

**FOR PUBLIC RELEASE**

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Floy Andrews, Interim City Attorney  
William Mazzota, Special Counsel  
Michelle Hernandez, Deputy City Attorney

**DATE:** March 27, 2026

**RE:** Response to Petition for Reconsideration – February 3, 2026 City Council Meeting  
– Mary Ave Villas Project

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This Petition for Reconsideration was received by the City of Cupertino (“City”) on February 27, 2026 and was submitted by Joshua Safran, Esq. from Strategy Law, LLP, as council for the Garden Gate Coalition for Mary Avenue Safety (“Petitioner”), regarding the Mary Avenue Villas Project (APN 326-27-053) (“Project”), specifically (i) Architectural and Site Approval Permit Application No. ASA-2025-006 (“ASA Permit”), (ii) Preliminary CEQA Exemption Determination, and (iii) the Disposition and Development Agreement (“DDA”) as contemplated and approved by the City Council at a public meeting held on February 3, 2026. The City has determined that approval of the ASA Permit is an adjudicatory action subject to reconsideration. The preliminary CEQA Exemption Determination, and the approval of the DDA, however, are legislative actions and not subject to reconsideration. Nevertheless, for the sake of thoroughness, we will consider each item in the Petition for Reconsideration.

Petitioner brings the Petition for Reconsideration pursuant to Cupertino Municipal Code (“CMC”), section 2.08.096, which specifies that “[t]he grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by: (a) Not proceeding in a manner required by law; and/or (b) Rendering a decision

which was not supported by findings of fact; and/or (c) Rendering a decision in which the findings of fact were not supported by the evidence.

The following italicized language constitutes the City’s response to the grounds raised in the Petition, each of which is found to be deficient and meritless.

**Ground 1:** Offer of new relevant evidence not previously obtainable with reasonable diligence.

1. External commentary provided by the sole proprietorship, Krupka Consulting.

*As reflected in the Minutes of the Meeting on February 3, 2026 (“February 3 Minutes”) (attached as Exhibit A) and the YouTube and Zoom transcripts (“February 3 Transcript”) of that meeting (attached as Exhibit B), Paul Krupka from Krupka Consulting presented and discussed his findings for the City Council’s consideration at that time. Accordingly, those findings were part of the record before the City Council and do not constitute “new evidence.”*

*Based on the foregoing, the external commentary presents no valid grounds for reconsideration pursuant to CMC, section 2.08.096 as it does not present any new evidence not otherwise available at the time of the original decision, evidence that was improperly excluded, or proof of facts that show that the City Council acted improperly.*

2. Documentation submitted by the Petitioner on February 10, 2026

*The Coalition’s February 10, 2026, Objection to the Proposed February 10, 2026, Planning Commission Action argues that (1) the Planning commission cannot make a post-hoc consistency determination; (2) the proposed findings remain unsupported by substantial evidence; (3) the CEQA deficiencies cannot be cured through a belated Planning Commission action; and (4) the Planning Commission should decline to act on an incomplete and unlawful record.*

*However, the documentation provided does not relate to actions before the City Council on February 3, 2026 that is the subject of this Petition. Accordingly, such materials were not part of the record for the Council’s consideration of that action. Nevertheless, CEQA analysis and supporting documentation for the exemption are included as Exhibit D to the February 3 Staff Report and support the City’s determination. Also, see response to Ground 1, Section 1 and response to Ground 3, Section 1.*

*Based on the foregoing, the objection presents no valid grounds for reconsideration pursuant to CMC, section 2.08.096 as it does not present any new*

*evidence not otherwise available at the time of the original decision, evidence that was improperly excluded, or proof of facts that show that the City Council acted improperly.*

3. The City’s Planning Commission agenda published on February 10, 2026.

*The items listed on the Planning Commission agenda published on February 10, 2026 in connection with the Project, were not before the City Council at the February 3, 2026 meeting that is the subject of this Petition. Accordingly, such materials were not part of the record for the Council’s consideration of that action.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any new evidence not otherwise available at the time of the original decision, evidence that was improperly excluded, or proof of facts that show that the City Council acted improperly.*

**Ground 2:** Offer of relevant evidence improperly excluded at prior city hearing.

1. Impaired ability to present and have considered documentary/visual exhibits at the February 3, 2026 City Council Meeting.

