

# Supplemental Responses Comments

Regnart Creek Trail

Initial Study/Mitigated Negative Declaration



**CUPERTINO**

May 2020

## **PREFACE**

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The following pages contain responses to comments submitted in conjunction with the Regnart Creek Trail Initial Study/Mitigated Negative Declaration (IS/MND) Environmental Review Committee meeting. Copies of the written comments are included as Appendix A.

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

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| <b>Comment Number</b> | <b>Commenter</b>                       | <b>Page Number</b> |
|-----------------------|--|--------------------|
| 1                     | Liang-Fang Chao                        | 3                  |
| 2                     | Ilango Ganga                           | 9                  |
| 3                     | Viji                                   | 12                 |
| 4                     | Seema Lindskog                         | 14                 |
| 5                     | Sabari Sanjeevi and Devikala Natarajan | 14                 |
| 6                     | Suraj                                  | 15                 |
| 7                     | Gary Wong                              | 15                 |
| 8                     | Jeonghee Yi                            | 17                 |

## SECTION 2      RESPONSES TO COMMENTS RECEIVED ON THE IS/MND

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### 1.      RESPONSES TO COMMENTS FROM LIANG-FANG CHAO

**Comment 1.1:** 1. How will the crane reach the bridge (12 feet by 44 feet) at Wilson Park to remove it? Where would the bridge be placed in the mean time? Would there be any impact on the Wilson Park in terms of vegetation/landscaping?

**Response 1.1:** A crane would be placed on the east side of the Wilson Park baseball diamonds and would pick up the bridge. The bridge would be swung over the fields and placed adjacent to the trail path south of the existing walkway through Wilson Park. The crane would be installed on a crane mat to minimize disturbance to existing vegetation and irrigation systems.

It is anticipated that some temporary repair and/or replacement sod may be necessary due to these activities and due to lack of sunlight on covered areas during this work. Any temporary impacts to landscaping would not be a significant impact.

**Comment 1.2:** 2. The response to residents' comment about motorized bikes was that no gasoline powered bikes would be allowed. How about electric bikes? Would they be allowed on the trail?

**Response 1.2:** The operational choice of electric bikes on the trail is ultimately subject to City discretion and will be subject to City review prior to project opening. Allowable uses on the trail may be subject to Council action.

**Comment 1.3:** 3. This project will provide essential connections to allow students (& residents) from Monta Vista to travel to Cupertino Library, Creekside Park and even Main Street (as the project description promises at some point) or more students (& residents) in the Civic Center area to travel to Cupertino High and Main Street. Thus, we would expect increased pedestrian and bike traffic in the areas immediately adjacent to the proposed project. Thus, such impact should be assessed under CEQA.

**Response 1.3:** As stated in the Initial Study, the project is included in and consistent with the City's Pedestrian Transportation Plan and Bicycle Transportation Plan, for which environmental review was conducted. The Initial Study/Mitigated Negative Declaration for the Cupertino Pedestrian Transportation Plan was adopted by City Council on February 20, 2018. The Initial Study/Mitigated Negative Declaration for the Cupertino Bicycle Transportation Plan Update was adopted by City Council on June 21, 2016. The proposed trail would reduce vehicle trips by providing a bicycle and pedestrian connection between local residential, recreational, and public facility uses. The project area is well served by existing bicycle and pedestrian facilities. There are existing sidewalks on both sides of the streets in the project area and crosswalks at intersections. In addition, there are existing Class II bike lanes along Torre Avenue, Rodriguez Avenue and South Blaney Avenue in the vicinity of the project. The proposed trail would connect to the existing bicycle and

pedestrian network in the project area, the components of which (sidewalks, crosswalks, bike lanes, etc.) have been designed in compliance with applicable pedestrian and bicycle standards. For these reasons, the increased use is not expected exceed the capacity of the existing pedestrian and bicycle facilities in the project area. Therefore, the project would not result in the need to construct new or expand existing pedestrian and bicycle facilities, the construction which could result in environmental impacts.

**Comment 1.4:** The IS did not study the impact; thus no mitigation measures have been considered, on the following impact areas:

3.1. Crosswalks at Pacific & Torre. There will be more bike and pedestrian traffic crossing Pacific at Torre and crossing Torre at Pacific. Whether existing crosswalk is safe enough for the increased ped/bike traffic? It needs to be assessed.

**Response 1.4:** Please refer to Response 1.3.

**Comment 1.5:** 3.2. Crossing at Rodrigues Trailhead into the proposed Regnart Creek Trail.

- Some student attending Eaton will likely cross Rodrigues at the Trail head there (without any pedestrian crosswalk today) in order to access the proposed trail as a shortcut to Eaton. What would be the impact on transportation & public safety there?
- Some students attending Lawson will likely cross Rodrigues at the trail head there (without any pedestrian crosswalk today) in order to get to the north side of Rodrigues to ride east bound along Rodrigues to reach Lawson. What would be the impact on transportation & public safety there?

**Response 1.5:** There is an existing sidewalk along the south side of Rodrigues Avenue, providing direct pedestrian access to the proposed trail entrance. An existing driveway cut would allow direct bicycle access to the trail entrance, as well. The nearest public street intersection with a 4-way stop and marked crosswalks is less than 500 feet to the west, at Torre Avenue.

A student traveling to Lawson middle School, located approximately 0.8 miles north of the Rodriguez Avenue trail entrance, would likely travel west on Rodrigues Avenue and travel north on Torre Ave. Students older than 12 years old would be required to walk their bikes west on Rodrigues Avenue until they could use on-street facilities at Torre Avenue. No impacts on transportation or public safety would be expected at this location.

**Comment 1.6:** 3.3. Crossing at S Blaney. The impact on transportation & public safety is addressed as a part of the proposed project with raised crosswalk, bulb outs, and better signaling.

**Response 1.6:** The trail crossing at S. Blaney Avenue is a section of the proposed trail.

**Comment 1.7:** 3.4. Crossing at E. Estate : The impact on transportation & public safety is addressed as a part of the proposed project.

**Response 1.7:** The trail crossing at E. Estates Drive is a section of the proposed trail.

**Comment 1.8:** 3.5. Crossing at Phil over Miller Ave. Some students will travel to Cupertino High from the proposed bike trail through Creekside Park. What would be the impact on transportation & public safety there?

**Response 1.8:** Please refer to Response 1.3.

**Comment 1.9:** The staff's comment at the ERC was that there are existing facilities in those crossings; thus, they don't think the impact would be significant. However, there will be increased pedestrian and bicycle traffic on these existing facilities as a result of the proposed project. Therefore, the IS should assess the impact and determine if they are significant. If so, the IS should propose mitigation measures. The IS should not ONLY consider new facilities included in the project. Thus, this IS has neglected to include these impacts, which would be direct transportation & public safety impact on existing facilities of the proposed project.

**Response 1.9:** Please refer to Response 1.3.

**Comment 1.10:** 4. The noise level is measured at 6 feet from the property line. The IS did not mention at all why the noise level is ONLY measured at 6 feet from the property line. Please include the rationale. If it were an industry standard, as the staff pointed out at ERC, please point out the source of such standard. This is a 10-foot wide trail. Please explain why the middle of the trail would be 6 feet from the property line.

**Response 1.10:** Six feet is the minimum distance from the centerline of the path to the nearest residential property lines. This would represent the worst-case scenario. The distance would be greater at some residences, but for the residential property lines abutting the path, 6 feet would typically be the distance from the trail centerline. Using the acoustic center of a noise source when calculating noise levels over distance is an industry standard method. This same method is used when calculating noise from roadway traffic sources. This is consistent with Caltrans' guidance document entitled "Technical Noise Supplement to the Traffic Noise Analysis Protocol," (September 2013).

**Comment 1.11:** 4.1 Would the middle of the trail be 6 feet from the property line for residents on Lozano Lane and De Palma Lane?

**Response 1.11:** The future path at this location would be the existing paved path used for maintenance trucks. The minimum distance between the center of the existing paved path and the residential property line along Lozano Lane and De Palma Lane would be approximately 10 feet.

**Comment 1.12:** The noise impact to some residents might be an increase more than 5 decibels due to the proposed project. Thus, it's important to measure them differently so that we could provide different mitigation measures if necessary.

