

MITIGATION MONITORING OR REPORTING PROGRAM

Regnart Creek Trail

CITY OF CUPERTINO

May 2020

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring or Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

On [REDACTED], 2020, the City Council adopted the Mitigated Negative Declaration (MND) for the Regnart Creek Trail project. The MND concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were adopted and incorporated into the project or are required as a condition of project approval. This Mitigation Monitoring or Reporting Program addresses those measures in terms of how and when they will be implemented.

The attached table includes columns that show: 1) each mitigation measure identified in the MND as finally adopted; 2) the procedure for implementing each mitigation measure; 3) the timeframe for implementation of each mitigation measure; 4) the agency responsible for monitoring; and 5) the monitoring action or frequency.

This document does not discuss those subjects for which the MND concluded that mitigation measures would not be required to reduce potentially significant impacts.

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Mitigation Measure	Implementing Procedure	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action/Frequency
<i>Biological Resources</i>				
MM BIO-1.1: A qualified biologist shall conduct a preconstruction survey of the work area for pond turtles within 48 hours prior to the start of work activities. If a western pond turtle is observed within the work area at any time before or during proposed construction activities, all activities shall cease until such time that either: (1) the pond turtle leaves the area, or; (2) the qualified biologist can capture and relocate the animal to suitable habitat away from project activities.	City of Cupertino to hire a qualified biologist to conduct the preconstruction survey.	Biologist to conduct the survey within 48 hours prior to the start of construction within the project site.	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the work area for the project.
MM BIO-1.2: A qualified wildlife ecologist shall conduct a preconstruction survey for active nests of San Francisco dusky-footed woodrats within the project construction area within 30 days prior to the start of construction within non-developed habitats on the project site. If active woodrat nests are determined to be present in, or within 10 feet of project work areas, Mitigation Measures MM BIO-1.3 and BIO-1.4 below will be implemented, as appropriate.	City of Cupertino to hire a qualified biologist to conduct the preconstruction survey.	Biologist to conduct the survey within 30 days prior to the start of construction within non-developed habitats on the project site.	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the work area for the project.

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MM BIO-1.3: Active woodrat nests that are detected within project construction areas shall be avoided to the extent feasible. A minimum 10-foot buffer shall be maintained between project construction activities and woodrat nests to avoid disturbance. In some situations, a smaller buffer may be allowed if, in the opinion of a qualified biologist, nest relocation (Measure MM BIO-1.4 below) would represent a greater disturbance to the woodrats than the adjacent work activities.	If active nests are detected within project construction areas, biologist shall establish the minimum required buffer zones.	Biologist to conduct the survey within 30 days prior to the start of construction within non-developed habitats on the project site.	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the work area for the project.
MM BIO-1.4: If avoidance of active woodrat nests within and immediately adjacent to (within 10 feet of) the construction areas is not feasible, then nest materials will be relocated to suitable habitat as close to the project site as possible (ideally, within or immediately adjacent to the site). One or both of the following two relocation measures will be implemented, depending on whether existing woodrat nest sites are connected by suitable dispersal habitat to the nest relocation sites. <ul style="list-style-type: none"> If the woodrat nest site and the proposed relocation area are connected by suitable dispersal habitat for the woodrat, as determined by a qualified biologist, the following relocation methodology shall be used. Prior to the start of construction 	If active nests cannot be avoided, then biologist to relocate nest materials to suitable habitat.	Biologist to conduct the survey within 30 days prior to the start of construction within non-developed habitats on the project site.	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the work area for the project.

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<p>activities, a qualified biologist will disturb the woodrat nest to the degree that all woodrats leave the nest and seek refuge outside of the construction area. Relocation efforts shall avoid the peak nesting season (February–July) to the maximum extent feasible. Disturbance of the woodrat nest shall be initiated no earlier than one hour before dusk to minimize the exposure of woodrats to diurnal predators. Subsequently, the biologist will dismantle and relocate the nest material by hand. During the deconstruction process, the biologist will attempt to assess if there are juveniles in the nest. If immobile juveniles are observed, the deconstruction process shall be discontinued until a time when the biologist believes the juveniles will be capable of independent survival (typically after 2 to 3 weeks). A no-disturbance buffer shall be established around the nest until the juveniles are mobile. The nest may be dismantled once the biologist has determined that adverse impacts on the juveniles would not occur.</p>				