*The February 3 Minutes and February 3 Transcript reflect that members of the public who wished to address the Council were afforded their allotted time pursuant to Government Code, section 54954.3(a)(1).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any relevant evidence which was improperly excluded at any prior City hearing..*

2. Insufficient public access to the complete plan set and supporting technical materials prior to close of Public Hearing.

*The plan set and supporting technical materials were made available at various stages of the process, including in the Staff Report for the City Council meeting on June 15, 2025 (attached as Exhibit C), and the updated plan set circulated as Exhibit F to the Staff Report for the City Council meeting on February 3, 2026 (See attached Exhibit D).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any relevant evidence which was improperly excluded at any prior City hearing..*

3. Failure to provide or circulate the final/amended versions of key approval documents.

*The agenda for the City Council meeting of February 3, 2026 ( See attached Exhibit D) provided a brief general description as required pursuant to Government Code, section 54954.2(a)(1)(A). The revisions were described in the staff presentation prior to public comment (attached as Exhibit E), and were read into the record at the meeting (See February 3 Minutes and February 3 Transcript). Members of the public were afforded the opportunity to comment on the matter before Council action, consistent with Government Code, section 54954.3(a)(1).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any relevant evidence which was improperly excluded at any prior City hearing..*

**Ground 3:** Proof of facts demonstrating the City Council proceeded without, or in excess of, its jurisdiction

1. Government Code, section 65402 sequencing/jurisdictional defect.

*An in-depth analysis of the legal requirements related to the sequencing of the relevant discretionary actions was provided in the Staff Report for the Study Session heard by City Council on December 2, 2025 (“December 2 Staff Report,” attached as Exhibit F). Additional information related to sequencing was provided in the Supplemental Report submitted for the City Council meeting on February 3, 2026 (“February 3 Supplemental Report,” attached as Exhibit G).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction..*

2. Approval predicated on future right-of-way vacation and public property disposition without required findings and procedures.

*The DDA (attached as Exhibit H) expressly conditions implementation on subsequent discretionary approvals. Also, see response to Ground 3, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction..*

3. Public Land Disposition and commitment via DDA without completion of prerequisite statutory compliance.

*See response to Ground 3, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction..*

**Ground 4:** Proof of facts demonstrating the City Council failed to provide a fair hearing.

1. Material amendments adopted without meaningful opportunity for public review/comment.

*See response to Ground 2, Section 3.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

2. Unstable/inconsistent legal and factual bases presented to the public and decisionmakers.

*As reflected in the record, the City identified the applicable CEQA treatment for each relevant approval and ultimately made its CEQA determination for the project in connection with the later discretionary actions considered by the City Council on March 3, 2026. The City fully complied with CEQA in conjunction with this project.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

3. Post hoc process to retrofit required findings. The City accelerated the approval process manifesting in procedural constraints and sought retroactive approvals from Planning Commission.

*The February 3 Agenda sets forth the terms to participate and comment in accordance with Government Code, section 54954.3(b)(1). Also, see response to Ground 3, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

4. Denial of a fair hearing: common-law conflict of interest/ bias/ lack of “Open Mind” and Procedural and substantive due process violations and attacks on counsel’s ethics and credibility.

*The February 3 Minutes and February 3 Transcript reflect that the City Council received and considered correspondence submitted by the Petitioner’s counsel prior to taking action. Statements made by individual Councilmembers during deliberation reflect their evaluation of the arguments presented in the record.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

5. Moral framing that costs opponents as bad actors, rather than evaluating legal compliance.

*See response to Ground 4, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

6. Prejudgment by the key voting member of the majority which would not have occurred if Councilmember Fruen had recused himself.

*Petitioner does not identify any specific facts or evidence demonstrating a disqualifying conflict of interest and this ground is therefore conclusory. The record does not reflect any such disqualifying conflict.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

7. The Mayor’s voting posture reinforced an unlawful “Trust us” standard rather than adjudicatory neutrality.

*Petitioner does not identify any specific facts or evidence demonstrating bias, prejudice, or a common-law disqualifying conflict and this ground is therefore conclusory and unsupported by the record. Also, see response to Ground 4, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

**Ground 5:** Proof of facts demonstrating the City Council abused its discretion.

**Ground 5(a): Not Proceeding in a Manner Required by Law**

1. Council did not proceed as required by law with respect to CEQA: invalid reliance on exemption and improper segmentation/"whole of action" defects.

