

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
ADOPTING A MITIGATED NEGATIVE DECLARATION, MITIGATION  
MEASURES, AND A MITIGATION MONITORING AND REPORTING  
PROGRAM FOR THE LAWRENCE-MITTY PARK AND TRAIL PROJECT

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WHEREAS, the California Environmental Quality Act (CEQA) requires that all discretionary projects proposed to be carried out or approved by public agencies be subject to a comprehensive environmental review process; and

WHEREAS, on February 12, 2024 the City issued a Notice of Intent to Adopt a Mitigated Negative Declaration; and

WHEREAS, on February 12, 2024 the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the project was distributed to responsible agencies and the public for review and comment for a 30-day period that ended March 13, 2024; and

WHEREAS, the City of Cupertino has reviewed and considered all comments received from the public, governmental agencies, and other interested parties regarding the IS/MND for the Lawrence-Mitty Park and Trail project; and

WHEREAS, the Final IS/MND for the Lawrence-Mitty Park and Trail project is comprised of the Draft IS/MND and the Final Memo and Response to Comments dated May 21, 2024; and

WHEREAS, text revisions made after publication of the Draft IS/MND, which are found in the Final Memo and Response to Comments, merely clarify, amplify, or make insignificant modifications to the IS/MND, and recirculation of the IS/MND is not required; and

WHEREAS, environmental analysis conducted by MIG, Inc. pursuant to the requirements of the California Environmental Quality Act ("CEQA") (14 Cal Code. Regs, § 15164), in the services of an Initial Study report, found that there is no substantial evidence that the project may have a significant effect on the environment, and the effects can be mitigated to a point where no significant effects would occur.

WHEREAS, the City of Cupertino finds that the IS/MND adequately identifies and analyzes the potential environmental impacts of the project and demonstrates that, with implementation of identified mitigation measures, those impacts will be reduced to a level of insignificance; and

WHEREAS, the City of Cupertino finds that the IS/MND reflects the City's commitment to environmental stewardship and sustainability while allowing for the responsible development and growth of the community;

WHEREAS, on May 28, 2024, the City of Cupertino's Planning Commission held a duly noticed public hearing to receive public testimony reviewed and considered the information contained in the IS/MND, and voted to recommend that the City Council adopt the IS/MND, adopt and incorporate into the Project and implement as conditions of approval all of the mitigation measures for the project that are identified in the IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project;

WHEREAS, on June 11, 2024, the Parks and Recreation Commission held a duly noticed public hearing to receive public testimony and voted to recommend that the City Council approve the Lawrence-Mitty Park and Trail Project Final Conceptual Design and adopt the Initial Study/Mitigated Negative Declaration.

WHEREAS, the City Council has independently reviewed and considered the IS/MND together with the comments and the responses to those comments prior to taking action on the Project; and

NOW, THEREFORE, BE IT RESOLVED after careful consideration of the IS/MND, comments on the IS/MND, facts, exhibits, testimony, staff reports, public comments, and other evidence submitted in this matter, that the Cupertino City Council does hereby:

1. Find that the IS/MND for the Project has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City.
2. Find that, on the basis of the whole record before it, there is no substantial evidence that the Project as proposed and mitigated will have a significant effect on the environment.
3. Find that the text revisions to the IS/MND merely clarify, amplify, or make insignificant modifications to the IS/MND; therefore, recirculation of the IS/MND is not required.

4. Adopt the Mitigated Negative Declaration for the Project.
5. Adopt and incorporate into the Project all of the mitigation measures identified in the IS/MND. The City Council further makes the mitigation measures, which are listed below, required conditions of approval of the Project to the extent they are within the responsibility and jurisdiction of the City:

- **Mitigation Measure BIO-1a. Conduct Preconstruction Survey.** No more than 24 hours prior to the date of initial ground disturbance, a pre-construction survey for southwestern pond turtle will be conducted within the impact area by a qualified biologist. The survey will consist of walking the limits of impact to ascertain the possible presence of the species. The qualified biologist will investigate all potential areas that could be used by southwestern pond turtle for feeding, sheltering, movement, and other essential behaviors.

A qualified biologist is an individual who shall have a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting surveys for each amphibian and reptile special-status species that may be present within the project areas. During or following academic training, the qualified biologist shall have achieved a high level of professional experience and knowledge in biological sciences and special-status species identification, ecology, and habitat requirements. Additionally, the qualified biologist must be permitted or authorized to handle and relocate southwestern pond turtle.

