

Responses to Comments

Regnart Creek Trail Initial Study/Mitigated Negative Declaration



CUPERTINO

April 2020

PREFACE

The 30-day Initial Study/Mitigated Negative Declaration (IS/MND) public review period for the Regnart Creek Trail project started Friday, February 7, 2020 and ended Monday, March 9, 2020. The following pages contain responses to comments submitted by agencies, organizations, and individuals during the IS/MND public review period. Copies of the comment letters are included as Appendix A.

**SECTION 1 LIST OF AGENCIES AND PERSONS COMMENTING
ON THE IS/MND**

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SECTION 2 RESPONSES TO COMMENTS RECEIVED ON THE IS/MND

1. RESPONSE TO COMMENT LETTER 1 FROM SABARI SANJEEVI, DATED MARCH 5, 2020

Comment 1.1: We recently purchased the property at 10301 S. Blaney Ave Cupertino. Our driveway is few feet from the Regnart creek/bridge. Given the location of the proposed crosswalk and barrier in the middle of the road any car or passenger van backing out of our driveway have to go over the pedestrian crossing. In the initial report section 4.17.2, “Impact TRN-3” states that, the geometric design has “less than significant impact”. We have serious concern about the location of the crosswalk on the safety of pedestrians, especially children on bicycle. We are concerned about children crossing in bicycle and vehicles backing out of the cross walk at same time. Safety can be improved significantly by locating the proposed cross walk away from the driveway entrance. That give enough space between the pedestrian crossing and vehicle backing out of the driveway. We are hoping our concern is addressed for the safety of all.

Response 1.1: As stated in the Initial Study project description (Section 3.1.2.3), a high visibility pedestrian crosswalk with Rectangular Rapid Flash Beacons (RRFBs) and Americans with Disabilities Act (ADA) ramp and curb improvements would be constructed at the South Blaney Avenue trail crossing. The approximate location of the proposed South Blaney Avenue crosswalk is shown on Figure 3.1-1 of the Initial Study and is generally in line with the creek channel. Through use of AutoTurn, a software used for vehicle swept path evaluation, it was determined that there is adequate space for a passenger vehicle to reverse out of the driveway into the northbound direction and head southbound without encroaching the proposed crosswalk.

2. RESPONSE TO COMMENT LETTER 2 FROM VALLEY WATER, DATED MARCH 6, 2020

Comment 2.1: Santa Clara Valley Water District (Valley Water) staff has reviewed the Mitigated Negative Declaration (MND) for the subject project, received on February 19, 2020. As the project requires Valley Water approvals for the portions of the project located on its fee title right of way for Regnart Creek, Valley Water is a Responsible Agency under the California Environmental Quality Act. Valley Water's interests relative to Regnart Creek are stream stewardship and flood protection.

The MND addresses stream stewardship and flood protection impacts in the biological resources and hydrology and water quality sections. The MND includes appropriate mitigation measures addressing those impacts resulting from construction and operation of the trail, maintenance ramp relocation and pedestrian bridge.

We appreciate the opportunity to provide comments. I may be reached at (408) 630-2319 or via e-mail at yarroyo@valleywater.org, if you have any questions.

Response 2.1: The comment is noted. This comment will be considered as part of the project decision process. No additional response is required as the comment does not raise environmental issues or questions about the adequacy of the Initial Study.

3. RESPONSE TO COMMENT LETTER 3 FROM GARY WONG, DATED MARCH 8, 2020

Comment 3.1: This is a response to the Notice of Intent to Adopt a Mitigated Negative Declaration pertaining to Regnart Creek Trail and the Public Review Period.

These are a few of my observations or questions pertaining to the MNG.

1. Page 33, Sensitive Habitat Regulations. I am unsure whether ducks are part of the definitions for birds or not, but ducks have long used the Creek as an area of refuge and activity. With the construction and use of the Creek as a trail, such activity will disrupt this "habitat" for them. The MND is silent on this matter. Attached is a photo of ducks who use the Lozano property as a gateway to the Creek. The Creek also has numerous dens in the Creek and I could not find any discussion of this or impact thereto.