*See response to Ground 4, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. Council did not proceed as required by law with respect to CEQA: failure to satisfy categorical exemption criteria and exceptions.

*The record reflects that the City extensively considered parking, traffic, and other project-specific conditions in evaluating the project, including an informational memorandum dated August 28, 2025 (attached as Exhibit I), a traffic study dated November 13, 2025 submitted with the February 3 Supplemental Report. The CEQA analysis and supporting documentation for the exemption are included as Exhibit D to the February 3 Staff Report (See attached Exhibit D). See also response to Ground 4, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. General Plan/Government Code, section 65402: Mandatory sequencing violated

*See response to Ground 3, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

4. Right of Way vacation: Required findings and evidence not made

*See response to Ground 3, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

5. Surplus Land Act & public disposition requirements.

*See response to Ground 3, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

6. Constitutional and Statutory Constraints on Public subsidies/Gifts of public funds.

*The Petitioner does not identify any specific facts or evidence demonstrating a lack of support for the legal adequacy or proportional public benefit of the financial contributions provided by the City and is therefore conclusory and unsupported by the record. The record reflects discussions of the project's financial impact in the Staff Report for the City Council meeting held on April 15, 2025 (attached as Exhibit J), the Supplemental Report for the City Council meeting held on September 4, 2025 (attached as Exhibit K), the December 2 Staff Report, and the February 3 Staff Report.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law;*

*and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

7. Substantive due process/arbitrary-and-capricious decision making.

*Petitioner does not identify any specific facts or evidence demonstrating violations of substantive due process, and this ground is therefore conclusory and unsupported by the record. Also, see responses to Ground 4, Section 4, and Ground 3, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

**Ground 5(b): Rendering a Decision Not Supported by Findings of Fact**

The Council’s findings are inadequate or conclusory in multiple respects, including:

1. Whether the project will be detrimental to public health, safety, or welfare in connection with severe peak parking overload, circulation conflicts, and safety impacts.

*See response to Ground 5, Section 2.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. Mandatory prerequisites (including Section 65402 sequencing) were not satisfied at the time of Council action.

*See response to Ground 3, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. Presupposing lawful process, an impartial adjudication, and an improper basis for rejecting evidence and arguments.

*See response to Ground 4, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

**Ground 5(c): Rendering Findings Not Supported by the Evidence.**

1. Findings and conclusions supporting CEQA exemption are contradicted by record evidence and findings set forth by Krupka Consulting. Reference is made to the staff analysis related to an adjacent City project.

*The CEQA analysis and supporting documentation for the exemption are included as Exhibit D to the February 3 Staff Report and support the City’s determination. Also, see response to Ground 1, Section 1.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. Assertions that later approvals (including the DDA) are merely “within the scope” of earlier environmental determinations are unsupported where the DDA independently commits the City to a fixed course of conduct and public land disposition.

*The DDA expressly contemplates and is conditioned on subsequent discretionary approvals, including actions requiring findings of General Plan consistency and other entitlements. Accordingly, the City’s earlier environmental determinations and CEQA analysis were appropriately made in connection with the later discretionary actions.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law;*

*and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. Staff and Council reliance on generalized Housing Element designation to justify right-of-way abandonment and disposition is not substantial evidence of General Plan conformity for the specific actions taken.

*General Plan conformity was not under consideration during the February 3, 2026 meeting for which this petition is requesting consideration.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

4. The Council’s findings necessarily presuppose lawful process and an impartial adjudication. However, the record demonstrates an improper basis for rejecting evidence and arguments for making findings that purport to be grounded in the administration record.

*See response to Ground 4, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

Exhibits:

- A – Minutes Dated February 3, 2026
- B – Transcript Dated February 3, 2026
- C – Agenda Dated July 15, 2025 (Including staff reports and attachments)
- D – Agenda Dated February 3, 2026 (Including staff reports and attachments)
- E – Staff PowerPoint Presentation Dated February 3, 2026
- F – Staff Report Dated December 2, 2025
- G – Supplemental Report Dated February 3, 2026
- H – CC Resolution No. 26-018 Approving DDA
- I – Informational Memo Dated August 28, 2025
- J – Staff Report dated April 15, 2025

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K – Excerpt of Supplemental Report dated September 4, 2025