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<ul style="list-style-type: none"> If a qualified biologist determines that the woodrat relocation area is separated from the nest site by major impediments, or a complete barrier, to woodrat movement, trapping for woodrats shall be conducted prior to relocation of nest material. Prior to the start of nest relocation activities, artificial pine box shelters will be placed at each of the sites selected for relocation of nest materials. The dimensions of the artificial shelters will be approximately 8-inch long by 8-inch wide by 6-inch high. Each shelter will include two interior chambers connected by an opening. At the relocation sites, the artificial pine box shelters will provide basement structures for the relocated woodrat nest materials, allowing woodrats to enter, use, and modify the relocated nests. <p>A qualified biologist will set two traps around each of the woodrat nests to be relocated. Traps will be set within one hour prior to sunset, and baited with a mixture of peanut butter, oats, and apples. Traps will also be equipped with cotton bedding and covered with</p>				

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<p>cardboard. The traps will be checked the following morning, within one-and-a-half hours of sunrise. If a woodrat is captured it will be placed in a quiet area while its nest material is relocated; the animal will then be released at the relocated nest. If no woodrats are captured after the first night, the biologist will set the traps for one additional evening to increase the probability of capturing an animal and ensuring a safe relocation. If no woodrats are captured at a given location after two nights, it will be assumed that the nest is not currently occupied.</p> <p>Trapping shall only be conducted outside the peak breeding season, which is from February through the end of July. If a litter of young is found or suspected while dismantling a nest for relocation, the nest material will be replaced, any trapped woodrats will be returned to the nest, and the nest will be left alone for 2 to 3 weeks, after which time the nest would be rechecked to verify that the young are capable of independent survival, as determined by the biologist, before proceeding with nest dismantling.</p>				

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MM BIO-2.1: To minimize impacts to riparian habitat, soil disturbance shall be kept to the minimum footprint necessary to abandon the existing ramp and install the proposed ramp. The ramp relocation has been designed to minimize the area of disturbance to riparian ruderal grassland habitat in the existing ramp location. In addition, the proposed ramp location has been designed to have as minimal a footprint as possible.	Project engineer to prepare final plans showing proposed ramp configuration.	Prior to bidding and construction of the project.	City of Cupertino Public Works Department	City of Cupertino to review and accept final construction plans showing minimal disturbance prior to authorizing bidding for the project.
MM BIO-2.2: The proposed maintenance ramp relocation work shall occur between May 15 and October 31 when the channel bed is dry. This will prevent unintended sediment runoff into creek waters and will ensure that there are no adverse effects to any aquatic life that may be seasonally present in the intermittent creek. Work shall halt if there is an out-of-season storm that deposits more than 0.5 inches of rain in 24 hours until the site has dried.	Ramp relocation and construction to occur between May 15 and October 31, and only when channel bed is dry.	During relocation and construction of the ramp.	City of Cupertino Public Works Department	City of Cupertino to monitor ramp relocation and construction to ensure construction occurs between May 15 and October 31, and only when channel bed is dry.
MM BIO-2.3: To protect on-site vegetation and water quality, the staging area for the ramp relocation shall be located on the access road to the north of the channel in Wilson Park, at least 100 feet outside the top of bank, in an area that currently supports either hardscape, landscaping,	City of Cupertino to establish construction staging and material storage area locations for maintenance ramp	Prior to the start of construction.	City of Cupertino Public Works Department	City of Cupertino to regularly inspect staging and material storage areas for proper maintenance of erosion control

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or ruderal vegetation. Similarly, all equipment and materials (e.g., road rock and project spoil) shall be contained within existing disturbed areas outside of the riparian zone in a pre-determined staging area. Erosion control measures shall be installed around the staging area to prevent runoff from the staging areas to enter the Regnart Creek channel. Any landscape areas that are affected by staging shall be restored. No staging shall occur within driplines of trees to remain.	relocation work.			and other stormwater BMPs as required in the SWPPP.
MM BIO-2.4: The ramp relocation shall be fully designed to prevent bank failure. Following construction and to further prevent potential downstream erosion impacts, the site design shall provide proactive protection of vulnerable areas within the reach of the worksite. Such measures could include, but are not limited to, appropriately keyed-in coir logs, strategic placement of rock, and flow deflectors. Bank stabilization shall include transition designs upstream and downstream of the work site to prevent potential erosion impacts.	Project engineer to prepare final plans showing proposed ramp configuration and incorporating appropriate site design features to protect vulnerable areas within reach of the work site.	Prior to the start of construction.	City of Cupertino Public Works Department	City of Cupertino to review and accept final construction plans prior to authorizing bidding for the project.
MM BIO-2.5: Following ramp relocation all non-hardscaped areas that have exposed soil shall be stabilized to prevent erosion. These areas shall be seeded with native species seed down to	Contractor to install temporary erosion control measures in exposed soil areas	Following construction of the relocated ramp.	City of Cupertino Public Works Department	City of Cupertino to regularly inspect relocated ramp areas for proper

