

CC 03-21-2023

#7

Petition for
Reconsideration Sign
Exception

Petitioner's
Presentation

The Public Storage Sign Mistake & How We Can Fix It

1. Why Reconsider the February 7 Council Vote?

Council voted to approve a Public Storage sign without having necessary data/direction to make an informed decision

2. Why Deny the Sign Application?

The Proposed Sign does not meet the Municipal Code



You Only Need ONE Reason to Reconsider and There are Many!

This Response to the Staff report addresses 3 areas (CMC 2.08.096)

1. Evidence improperly excluded from hearing
2. Council had unfair hearing
3. Council inadvertently abused its discretion

Now you have the opportunity to
Respond to your Residents'
Health and Safety needs and to
follow the Municipal Code

My apologies for using the harsh language of improper exclusion, unfair, abuse of discretion – those are required by code

“The Sign Ordinance provides the regulations that the City has adopted to ensure that signage does not impinge upon the aesthetics of the City and does not inconvenience the public”

<https://www.cupertino.org/our-city/departments/community-development/planning/non-residential-mixed-use-development/sign-information>



Public Nuisance – excessively bright lights on building and sign **all night long**
The building's excessive exterior lighting gives you an idea as to the impact of the proposed sign

Missteps During the Sign Approval Process

1) You could not have a fair hearing because relevant evidence was improperly excluded. You were told that you had to vote for 1 freeway-oriented sign because the building had none. In fact, **the building already its one allowable freeway-oriented sign.**

A business is allowed to have 1 freeway-oriented sign (CMC 19.104.200)

"Freeway oriented Sign" = located within 660 ft of a freeway and visible from a freeway (CMC 19.08.030 S.7)

Existing Sign Visible from Freeway – Brighter than Green Freeway Sign (and excessive illumination on building)



Mistakes Happen – We Can Fix This

Staff Report (2/7 page 2) assumes that only sign 2 and 3 are freeway-oriented and **incorrectly assumes that sign 1 is not freeway-oriented**: *"Sign 1", proposed on the east elevation of Building One, is not oriented toward I280 (see Figure 2). Of the three wall signs, two (2) are freeway oriented where only one is permitted."*

As mentioned in the Reconsideration Petition, Sign #1 is visible from the highway 280, which is proved to be visible and considered to be a freeway-oriented sign on the previous slide. (CMC 19.104.220 Freeway Orientation – 1 per business/tenant in a building).

Council rendered a decision that was not supported by findings of fact.

FYI – Planning staff who allowed the building no longer work for the City

Sign 1 "east"
Sign 2, 3 exclusively Freeway oriented



3) The sign (#3) has the appearance of being 625 sq ft, but the Council was told it was 165 sq ft. **An explanation as to how signs are measured was improperly excluded, leading one to believe that the sign would be smaller** (by nearly a factor of 4).



Letters 4' 6" tall (total of 165 sq ft of illuminated white letters); Person is about 6' tall

Staff could have asked the applicant if the sign plan could be shown. And staff could have provided a schematic with the length and height of the orange wall (11' 6" x 51' 4"), the height of the letters (4' 6"), and a photograph of a similar sign on the building which is about 1/3 of the size of the proposed sign.



An illuminated sign is not measured by the size of the rectangle, it is measured by the area of the illuminated letters.

4) You were not told that the building was supposed to be nearly invisible from the freeway; how can you justify approving highly visible signage now? Planning Commission approved this building because it was given the impression that this would be a low-key, low-impact building. A low-impact building doesn't require multiple signs, illuminated signs, or giant signs. The previous building had no freeway-oriented sign for 40 years. Now, Public Storage wants 3 freeway-oriented signs for advertising purposes that are visible to motorists driving by at "75 mph."

Staff Report 2/7: allowing more than one wall-mounted sign to a single business is contrary to the intent and purpose of the Sign Ordinance (CMC 19.104), which seeks to balance the architectural and aesthetic harmony of signs into the overall building design but still allow for good sign visibility for both the public and the needs of businesses, without over-signage.