**FOR PUBLIC RELEASE**

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Floy Andrews, Interim City Attorney  
William Mazzota, Special Counsel  
Michelle Hernandez, Deputy City Attorney

**DATE:** March 27, 2026

**RE:** Response to Petition for Reconsideration – March 3, 2026 City Council Meeting – Mary Ave Villas Project

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This Petition for Reconsideration was received by the City of Cupertino (“City”) on March 13, 2026 (“Petition”) and was submitted by Joshua Safran, Esq. from Strategy Law, LLP, as council for the Garden Gate Coalition for Mary Avenue Safety (“Petitioner”), regarding the Mary Avenue Villas Project (APN 326-27-053) (“Project”), including (i) Resolution No. 26-024 approving the vacation of a portion of the public right-of-way along Mary Avenue (“Vacation”), (ii) CEQA exemption determination, and (iii) Resolution No. 26-025 declaring the Project site to be exempt surplus land pursuant to the Surplus Land Act (California Government Code Section 54220 *et seq.*) (“SLA Declaration”), as contemplated and approved by the City Council at a public meeting held on March 3, 2026.

Petitioner incorporates by reference a prior Petition for Reconsideration dated February 27, 2026, relating to City Council actions taken on February 3, 2026. Those actions involved different matters that were not before the City Council on March 3, 2026. Because this Petition challenges a separate Council action, the incorporated arguments do not establish any basis for reconsideration of the decision at issue here. To the extent any such arguments are relevant, the City’s prior responses apply only as applicable to this action.

Petitioner brings the Petition for Reconsideration pursuant to Cupertino Municipal Code (“CMC”), section 2.08.096, which specifies that “[t]he grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.

5. Proof of facts which demonstrate that the City Council abused its discretion by: (a) Not proceeding in a manner required by law; and/or (b) Rendering a decision which was not supported by findings of fact; and/or (c) Rendering a decision in which the findings of fact were not supported by the evidence.”

The following italicized language constitutes the City’s response to the grounds raised in the Petition, each of which is found to be deficient and meritless.

**Ground 1:** Offer of relevant evidence improperly excluded at prior city hearing. The March 3, 2026 agenda procedures materially constrained the Petitioner’s ability to present documentary and visual evidence because the agenda prohibited speakers from connecting personal devices at the podium and required documents be emailed to the City Clerk by 3:00 p.m. if the speaker wish staff to display them during oral comment.

*The Agenda for the City Council’s meeting on March 3, 2026 (“March 3 Agenda,” attached as Exhibit L) sets forth the terms to participate and comment in accordance with Government Code, section 54954.3(b)(1).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present any relevant evidence which was improperly excluded at any prior City hearing.*

**Ground 2:** Proof of facts demonstrating the City Council proceeded without, or in excess of, its jurisdiction.

1. The March 3 actions cannot cure or retroactively validate jurisdictional defects because the City unlawfully approved and committed itself to the project through the February 3 approvals and DDA before completing the antecedent Planning Commission review, lawful CEQA analysis of the whole action, and the legally required findings for vacation and public land disposition.

*With respect to the Vacation, the City has determined that this action by City Council was not adjudicatory and therefore is not subject to reconsideration. Nevertheless, even if the Vacation can be reconsidered, this point does not form a valid basis for reconsideration as laid out in CMC, section 2.08.096, because the Petition fails to identify any statutory authority or evidence demonstrating that the City proceeded without, or in excess of, its jurisdiction or that City’s actions were inconsistent with applicable law.*

*In connection with the CEQA exemption determination, the Petition does not provide any evidence to support a claim of a violation of CEQA.*

*With respect to the public land disposition, this item was not before City Council on March 3, 2026.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.*

2. Under the City’s March 3 Staff Report, the City could not perfect the transfer of City-owned property unless the City first declared the property exempt surplus land and first vacated 0.79 acres of public right-of-way. Thus, the March 3 actions were not ministerial “follow-through,” they were substantive discretionary prerequisite approvals that the City was attempting to supply after having already committed itself through the DDA.