**Response 1.12:** The results of the calculations did not reveal that noise levels would increase substantially with the operation of the project. Please also see Response 2.3.

**Comment 1.13:** Since the trail is not 12 feet wide near Lozano Lane and De Palma Lane, please provide that the noise impact to residents at Lozano Lane and De Palma Lane separately.

**Response 1.13:** The distance from the path centerline to the property lines of the residences on Lozano Lane and De Palma Lane is greater than 6 feet. Therefore, project noise levels would be less at these property lines than the calculations in the noise assessment, which are based on a 6-foot distance from path centerline to the adjacent residential property lines. Please refer to Response 1.11.

**Comment 1.14:** 4.2 In a bi-directional bike trail, people are more likely to walk or bike near the edge of the trail to keep a distance from bike traffic from the opposite direction. When the 10-foot bike trail is right next to a creek with somewhat steep descent to the creek bed, more likely bicyclists biking along the creekside would bike closer to the center of the trail; thus pushing bicyclists and pedestrians traveling along the neighboring property to walk/bike closer to the property line. Even if the industry standard is to consider the average noise, the average would likely NOT be at 6 feet from the property. The average would likely be 4 feet to 5 feet from the property in the 10-foot wide trail, abutting a creek with a railing at 11 feet from the property line. Thus, please justify in the IS why the 6 feet from the property line is used.

**Response 1.14:** Using the acoustic center of a noise source when propagating noise levels over distance is an industry standard method. This same method is used when calculating noise from roadway traffic sources. This is consistent with Caltrans' guidance document entitled "Technical Noise Supplement to the Traffic Noise Analysis Protocol," (September 2013).

**Comment 1.15:** 4.3 The noise level to distance is not linear. It's logarithmic. Thus, we cannot simply measure noise using the average distance from the property line as the noise source. We must should the average noise level instead.

For example, we know "For every doubling of distance from the noise source, the sound pressure level decreases with 6 decibels". ([https://www.engineeringtoolbox.com/voice-level-d\\_938.html](https://www.engineeringtoolbox.com/voice-level-d_938.html)). At 2 feet away, the noise is X; then at 4 feet away, the noise would be X-6 and at 8 feet away, the noise level would be X-12.

For a 10-foot trail, let's take the average noise level between the 2-foot and 8-foot distance from the property line. Then, the average noise level would be  $X + X-12 / 2 = X-6$ . Thus, the average noise level would be about the same level as noise measured at 4 feet from the property line, NOT 5 feet, which is the "average distance" of 2 feet and 8 feet, not a point with average noise level.

**Response 1.15:** The formula for logarithmic propagation from a point source is as follows:

$Level_{at\ 6\ feet} = Level_{at\ 2\ feet} - 20Log_{10}\left(\frac{6\ feet}{2\ feet}\right)$ . Therefore, the noise level at 2 feet would decrease by about 9.5 dB at 6 feet.

**Comment 1.16:** Thus, please provide more accurate measures for noise assessment.

**Response 1.16:** The noise assessment relied on credible noise levels and usage assumptions to develop worst-case hourly average noise level estimates expected from the operation of the project. The hourly average noise levels were then conservatively assumed to be sustained throughout the daytime to estimate the CNEL noise level.

**Comment 1.17:** 4.4 The IS is supposed to measure "project-generated noise level increase", according to the IS: "To determine the effect of the project-generated noise level increase, the hourly average noise levels due to project operation, which as stated above would be less than 45 dBA Leq, is conservatively assumed to occur every hour within a 24-hour period. Under this assumption, the estimated community noise equivalent level would be below 52 dBA CNEL. With ambient noise levels of 52 to 54 dBA CNEL, the proposed project would increase noise levels by up to three dBA CNEL (assuming activities 24 hours per day)" I am confused by the terms used in the above paragraph, which refers to existing condition and which refer to impact of the proposed project?

**Response 1.17:** CNEL is the community noise equivalent level, which adds a 5 dBA penalty to hourly average noise levels measured between 7:00 PM and 10:00 PM and a 10 dBA penalty to noise levels measured between 10:00 PM and 7:00 AM. Then each hour in a 24-hour period is averaged in an energy form to calculate the CNEL. This is the definition of the metric, which is used by the City of Cupertino. These metrics are discussed in the Fundamentals section of the noise and vibration assessment provided as Appendix C to the Initial Study. However, the trail is not proposed to be open at night.

**Comment 1.18:** 4.4.1 What's the existing condition? "ambient noise levels of 52 to 54 dBA CNEL".

**Response 1.18:** Ambient noise levels ranging from 52 to 54 dBA CNEL is the existing condition. Please refer to the Existing Conditions section of the noise and vibration assessment provided as Appendix C to the Initial Study, which summarizes the results of ambient noise levels measured during the noise survey.

**Comment 1.19:** 4.4.2 How was the existing condition measured? Based on surveys?

**Response 1.19:** Yes, the existing condition was determined based on a noise monitoring survey, as described in Section 4.13.1.3 of the Initial Study and in the Existing Conditions section of the Noise and Vibration Assessment prepared for the project and included as Appendix C to the Initial Study.

**Comment 1.20:** "Based on the survey, the community noise equivalent level along the proposed trail alignment ranges from 52 to 54 dBA CNEL."

"The ambient noise levels measured at LT-2, ST-1, and ST-2 represent the existing conditions at these residences, which range from 44 to 57 dBA Leq during daytime hours."



So, the "community noise equivalent level" is determined from "44 to 57 dBA Leq during daytime hours"? How's that determined?

**Response 1.20:** The CNEL is the community noise equivalent level, which adds a 5 dBA penalty to hourly average noise levels measured between 7:00 PM and 10:00 PM and a 10 dBA penalty to noise levels measured between 10:00 PM and 7:00 AM. At LT-2, hourly average noise levels measured during daytime hours only ranged from 44 to 57 dBA Leq. Nighttime ambient ranged from 40 to 48 dBA Leq. The CNEL was calculated to be 52 dBA at LT-2. At LT-1, daytime hourly average noise levels ranged from 48 to 55 dBA Leq, and nighttime hourly average noise levels ranged from 42 to 50 dBA Leq. The CNEL was calculated to be 54 dBA at LT-1.

**Comment 1.21:** 4.4.3 How's the "project-generated noise level" measured? This seems to be the estimation: "Under this assumption, the estimated community noise equivalent level would be below 52 dBA CNEL." But I couldn't figure out how that's determined. "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." => How do you get "52 dBA CNEL." from "61 to 66 dBA"?

**Response 1.21:** As explained in Response 2.1, noise levels measured along the Stevens Creek Trail were 50 to 55 dBA at 20 feet for talking/laughing activities and 65 to 70 dBA at 20 feet for warning whistles/bicycle bells/shouting. Typical hourly average noise levels at 20 feet were less than 45 dBA Leq.

The Initial Study evaluates the operational noise generated by the project at the property lines of noise-sensitive land uses consistent with the requirements of the Municipal Code. Therefore, the source levels produced at 20 feet were calculated at 6 feet, which would represent the minimum distance from the centerline of the walking trail to the adjacent residential property lines.

The Initial Study also evaluates the permanent noise level increase generated by the project in terms of the CNEL. This evaluation is made at the center of the outdoor use area because this location would best represent where the majority of outdoor activities would occur. To calculate the CNEL, the hourly average noise level for walking trails at 20 feet (45 dBA Leq) was conservatively assumed to occur each hour in a 24-hour period. The CNEL under this assumption was calculated to be 52 dBA CNEL.

**Comment 1.22:** This site shows a helpful table with this general rule: "For every doubling of distance from the noise source, the sound pressure level decreases with 6 decibels".

[https://www.engineeringtoolbox.com/voice-level-d\\_938.html](https://www.engineeringtoolbox.com/voice-level-d_938.html)

#### Talking with

- a normal voice approximates to a sound pressure level of 70 dB
- a raised voice approximates to a sound pressure level of 76 dB
- a very loud voice approximates to a sound pressure level of 82 dB
- a shouting voice approximates to a sound pressure level of 88 dB

at a distance of 1 ft (0.3 m).

