PUBLIC WORKS DEPARTMENT
Roger Lee, Director

CITY HALL
10300 TORRE AVENUE ~ CUPERTINO, CA 95014-3266
(408) 777-3354 ~ FAX (408) 777-3333

FINAL
CITY OF CUPERTINO
MITIGATED NEGATIVE DECLARATION

As provided by the Environmental Assessment Procedure adopted by the City Council of the City of Cupertino on May 27, 1973, and amended on March 4, 1974, January 17, 1977, May 1, 1978, and July 7, 1980, the City of Cupertino City Council has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project implementation. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affect by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance (CEQA Guidelines Section 15382).

PROJECT INFORMATION AND LOCATION

Project Name:	Regnart Creek Trail
Applicant:	City of Cupertino
Location:	City of Cupertino

PROJECT DESCRIPTION

The project proposes to construct a 0.8-mile shared-use trail extending from Torre Avenue to East Estates Drive in the City of Cupertino. The project location is shown on regional, vicinity, and aerial maps on Figures 2.2-1, 2.2-2, and 2.2-3, respectively, in the attached Initial Study. The proposed trail would provide a connection from the Cupertino Civic Center complex to the west with Wilson and Creekside Parks to the east. For most of its reach, the trail would be constructed on the existing Valley Water maintenance road along Regnart Creek. The trail would be 10 feet wide and surfaced with decomposed granite. The project would relocate the existing concrete Valley Water maintenance ramp located along the proposed trail alignment to the north side of the creek. Various ancillary trail components and features are proposed along the trail alignment at specific locations, including curb and gutter improvements, fence replacements, chain link gates at trail access points, removable railings, chain link fencing, and a

pedestrian bridge at Wilson Park. Additionally, the project includes pedestrian and bicycle improvements on the surrounding roadways to provide better access to and from the proposed trail.

FINDINGS OF DECISIONMAKING BODY

The City Council finds the project described is consistent with the General Plan and will not have a significant effect on the environment based on the analysis completed in the attached Initial Study. The City, before the public release of this draft Mitigated Negative Declaration (MND), has agreed to make project revisions that mitigate the project's effects to a less than significant level. The City agrees to implement the mitigation measures identified in the attached Initial Study and summarized below.

Biological Resources

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.

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.

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.

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.

- 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 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.

- 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.

  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 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.

  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.

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.

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.

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, 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.

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.

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 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.

Scientific Name[1]	**Common Name**	**Application Rate** (pounds PLS/acre)[2]
Elymus glaucus	Blue wildrye	4.0
Eschscholzia californica	California poppy	1.0
Festuca microstachys	Small fescue	6.0
Hordeum brachyantherum	Meadow barley	10.0
Lupinus bicolor	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 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.

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 1st through August 31st.

MM BIO-4.2: If it is not possible to schedule demolition and construction between September 1st and January 31st, 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 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.

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.

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 1st). This will preclude the initiation of nests in this vegetation, and prevent the potential delay of the project due to the presence of active nests in these substrates.

Cultural Resources and Tribal Cultural Resources

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.

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 the Northwest Information Center.

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.

Hazards and Hazardous Materials

MM HAZ-2.1: Prior to excavation, shallow soil samples shall be taken along the proposed trial alignment and other areas of disturbance to determine if contaminated soil is located on-site with concentrations above established construction/trench worker thresholds.

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.

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 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.

The SMP shall be submitted to the SCCDEH (or other appropriate 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.

Noise

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:

- 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.
- Prohibit the use of heavy vibration-generating construction equipment within 20 feet 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.

PUBLIC REVIEW PERIOD

The public circulation period for the Initial Study and draft MND began on February 7, 2020 and ended on March 9, 2020.

_____

Roger Lee
Director of Public Works

CERTIFICATE OF THE CITY CLERK

This is to certify that the above Mitigated Negative Declaration was filed in the Office of the City Clerk of the City of Cupertino on _____

_____

City Clerk