Applicant:

"We did a couple of visibility studies to see the impact from the freeway"
"from the 280, you can barely see the property"
"even when we are at 4 stories"

Relevant Evidence was
Improperly Excluded



5) Council assumed that the Cupertino Hotel sign looked just like the proposed Public Storage sign. Even the existing Public Storage sign, which is 1/3 the size of the proposed sign, is more impactful. Council approved the new Public Storage sign based on the false assumption that it would be the only freeway-oriented sign and its impact would be comparable to that of the hotel.



Photo taken from 280 on-ramp North



Existing Sign on East Side of Building

Council abused its discretion by rendering a decision which was not supported by findings of fact

6) Council was unable to provide a fair hearing because Council failed to obtain clear instructions from staff.

- The City Attorney was not provided the opportunity to explain why the prior Planning Commission's decision had no legal standing. Planning Commission had listed non-compliance with the sign ordinance as one of its reasons for denial. Consequently, Council could have been confused as to what reasons they could give for rejecting the applicant's appeal.
- Council received inconsistent and conflicting direction from staff members.
- After Public Comment had closed, staff told Council that they could only base their decision on a certain portion of the municipal code. Consequently, the residents were denied the opportunity to provide relevant testimony.
- Council was confused about whether they could vote for 0, 1 or 2 signs. Council was given the impression that they had to vote for at least 1 sign, when in fact they could vote for 0.
- Council was told that the proposed sign is compliant with CMC 19.104.220 Design Criteria and it is not. However, it was up to Council to determine compliance, not staff. Council was not shown the code, even after it was requested by a council member. The Design Criteria, which is key to sign-approval, was improperly excluded. It is so important that it is listed 12 times in the Municipal Code!

All Signs are Subject to Design Criteria

7) The **CMC 19.104.220 Design Criteria, which is key to approving signs, was improperly excluded** from the staff report and from the hearing – even after a councilmember requested its display – and subsequently asked for a continuance. The development requirements were also improperly excluded.

CMC 19.104.220 C. The sign shall also be compatible with the aesthetic character of the surrounding developments and neighborhood With the exception of Public Storage, the area is residential and office per the N De Anza special area of the General Plan. In fact, a proposal to replace the single-story Public Storage buildings in 2006 with 3-story buildings was recommended for rejection by the City Planning department because it was an intensification of a non-conforming use. Staff was also concerned that a new 3-story tall building would be prominently visible from Interstate 280.

No adjacent offices have wall signs – the maximum size for a wall sign is 40 square feet. In order to be compatible, the existing sign at 52.5 square feet would need to be reduced – or not be there at all. It has been illuminated all night long in spite of complaints. (The new sign would be 165.8 sq ft)



South Side is dark at night and faces offices. Somewhat compatible.



East Side nearest freeway is bright, faces adjacent homes, visible from freeway.
Not compatible



All Signs are Subject to Design Criteria (page 2)

CMC 19.104.220 color and illumination shall not produce a distraction to motorists

The applicant stated that he would want the sign to be visible to motorists passing by at 75 mph. Consequently, the new sign would produce a distraction. All De Anza Forge residents will be blinded by the sign when they enter their driveway, a **Safety Hazard**.

CMC 19.104.220 color and illumination shall not produce a distraction to residents

Because the smaller sign produces a distraction, the larger one will too. Public Storage is not complying with Municipal Code and turning off the sign by 11PM – a **Health Hazard**. Allowing lights to shine into bedrooms until 11PM – or at anytime – is a **Public Nuisance**.



Unfortunately, Council Conflated Objective Criteria with Design Criteria

Case Study: How a Good Sign Program Works

The Sign Ordinance provides the regulations that the City has adopted to ensure that signage does not impinge upon the aesthetics of the city and does not inconvenience the public

cupertino.org/our-city/departments/community-development/planning/non-residential-mixed-use-development/sign-information

1. **Determine Size** limit depending on building size

Commercial Maximum = 200 square feet; Office Maximum = 40 square feet (CMC 19.104.140)