For every doubling of the distance from the noise source the sound pressure level decrease with 6 decibels:

| Distance |     | Voice Level (dB) |        |           |          |
|----------|-----|------------------|--------|-----------|----------|
| (ft)     | (m) | Normal           | Raised | Very Loud | Shouting |
| 1        | 0.3 | 70               | 76     | 82        | 88       |
| 3        | 0.9 | 60               | 66     | 72        | 78       |
| 6        | 1.8 | 54               | 60     | 66        | 72       |
| 12       | 3.7 | 48               | 54     | 60        | 66       |
| 24       | 7.3 | 42               | 48     | 54        | 60       |

In social settings people often talk with normal voice levels at distances ranging 1 to 4 metre. In such cases background noise levels should not exceed 55 to 60 dB(A).

In outdoor play and recreational areas people often communicate with raised or very loud voices at distances 5 to 10 metre and the background noise should not exceed 45 to 55 dB(A).

**Response 1.22:** The data used in the noise analysis are more conservative than the figures shown in the table above, supporting the conclusion that a credible worst-case assessment was performed when evaluating noise impacts in the noise analysis.

## 2. RESPONSES TO COMMENTS FROM ILANGO GANGA

**Comment 2.1:** Inadequacies in Noise analysis: I have submitted comments on IS/MND that the City has not performed adequate noise analysis considering various operational noise profiles. The City in its response provides generic and subjective answers instead of addressing the specific conditions that were omitted in its noise analysis.

The operational noise analysis (IS/MND, Appendix C) did not include the expected traffic profile on the trail, this should be based on the projected number of trail users, number of pedestrians, joggers, bicyclists, bidirectional, peak and average numbers during the day, among other parameters. This should be specific to Regnart Creek trail path considering the path is less than 2 feet from the residential property lines on large sections of the trail, and in sections run in front of properties, side and behind the properties as well.

**Response 2.1:** Noise generated on walking trails would primarily result from normal levels of conversation as users pass individual residential properties. There are no specific models available to estimate noise levels from persons utilizing a walking trail. Average noise levels from the proposed project were estimated based on data from a prior trail study (Illingworth & Rodkin, Inc., *Stevens Creek Trail, Reach 2, Segment 4 Project Environmental Noise Assessment*, December 7, 2001), which indicate that noise levels produced by normal conversation would range from 50 to 55 dBA at 20 feet, and that noise levels from infrequent sources of noise (e.g., warning whistles/bicycle bells/shouting) would range from 65 to 70 dBA at 20 feet. Because these sources would move along the trail, the noise levels were assumed to be audible at any given residence for a cumulative period of 5 minutes or less during any hour. The hourly average noise level at a distance of 20 feet would be less than 45 dBA Leq. Please see detailed response related to assumptions used to determine if the noise

impact from project operations would be significant (refer to Response 1.21) which explains why the noise impact due to trail use would be less-than-significant.

**Comment 2.2:** For example, N number of bicyclists talking and passing on an unpaved decomposed granite path is different than 1 cyclist; N number of kids shouting while walking is different than 1 kid shouting or N people talking. Noise profile for residences in front of the property is different than two feet next to property line and is different when the people are crossing the bridge.

**Response 2.2:** Please see above response regarding the assumptions used to determine hourly average noise levels from trail use. Multiple users of the trail could potentially increase ambient noise levels, but considering the nature of these noise sources (walking, jogging, normal levels of conversation, heavy panting, bicycle gears, bicycle tires on pavement, and the occasional raised voice/shouting or bicycle bell), these noise sources would not exceed the City's noise level requirements at the property line. Please see detailed response related to assumptions used to determine if the noise impact from project operations would be significant (refer to Response 1.21).

**Comment 2.3:** The noise analysis should include projected models based on actual conditions this trail will be subjected to and proper mitigation measures should be provided for residents on various sections behind the trail and in front of the trail. How can the City (lead agency) say that there are no impact when the City is still working with residents on solutions to various sections of the trail even during and after the public review period.

**Response 2.3:** Please refer to Response 1.21 a detailed response related to assumptions used to determine whether the noise impact from project operations would be significant. The City continues to work with residents to address noise concerns; although, there is not a significant environmental noise impact related to project construction or operation.

**Comment 2.4:** The City should perform proper noise analysis after the design is completed and proper mitigations measures have to be provided before ERC committee can make a determination between MND vs EIR.

**Response 2.4:** The noise analysis was conducted based on realistic usage of the trail and realistic noise levels that could be expected along the trail. All of the methods used in the noise analysis follow standards established for environmental noise studies.

**Comment 2.5:** Aesthetic Impact: The section 4.1 and 4.1.2 of IS/MND says there are no impacts to existing visual character, quality of public views of the site and surroundings etc., The city has not yet provided solution and/or is still working on a solution with residents on various sections of the trail. The Aesthetic impact to these solutions will not be known until the solution(s) is/are completed and incorporated in the plans. It is misleading for the MND document to say that there are no aesthetic impacts when the City has not completed the solutions to adjacent residents. Public (including me) was deprived of making comments on the Aesthetic impact as the public was not made aware that the solutions are not complete.

The city should complete the solutions and designs for the fencing, safety, security, privacy, noise issues, and then the City should analyze the environmental impact due to the final solution(s) and present the mitigation measures to the public for review and to the ERC committee before making a determination on MND vs EIR.

**Response 2.5:** The Initial Study provides a description of the existing conditions on the site (proposed trail alignment) and evaluates the aesthetic impacts of the project as described in the Project Description, using the CEQA Checklist questions, which are the thresholds of significance. Based on the analysis provided for each checklist question, the Initial Study accurately stated that the project would not have a substantial adverse effect on scenic vistas, would not damage scenic resources within a state scenic highway, would not conflict with applicable regulations governing scenic quality, and would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

Consistent with CEQA and the CEQA Guidelines, the IS/MND evaluates the potential environmental impacts of the proposed project (refer to Section 3.0, Project Description of the IS/MND) and identifies mitigation measures to reduce identified potentially significant impacts to less than significant levels. The City is continuing to work with adjacent property owners to include improvements such as fencing. If substantial changes to the project are proposed in the future, the City would determine at that time if additional environment review is required under CEQA.

**Comment 2.6:** The City as late as Feb 24th was working on drainage issues and inability to drain away from the channel in all reaches. This means that the drainage plans were not complete and the City was still working with Valley Water on drainage plans during the IS/MND public review period. The impact of drainage on the creek channel and/or the adjacent properties and any mitigation measures cannot be understood until the plans are completed. The City should complete the drainage plans and do the environmental impact study and present the mitigation measures to the public for review and to the ERC committee before making a determination on MND vs EIR.

**Response 2.6:** Drainage impacts to water quality in the creek were addressed under Impact HYD-3 in the Initial Study. It was stated that because the surface material of the trail would be permeable, the project was excluded from Municipal Regional Permit (MRP) requirements. The Initial Study also states that the MRP includes exclusions for impervious trails built to direct stormwater runoff to adjacent vegetated areas, or other non-erodible permeable areas, preferably away from creeks or toward the outbound side of levees. The project is consistent with this provision in that surface runoff, to the extent feasible, would be directed away from the creek to surface collection systems which connect to underground systems and existing creek outfalls.

The proposed pervious trail, constructed of decomposed granite surface material, would not result in significant hydrology or water quality impacts that would require further analysis in an EIR, regardless of the final drainage plans. It would not generate runoff volumes or velocities that would impact the creek or adjacent properties that would rise to the level of significance under CEQA.

**Comment 2.7:** As per the Cupertino City Municipal code (2.84.080) the Environmental Review committee makes a determination based on the initial study and environmental impact if the project should be recommend for Negative Declaration or shall require Environmental Impact Review. Since the design plans are not fully complete (and as of public review period was not complete), I request the ERC committee to require the City (in this case the lead agency) to complete the design plans, complete the solutions to adjacent residents and then study the environmental impact based on the completed plans and provide the mitigation measures for public review and to ERC committee to make a determination on MND vs EIR. It is premature to approve the MND when the city is still working with the residents and Valley Water on designs/solutions.