Response 3.1: Potential project impacts upon biological resources are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report prepared for the project and included as Appendix A to the Initial Study. As stated on page 36 of the Initial Study, Regnart Creek provides habitat for some urban-adapted species associated with aquatic habitats. As discussed on pages 49 and 50 of the Initial Study, project construction and operation could disrupt wildlife movement through the Regnart Creek corridor. However, the common terrestrial wildlife and bird species that occur on-site are expected to continue to use the area during the night and other hours of the day when human activity is relatively low, such as early mornings and evenings. Further, the common species of birds that nest along the creek are highly tolerant of human disturbance and are expected to habituate to any increase in disturbance due to trail use.

As discussed on page 50, construction disturbance during the avian breeding season (February 1 through August 31, for most species) could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests or indirectly by causing the abandonment of nests on or near the project alignment. Therefore, the project includes mitigation measures to avoid impacts to nesting birds during construction. These measures are listed on pages 50 and 51 of the Initial Study and include completing project construction outside of the nesting season, completing preconstruction nesting bird surveys when construction occurs during the nesting season, and subsequent measures if an active nest is found near construction activities. For these reasons and those stated above, the Initial Study concludes on page 51 the project would not result in substantial adverse impacts to wildlife using the creek.

Comment 3.2: 2. Appendix C Noise and Vibration Assessment. This section discusses acoustical terms and noise levels. It spends a large portion of the assessment on construction noise. When assessing noise levels of trail use, it concludes that from time to time, noise levels could exceed common indoor activity, but concludes that this noise is limited in duration, and thus, not a concern. However, if the trail is heavily used, as suggested in the City's Bike and Pedestrian Plans, the study is silent on the impact of a steady stream of users on residences along the trail. What volume of traffic or usage of the Trail was assumed? Some assumption of usage must have been made to design the bridge.

Response 3.2: The Noise and Vibration Assessment completed for the proposed project evaluates continual trail use based on noise measurements completed along local and regional trails throughout the Bay Area. As discussed in Section 4.13 Noise on page 96 of the Initial Study and pages 20 and 21 of the Noise and Vibration Assessment, activities expected along the proposed trail would include bicycling, walking, and jogging. The Noise and Vibration Assessment does not state noise from trail operations would be minimal because of limited trail use. The Noise and Vibration Assessment states noise levels generated by activity along the trail would be minimal because, due to the nature of trail activities (i.e., trail users normally move along the trail), the length of time nearby residences would be exposed to noise from individual trail activities would be short in duration (i.e., as the users pass by a residence). It is for this reason the Noise and Vibration Assessment and Initial Study conclude trail operational noise would meet daytime and nighttime thresholds at residential property lines and, therefore, not result in a significant impact.

Comment 3.3: Also, the study is silent on changes of mode of transport. For instance, it does not discuss the use of motorized scooters or other emerging personal transport.

Response 3.3: Gas-powered scooters/transport will be prohibited on the trail.

Comment 3.4: The study discusses the effectiveness of a sound wall, but states it should only be implemented as a last resort due to cost. Construction is estimated to be 10 months, with mitigation efforts to limit the hours of construction to existing City guidelines. Given the benefits of a sound wall, residents would welcome that this option be retained for noise, privacy and security reasons.

Response 3.4: The proposed project is expected to be constructed in approximately 10 months, which would be less than the one-year threshold that defines a temporary noise increase. Furthermore, no one receptor would be exposed to construction over the entire project duration due to the length of the project corridor and the fact that construction activities would advance along the corridor. This would reduce the cumulative amount of time that individual receptors would be exposed to elevated construction noise levels. As discussed on pages 94 and 95 of the Initial Study, project construction would be completed in accordance with the provisions of the City's Municipal Code (e.g., construction work limited to daytime hours, Monday through Friday) and, as a Standard Permit Condition, the project shall develop and implement a construction noise control plan. For these reasons, the Initial Study concludes the increase in ambient noise levels due to project construction would be less than significant. Neither the Initial Study nor Noise and Vibration Assessment

recommend installing a sound wall or state a sound wall should only be implemented as a last resort due to cost.