2. **Determine Illumination** limit

Commercial/Office/Industrial = 250 ft-L; Others = 100 ft-L

The **foot-lambert readings shall be used as a guide** by staff to evaluate signs which are deemed to be a **problem to passing motorists or residents in the surrounding neighborhood**. The **color** and thickness of the sign panels as well as the **brightness** of the bulbs used to illuminate the sign shall be designed in such a manner as to **avoid excessive illumination and glare**. (CMC 19.104.230)

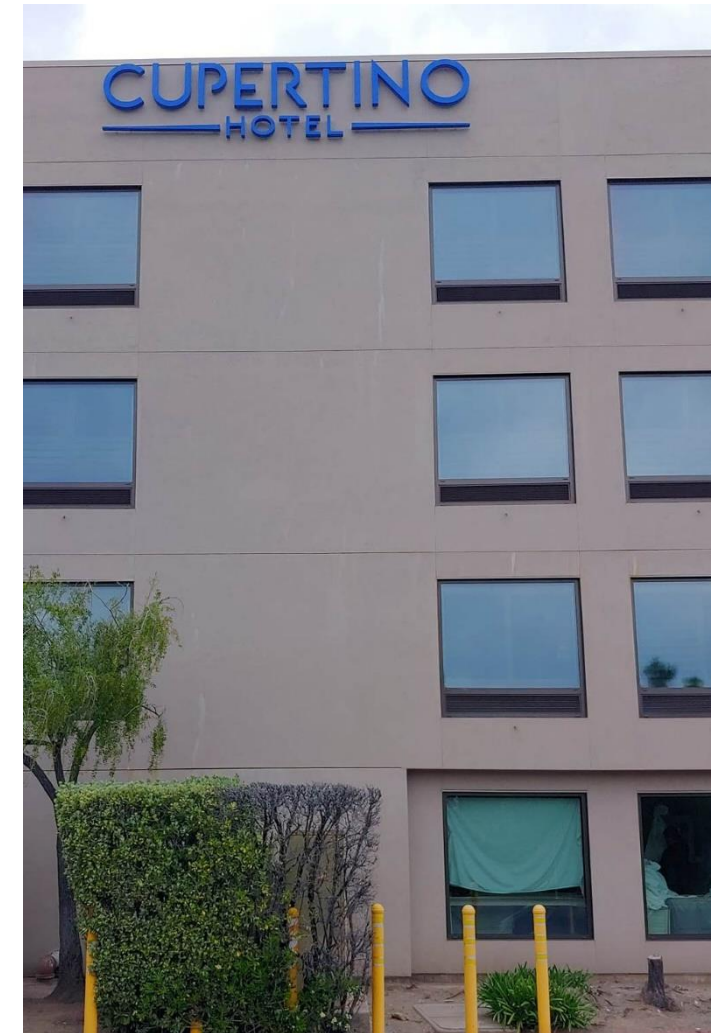
3. **Refine Design** basic design guidelines are needed in order to maintain the City's high quality appearance (CMC 19.104.220)

- compatible with the aesthetic character of the surrounding developments and neighborhood
- color and illumination shall not produce distraction to motorists or nearby residents

