Lawrence-Mitty Park and Trail Project

Initial Study / Mitigated Negative Declaration

10300 Torre Avenue

Cupertino, CA 95014

February 2024

Prepared by

2205 Junction Ave, Suite 205
San Jose, CA 95131

This page is intentionally blank

PUBLIC WORKS DEPARTMENT
Chad Mosley, Director

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

Draft Mitigated Negative Declaration

Project: Lawrence-Mitty Park and Trail Project

Lead Agency/ Project Proponent: City of Cupertino

Availability of Documents: The Initial Study for this Mitigated Negative Declaration is available for review at:

Cupertino City Hall
10300 Torre Avenue
Cupertino, CA 95014

Contact: Susan Michael, CIP Manager
City of Cupertino Public Works Department
10300 Torre Avenue
Cupertino, CA 95014

Phone: (408) 777-3354 (Public Works)
SusanM@cupertino.gov

PROJECT DESCRIPTION

The project consists of the development of a new public park and extension of the existing Saratoga Creek Trail on an approximately 7.8-acre site, located along the west side of Lawrence Expressway, south of Interstate 280 and adjacent to Saratoga Creek in the City of Cupertino.

PROPOSED FINDINGS

The City of Cupertino has reviewed the attached Initial Study and determined that the Initial Study identifies potentially significant project effects, but:

1. Revisions to the project plans incorporated herein as mitigation would avoid or mitigate the effects to a point where no significant effects would occur; and

2. There is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment. Pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15064(f)(3) and 15070(b), a Mitigated Negative Declaration has been prepared for consideration as the appropriate CEQA document for the project.

BASIS OF FINDINGS

Based on the environmental evaluation presented in the attached Initial Study, the project would not cause significant adverse effects related to aesthetics, agricultural and forestry resources, air quality, energy, geology/soils, greenhouse gas emissions, hazards/hazardous materials, land use/planning, mineral resources, noise, population/housing, public services, recreation, transportation, utilities/service systems, and wildfire. The project does not have impacts that are individually limited, but cumulatively considerable.

The environmental evaluation has determined that the project would have potentially significant impacts on biological, cultural and tribal cultural resources as described below.

Mitigation Measures

The project could result in significant adverse effects to biological resources, cultural resources, and tribal cultural resources. However, the project has been revised to include the mitigation measures listed below, which reduce these impacts to a less-than-significant level. With implementation of these mitigation measures, the project would not substantially degrade the quality of the environment, reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal. Nor would the project cause substantial adverse effects on humans, either directly or indirectly.

Mitigation Measures Incorporated into the Project:

Mitigation Measure BIO-1a. Conduct Preconstruction Survey. No more than 24 hours prior to the date of initial ground disturbance, a pre-construction survey for southwestern pond turtle will be conducted within the impact area by a qualified biologist. The survey will consist of walking the limits of impact to ascertain the possible presence of the species. The qualified biologist will investigate all potential areas that could be used by southwestern pond turtle for feeding, sheltering, movement, and other essential behaviors.

A qualified biologist is an individual who shall have a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting surveys for each amphibian and reptile special-status species that may be present within the project areas. During or following academic training, the qualified biologist shall have achieved a high level of professional experience and knowledge in biological sciences and special-status species identification, ecology, and habitat requirements. Additionally, the qualified biologist must be permitted or authorized to handle and relocate southwestern pond turtle.

Mitigation Measure BIO-1b. Worker Environmental Awareness Program. All construction personnel will participate in a worker environmental awareness program. These personnel will be informed about the possible presence of all special-status species and habitats associated with the species identified here to be potentially present in the parcel and that unlawful take of the animal or destruction of its habitat is a violation of law. Prior to construction activities, a qualified biologist will instruct all construction personnel about (1) the description and status of the species; (2) the importance of their

associated habitats; (3) a list of measures being taken to reduce impacts on these species during project construction and implementation; and (4) measures to be followed if special-status species are encountered during construction activities. A fact sheet conveying this information will be prepared for distribution to the construction crew and anyone else who enters the project site.

Mitigation Measure BIO-1c. Install Wildlife Exclusion Barrier. Prior to any ground disturbance in the work area, a temporary wildlife exclusion barrier will be installed along the limits of disturbance. A qualified biologist will inspect the area prior to installation of the barrier. The barrier will be designed to allow the southwestern pond turtles to leave the work area and prevent them from entering the work area. The fence will remain in place until all development activities have been completed. This barrier will be inspected daily and maintained and repaired as necessary to ensure that it is functional and is not a hazard to southwestern pond turtles on the outer side of the barrier.

Mitigation Measure BIO-1d. Construction Monitoring. A qualified biologist or biological monitor will be onsite during all project activities that may result in the take of any special-status species. The qualified biologist will be given the authority to freely communicate verbally, by telephone, by electronic mail, or in writing at any time with construction personnel, any other person(s) at the project site or otherwise associated with the project, and regulatory agencies (e.g., USFWS or CDFW). The qualified biologist or biological monitor will have oversight over implementation of all the mitigation measures and will have the authority and responsibility to stop project activities if they determine any of the measures are not being fulfilled.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area and be familiar with the habits and behavior of those species.

Mitigation Measure BIO-2a: Pre-Construction Survey for San Francisco Dusky-Footed Woodrats. Within 30 days prior to the start of construction activities, a qualified biologist shall map all San Francisco dusky-footed woodrat houses within a 50-foot buffer around the project footprint. Environmentally sensitive habitat fencing shall be placed to protect the houses with a minimum 50-foot buffer. If a 50-foot buffer is not feasible, a smaller buffer may be allowable based on advice from a qualified biologist with knowledge of woodrat ecology and behavior, or Mitigation Measure BIO-2b may be implemented.