4. RESPONSE TO COMMENT LETTER 4 FROM ILANGO GANGA, DATED MARCH 9, 2020

Comment 4.1: 1. Section: 4.13.1.3: Noise measurement locations and noise levels: Long term noise measurements were not performed on the sections of the path behind the Lamar Drive from Blaney to East Estates drive and behind De Palma Lane. Long term noise measurements should be performed and noise level trends to be plotted for this section of the trail as well.

Response 4.1: A noise monitoring survey was completed at the site on January 2, 2019 through January 4, 2019. The survey included two long-term (LT-1 and LT-2) and two short-term (ST-1 and ST-2) noise measurements. The purpose of the noise monitoring survey was to accurately describe existing ambient noise levels in the project area. Based on the survey, the community noise equivalent level along the proposed trail alignment ranges from 52 to 54 dBA CNEL. The noise environment in the project vicinity is dominated by traffic noise along the local roadways that run parallel to or cross the proposed trail alignment (e.g., Pacifica Drive and South Blaney Avenue) and local neighborhood activities. A short-term noise measurement was completed behind the residences along La Mar Drive, which confirmed the long-term measurement data accurately reflects ambient noise levels at this location. Therefore, the additional long-term measurements requested in this comment are not necessary.

Comment 4.2: 2. Section 4.13.2.1 Operational noise: The analysis assumes nearest residential property line would be approximately 6 ft from the center of the trail. However, the trail is a bidirectional trail with people biking, walking, jogging on both direction that may be as close as or less than 2ft from the property line. The analysis should include noise sources 2ft or less from the property line and the noise source could be as tall as or taller than 5-6 ft that is the height of the fences.

Response 4.2: The Initial Study and Noise and Vibration Assessment correctly estimates trail construction and operation noise levels from the trail centerline, which represents the average distance between the noise source and nearest property line. As stated on pages 94 and 96 of the Initial Study, trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. For these reasons, the additional analysis requested in this comment is not necessary.

Comment 4.3: 3. The analysis shows the noise level of 50-55dBA at 20ft for noise sources (people talking, etc.). The noise level at less than 20 feet and as close as 2 ft to the residential properties should be shown as well.

Response 4.3: The Initial Study and Noise and Vibration Assessment correctly estimates trail construction and operation noise levels at a distance of 6 feet, which represents the average distance between the noise source and nearest property line. As stated on page 96 of the Initial Study, at a distance of 6 feet from the property line, talking or laughing would

generate noise levels of 61 to 66 dBA assuming no attenuation from a property line fence. Whistles, bells, or shouting would generate unattenuated noise levels of 76 to 81 dBA at the nearest residential property line.

Comment 4.4: 4. At a distance of 6 ft from noise source talking and laughing would generate 61-66 dBA and shouting, etc., would generate up to 81 dBA at the nearest property line. This analysis does not show the aggregate noise due to the number of people walking, jogging, biking along the trail and duration of the traffic and peak and average periods during the day. The analysis/model does not take into account the number of people that will be generating this noise and the time of the day. The city has projected hundreds of people walking/biking and using this trail. So the analysis/model should include the projected number of people using the trail and calculate the aggregate noise generated during various periods. It makes a subjective assessment that the activities would be "short" along the trail, however there will volumes of people moving along the trail, projection for current and future growth of traffic should be estimated and used for the analysis.

Response 4.4: The Noise and Vibration Assessment completed for the proposed project evaluates continual trail use throughout the day. Please refer to Response 3.2 for a detailed response to the issues raised in this comment.

Comment 4.5: 5. The analysis shows the wooden fencing would have 5dBA reduction however during to varying grade levels and the noise source being elevated 5-6 feet from the ground level would have line of sight or closer to the top fence line, hence the attenuation of 5dBA is not applicable for all properties along the trail. The analysis should be more specific to show and illustrate the noise sources, attenuation, distance from property lines and actual or projected noise level for different residential units along the trail path.

Response 4.5: As stated on pages 94 and 96 of the Initial Study, trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. For these reasons, the additional analysis requested in this comment is not necessary.