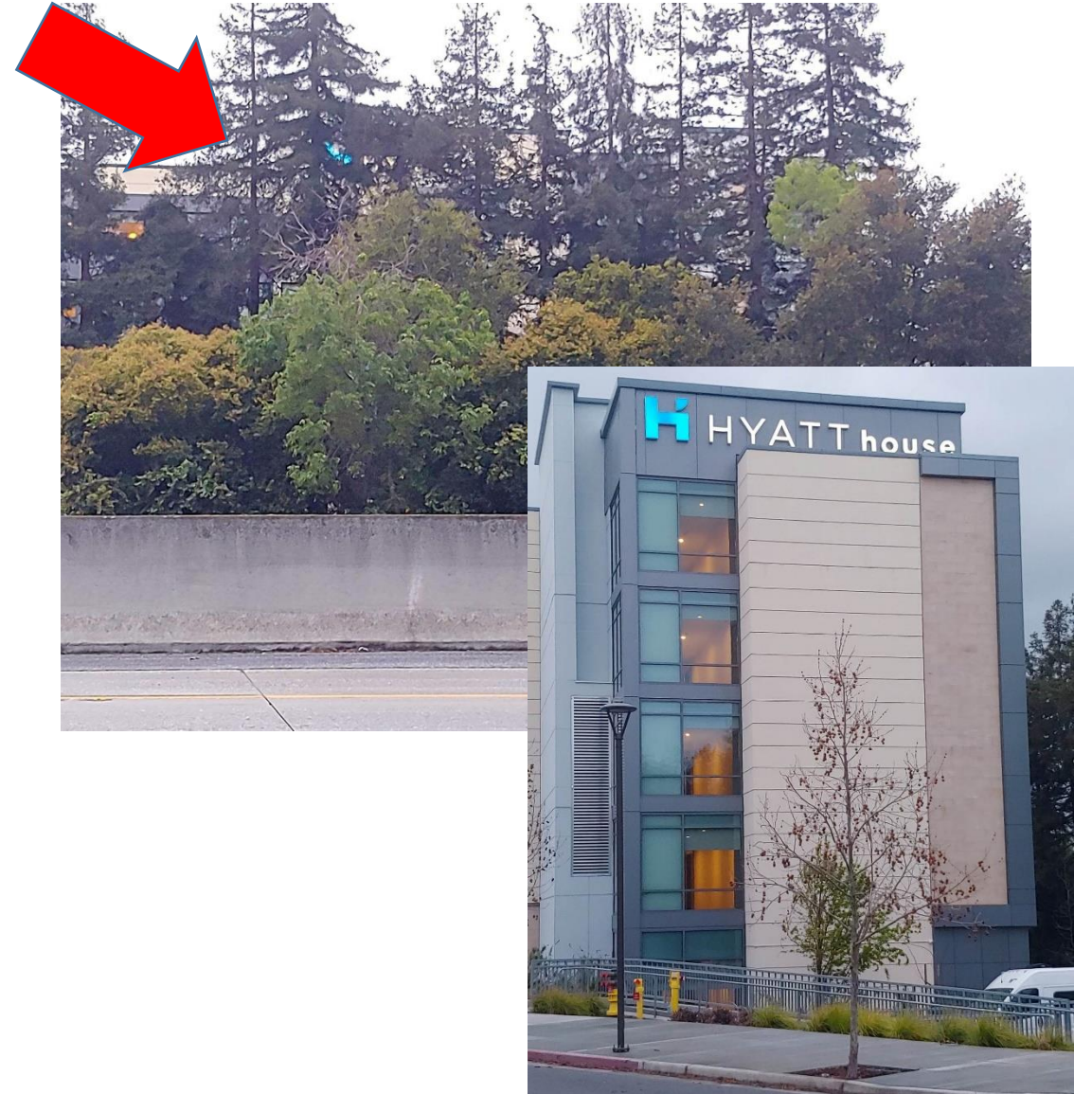
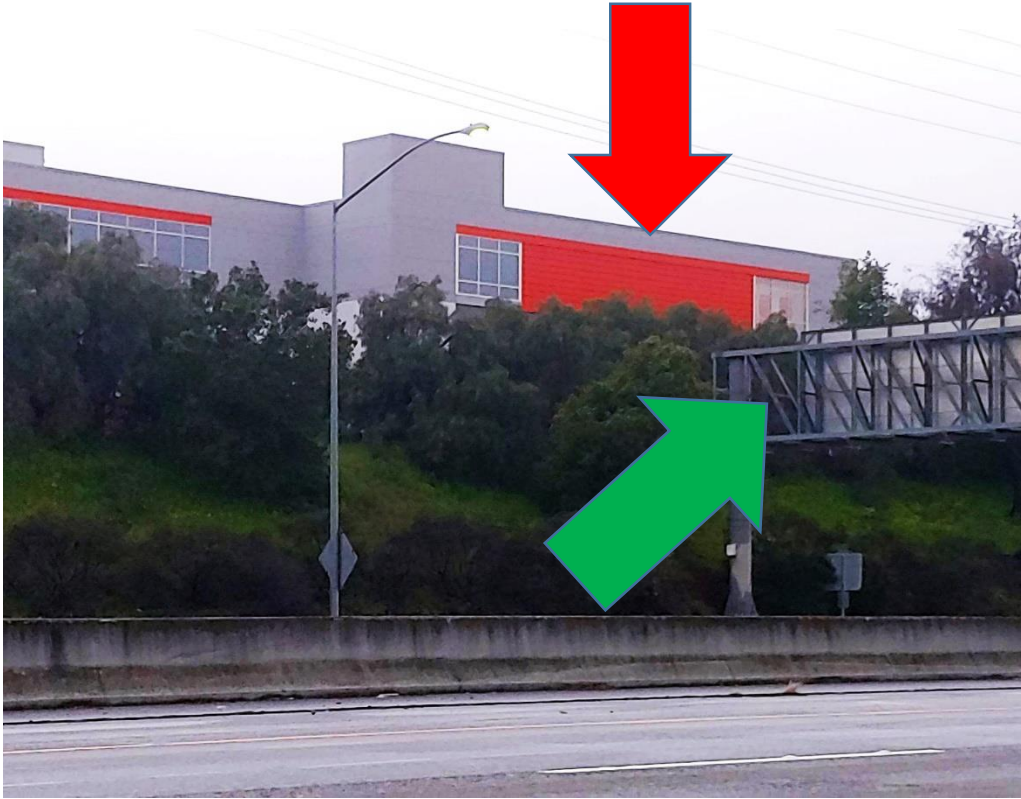
4. **Notice Impacted Residents**, including those beyond minimum 300' requirement. "The City may also give notice of public hearings/public meetings in any other manner it deems necessary or desirable. If the Director of Community Development believes the project may have impacts beyond the range of the mailed notice, particularly on nearby residential areas, the Director, in his or her discretion, may expand noticing beyond the stated requirements" (CMC 19.12.110 E)