**Response 2.7:** Consistent with CEQA and the CEQA Guidelines, the IS/MND evaluates the potential environmental impacts of the proposed project (refer to Section 3.0, Project Description of the IS/MND) and identifies mitigation measures to reduce identified potentially significant impacts to less than significant levels. Although not needed to reduce a significant impact, the City is continuing to work with adjacent property owners to include improvements such as fencing. If substantial changes to the project are proposed in the future, the City would determine at that time if additional environmental review is required under CEQA.

### 3. RESPONSES TO COMMENTS FROM VIJI

**Comment 3.1:** I am writing to let you know that the City of Cupertino did not provide a 30 day public review period for Regnart Creek IS/MND. I would like you to pay attention to the following dates.

As per the City's Regnart Creek Trail web page, MND was posted on Feb 7th, 2020 for a period of 30 days until March 8th, 2020.

<https://www.cupertino.org/our-city/departments/public-works/transportation-mobility/bicycle-and-pedestrian-travel/bicycle-transportation-plan-implementation/regnart-creek-trail>

However, the MND posted on Ca.Gov CEQA page shows the review period start date as Feb 7th, 2020 and end date as March 9th 2020.

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

I noticed this date discrepancy and emailed City Staff, David Stillman with good faith on March 7th, that there is an error on the deadline on MND document and City's website. He replied that, "*We won't be closing the comment period until after the final day listed, which is March 9*". When I had sent my email to the staff, I expected the City to own their mistake by acknowledging the error and thereby changing the deadline on the City's website and communicating to the public by extending few more days of public review period. No such thing was done.

I requested to add this date discrepancy as my comment on IS/MND. I am quiet surprised that the City's response to my comment on MND is, "*Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day*"

In every single communication the City had sent to residents(see below), they had mentioned March 8th as the deadline for submitting the comments and the City now expects the residents to be aware that they could send the comments until 5pm Monday, March 9th. Seriously? Is this how the City

covers up their mistakes and say the public is supposed to know that we could send comments until Monday 9th when the experts in the field who posted it did not know about it. It is the responsibility to calculate and document the dates accurately in MND documents and all the notices circulated to public.

The City notified via email to the public on Feb 11th 2020 that, "*Publication of the IS/MND marks the beginning of a 30-day public review and comment period, which began on Friday, February 7, 2020, and will end on Sunday, March 8, 2020*". Please note the date. This was received on the 4th day after it was posted on the website. (see Attachment)- 27 days public review period were given as per email

City sent a notice to the adjacent residents via postal mail regarding the public review. The letter was mailed by the City on Feb 12th and received by residents on Feb 13th (See Attachment). This letter was mailed 6 days after MND was posted on the website.- Only 25 days of public review period were given.

As per law, it is mandatory that 30 day period should be given to public for review and if the deadline falls on a weekend then the review period ends on the next day.

*"CODE OF CIVIL PROCEDURE - CCP*

*PRELIMINARY PROVISIONS*

*( Preliminary Provisions enacted 1872. )*

*12a.*

*(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."*

I am letting this committee know that the City deprived the public of additional days for review and comments. Also, I have read if cities fail to provide 30 day notice, an automatic extension of 180 days apply for public review. I am not an attorney but there are cases won against not providing 30 day review period.

I request the committee to decide if the City of Cupertino provided the required 30 day notice for public review without any subjectivity. I believe the public review period is not met and should be extended. If the committee members are not sure, then I would suggest discussing with the City Attorney. Until you are 100% certain that the 30 day review period has been provided to public as per law, I would request you to postpone the decision on MND until such determination is made.

**Response 3.1:** On February 7, 2020, the City published on its website the dates of the 30-day public review comment period dates of February 7, 2020 through March 8, 2020, which is technically 30 days. These dates also appeared on the Notice of Completion and Document Transmittal filed with the State Clearinghouse. Due to the fact that March 8, 2020 fell on the weekend (Sunday), the City accepted public comments through March 9, 2020 consistent with the requirements of State law. In addition, the City has compiled and is responding to public comments submitted after March 9, 2020 including comments from the April 16, 2020 Environmental Review Committee meeting. This additional period during which the City

accepted comments exceeds the legally required public review period for the IS/MND by 38 days.

#### **4. RESPONSES TO COMMENTS FROM SEEMA LINDSKOG**

**Comment 4.1:** Respected Environmental Review Committee,

I am writing on behalf of the Friends of Regnart Creek Trail group to re-iterate our strong support for the trail and to encourage you to approve the EIR. This trail will be a great asset to the community, especially as social distancing becomes our new normal.

Cities all around the world, and in our own Bay Area, are recognizing that more cycling and walking paths are vital to the health and mobility of their community, especially during a pandemic, and are changing city infrastructure to prioritize them, not just temporarily, but also looking at permanent, long-term improvements.

Here's a relevant article - <https://www.theguardian.com/world/2020/apr/11/worldcities-turn-their-streets-over-to-walkers-and-cyclists>

Thank you for your hard work in support of the city's residents,  
Seema

**Response 4.1:** Comment noted.

#### **5. RESPONSES TO COMMENTS FROM SABRI SANJEEVI AND DEVIKALA NATARAJAN**

**Comment 5.1:** Hello,

Subject: Regnart Creek Trail Initial Study/Mitigated Negative Declaration

Reference: Comment 1.1 and Response 1.1

Thanks for taking time and reviewing our concern.

In the response it was mentioned "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".

But in our daily use of our family van, backing out of the driveway we notice that we are always end up in the middle of the creek/proposed walkway and proposed median island. We are concerned if the software used appropriate sized car for the swept path analysis.

Usually this kind of simulation software takes variety of inputs to run the simulations.

The results are as good as the inputs provided to the software. This kind of software cannot give an yes or no answer. The answer is usually with a list of constraints for both yes and no.

We do not find any reference to the Autoturn's swept path analysis in any published documents. We would like to be informed about the simulation input and the resulting constraints. To be precise, would like to know what kind of passenger vehicles can back out/operate safely.

The above answer (in Response 1.1) did not adequately address our concerns about safety.

**Response 5.1:** The AutoTurn program was run assuming a passenger sedan and provided approximately 12 feet behind the vehicle to the crosswalk. For this reason, the crosswalk location would not substantially increase hazards and result in a significant impact.

While robust, the program uses a limited vehicular database but the vehicle types generally resemble typical operations on city streets. In further response to the resident's concerns, the City is willing to meet on-site and mark the crosswalk location with the resident.

## **6. RESPONSES TO COMMENTS FROM SURAJ**

**Comment 6.1:** I tried working with the city on resolving my concerns regarding noise, privacy and security through the fence options. However, due to the current situation, the city has been pushing out our meeting (understandably) since we cannot meet physically.

Given that basic issues of neighbors abutting the trail have not been resolved, how are we planning to move ahead with ERC approvals?

I ask the city to resolve the basic issues of the most impacted residents before moving any further on this trail.

**Response 6.1:** Consistent with CEQA and the CEQA Guidelines, the IS/MND evaluates the potential environmental impacts of the proposed project (refer to Section 3.0, Project Description of the IS/MND) and identifies mitigation measures to reduce identified potentially significant impacts to less than significant levels. The City is continuing to work with adjacent property owners to include improvements at these property frontages including fencing. If substantial changes in the project occur at a later date, the City would determine at that time if additional environment review is required under CEQA.

## **7. RESPONSES TO COMMENTS FROM GARY WONG**

**Comment 7.1:** There are several issues outstanding that merit serious consideration prior to approving the Mitigated Negative Declaration for Regnart Creek Trail. 100% design is incomplete and such design has not been shared with residents nor Council Members and release of such design information has not been scheduled. It seems premature to proceed without having 100% design known and details of the pending items can alter the MND report's review and recommendations.

**Response 7.1:** Consistent with CEQA and the CEQA Guidelines, the IS/MND evaluates the potential environmental impacts of the proposed project (refer to Section 3.0, Project Description of the IS/MND) and identifies mitigation measures to reduce identified impacts to less than significant levels. If changes in the project occur at a later date, the City would determine at that time if additional environment review is required under CEQA.