*With respect to the Vacation, the City has determined that this action by City Council was not adjudicatory and therefore is not subject to reconsideration. Nevertheless, even if the Vacation can be reconsidered, this point does not form a valid basis for reconsideration as laid out in CMC, section 2.08.096, because the Petition fails to identify any statutory authority or evidence demonstrating that (1) the City proceeded without, or in excess of, its jurisdiction or that City’s actions were inconsistent with applicable law.*

*As to the City Council’s determination regarding the SLA Declaration, the Petition does not identify any statutory authority or evidence demonstrating that (1) the City proceeded without, or in excess of, its jurisdiction; (2) the City was required to undertake these actions in a particular sequence; or (3) the City’s actions were inconsistent with applicable law.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.*

3. A belated Planning Commission action on February 10, 2026 could not retroactively legitimize an invalid CEQA process, cure improper segmentation, or supply by ratification the antecedent findings required by Government Code 65402.

*The actions before the Planning Commission on February 10, 2026 were not before the City Council on March 3, 2026. The Council’s March 3 actions were limited to*

*consideration of the Vacation and the SLA Declaration, based on the record before it. The Petition does not demonstrate how the Planning Commission’s February 10, 2026 actions invalidate or otherwise affect the Council’s March 3 determinations.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.*

4. Resolution No. 26-024 likewise confirms the continuing entrenchment of the prior unlawful commitment and treats the vacation as a DDA contingency to be carried out once the developer satisfies the agreement’s conditions.

*Resolution No. 26-024 contemplates the Vacation. The City has determined that this action by City Council was not adjudicatory and therefore is not subject to reconsideration. Nevertheless, even if the Vacation can be reconsidered, this point does not form a valid basis for reconsideration as laid out in CMC, section 2.08.096, because the Petition fails to identify any statutory authority or evidence demonstrating that (1) the City proceeded without, or in excess of, its jurisdiction or that City’s actions were inconsistent with applicable law.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.*

5. Resolution No. 26-025 treats the exempt surplus status as another contingency needed to carry out the already-approved transaction, and improperly declares as “exempt surplus” land that the record shows is functionally active public infrastructure, including an existing public right-of-way resource serving bicycle travel, public parking, circulation and access. Likewise it confirms the continuing entrenchment of the prior unlawful commitment and treats the vacation as a DDA contingency to be carried out once the developer satisfies the agreement’s conditions.

*The Petition does not identify any statutory authority or evidence demonstrating that the City was required to undertake these actions in a particular sequence or that the City’s actions were inconsistent with applicable law.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.*

**Ground 3:** Proof of facts demonstrating the City Council failed to provide a fair hearing

1. A fair quasi-judicial hearing requires decisionmakers to maintain an “open mind” to decide based on law and evidence, and not to proceed based on animus, moral condemnation, prejudice, or demonstrated bias.

*The Petition does not provide any evidence not otherwise available at the time of the original decision to support a claim of “animus, moral condemnation, prejudice, or demonstrated bias” at the City Council meeting on March 3, 2026.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

2. The City Council proceeded with consequential new adjudicatory actions without recusal of a Councilmember with a disqualifying conflict of interest, including prejudice or bias inconsistent with an open mind.

*The Petition does not provide any evidence to support a claim of “a disqualifying conflict of interest, including prejudice or bias inconsistent with an open mind” at the City Council meeting on March 3, 2026.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

3. The City continued to proceed in the same accelerated, deadline-driven manner because the City had already committed itself and now sought to fulfill the remaining contingencies necessary to keep pace with the Project’s financing schedule.

*The Petition does not provide any evidence not otherwise available at the time of the original decision to support a claim of accelerated process at the City Council meeting on March 3, 2026.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

4. To the extent the City relied on agenda-imposed restrictions on live presentation of documentary material, those restrictions further impaired the Petitioner's ability to present responsive evidence at the March 3 hearing.

*The March 3 Agenda sets forth the terms to participate and comment in accordance with Government Code, section 54954.3(b)(1).*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council failed to provide a fair hearing.*

**Ground 4:** Proof of facts demonstrating the City Council abused its discretion.

**Ground 4(a):** Not proceeding in a Manner Required by Law.

1. Council did not proceed as required by law with respect to CEQA: invalid reliance on exemption and improper segmentation/"whole of action" defects.

*The City's earlier environmental determinations and CEQA analysis were appropriately made in connection with the discretionary actions taken on March 3, 2026.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. The March 3 staff report confirms that the City is now attempting to satisfy the contingencies needed to perfect the transfer. That is the very essence of unlawful predetermination and backward sequencing.