"Following the formal application, the applicant worked with Staff to further refine the plans, including the size of the sign, percentage of store front area, and illumination intensity."

Applied May 2 2016, Approved August 9 2016 (PC Staff Report 8/9/2016)



Comparing Public Storage with Hyatt House



What Makes Public Storage Different?

- Not supposed to be visible from the freeway
- Extremely Visible (effect on adjacent freeway sign?)
- Faces Residents' Homes
- Intensification of a Non-Conforming Use
- Violates Municipal Code

Mistakes Happen – We Can Fix This!

Accepting that the hearing went wrong and rejecting the sign proposal allows the applicant to re-apply and work with staff and propose a more appropriate signage

Consequences of Accepting the Sign

Public Nuisance, Health Hazard, Safety Hazard, Excessive Energy Use, Light Pollution
Please also do something about the excessive illumination on the building

Question?

If my home was allowed to have only 1 swimming pool and I already had one that was accidentally permitted as a small hot tub, upon realizing that error, would the City allow me to have a second swimming pool?

Public Outcry

- Many Personal Letters
- Over 144 signatures from change.org petition to:
Say No to Huge Illuminated Sign Facing 280 on Cupertino Public Storage Building
- Audubon Society Action Alert: Tell Cupertino to say no to lighted sign
- Sierra Club Loma Prieta Chapter: Call to Action

Now you Have over 7 Reasons Why you must Reconsider this Application, You Only Need 1

1. The building already its one allowable freeway-oriented sign.
2. The fact that the proposed sign directly faces homes across the freeway, was improperly excluded. By failing to notify your most impacted residents, they were muted.
3. An explanation as to how signs are measured was improperly excluded, leading you to believe that the sign would be smaller (by nearly a factor of 4).
4. You were not told that the building was supposed to be nearly invisible from the freeway; how can you justify approving highly visible signage now?
5. Council approved the new sign based on the false assumption that it would be the only freeway-oriented sign and its impact would be comparable to that of the hotel.
6. Council was unable to provide a fair hearing because Council failed to obtain clear instructions from staff.
7. CMC 19.104.220 Design Criteria, which is key to approving signs, was improperly excluded.