**Comment 7.2:** Due to time constraints, let me identify several of the outstanding issues: Bridge placement and impact. According to Valley Water - Cupertino minutes, Valley Water is to provide written concurrence with the bridge location and confirmation that no hydraulic modeling is required. We have not seen confirmation that this has been received from Valley Water, and a



change in placement could have material changes to the MND. This information was not in place at the time of distribution of the MND.

**Response 7.2:** Valley Water has indicated conceptual agreement with the location of the bridge. The potential changes to the bridge location are minimal and do not affect the conclusions of the Mitigated Negative Declaration. In an email dated April 21, 2020, Valley Water confirmed that a hydraulic analysis of the proposed pedestrian bridge is not required because the bridge structure will not be located below top of bank. An analysis is also not required for the relocation of the maintenance access ramp because the configuration of the new ramp is the same as the existing ramp and it is in a location very close to the existing ramp on the opposite bank of a straight uniform channel.

**Comment 7.3:** Relocating the Access Ramp, required concrete work thereof and sediment containment has not been addressed nor finalized in the MND.

**Response 7.3:** The relocation of the maintenance ramp is evaluated in Section 4.4 of the Initial Study, which includes identification of mitigation measures to address sedimentation impacts to the creek (MM BIO-2.1 and 2.2). Figure 4.4-2 (Ramp Relocation Impacts) shows a comparison of pre- and post-project quantities of concrete and native soil in the ramp areas.

**Comment 7.4:** For over 9 months, we have spoken and written to staff about discussing with Valley Water the possibility of obtaining a foot of land between the Lozano and Valley Water property lines to mitigate the impact of the Regnart Creek Trail on our homes and communities. We were assured by City staff that they will do so. Having reviewed all of the meeting minutes between Cupertino and Valley Water, nowhere is our request mentioned. This is critically important because our homes are the most impacted along the trail, with one section bisecting our property on the west side and the southern part of the Trail bordering less than 20 feet from our front doors. Thus, we are impacted on 2 of 4 sides of our property. Council members have stated often that the most challenging sections of the Trail should be addressed first. We have come to learn that mitigation issues for our homes have been ignored and to this day neither we nor the City have written details for a mitigation plan.

**Response 7.4:** This is a comment on the project, not on the adequacy of the environmental review. The concerns expressed by the commenter do not pertain to mitigation activities for a potentially significant environmental impact as analyzed under CEQA. However, these concerns will be forwarded to the City Council. The City has and will continue to work with the property owners at Lozano Lane to provide improvements along the project frontage to address the residents' concerns regarding proximity of the trail.

**Comment 7.5:** (See letter dated April 15, 2020 from the Board of Valley Water, attached hereto). Valley Water states that it is willing to issue to Cupertino an encroachment permit to mitigate noise, traffic and privacy to us. It seems that such mitigation should be included in MND, as it is silent on our community and for the other homes on the trail. To proceed or approve the MND without detailing these mitigation measures is a material omission and an incomplete report. What if such mitigation measure included a 9 foot wall with lighting, similar to East Estates Drive? What would be the aesthetic impact of such mitigation or disturbance to habitat? AB 2341 allows for individual

and subjective opinions to constitute substantive evidence of a fair argument, thus it must be addressed and not ignored.

**Response 7.5:** The IS/MND prepared for the project addresses all required areas of potential environmental impacts and identifies mitigation measures to reduce potentially significant impacts to less than significant levels. The encroachment permit that may be available from Valley Water would not change the significant impacts of the project and would not require any additional mitigation measures other than those already identified in the IS/MND. The City is continuing to work with the property owners to include improvements at these property frontages including fencing. Please refer to Response 8.2 and Response 7.4.

## **8. RESPONSES TO COMMENTS FROM JEONGHEE YI**

**Comment 8.1:** I understand the Mitigated Negative Declaration for Regnart Creek Trail is going to be discussed for approval during the ERC meeting today. There are many issues with MND but we still do not know how the city's design addresses these issues, since the 100% design is not completed and has not been shared with the residents for the review. Therefore, I urge the committee to defer making any decision on your recommendation until the 100% design is ready for review to see if the outstanding issues are properly addressed. I think it's only appropriate to even review it after the 100% design is available for review.

**Response 8.1:** Consistent with CEQA and the CEQA Guidelines, the IS/MND evaluates the potential environmental impacts of the proposed project (refer to Section 3.0, Project Description of the IS/MND) and identifies mitigation measures to reduce identified potentially significant impacts to less than significant levels. The City is continuing to work with adjacent property owners to include improvements such as fencing. If substantial changes in the project occur at a later date, the City would determine at that time if additional environment review is required under CEQA.

**Comment 8.2:** Let me address some of the issues and concerns with the items on the draft MND and the mitigations in the city's design plan so far.

1. Resident on La Mar Dr abutting the trail are greatly concerned about the impacts to noise, privacy and security due to the increased public use of the trail with only 2 feet of setbacks. I can even hear noise from the Wilson Park during days and nights that's from much greater distance than the trail. Therefore it is expected the level of noise would be much higher from the trail users because it's much closer. At the same time this is a great concern for our privacy because anything we are talking about in our backyard could be heard by the trail users. So far, the city has not provided any acceptable level of mitigations for noise, privacy and security impacts for the residents. Residents are still for the city's solutions to the problems in the 100% design plan.

**Response 8.2:** Audibility does not define a substantial increase in ambient noise levels. As stated on page 92 of the Initial Study, a substantial increase in ambient noise level is defined as a) a noise level increase of 5 dBA CNEL or greater, with a future noise level of less than 60 dBA CNEL, or b) a noise level increase of 3 dBA CNEL or greater, with a future noise level of 60 dBA CNEL or greater. Noise generated on walking trails, which

would rarely include noise sources louder than normal conversation, would be moving sources typically audible for less than 5 minutes cumulatively in any hour while the noise sources pass individual residential properties. The overall impact from a noise standpoint would be minimal. Effects on privacy and security are not considered impacts under CEQA and, therefore, are not evaluated in the Initial Study/Mitigated Negative Declaration.

**Comment 8.3:** Many of the items in the MND requires specific guidelines to follow to mitigate the environmental impacts. But the currently plan does not or can not follow the guidelines, For example, Item MM BIO-4.1 of the draft MND 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. We have to review the 100% design plan to figure out the plan is complying with the MND.

**Response 8.3:** Mitigation Measure BIO-4.2 states that if it is not possible to schedule demolition and construction between 9/1 and 1/31, then pre-construction surveys for nesting birds must be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. Mitigation Measures BIO-4.3 and 4.4 contain further measures that must be followed in order to ensure that no significant impacts to nesting birds occur (refer to Response 8.4).

**Comment 8.4:** The city's current plan has already violated some of the items on the MND. For example, for item MM BIO-4.4 on p.6 of the draft MND, the city has already passed the deadline of removing potential nesting substrates before starting the construction for year 2020. The city may have to postpone the start of construction to be postponed to be 2021, or 9/1 after the nesting season. We need to see the updated schedule to see if it's complying with the MND.

**Response 8.4:** 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 substrates 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 31<sup>st</sup>, 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 substrates 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 8.5:** These are some of the examples why the review of draft MND is premature at this point. In addition, the unprecedented event of COVID-19 may require some alteration in the 100% design as well as the city's schedule and ability to execute some of items in the draft MND. Therefore, the recommendation should be deferred until after the 100% design plan becomes available for public review.

**Response 8.5:** Please refer to Response 8.1.

# **APPENDIX A**

## **WRITTEN COMMENTS**

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**From:** Liang-Fang Chao <[lfchao@gmail.com](mailto:lfchao@gmail.com)>  
**Sent:** Thursday, April 16, 2020 2:57 PM  
**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>  
**Cc:** Liang Chao <[LiangChao@cupertino.org](mailto:LiangChao@cupertino.org)>  
**Subject:** Comment for Initial Study for Regnart Creek Bike Path

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Please add this to the public comment for Regnart Creek Bike Path.

I do wish to get responses to my questions. Thanks.

This is an important project for the City that hopefully will be used by many people/. Thus, we do need to make sure that the project impacts are assessed and sufficient mitigation measures are proposed to mitigate identified significant impacts. And we do need to ensure that proper measures are used to assess the project impact.