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<p>the OHWM as soon as is appropriate following completion of the project. Grassland revegetation will be most effective if the seed is applied in the fall (after September 1 and before December 1), Until that time, the area shall achieve erosion control through use of temporary measures, which are BMPs such as jute netting, fiber rolls, or other equally effective measures. These BMPs shall be removed prior to seeding. The seed mix will be broadcast seeded onto prepared (decompacted and scarified) soil surface and then lightly raked to maximize seed/soil contact. The seed mix shall consist of the California native grasses and forbs and application rates as shown in the following table, or native species and application rates as otherwise acceptable to involved agencies.</p>	<p>following construction of the relocated ramps, if prior to September 1. Between September 1 and December 1, any temporary measures installed shall be removed and the areas seeded, per specifications.</p>			<p>installation and maintenance of erosion control BMPs.</p>

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Scientific Name ¹	Common Name	Application Rate (pounds PLS/acre) ²				
<i>Elymus glaucus</i>	Blue wildrye	4.0				
<i>Eschscholziacalif ornica</i>	California poppy	1.0				
<i>Festuca microstachys</i>	Small fescue	6.0				
<i>Hordeumbrachya ntherum</i>	Meadow barley	10.0				
<i>Lupinus bicolor</i>	Annual lupine	1.0				
1 Names derived from The Jepson Manual (Baldwin et al. 2012). 2 PLS (pure live seed) = the proportion of total seed that is pure and viable. To find the total weight of raw seed needed to achieve the application rate in the table, find %PLS as follows: [(% purity of seed lot) (% germination rate of species)/100]. Then divide the application rate in the table (pounds) by the %PLS (expressed as a decimal) to find total weight of raw seed applied per acre for each species.						
MM BIO-2.6: The City shall monitor the reseeded riparian bank areas annually for two years to ensure that the percent vegetation cover reaches at least 75 percent of the cover in the adjacent undisturbed reaches, and shall control any infestations of Cal-IPC rated moderate or high weeds comprising greater than five percent of the total cover in the recovering areas. If after			City of Cupertino shall monitor the reseeded riparian bank areas annually for two years and shall control weed infestations as specified. The City	Annually for two years following reseeded of riparian bank areas.	City of Cupertino Public Works Department	City of Cupertino shall monitor the reseeded riparian bank areas annually for at least two years until specified success criteria have been met.

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two years, these success criteria have not been met, the City shall implement remedial measures, such as re-seeding the area and monitoring for an additional two years.	shall implement remedial measures, such as re-seeding the area and monitoring for an additional two years if the specified success criteria have not been met.			
MM BIO-4.1: Construction activities (or at least the commencement of such activities) shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 st through August 31 st .	Construction activities (or at least the commencement of such activities) shall be scheduled to avoid the nesting season.(February 1st through August 31st).	Start of project construction activities.	City of Cupertino Public Works Department	City of Cupertino shall determine if construction activities can be scheduled to avoid the nesting season.
MM BIO-4.2: If it is not possible to schedule demolition and construction between September 1 st and January 31 st , pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys shall be completed no more than seven	City of Cupertino to hire a qualified biologist to conduct the preconstruction survey.	Within seven days prior to the start of project construction	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the

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days prior to the initiation of construction activities. During this survey, the ornithologist shall inspect all trees and other potential nesting habitats (e.g., trees, shrubs, grasslands, buildings) in and immediately adjacent to the impact areas for nests.				work area for the project.
MM BIO-4.3: If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest(typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.	If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist shall determine the extent of a construction-free buffer zone to be established around the nest.	Within seven days prior to the start of project construction.	City of Cupertino Public Works Department	City of Cupertino to review and accept biologist's survey results prior to commencement of construction activities within the project work area.
MM BIO-4.4: If construction activities will not be initiated until after the start of nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation)that are scheduled to be removed by the project may be removed prior to the start of the nesting season (e.g., prior to February 1 st). This will preclude the initiation of nests in this vegetation and prevent the potential delay of the project due to the	All potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation)that are scheduled to be removed by the project may be removed prior to the	Prior to the start of the nesting season (February 1st).	City of Cupertino Public Works Department	Prior to the start of the nesting season (February 1st).

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presence of active nests in these substrates.	start of the nesting season (e.g., prior to February 1st) at the City's discretion.			
<i>Cultural Resources</i>				
MM CUL-2.1: Prior to any project-related construction or ground disturbing activities, a qualified archaeologist shall complete mechanical coring to explore for archaeological resources. Coring shall be completed near the proposed eastern terminus and in specific locations that will be impacted by the proposed improvements, such as the proposed new maintenance ramp and bridge abutment locations. The results of the mechanical coring activities shall be submitted to the Director of Public Works or his or her designee for review and acceptance prior to issuance of any Notice to Proceed for construction. If archaeological resources are discovered during the mechanical coring investigation, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist.	City to hire a qualified archaeologist to perform mechanical coring.	Prior to any project-related construction or ground disturbing activities.	City of Cupertino Public Works Department	City of Cupertino to review and accept the results of the mechanical coring activities prior to the start of construction.