CC 03-21-2023

#7

Petition for
Reconsideration Sign
Exception

Updated Presentation

Sign Exception

EXC-2022-003

20565 Valley Green Drive



**CITY OF
CUPERTINO**

Subject

- Consider petition for reconsideration regarding the City Council decision of February 7, 2023, to uphold the appeal of Planning Commission Resolution No. 6962 in part, approve one of the two requested freeway-oriented signs, and deny the requested sign exception.
- Applicant: David Ford (All Sign Services)
- Petitioner: Rhoda Fry

Background

- Council on February 7, 2023 upheld the appeal of Planning Commission Resolution No. 6962 in part, approved one of the two requested freeway-oriented signs, and denied the requested sign exception.
- On February 17, 2023 Rhoda Fry submitted a Petition for Reconsideration for Council's decision.

City Council Reconsideration

- CMC Section 2.08.096 authorizes any interested person to petition the City Council to reconsider any adjudicatory decision made by the Council.
- A petition for reconsideration must “specify, in detail, each ground for reconsideration.” (CMC § 2.08.096(B).)

Grounds for Reconsideration -1

An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.

- *Petitioner cites a Public Storage blog post, without explaining why post is relevant to interpretation of Sign Ordinance.*
 - *Staff recommends denying reconsideration on this ground as:*
 - *Presents arguments and evidence that were available at time of Planning Commission and City Council hearings; and*
 - *Offers no explanation as to why such evidence could not have been introduced at time of those hearings.*

Grounds for Reconsideration -2

An offer of relevant evidence which was improperly excluded at any prior city hearing.

- *Petitioner argues that evidence was improperly excluded from hearing, citing various evidence that was allegedly not presented to Council.*
- *Staff recommends denying reconsideration on this ground as:*
 - *No evidence was excluded from the hearing.*
 - *The failure of an interested party to submit evidence that could have been produced at prior hearing is not a basis for reconsideration.*

Grounds for Reconsideration -3

Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

- *Petitioner argues that City Council proceeded without or in excess of its jurisdiction, citing an undefined “validation from Caltrans.”*
- *Staff recommends denying reconsideration on this ground as Council has jurisdiction to review the Planning Commission’s decision and affirm, modify, or reverse it.*

Grounds for Reconsideration -4

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

- *Petitioner argues that Council failed to provide a fair hearing, citing discussion of the Sign Ordinance by City staff.*
- *Staff recommends denying reconsideration on this ground as there is no evidence that any interested party:*
 - *Was deprived of opportunity to present evidence; or*
 - *The hearing did not meet standards of procedural fairness, including notice and an opportunity to be heard.*

Grounds for Reconsideration -5

Proof of facts which demonstrate that the City Council abused its discretion by:

- Not preceding in a manner required by law; and/or
- Rendering a decision which was not supported by findings of fact; and/or
- Rendering a decision in which the findings of fact were not supported by the evidence.

Grounds for Reconsideration -5 (cont.)

- *Petitioner argues that Council abused its discretion because a Councilmember compared the Public Storage sign to the Cupertino Hotel sign.*
- *Staff recommends denying reconsideration on this ground as petition does not explain why this comparison undermines constitutes an abuse of discretion.*

Staff Report - Errata

Revision to Staff Report, Page 2, Paragraph 4:

First, the petition argues that reconsideration is warranted because there is ~~no~~ relevant evidence, which, in the exercise of reasonable diligence, could not have been produced at any earlier City hearing....



Recommended Action

That the City Council conduct a public hearing and adopt Resolution No. 23-XXXX (Attachment A) denying the petition for reconsideration.

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EXC-2022-003

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Grounds for Reconsideration -2

An offer of relevant evidence which was improperly excluded at any prior city hearing.

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Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

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 - *No evidence was excluded from the hearing.*
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Grounds for Reconsideration -4

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

- *Petitioner argues that Council failed to provide a fair hearing, citing discussion of the Sign Ordinance by City staff.*
- *Staff recommends denying reconsideration on this ground as there is no evidence that any interested party:*
 - *Was deprived of opportunity to present evidence; or*
 - *The hearing did not meet standards of procedural fairness, including notice and an opportunity to be heard.*

Grounds for Reconsideration -5

Proof of facts which demonstrate that the City Council abused its discretion by:

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Recommended Action

That the City Council conduct a public hearing and adopt Resolution No. 23-XXXX (Attachment A) denying the petition for reconsideration.