Comment 4.6: 6. The noise analysis does not show the biological impact to habitat, species along the trail. The biological impact of operational noise and as well as impact due to construction should be analyzed and documented in the study.

Response 4.6: Potential project impacts upon biological resources during construction and operation are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report prepared for the project and included as Appendix A to the Initial Study. Please refer to Response 3.1 for more information regarding project biological resource impacts.

Comment 4.7: 7. The study shows that existing fences will provide 5dBA attenuation during construction, however this is not applicable to all the residential units. So barriers should be used to attenuate the noise to the residential units to adequate levels during construction.

Response 4.7: Trail construction and operation noise levels were conservatively estimated without reductions due to intervening buildings or existing fences. Please refer to Response 4.5.

5. RESPONSE TO COMMENT LETTER 5 FROM VIJI ILANGO, DATED MARCH 9, 2020

Comment 5.1: I noticed a discrepancy in the public review end date for Initial Study/Mitigated Negative Declaration of Regnart Creek Trail. The City's Regnart Creek webpage, the notice mailed to the residents, and the MND document says March 8th 2020, Sunday as the review end period. Sunday cannot be a review end date because it is not a business day. However, CEQA webpage in ca.gov says March 9th, 2020 Monday as the review end period. See below

<https://ceqanet.opr.ca.gov/2020020179/2>

There is a discrepancy between MND document and what is posted in CEQA page in ca.gov. The last date in the IS/MND document seems to be incorrect.

Response 5.1: The 30-day comment period started Friday, February 7. Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day.

Comment 5.2: Thanks for your prompt reply. Good to know that the comment period ends today. How will the residents/public know that they can submit comments today, March 9th 2020 when it's been advertised everywhere that March 8th is the deadline?

Please take this email as my comment to IS/MND document.

Response 5.2: The 30-day comment period started Friday, February 7. Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day.

6. RESPONSE TO COMMENT LETTER 6 FROM JEONGHEE YI, DATED MARCH 9, 2020

Comment 6.1: 1. Item MM BIO-2.1, page 4, Draft Mitigated Negative Declaration:
The proposed site of ramp relocation is probably some of the most friendly places for riparian habitat such as frogs and amphibians along the section of RCT parallel to La Mar Dr with grass and shades from mature trees, while the site of the existing ramp do not provide equally friendly environment for them. No matter how much effort is made to minimize the footprint of the new ramp, substantial amount of the preferable site for their habitation would be destroyed.
Does the city have any plan to compensate such loss for the riparian habitats ?

Response 6.1: Potential project impacts upon biological resources during construction and operation are addressed in Section 4.4 Biological Resources of the Initial Study. The discussion in Section 4.4 Biological Resources is based on a Biological Resources Report

prepared for the project and included as Appendix A to the Initial Study. The mitigation measures for project impacts to riparian habitat (i.e., mitigation measures MM BIO-2.1 through MM BIO-2.6) are listed on pages 46 and 47 of the Initial Study.

Comment 6.2: 2. Item MM BIO-2.5, pp 4-5, Draft Mitigated Negative Declaration:

I observed Meadow Barley (or something similar to it) around the bank along RCT. Though this might be natural habitat of this area, their seeds form foxtail or foxtail-like clusters that are very sharp and spiky when it gets dry and hardened in the fall. They are very dangerous to animals walking over them because the needle could intrude into their skin. Though they are seeded on the ramp area where pedestrians are prohibited to walk on, it is quite possible for them to migrate over time to nearby sites in Wilson Park and/or for the foxtail to be blown to the pathways in Wilson Park where pets are walking.

Please consider substituting Meadow Barley to something else.

Response 6.2: As stated in MM BIO-2.5 on page 47 of the Initial Study, disturbed areas shall be seeded with native species seed. The seed mix shall consist of the California native grasses and forbs including Meadow barley, or native species otherwise acceptable to involved agencies. The comment will be taken into consideration.

Comment 6.3: 3. Item MM BIO-2.2 on p.4 and MM BIO-4.1, Draft Mitigated Negative Declaration:

Item MM BIO-4.1 indicates that demolition and construction should avoid between 2/1~8/31 in order to avoid nesting season of birds, yet they are scheduled to happen during the nesting season: 5/15~10/31.