This is a basic standard for a CEQA study that should apply to all city projects.

1. How will the crane reach the bridge (12 feet by 44 feet) at Wilson Park to remove it? Where would the bridge be placed in the mean time? Would there be any impact on the Wilson Park in terms of vegetation/landscaping?

2. The response to residents' comment about motorized bikes was that no gasoline powered bikes would be allowed.

How about electric bikes? Would they be allowed on the trail?

3. This project will provide essential connections to allow students (& residents) from Monta Vista to travel to Cupertino Library, Creekside Park and even Main Street (as the project description promises

at some point) or more students (& residents) in the Civic Center area to travel to Cupertino High and Main Street. Thus, we would expect increased pedestrian and bike traffic in the areas immediately adjacent to the proposed project. Thus, such impact should be assessed under CEQA.

The IS did not study the impact; thus no mitigation measures have been considered, on the following impact areas:

3.1. Crosswalks at Pacific & Torre. - There will be more bike and pedestrian traffic crossing Pacific at Torre and crossing Torre at Pacific. Whether existing crosswalk is safe enough for the increased ped/bike traffic? It needs to be assessed.

3.2. Crossing at Rodrigues Trailhead into the proposed Regnart Creek Trail.

- Some student attending Eaton will likely cross Rodrigues at the Trail head there (without any pedestrian crosswalk today) in order to access the proposed trail as a shortcut to Eaton. What would be the impact on transportation & public safety there?
- Some students attending Lawson will likely cross Rodrigues at the trail head there (without any pedestrian crosswalk today) in order to get to the north side of Rodrigues to ride east bound along Rodrigues to reach Lawson. What would be the impact on transportation & public safety there?

3.3. Crossing at S Blaney: the impact on transportation & public safety is addressed as a part of the proposed project with raised crosswalk, bulb outs, and better signaling.

3.4. Crossing at E. Estate : the impact on transportation & public safety is addressed as a part of the proposed project.

3.5. Crossing at Phil over Miller Ave. - Some students will travel to Cupertino High from the proposed bike trail through Creekside Park. What would be the impact on transportation & public safety there?

The staff's comment at the ERC was that there are existing facilities in those crossings; thus, they don't think the impact would be significant. However, there will be increased pedestrian and bicycle traffic on these existing facilities as a result of the proposed project. Therefore, the IS should assess the impact and determine if they are significant. If so, the IS should propose mitigation measures. The IS should not ONLY consider new facilities included in the project.

Thus, this IS has neglected to include these impacts, which would be direct transportation & public safety impact on existing facilities of the proposed project.

4. The noise level is measured at 6 feet from the property line. The IS did not mention at all why the noise level is ONLY measured at 6 feet from the property line. Please include the rationale. If it were an industry standard, as the staff pointed out at ERC, please point out the source of such standard. This is a 10-foot wide trail. Please explain why the middle of the trail would be 6 feet from the property line.

4.1 Would the middle of the trail be 6 feet from the property line for residents on Lozano Lane and De Palma Lane?

The noise impact to some residents might be an increase more than 5 decibels due to the proposed project. Thus, it's important to measure them differently so that we could provide different mitigation measures if necessary.

Since the trail is not 12 feet wide near Lozano Lane and De Palma Lane, please provide that the noise impact to residents at Lozano Lane and De Palma Lane separately.

4.2 In a bi-directional bike trail, people are more likely to walk or bike near the edge of the trail to keep a distance from bike traffic from the opposite direction. When the 10-foot bike trail is right next to a creek with somewhat steep descent to the creek bed, more likely bicyclists biking along the creekside would bike closer to the center of the trail; thus pushing bicyclists and pedestrians traveling along the neighboring property to walk/bike closer to the property line. Even if the industry standard is to consider the average noise, the average would likely NOT be at 6 feet from the property. The average would likely be 4 feet to 5 feet from the property in the 10-foot wide trail, abutting a creek with a railing at 11 feet from the property line.

Thus, please justify in the IS why the 6 feet from the property line is used.

4.3. The noise level to distance is not linear. It's logarithmic. Thus, we cannot simply measure noise using the average distance from the property line as the noise source. We must should the average noise level instead.

For example, we know "For every doubling of distance from the noise source, the sound pressure level decreases with 6 decibels". ([https://www.engineeringtoolbox.com/voice-level-d\\_938.html](https://www.engineeringtoolbox.com/voice-level-d_938.html)). At 2 feet away, the noise is X; then at 4 feet away, the noise would be X-6 and at 8 feet away, the noise level would be X-12.

For a 10-foot trail, let's take the average noise level between the 2-foot and 8-foot distance from the property line. Then, the average noise level would be  $X + X-12 / 2 = X-6$ . Thus, the average noise level would be about the same level as noise measured at 4 feet from the property line, NOT 5 feet, which is the "average distance" of 2 feet and 8 feet, not a point with average noise level.

Thus, please provide more accurate measures for noise assessment.

4.4 The IS is supposed to measure "project-generated noise level increase", according to the IS:

"To determine the effect of the **project-generated noise level increase**, the hourly average noise levels due to project operation, which as stated above would be less than 45 dBA Leq, is conservatively assumed to occur every hour within a 24-hour period. Under this assumption, the estimated community noise equivalent level would be below 52 dBA CNEL. With ambient noise levels of 52 to 54 dBA CNEL, the proposed project would increase noise levels by up to three dBA CNEL (assuming activities 24 hours per day)"

I am confused by the terms used in the above paragraph, which refers to existing condition and which refer to impact of the proposed project?

4.4.1. What's the existing condition? "ambient noise levels of 52 to 54 dBA CNEL".

4.4.2. How was the existing condition measured? Based on surveys?

"Based on the survey, the community noise equivalent level along the proposed trail alignment ranges from 52 to 54 dBA CNEL."

"The ambient noise levels measured at LT-2, ST-1, and ST-2 represent the existing



conditions at these residences, which range from 44 to 57 dBA Leq during daytime hours."

So, the "community noise equivalent level" is determined from "44 to 57 dBA Leq during daytime hours"? How's that determined?

#### 4.4.3 How's the "project-generated noise level" measured?

This seems to be the estimation: "Under this assumption, the estimated community noise equivalent level would be below 52 dBA CNEL." But I couldn't figure out how that's determined.

"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."

=> How do you get "52 dBA CNEL." from "61 to 66 dBA"?

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This site shows a helpful table with this general rule: "For every doubling of distance from the noise source, the sound pressure level decreases with 6 decibels".

[https://www.engineeringtoolbox.com/voice-level-d\\_938.html](https://www.engineeringtoolbox.com/voice-level-d_938.html)

#### Talking with

- a normal voice approximates to a sound pressure level of 70 dB
- a raised voice approximates to a sound pressure level of 76 dB
- a very loud voice approximates to a sound pressure level of 82 dB
- a shouting voice approximates to a sound pressure level of 88 dB

at a distance of 1 ft (0.3 m).

For every doubling of the distance from the noise source the sound pressure level decrease with 6 decibels:

| Distance |     | Voice Level (dB) |        |           |          |
|----------|-----|------------------|--------|-----------|----------|
| (ft)     | (m) | Normal           | Raised | Very Loud | Shouting |
| 1        | 0.3 | 70               | 76     | 82        | 88       |
| 3        | 0.9 | 60               | 66     | 72        | 78       |
| 6        | 1.8 | 54               | 60     | 66        | 72       |
| 12       | 3.7 | 48               | 54     | 60        | 66       |
| 24       | 7.3 | 42               | 48     | 54        | 60       |

In social settings people often talk with normal voice levels at distances ranging 1 to 4 metre. In such cases background noise levels should not exceed 55 to 60 dB(A).

In outdoor play and recreational areas people often communicate with raised or very loud voices at distances 5 to 10 metre and the background noise should not exceed 45 to 55 dB(A).