- **Mitigation Measure BIO-1b. Worker Environmental Awareness Program.** All construction personnel will participate in a worker environmental awareness program. These personnel will be informed about the possible presence of all special-status species and habitats associated with the species identified here to be potentially present in the parcel and that unlawful take of the animal or destruction of its habitat is a violation of law. Prior to construction activities, a qualified biologist will instruct all construction personnel about (1) the description and status of the species; (2) the importance of their associated habitats; (3) a list of measures being taken to reduce impacts on these species during project construction and implementation; and (4) measures to be followed if special-status species are encountered during construction activities. A fact sheet conveying this information will be prepared for distribution to the construction crew and anyone else who enters the project site.
- **Mitigation Measure BIO-1c. Install Wildlife Exclusion Barrier.** Prior to any ground disturbance in the work area, a temporary wildlife exclusion

barrier will be installed along the limits of disturbance. A qualified biologist will inspect the area prior to installation of the barrier. The barrier will be designed to allow the southwestern pond turtles to leave the work area and prevent them from entering the work area. The fence will remain in place until all development activities have been completed. This barrier will be inspected daily and maintained and repaired as necessary to ensure that it is functional and is not a hazard to southwestern pond turtles on the outer side of the barrier.

- **Mitigation Measure BIO-1d. Construction Monitoring.** A qualified biologist or biological monitor will be onsite during all project activities that may result in the take of any special-status species. The qualified biologist will be given the authority to freely communicate verbally, by telephone, by electronic mail, or in writing at any time with construction personnel, any other person(s) at the project site or otherwise associated with the project, and regulatory agencies (e.g., USFWS or CDFW). The qualified biologist or biological monitor will have oversight over implementation of all the mitigation measures and will have the authority and responsibility to stop project activities if they determine any of the measures are not being fulfilled.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area and be familiar with the habits and behavior of those species.

- **Mitigation Measure BIO-2a. Pre-Construction Survey for San Francisco Dusky-Footed Woodrats.** Within 30 days prior to the start of construction activities, a qualified biologist shall map all San Francisco dusky-footed woodrat houses within a 50-foot buffer around the project footprint. Environmentally sensitive habitat fencing shall be placed to protect the houses with a minimum 50-foot buffer. If a 50-foot buffer is not feasible, a smaller buffer may be allowable based on advice from a qualified biologist with knowledge of woodrat ecology and behavior, or Mitigation Measure BIO-2b may be implemented.
- **Mitigation Measure BIO-2b. Relocation of Woodrat Houses.** In the unlikely event that one or more woodrat houses are determined to be present and physical disturbance or destruction of the houses cannot be avoided, then the woodrats shall be evicted from their houses and the nest

material relocated outside of the disturbance area, prior to onset of activities that would disturb the house, to avoid injury or mortality of the woodrats. The reproductive season for San Francisco dusky-footed woodrats typically starts in February or March and breeding activity usually continues to July but can extend into September. Thus, relocation efforts should be completed in the fall to minimize the potential for impacts on young woodrats in the house. Additionally, it is recommended that the period between the completion of the relocation efforts and the start of construction activities be minimized to reduce the potential for woodrats to reconstruct houses in the project footprint prior to the start of construction activities.

Relocation generally involves first choosing an alternate location for the house material based on the following criteria: 1) proximity to current nest location; 2) safe buffer distance from planned work; 3) availability of food resources; and 4) availability of cover. An alternate house structure will then be built at the chosen location. Subsequently, during the evening hours (i.e., within 1 hour prior to sunset), a qualified biologist will slowly dismantle the existing woodrat house to allow any woodrats to flee and seek cover. All sticks from the nest will be collected and spread over the alternate structure. However, alternative relocation measures can be employed as advised by a qualified wildlife biologist in consultation with CDFW.

- **Mitigation Measure BIO-3a. Pre-Construction Survey for Roosting Bats.** A survey of culverts within the project site, including a 50-foot buffer (as feasible) shall be conducted by a qualified bat biologist no less than 30 days before the start of construction-related activities (including but not limited to mobilization and staging, clearing, grubbing, tree removal, vegetation removal, fence installation, demolition, and grading). If construction activities are delayed by more than 30 days, an additional bat survey shall be performed. The survey may be conducted at any time of year but should be conducted in such a way to allow sufficient time to determine if special-status bats or maternity colonies are present on the site. The results of the survey shall be documented.

If no habitat or signs of bats are detected during the habitat suitability survey, no further surveys are warranted. If suitable habitat is present and signs of bat occupancy (e.g., guano pellets or urine staining) are detected, Mitigation Measure BIO-3b shall apply.

- **Mitigation Measure BIO-3b. Acoustic Survey.** If suitable habitat is present and signs of bat occupancy are detected, a follow-up dusk emergence survey shall be conducted no less than 30 days prior to construction activities. A dusk survey will determine the number of bats present and will also include the use of acoustic equipment to determine the species of bats present. The results of the survey shall be documented. If an active roost is observed within the project site, Mitigation Measure BIO-3c shall apply.
- **Mitigation Measure BIO-3c. Roost Buffer.** If a day roost or a maternity colony is detected and is found sufficiently close to work areas to be disturbed by construction activities, the qualified biologist shall determine the extent of a construction-free buffer zone to be established around the roost in consultation with CDFW. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading shall be permitted. Monitoring shall be required to ensure compliance with relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.
- **Mitigation Measure BIO-4. Pre-Construction/Pre-Disturbance Survey for Nesting Birds.**

*Avoidance.* To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31.