*The Petition does not identify any evidence in the record or legal authority supporting its claim of unlawful predetermination or improper sequencing in connection with the City Council's March 3, 2026 actions.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. The City failed to proceed in the manner required by Streets and Highways Code § 8324(b).

*See response to Ground 2, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

4. Surplus Land Act / public disposition requirements. Resolution No. 26-025, section 3 improperly bootstraps the “not necessary for the City’s use” determination from (i) the City’s prior decision to designate the site for affordable housing, (ii) the future roadway design after vacation, and (iii) the added statement that public parking is not “essential” to the agency’s operational needs.

*The March 3 Staff Report, the staff’s oral and PowerPoint presentations (“March 3 Staff Presentations,” attached as Exhibit M and N, respectively), and the minutes of the City Council meeting on March 3, 2026 (“March 3 Minutes,” attached as Exhibit O) were included in the record before the City Council supporting its determination regarding the SLA Declaration.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

5. Mere citation to *Airport Business Center v. Santa Rosa* does not cure the defect and does not substitute for findings supported by record evidence.

*See response to Ground 4(a), Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

**Ground 4(b):** Rendering decisions not supported by findings of fact.

1. Resolution No. 26-024 contains no finding addressing the public interest in the Vacation, notwithstanding that public-interest component of the governing law.

*See response to Ground 2, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. Resolution No. 26-024 does not identify findings addressing elimination of the functional public uses, including public parking, neighborhood circulation, event-related parking spillover, and the role of Mary Avenue as a Neighborhood Connector.

*See response to Ground 2, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. Resolution No. 26-025 does not identify findings explaining how an active public right-of-way and parking resource is suddenly unnecessary for present and foreseeable public use.

*See response to Ground 4(a), Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

4. Both resolutions presuppose that the City lawfully could continue implementing the DDA and prior approvals without first curing defects.

*The Petition does not identify any evidence in the record or legal authority supporting its claim of a violation of law in connection with the City Council's March 3, 2026 actions. Accordingly, this ground does not establish any basis for reconsideration.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

**Ground 4(c):** Rendering findings not supported by the evidence.

1. The repeated CEQA finding that approval of the Project would not result in significant effects relating to traffic is contradicted by information provided by Krupka Consulting, and Westport related parking/circulation materials.

*The record reflects that the City extensively considered parking, traffic, and other project-specific conditions in evaluating the project, including an informational memorandum dated August 28, 2025, a traffic study dated November 13, 2025 submitted with the February 3 Supplemental Report. The CEQA analysis and supporting documentation for the exemption are included as Exhibit D to the February 3 Staff Report. Further, the City identified the applicable CEQA treatment for each relevant approval and ultimately made its CEQA determination for the project in connection with the later discretionary actions considered by the City Council on March 3, 2026. The City fully complied with CEQA in conjunction with this project.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

2. The finding in Resolution No. 26-024, Section 6 that the Vacation Area is unnecessary for present or prospective public use is not supported by substantial evidence.

*See response to Ground 2, Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

3. The finding in Resolution No. 26-025, Section 3 that the Property is not necessary for the City’s use, including the amended recital that public parking is not essential for the City’s operational needs, is likewise unsupported by substantial evidence.

*See response to Ground 4(a), Section 4.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

4. To the extent that Council purported to find that the March 3 actions were merely implementation actions within the scope of earlier approvals, that finding is contradicted by the staff report itself, which states that the transfer could not be perfected unless the City separately approved the Vacation and separately declared the Property exempt surplus land.

*The Petition does not identify any evidence in the record or legal authority supporting its claim of a violation of law in connection with the City Council’s March 3, 2026 actions. Accordingly, this ground does not establish any basis for reconsideration.*

*Based on the foregoing, this is not a valid ground for reconsideration pursuant to CMC, section 2.08.096 as it does not present proof of facts which demonstrate that the City Council abused its discretion by (a) not proceeding in a manner required by law; and/or (b) rendering a decision which was not supported by findings of fact; and/or (c) rendering a decision in which the findings of fact were not supported by the evidence.*

Exhibits:

- L – Agenda dated March 3, 2026 (Including staff reports and attachments)
- M – Staff Presentation regarding SLA Declaration dated March 3, 2026
- N – Staff Presentation regarding Vacation dated March 3, 2026
- O – Minutes dated March 3, 2026