Why is the City taking the potential disturbance ? Even if they city conduct surveys for nesting birds before the start of the construction, how do we know there are no birds migrating after the time the surveys are conducted ?

Response 6.3: The non-nesting season (i.e., September 1 through January 31) coincides with the rainy season. There would be a higher potential for erosion and sedimentation impacts to Regnart Creek if project construction occurred during the rainy season. As described under mitigation measure MM BIO-4.2 and consistent with California Department of Fish and Wildlife recommendations for construction activities during the nesting season, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist no more than seven days prior to the initiation of construction activities. With implementation of MM BIO-4.2, potential impacts to nesting birds resulting from project construction activities are considered less than significant.

Comment 6.4: 4. Item MM BIO-4.3 on p.6, Draft Mitigated Negative Declaration:

What if active nests are discovered on the construction site itself ? Does it require for the construction to stop until the nesting season is completed ?

Response 6.4: As stated under mitigation measure MM BIO-4.3 on page 51 of the Initial Study, 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 within the footprint of construction activities, construction activities may have to stop if a viable solution cannot be implemented that ensures the success of the reproductive effort.

Comment 6.5: 5. Item MM BIO-4.4 on p.6 Draft Mitigated Negative Declaration:

We've already passed the deadline of removing potential nesting substrates before starting the construction for year 2020. Has the city removed the potential nesting substrates ? If not, does it make the start of construction to be postponed to be 2021, or 9/1 after the nesting season ?

Response 6.5: Mitigation measure MM BIO-4.4 states, “[i]f 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.”

The City has not removed potential nesting substrates within the proposed alignment or otherwise begun implementing the project. While MM BIO-4.4 allows for the City to obtain approval to begin removal of nesting substrate in advance of the start of construction, if there is not sufficient time to obtain the necessary approvals for substrate removal, for construction activities that will be conducted outside of the time period between September 1st and January 31st, MM BIO-4.2 requires pre-construction surveys for nesting birds to be “completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation . . . [and] no more than seven days prior to initiation of construction activities,” and MM BIO-4.3 requires that if an active nest is found sufficiently close to a work area to be disturbed by construction 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 MBA and California Fish and Game Code are disturbed during project implementation.” Therefore, advance removal of potential nesting substrate would not delay the potential start of project construction activities, but the measures taken in compliance with mitigation measures BIO-4.2 and BIO-4.3 will reduce the potential impact to a less-than-significant level.

Comment 6.6: 6. Item MM CUL-2.1 on p.6, Draft Mitigated Negative Declaration:

Has the mechanical coring investigation by qualified archaeologist been completed yet ? Is so, what is the results ? If not done yet, when is it scheduled for ? Would the city release the report and findings ?

Response 6.6: The mechanical coring investigation has not yet been completed and has not been scheduled. 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. Because the report could contain sensitive

information (e.g., archaeological site locations), the report may not be available for public review.

Comment 6.7: 7. Item MM CUL-2.2 on p.6, Draft Mitigated Negative Declaration:

If the work items described on MM Cut-2.2, how much additional time and budget do they required ?

Response 6.7: If archaeological resources are discovered during the mechanical coring investigation, the project shall retain a qualified archaeologist to prepare a treatment plan. The scope, budget, and schedule to implement the treatment plan depends on the type of archaeological resource discovered.

Comment 6.8: 8. What are the mitigations the city is planning for to protect residents along the construction site from the noise and dust ?

Response 6.8: The construction noise and dust control measures to be implemented by the project are listed in Initial Study Sections 4.13 Noise and 4.3 Air Quality, respectively. As discussed on pages 94 and 95 of the Initial Study, project construction would be completed in accordance with the provisions of the City's Municipal Code (e.g., construction work limited to daytime hours, Monday through Friday) and, as a Standard Permit Condition, the project shall develop and implement a construction noise control plan. As discussed on pages 31 and 32 of the Initial Study, the project would implement Bay Area Air Quality Management (BAAQMD) Basic Construction Measures during all phases of construction to control dust and exhaust as a Standard Permit Condition.

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