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MM CUL-2.2: If archaeological resources are discovered during the mechanical coring investigation, the project shall retain a qualified archaeologist to prepare a treatment plan that reflects the project details pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Public Works for review/approval and shall be implemented prior to proceeding with any grading work for the project. The plan may require archaeological data recovery excavations to address treatment of the resource along with subsequent laboratory processing and analysis. If appropriate, the archaeologist may conduct archaeological monitoring on all or part of the site. An archaeological report shall be written detailing all archaeological finds and submitted to the City and Northwest Information Center.	If archaeological resources are discovered during the required mechanical coring investigation, then the archaeologist shall prepare the required treatment plan.	Prior to the start of construction.	City of Cupertino Public Works Department	City of Cupertino to review and accept treatment plan prior to the start of construction.
MM CUL-2.3: If archaeological resources are not discovered during the mechanical coring investigation, project construction shall proceed under the presumption that upon discovery of possible buried prehistoric or historic cultural materials, work within 25 feet of the find must be halted and mitigation measure MM CUL-2.2 shall be implemented.	If archaeological resources are not discovered during the mechanical coring investigation, construction shall proceed.	Prior to the start of construction.	City of Cupertino Public Works Department	City of Cupertino to review and accept the results of the mechanical coring activities prior to the start of construction.

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<i>Hazards and Hazardous Materials</i>				
MM HAZ-2.1: Prior to excavation, shallow soil samples shall be taken along the proposed trail alignment and other areas of disturbance to determine if contaminated soil is located on-site with concentrations above established construction/trench worker thresholds.	The City shall hire a qualified consultant to take shallow soil samples and have them analyzed for potential pesticides or chemicals from historic agricultural operations.	Prior to the start of construction.	City of Cupertino Public Works Department	City to review and accept the results of the soil sample analysis prior to the start of construction.
MM HAZ-2.2: Once soil sampling is complete, a report of findings shall be provided to the SCCDEH (or other appropriate agency) for review. If no contaminants are found above established thresholds, no further action is required.	The City shall provide a report of the findings from the soil sampling analysis to the SCCDEH or other appropriate agency.	Following the completion of shallow soil sampling per MM HAZ-2.1.	City of Cupertino Public Works Department	If no contaminants are found above established thresholds by the SCCDEH (or other appropriate agency), City may allow construction to proceed.
MM HAZ-2.3: If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) shall be prepared and implemented to manage the cleanup of potential contamination. The SMP shall be prepared prior to construction to reduce or eliminate exposure risk to human health and the	The City shall oversee preparation and implementation of a SMP to manage the cleanup of potential contamination.	Prior to any project-related construction or ground disturbing activities.	City of Cupertino Public Works Department	City to monitor implementation of a SMP, including any removal and off-hauling of contaminated soil, prior to the start of construction if

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<p>environment, specifically, potential risks associated with the presence of contaminated soils. Contaminated soil removed from the site shall be hauled off-site and disposed at a licensed hazardous materials disposal site in accordance with applicable regulations.</p> <p>The SMP shall be submitted to the SCCDEH (or other equivalent agency) for review and acceptance. A copy of the accepted SMP shall be submitted to the City of Cupertino Public Works Department and shall be implemented prior to the commencement of grading activities on the site.</p>				contaminated soils are found in concentrations above established thresholds.
Noise and Vibration				
<p>MM NOI-2.1: The following measures shall be implemented where vibration levels due to construction activities would exceed 0.3 inch per second PPV at nearby sensitive uses:</p> <ul style="list-style-type: none"> Comply with the construction noise ordinance to limit hours of exposure. The City's Municipal Code allows construction activities during daytime hours, Monday through Friday. Construction is prohibited on weekends and all holidays. 	Construction activities shall comply with the limitations on days and hours of construction contained in the City's Municipal Code during construction of the project. The use of heavy vibration-	During project construction.	City of Cupertino Public Works Department	City to enforce Municipal Code limits on construction days and hours, as well as restrictions on the use of heavy vibration-generating equipment within 20 feet of existing structures through

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<ul style="list-style-type: none"> Prohibit the use of heavy vibration-generating construction equipment within 20feet of the structures located along the project corridor. The contractor shall alert heavy equipment operators in close proximity of the adjacent structures so they can exercise extra care. 	generating equipment shall be prohibited within 20 feet of any existing structures adjacent to the trail alignment.			record-keeping by construction manager.