**From:** Ilango <[ilangog@yahoo.com](mailto:ilangog@yahoo.com)>

**Sent:** Thursday, April 16, 2020 1:31 AM

**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>

**Cc:** Kitty Moore <[Kmoore@cupertino.org](mailto:Kmoore@cupertino.org)>; Liang Chao <[LiangChao@cupertino.org](mailto:LiangChao@cupertino.org)>; Jon Robert Willey <[JWilley@cupertino.org](mailto:JWilley@cupertino.org)>

**Subject:** Written comments ERC committee Agenda item 3 - Regnart Creek Trail

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Dear Chair and Committee members,

I am submitting the following comments on IS/MND as a Cupertino Resident, for consideration by ERC committee.

1. Inadequacies in Noise analysis:

I have submitted comments on IS/MND that the City has not performed adequate noise analysis considering various operational noise profiles. The City in its response provides generic and subjective answers instead of addressing the specific conditions that were omitted in its noise analysis.

The operational noise analysis (IS/MND, Appendix C) did not include the expected traffic profile on the trail, this should be based on the projected number of trail users, number of pedestrians, joggers, bicyclists, bidirectional, peak and average numbers during the day, among other parameters. This should be specific to Regnart Creek trail path considering the path is less than 2 feet from the residential property lines on large sections of the trail, and in sections run in front of properties, side and behind the properties as well.

For example, N number of bicyclists talking and passing on an unpaved decomposed granite path is different than 1 cyclist; N number of kids shouting while walking is different than 1 kid shouting or N people talking. Noise profile for residences in front of the property is different than two feet next to property line and is different when the people are crossing the bridge.

The noise analysis should include projected models based on actual conditions this trail will be subjected to and proper mitigation measures should be provided for residents on various sections behind the trail and in front of the trail. How can the City (lead agency) say that there are no impact when the City is still working with residents on solutions to various sections of the trail even during and after the public review period.

The City should perform proper noise analysis after the design is completed and proper mitigations measures have to be provided before ERC committee

can make a determination between MND vs EIR

2. Aesthetic Impact: The section 4.1 and 4.1.2 of IS/MND says there are no impacts to existing visual character, quality of public views of the site and surroundings etc., The city has not yet provided solution and/or is still working on a solution with residents on various sections of the trail. The Aesthetic impact to these solutions will not be known until the solution(s) is/are completed and incorporated in the plans. It is misleading for the MND document to say that there are no aesthetic impacts when the City has not completed the solutions to adjacent residents. Public (including me) was deprived of making comments on the Aesthetic impact as the public was not made aware that the solutions are not complete.

The city should complete the solutions and designs for the fencing, safety, security, privacy, noise issues, and then the City should analyze the environmental impact due to the final solution(s) and present the mitigation measures to the public for review and to the ERC committee before making a determination on MND vs EIR.

3. The City as late as Feb 24th was working on drainage issues and inability to drain away from the channel in all reaches. This means that the drainage plans were not complete and the City was still working with Valley Water on drainage plans during the IS/MND public review period. The impact of drainage on the creek channel and/or the adjacent properties and any mitigation measures cannot be understood until the plans are completed.

The City should complete the drainage plans and do the environmental impact study and present the mitigation measures to the public for review and to the ERC committee before making a determination on MND vs EIR.

As per the Cupertino City Municipal code (2.84.080) the Environmental Review committee makes a determination based on the initial study and environmental impact if the project should be recommend for Negative Declaration or shall require Environmental Impact Review.

Since the design plans are not fully complete (and as of public review period was not complete), I request the ERC committee to require the City (in this case the lead agency) to complete the design plans, complete the solutions to adjacent residents and then study the environmental impact based on the completed plans and provide the mitigation measures for public review and to ERC committee to make a determination on MND vs EIR. It is premature to approve the MND when the city is still working with the residents and Valley Water on designs/solutions.

Thanks,

Ilango Ganga  
As Cupertino resident

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**From:** [viji.ilango@yahoo.com](mailto:viji.ilango@yahoo.com) <[viji.ilango@yahoo.com](mailto:viji.ilango@yahoo.com)>

**Sent:** Wednesday, April 15, 2020 11:45 PM

**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>

**Cc:** Liang Chao <[LiangChao@cupertino.org](mailto:LiangChao@cupertino.org)>; Jon Robert Willey <[JWilley@cupertino.org](mailto:JWilley@cupertino.org)>; Kitty Moore <[Kmoore@cupertino.org](mailto:Kmoore@cupertino.org)>

**Subject:** Written Comments on Regnart Creek Trail IS/MND - ERC meeting agenda Item 3

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Dear Chair Moore and Committee Members,

I am writing to let you know that the City of Cupertino did not provide a 30 day public review period for Regnart Creek IS/MND. I would like you to pay attention to the following dates.

As per the City's Regnart Creek Trail web page, MND was posted on Feb 7th, 2020 for a period of 30 days until March 8th, 2020.

<https://www.cupertino.org/our-city/departments/public-works/transportation-mobility/bicycle-and-pedestrian-travel/bicycle-transportation-plan-implementation/regnart-creek-trail>

**However, the MND posted on Ca.Gov CEQA page shows the the review period start date as Feb 7th, 2020 and end date as March 9th 2020.**

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

I noticed this date discrepancy and emailed City Staff, David Stillman with good faith on March 7th, that there is an error on the deadline on MND document and City's website. He replied that, "*We won't be closing the comment period until after the final day listed, which is March 9*". When I had sent my email to the staff, I expected the City to own their mistake by acknowledging the error and thereby changing the deadline on the City's website and communicating to the public by extending few more days of public review period. No such thing was done.

I requested to add this date discrepancy as my comment on IS/MND. I am quiet surprised that the City's response to my comment on MND is, "*Because the 30-day comment period ends on a weekend, City practice is to accept comments until 5 PM the following business day*"

In every single communication the City had sent to residents(see below), they had mentioned March 8th as the deadline for submitting the comments and the City now expects the residents to be aware that they could send the comments until 5pm Monday, March 9th. Seriously? Is this how the City covers up their mistakes and say the public is supposed to know that we could send comments until Monday 9th when the experts in the field who posted it did not know about it. It is the responsibility to calculate and document the dates accurately in MND documents and all the notices circulated to public.

The City notified via email to the public on Feb 11th 2020 that, "*Publication of the IS/MND marks the beginning of a 30-day public review and comment period, which began on Friday, February 7, 2020, and will end on Sunday, March 8, 2020*". Please note the date. This was received on the 4th day after it was posted on the website.(see Attachment)- 27 days public review period were given as per email

City sent a notice to the adjacent residents via postal mail regarding the public review. The letter was mailed by the City on Feb 12th and received by residents on Feb 13th (See Attachment). This letter was mailed 6 days after MND was posted on the website.- Only 25 days of public review period were given.

As per law, it is mandatory that 30 day period should be given to public for review and if the deadline falls on a weekend then the review period ends on the next day.

**"CODE OF CIVIL PROCEDURE - CCP  
PRELIMINARY PROVISIONS**

*( Preliminary Provisions enacted 1872. )*

**12a.** *(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday."*

I am letting this committee know that the City deprived the public of additional days for review and comments. Also, I have read if cities fail to provide 30 day notice, an automatic extension of 180 days apply for public review. I am not an attorney but there are cases won against not providing 30 day review period.

I request the committee to decide if the City of Cupertino provided the required 30 day notice for public review without any subjectivity. I believe the public review period is not met and should be extended. If the committee members are not sure, then I would suggest discussing with the City Attorney. Until you are 100% certain that the 30 day review period has been provided to public as per law, I would request you to postpone the decision

on MND until such determination is made.

Thanks,  
Viji

**From:** Seema Lindskog <[seema3366@gmail.com](mailto:seema3366@gmail.com)>

**Sent:** Wednesday, April 15, 2020 11:00 AM

**To:** Kitty Moore <[Kmoore@cupertino.org](mailto:Kmoore@cupertino.org)>; Cupertino City Manager's Office <[manager@cupertino.org](mailto:manager@cupertino.org)>; Chad Mosley <[ChadM@cupertino.org](mailto:ChadM@cupertino.org)>; Darcy Paul <[DPaul@cupertino.org](mailto:DPaul@cupertino.org)>; Benjamin Fu <[BenjaminF@cupertino.org](mailto:BenjaminF@cupertino.org)>

**Subject:** I support EIR Item #3 - Regnart Creek Trail

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Respected Environmental Review Committee,

I am writing on behalf of the Friends of Regnart Creek Trail group to re-iterate our strong support for the trail and to encourage you to approve the EIR. This trail will be a great asset to the community, especially as social distancing becomes our new normal.