CC 03-21-2023

#8

I-280 Trail Name Change

Presentation

Cupertino City Council I-280 Trail Name Change

March 21, 2023



CUPERTINO

Agenda

I-280 Trail Name Change

- Background
- Survey - Research
- Survey - Outreach
- Survey - Naming Options
- Survey - Results
- Recommended Action

Background

- **December 21, 2021 City Council Meeting:** City Council directed staff to refrain from using the Junipero Serra name, research alternatives, utilize interim name I-280 Trail, and collaborate with the Bicycle Pedestrian Commission.
- **May 18, 2022 Bicycle Pedestrian Commission Meeting:** The Commission recommended that staff research potential names, develop a survey based on findings, and conduct public outreach.
- **February 23, 2023 Bicycle Pedestrian Commission Meeting:** The Commission endorsed the top choice selected by the public, Tamien Innu (Tamien Trail).

Survey - Research

- Staff worked in collaboration with:
 - Tamien Nation
 - Cupertino Historical Society
 - Stockmeir library at De Anza College
- Staff also reviewed:
 - Publications from the San Francisco Estuary Institute and Cupertino Chronicle

From that research, 7 options emerged

Survey - Outreach

Survey Schedule:

January 9 - 30, 2023

Outreach Methodology:

- City-wide mailer
- Items of Interest
- Cupertino SR2S Newsletter
- Social Media
- E-Notification



Rename the I-280 Trail

The City of Cupertino is considering a name change for the I-280 Trail, which runs from Vallco Parkway to the Don Burnette Bridge. With the name change, the City hopes to select a name that reflects Cupertino's history, culture, and past and current residents.

Participate in the name change survey by scanning the QR code or visiting the project webpage at engagecupertino.org/i-280-trail.



Survey is available from January 9 to 30.

Survey – Naming Options

Based on location:

- Option 1: **I-280 Trail**

Based on Tamien Nation:

- Option 2: **Tamien Innu** (Tamien Trail)
- Option 3: **Ruume Innu** (River Trail)

Based on Historical Vegetation of West Santa Clara Valley:

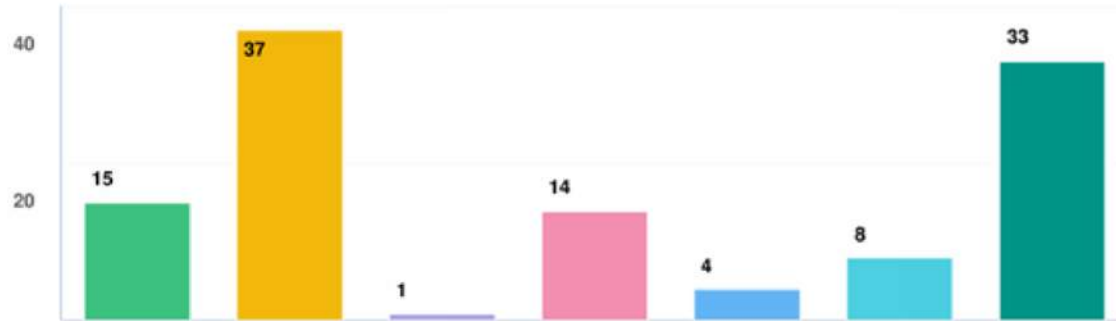
- Option 4: **Chaparral Trail**
- Option 5: **Punta del Roblar** (Point of the Oak grove)

Based on Historic Cupertino:

- Option 6: **El Hermoso Camino** (Beautiful Path)
- Option 7: **Cupertino Crossroads**

Survey - Results

Q3 Select Top Option



Question options

● Option 1: I-280 Trail

● Option 2: Tamien innu (Tamien trail)

● Option 3: Ruume innu (River trail)

● Option 4: Chaparral Trail

● Option 5: Punta del Roblar Trail (Point of the Oak grove)

● Option 6: El Hermoso Camino (Beautiful Path)

● Option 7: Cupertino Crossroads Trail

Mandatory Question (112 response(s))