*Pre-Construction Surveys.* If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests would be disturbed during project implementation. These surveys shall be conducted no more than five days prior to the initiation of any site disturbance activities and equipment mobilization, including tree, shrub, or vegetation removal, fence installation, grading, etc. If project activities are delayed by more than five days, an additional nesting bird survey shall be performed. During this survey, the biologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, culverts) in and immediately adjacent to the impact area for nests. Active nesting is present if a bird is building a nest, sitting in a nest, a nest has eggs

or chicks in it, or adults are observed carrying food to the nest. The results of the surveys shall be documented.

If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist will determine the extent of a construction-free buffer zone to be established around the nest (typically up to 1,000 feet for raptors and up to 250 feet for other species), to ensure that no nests of species protected by the Migratory Bird Treaty Act MBTA and California Fish and Game Code will be disturbed during project implementation. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading will be permitted until the chicks have fledged. Monitoring shall be required to ensure compliance with MBTA and relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.

- **Mitigation Measure CUL-1.** The City of Cupertino (City) shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Significant prehistoric cultural resources are defined as human burials, features or other clustering's of finds made, modified, or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:
  - a. Human bone - either isolated or intact burials.
  - b. Habitation (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).
  - c. Artifacts including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles, grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.
  - d. Various features and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.

e. Isolated artifacts.

- **Mitigation Measure CUL-2.** It is recommended that prior to the start of ground disturbing construction, the City should implement a Worker Awareness Training (WAT) program for cultural resources. Training shall be required for all construction personnel participating in ground disturbing construction to alert them to the archaeological sensitivity of the project area and provide protocols to follow in the event of a discovery of archaeological materials. The training shall be provided by a Registered Professional Archaeologist (RPA).

The RPA shall develop and distribute for job site posting an "ALERT SHEET" summarizing potential archaeological finds that could be exposed and the protocols to be followed as well as points of contact to alert in the event of a discovery.

- **Mitigation Measure CUL-3.** The City shall retain a Professional Archaeologist on an "on-call" basis during ground disturbing construction to review, identify and evaluate any potential cultural resources that may be inadvertently exposed during construction. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under the California Environmental Quality Act (CEQA).

If the Professional Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource under CEQA, he/she shall notify the City and other appropriate parties of the evaluation and recommend mitigation measures to mitigate to a less-than significant impact in accordance with California Public Resources Code Section 15064.5. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing, and data recovery among other options. The completion of a formal Archaeological Monitoring Plan (AMP) and/or Archaeological Treatment Plan (ATP) that may include data recovery may be recommended by the Professional Archaeologist if significant archaeological deposits are exposed during ground disturbing construction. Development and implementation of the AMP and ATP and treatment of significant cultural resources will be determined by the City in consultation with any regulatory agencies.

- **Mitigation Measure CUL-4.** In accordance with Section 7050.5 of the California Health and Safety Code, if potential human remains are found, immediately notify the lead agency (City of Cupertino or Santa Clara



County) staff and the Santa Clara County Coroner of the discovery. The coroner would provide a determination regarding the nature of the remains within 48 hours of notification. No further excavation or disturbance of the identified material, or any area reasonably suspected to overlie additional remains, can occur until a determination has been made. If the County Coroner determines that the remains are, or are believed to be, of Native American ancestry, the coroner would notify the Native American Heritage Commission within 24 hours. In accordance with California Public Resources Code, Section 5097.98, the Native American Heritage Commission must immediately notify those persons it believes to be the Most Likely Descendant from the deceased Native American. Within 48 hours of this notification, the Most Likely Descendant would recommend to the lead agency their preferred treatment of the remains and associated grave goods.

- **Mitigation Measure TRIB-1.** It is possible for a lead agency to determine that an artifact is considered significant to a local tribe, and thus considered a significant resource under CEQA, even if it would not otherwise be considered significant under CEQA. As such, all Native American tribal finds are to be considered significant until the lead agency has enough evidence to make a determination of significance. In the event that Native American archaeological resources are discovered, or suspected to have been discovered, Native American monitoring will be required before further ground disturbance shall be allowed.

6. Adopt and incorporate into the Project all of the Conditions of Approval noted in the IS/MND, which are listed below, as required conditions of approval of the Project to the extent they are within the responsibility and jurisdiction of the City:

- **Standard Permit Condition:** The following measures shall be applied to development of the project site to reduce and/or avoid impacts to paleontological resources:

If vertebrate fossils or other paleontological resources are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The City of Cupertino's Project Manager or other suitable representative shall be

responsible for submitting the paleontologist's report to the Director of Public Works and implementing the recommendations of the qualified professional paleontologist. The representative shall submit a report to the Director of Public Works indicating how the paleontologist's recommendations were complied with as soon as all measures have been incorporated into the project.

7. Adopt the Mitigation Monitoring and Reporting Program for the Project, as amended, attached hereto as Exhibit EA-1, and incorporated herein by reference, which incorporates all the mitigation measures identified in the Final IS/MND.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 2nd day of July, 2024, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Sheila Mohan, Mayor City Council	_____ Date
ATTEST:  _____ Kirsten Squarcia, City Clerk	_____ Date