Cities all around the world, and in our own Bay Area, are recognizing that more cycling and walking paths are vital to the health and mobility of their community, especially during a pandemic, and are changing city infrastructure to prioritize them, not just temporarily, but also looking at permanent, long-term improvements.

Here's a relevant article - <https://www.theguardian.com/world/2020/apr/11/world-cities-turn-their-streets-over-to-walkers-and-cyclists>

Thank you for your hard work in support of the city's residents,  
Seema

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"You must be the change you want to see in the world." - Mahatma Gandhi

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**From:** sabari sanjeevi <ssganesh@hotmail.com>  
**Sent:** Wednesday, April 15, 2020 10:54 AM  
**To:** City of Cupertino Planning Dept. <planning@cupertino.org>  
**Cc:** David Stillman <DavidS@cupertino.org>; Devikala@yahoo.com  
**Subject:** Regnart Creek Trail Initial Study/Mitigated Negative Declaration

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Hello,

Subject: Regnart Creek Trail Initial Study/Mitigated Negative Declaration  
Reference: Comment 1.1 and Response 1.1

Thanks for taking time and reviewing our concern.

In the response it was mentioned "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".

But in our daily use of our family van, backing out of the driveway we notice that we are always end up in the middle of the creek/proposed walkway and proposed median island. We are concerned if the software used appropriate sized car for the swept path analysis.

Usually this kind of simulation software takes variety of inputs to run the simulations. The results are as good as the inputs provided to the software. This kind of software cannot give an yes or no answer. The answer is usually with a list of constraints for both yes and no.

We do not find any reference to the Autoturn's swept path analysis in any published documents. We would like to be informed about the simulation input and the resulting constraints. To be precise, would like to know what kind of passenger vehicles can back out/operate safely.

The above answer (in Response 1.1) did not adequately address our concerns about safety.

Regards  
Sabari Sanjeevi  
Devikala Natarajan



From: sun.dalvi@gmail.com <sun.dalvi@gmail.com>  
Sent: Thursday, April 16, 2020 8:11 AM  
To: City of Cupertino Planning Dept. <planning@cupertino.org>  
Subject: Regnart Creek Trail -ERC comment

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Respected city council members and ERC committee,

I tried working with the city on resolving my concerns regarding noise, privacy and security through the fence options. However, due to the current situation, the city has been pushing out our meeting (understandably) since we cannot meet physically.

Given that basic issues of neighbors abutting the trail have not been resolved, how are we planning to move ahead with ERC approvals?

I ask the city to resolve the basic issues of the most impacted residents before moving any further on this trail.

Regards  
Suraj

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**From:** [garywong@ix.netcom.com](mailto:garywong@ix.netcom.com) <[garywong@ix.netcom.com](mailto:garywong@ix.netcom.com)>

**Sent:** Wednesday, April 15, 2020 11:41 PM

**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>

**Subject:** ERC Meeting Apr 16, 2020 - Public Comment

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My name is Gary Wong, a 20 year resident of Cupertino and President of Campo De Lozano HOA, whose homes are adjacent to the Regnart Creek Trail.

There are several issues outstanding that merit serious consideration prior to approving the Mitigated Negative Declaration for Regnart Creek Trail. 100% design is incomplete and such design has not been shared with residents nor Council Members and release of such design information has not been scheduled. It seems premature to proceed without having 100% design known and details of the pending items can alter the MND report's review and recommendations.

Due to time constraints, let me identify several of the outstanding issues:

1. Bridge placement and impact. According to Valley Water - Cupertino minutes, Valley Water is to provide written concurrence with the bridge location and confirmation that no hydraulic modeling is required. We have not seen confirmation that this has been received from Valley Water, and a change in placement could have material changes to the MND. This information was not in place at the time of distribution of the MND.
2. Relocating the Access Ramp, required concrete work thereof and sediment containment has not been addressed nor finalized in the MND.
3. For over 9 months, we have spoken and written to staff about discussing with Valley Water the possibility of obtaining a foot of land between the Lozano and Valley Water property lines to mitigate the impact of the Regnart Creek Trail on our homes and communities. We were assured by City staff that they will do so. Having reviewed all of the meeting minutes between Cupertino and Valley Water, nowhere is our request mentioned. This is critically important because our homes are the most impacted along the trail, with one section bisecting our property on the west side and the southern part of the Trail bordering less than 20 feet from our front doors. Thus, we are impacted on 2 of 4 sides of our property. Council members have stated often that the most challenging sections of the Trail should be addressed first. We have come to learn that mitigation issues for our homes have been ignored and to this day neither we nor the City have written details for a mitigation plan.

**See letter dated April 15, 2020 from the Board of Valley Water, attached hereto.** Valley Water states that it is willing to issue to Cupertino an encroachment permit to mitigate noise, traffic and privacy to us. It seems that such mitigation should be included in MND, as it is silent on our community and for the other homes on the trail. To proceed or approve the MND without detailing these mitigation measures is a material omission and an incomplete report. What if such mitigation measure included a 9

foot wall with lighting, similar to East Estates Drive? What would be the aesthetic impact of such mitigation or disturbance to habitat? .AB 2341 allows for individual and subjective opinions to constitute substantive evidence of a fair argument, thus is must be addressed and not ignored.

In concluding, the mitigation measures should be defined and detailed before the MND is approved or recommended for approval.

Thank you.

Gary Wong  
President, Campo De Lozano HOA

**From:** Jeonghee Yi <[jeonghee.yi@gmail.com](mailto:jeonghee.yi@gmail.com)>

**Sent:** Thursday, April 16, 2020 4:00 AM

**To:** City of Cupertino Planning Dept. <[planning@cupertino.org](mailto:planning@cupertino.org)>

**Cc:** Jeonghee Yi <[jeonghee.yi@gmail.com](mailto:jeonghee.yi@gmail.com)>

**Subject:** ERC Meeting Apr 16, 2020 - Public Comment

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear ERC Members:

I understand the Mitigated Negative Declaration for Regnart Creek Trail is going to be discussed for approval during the ERC meeting today. There are many issues with MND but we still do not know how the city's design addresses these issues, since the 100% design is not completed and has not been shared with the residents for the review.

Therefore, I urge the the committee to defer making any decision on your recommendation until the 100% design is ready for review to see if the outstanding issues are properly addressed. I think it's only appropriate to even review it after the 100% design is available for review.

Let me address some of the issues and concerns with the items on the draft MND an the mitigations in the city's design plan so far.

1. Resident on La Mar Dr abutting the trail are greatly concerned about the impacts to noise, privacy and security due to the increased public use of the trail with only 2 feet of setbacks. I can even hear noise from the Wilson Park during days and nights that's from much greater distance than the trail. Therefore it is expected the level of noise would be much higher from the trail users because it's much closer. At the same time this is a great concern for our privacy because anything we are talking about in our backyard could be heard by the trail users. So far, the city has not provided any acceptable level of mitigations for noise, privacy and security impacts for the residents. Residents are still for the city's solutions to the problems in the 100% design plan.

2. Many of the items in the MND requires specific guidelines to follow to mitigate the environmental impacts. But the currently plan does not or can not follow the guidelines, For example, Item MM BIO-4.1of the draft MND 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. We have to review the 100% design plan to figure out the plan is complying with the MND.

3. The city's current plan has already violated some of the items on the MND. For example, for item MM BIO-4.4 on p.6 of the draft MND, the city has already passed the deadline of removing potential nesting substrates before starting the construction for year 2020. The city may have to postpone the start of construction to be postponed to be 2021, or 9/1 after the nesting season. We need to see the updated schedule to see if it's complying with the MND.

These are some of the examples why the review of draft MND is premature at this point. In addition, the unprecedented event of COVID-19 may require some alteration in the 100% design as well as the city's schedule and ability to execute some of items in the draft MND. Therefore, the recommendation should be deferred until after the 100% design plan

becomes available for public review.

Thanks,

Jeonghee