Question type: Checkbox Question

Survey - Results

- Option 1: **I-280 Trail** had 15 responses
- Option 2: **Tamien Innu** (Tamien Trail) had 37 responses
- Option 3: **Ruume Innu** (River Trail) had 1 response
- Option 4: **Chaparral Trail** had 14 responses
- Option 5: **Punta del Roblar** (Point of the Oak grove) had 4 responses
- Option 6: **El Hermoso Camino** (Beautiful Path) had 8 responses
- Option 7: **Cupertino Crossroads** had 33 responses

Recommended Action:

Conduct a public hearing and adopt a Resolution approving

Tamien Innu (Tamien Trail)

as the officially recognized trail name.

Thank You



CUPERTINO

CC 03-21-2023

#10

General Plan Annual
Report and Housing
Element Annual Progress
Report (APR)

Presentation

2022 General Plan Annual Report

City Council
March 21, 2023



**CITY OF
CUPERTINO**

General Plan Annual Update

- Required by State Law
- Two parts
 - Progress on General Plan policies
 - Housing Element Annual Progress Report (APR) on forms from CA Dept. of Housing & Community Development (HCD)

2022 General Plan Annual Report

- Reviewed by PC (December 13, 2022)
- Suggested adding policies with next comprehensive GP Update regarding:
 - Requiring telecommunication projects to meet 5G Architectural standards
 - Public health and safety/environmental changes
 - Smart City Initiatives

2022 Housing Element Annual Progress Report (APR)



CUPERTINO

2022 Report

- Reporting Year: January 1 – December 31, 2022
- Must report building permits issued towards RHNA
- Due April 1, 2023

RHNA Generation by Developers

		Extremely Low/Very Low (0-50% of AMI)	Low (51-80% of AMI)	Moderate (81-120% of AMI)	Above Moderate (over 120% AMI)	Total Units
Projected Need (RHNA)		356	207	231	270	1,064
Total Projects Entitled by City (Not Yet Produced)		362	847	75	2,086	3,370
Building Permits Applied for By Developers and Issued	2015 APR*	-	-	14	164	178
	2016 APR	-	-	18	9	27
	2017 APR	-	-	12	16	28
	2018 APR	19	-	15	2	36
	2019 APR	-	-	15	24	39
	2020 APR	-	-	19	1	20
	2021 APR	29	19	41	1	90
	2022 APR	-	-	24	104	128
Total RHNA Production (2014 - 2022)		48	19	158	321	546
Balance		308	188	73	0	518

* Includes 2014 production

Entitlements By City

		Extremely Low/ Very Low (0-50% of AMI)	Low (51-80% of AMI)	Moderate (81-120% of AMI)	Above Moderate (over 120% AMI)	Total Units
Projected Need (RHNA)		356	207	231	270	1,064
Total Building Permits Issued		48	19	158	321	546
RHNA balance		308	188	73	0	518
Projects Entitled by City (Not Yet Produced)	Hamptons	-	7	30	563	600
	The Oaks – BP under review	-	-	-	123	123
	Vallco (SB35)	361	840	-	1,201	2,402
	Alan Row/ Bateh Bros.	-	-	1	9	10
	Canyon Crossing	1	-	2	15	18
	McClellan subdivision	-	-	6	5	11
	Marina 2.0	-	-	36	170	206
	Total Projects Entitled by City	362	847	75	2,086	3,370
RHNA Balance* (if BPs were applied for and issued for all entitled projects)		0	0	0	0	0

** Balance cannot be less than zero and cannot be applied to other income levels if there is excess production in any one income level.*

Table A- Housing Development Applications Submitted

- City processed **4** housing development applications in 2022
 - Marina Plaza
 - Alan Row
 - Canyon Crossing
 - McClellan subdivision)

Note: An "application" is a formal submittal of a project for approval, either for a discretionary entitlement, or where only a ministerial process is required (e.g., zoned by right), the application for a building permit

Table A2- Annual Building Activity Report Summary

In 2022, City:

- Entitled **263** net new units
- Issued Building Permits for **128** net new units
- Issued Certificate of Occupancy for **29** net new units



Thank you