for other things, like insurance. He refused. Will the City start checking that businesses that it enters into contract with are paying a business license tax?

Thanks,
Rhoda Fry

From: [Rhoda Fry](#)
To: [Public Comments](#); [City Clerk](#); [City Council](#); [Cupertino City Manager's Office](#)
Subject: Feb 3 City Council Agenda item #9
Date: Sunday, February 1, 2026 8:00:37 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Council,

The staff report mentions penalties for not having a business license.

What is the penalty?

Does the penalty apply to the current business year or all past years?

I would recommend a fourth option for the Business License compliance project:

This approach offers citywide penalty forgiveness to all previously unlicensed businesses: 100% forgiveness in the first 60 days. After the 60-day period, HdL would begin full discovery enforcement and **resume standard penalties after 30 days**.

Many small businesses in our city might not realize that they are subject to a business license tax, even if there is outreach from the City. I think that there should be an amnesty provided for those businesses that are discovered by HdL. Separately, how would the City treat businesses that are dormant?

Thanks,
Rhoda Fry

From: [Peggy Griffin](#)
To: [City Council](#); [Floy Andrews](#); [Jonathan Orozco, CPA](#)
Cc: [City Clerk](#)
Subject: 2026-02-03 City Council Meeting - ITEM 9 - Business Licenses
Date: Tuesday, February 3, 2026 4:52:38 PM

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PLEASE INCLUDE THIS AS PART OF WRITTEN COMMUNICATIONS FOR THE ABOVE MEETING AGENDA ITEM.

Dear City Council and Staff,

I'm glad you are looking into this issue and attempting to clean up the language and have a clear consistent implementation of our Business License program.

QUESTION1: Is the current Business License Fee \$31.24?

The Staff Report did not mention how much this fee is currently.

REQUEST1: DEFINE what a business is and is not such that it is an objective standard with no gray area.

The Staff Report says "...a business is broadly defined as every kind of lawful business, profession or trade in the City.

This definition uses the word "business" to define "business"! Please be specific. Are these businesses?

- Newspaper delivery person?
- Food truck?
- A company that is incorporated outside Cupertino?
- Construction company with address outside of Cupertino but does remodeling occasionally in Cupertino? Do they get one as needed?
- Electrician, plumber based outside Cupertino but doing work in Cupertino?
- Is it where the business address is located or where the work is being done or what?
- Babysitters?
- Home daycares?
- Home dance classes, music lessons, tutoring?

REQUEST2: Nonprofit Organizations – Please exempt them completely from even

From: [Peggy Griffin](#)
To: [Lauren Sapudar](#); [City Clerk](#)
Subject: Peggy's Slides for ITEM9 - Business Licenses
Date: Tuesday, February 3, 2026 6:46:28 PM
Attachments: [Peggy's Slides-ITEM9 Business License.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lauren,

I am planning to speak via ZOOM on ITEM 9 Business Licenses at tonight's City Council Meeting. Attached are my slides I would like you to display as I speak, please?

Thank you,
Peggy Griffin

applying.

Requiring them to submit a business license application is overkill!
This requirement complicates our business license program.

- NOTE1- most school booster clubs are non-profits! Examples
 - Cupertino Band Boosters
 - AYSO
 - Cupertino Symphonic Band
- NOTE2 - How will you reach all these organizations?
 - They often do not read legal postings in the paper.
 - If you don't know they exist, how are you going to reach them?

REQUEST3: Business License Amnesty Programs – PICK OPTION 2 -Ongoing amnesty upon discovery

- Don't fine them until they have been notified
 - May people do not realize the city considers them a "business" requiring a business license.
- Once they are notified, give them 30 days to comply then fine them.
- Only go back 3 years max for bringing them into compliance.

Thank you.

Peggy Griffin

2-3-2026 City Council Meeting – ITEM 9 – Business Licenses

QUESTION1: Is the current Business License Fee \$31.24?

REQUEST1: DEFINE what a business is and is not such that it is an objective standard with no gray area.

The Staff Report says “...a business is broadly defined as every kind of lawful business, profession or trade in the City.

This definition uses the word “business” to define “business”! Please be specific. Are these businesses?

- Newspaper delivery person?
- Food truck?
- A company that is incorporated outside Cupertino?
- Construction company with address outside of Cupertino but does remodeling occasionally in Cupertino? Do they get one as needed?
- Electrician, plumber based outside Cupertino but doing work in Cupertino?
- Is it where the business address is located or where the work is being done or what?
- Babysitters?
- Home daycares?
- Home dance classes, music lessons, tutoring?
- Sub-contractors for projects?

REQUEST2: Nonprofit Organizations – Please exempt them completely from even applying.

Requiring them to submit a business license application is overkill!

This requirement complicates a business license program.

- NOTE1- most school booster clubs are non-profits!

Examples:

- Cupertino Band Boosters
- AYSO
- Cupertino Symphonic Band

- NOTE2 - How will you reach all these organizations?

- They often do not read legal postings in the paper.
- If you don't know they exist, how are you going to reach them?

REQUEST3: Business License Amnesty Programs – PICK OPTION 2 -Ongoing amnesty upon discovery

- Don't fine them until they have been notified
 - Many people do not realize the city considers them a “business” requiring a business license.
- Once they are notified, give them 30 days to comply then fine them.
- Only go back 3 years max for bringing them into compliance.