Mitigation Measure BIO-2b: Relocation of Woodrat Houses. In the unlikely event that one or more woodrat houses are determined to be present and physical disturbance or destruction of the houses cannot be avoided, then the woodrats shall be evicted from their houses and the nest material relocated outside of the disturbance area, prior to onset of activities that would disturb the house, to avoid injury or mortality of the woodrats. The reproductive season for San Francisco dusky-footed woodrats typically starts in February or March and breeding activity usually continues to July but can extend into September. Thus, relocation efforts should be completed in the fall to

minimize the potential for impacts on young woodrats in the house. Additionally, it is recommended that the period between the completion of the relocation efforts and the start of construction activities be minimized to reduce the potential for woodrats to reconstruct houses in the project footprint prior to the start of construction activities.

Relocation generally involves first choosing an alternate location for the house material based on the following criteria: 1) proximity to current nest location; 2) safe buffer distance from planned work; 3) availability of food resources; and 4) availability of cover. An alternate house structure will then be built at the chosen location. Subsequently, during the evening hours (i.e., within 1 hour prior to sunset), a qualified biologist will slowly dismantle the existing woodrat house to allow any woodrats to flee and seek cover. All sticks from the nest will be collected and spread over the alternate structure. However, alternative relocation measures can be employed as advised by a qualified wildlife biologist in consultation with CDFW.

Mitigation Measure BIO-3a: Pre-Construction Survey for Roosting Bats. A survey of culverts within the project site, including a 50-foot buffer (as feasible) shall be conducted by a qualified bat biologist no less than 30 days before the start of construction-related activities (including but not limited to mobilization and staging, clearing, grubbing, tree removal, vegetation removal, fence installation, demolition, and grading). If construction activities are delayed by more than 30 days, an additional bat survey shall be performed. The survey may be conducted at any time of year but should be conducted in such a way to allow sufficient time to determine if special-status bats or maternity colonies are present on the site. The results of the survey shall be documented.

If no habitat or signs of bats are detected during the habitat suitability survey, no further surveys are warranted. If suitable habitat is present and signs of bat occupancy (e.g., guano pellets or urine staining) are detected, Mitigation Measure BIO-3b shall apply.

Mitigation Measure BIO-3b: Acoustic Survey. If suitable habitat is present and signs of bat occupancy are detected, a follow-up dusk emergence survey shall be conducted no less than 30 days prior to construction activities. A dusk survey will determine the number of bats present and will also include the use of acoustic equipment to determine the species of bats present. The results of the survey shall be documented. If an active roost is observed within the project site, Mitigation Measure BIO-3c shall apply.

Mitigation Measure BIO-3c: Roost Buffer. If a day roost or a maternity colony is detected and is found sufficiently close to work areas to be disturbed by construction activities, the qualified biologist shall determine the extent of a construction-free buffer zone to be established around the roost in consultation with CDFW. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading shall be permitted. Monitoring shall be required to ensure compliance with relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.

Mitigation Measure BIO-4: Pre-Construction/Pre-Disturbance Survey for Nesting Birds.

Avoidance. To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31.

Pre-Construction Surveys. If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests would be disturbed during project implementation. These surveys shall be conducted no more than five days prior to the initiation of any site disturbance activities and equipment mobilization, including tree, shrub, or vegetation removal, fence installation, grading, etc. If project activities are delayed by more than five days, an additional nesting bird survey shall be performed. During this survey, the biologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, culverts) in and immediately adjacent to the impact area for nests. Active nesting is present if a bird is building a nest, sitting in a nest, a nest has eggs or chicks in it, or adults are observed carrying food to the nest. The results of the surveys shall be documented.

If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist will determine the extent of a construction-free buffer zone to be established around the nest (typically up to 1,000 feet for raptors and up to 250 feet for other species), to ensure that no nests of species protected by the Migratory Bird Treaty Act MBTA and California Fish and Game Code will be disturbed during project implementation. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading will be permitted until the chicks have fledged. Monitoring shall be required to ensure compliance with MBTA and relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.

Mitigation Measure CUL-1: The City of Cupertino (City) shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Significant prehistoric cultural resources are defined as human burials, features or other clusterings of finds made, modified or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:

a. Human bone - either isolated or intact burials.

b. Habitation (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).

c. Artifacts including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles,

grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.

d. Various features and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.

e. Isolated artifacts.

Mitigation Measure CUL-2: It is recommended that prior to the start of ground disturbing construction, the City should implement a Worker Awareness Training (WAT) program for cultural resources. Training shall be required for all construction personnel participating in ground disturbing construction to alert them to the archaeological sensitivity of the project area and provide protocols to follow in the event of a discovery of archaeological materials. The training shall be provided by a Registered Professional Archaeologist (RPA).

The RPA shall develop and distribute for job site posting an "ALERT SHEET" summarizing potential archaeological finds that could be exposed and the protocols to be followed as well as points of contact to alert in the event of a discovery.

Mitigation Measure CUL-3: The City shall retain a Professional Archaeologist on an “on-call” basis during ground disturbing construction to review, identify and evaluate any potential cultural resources that may be inadvertently exposed during construction. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under the California Environmental Quality Act (CEQA).

If the Professional Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource under CEQA, he/she shall notify the City and other appropriate parties of the evaluation and recommend mitigation measures to mitigate to a less-than significant impact in accordance with California Public Resources Code Section 15064.5. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery among other options. The completion of a formal Archaeological Monitoring Plan (AMP) and/or Archaeological Treatment Plan (ATP) that may include data recovery may be recommended by the Professional Archaeologist if significant archaeological deposits are exposed during ground disturbing construction. Development and implementation of the AMP and ATP and treatment of significant cultural resources will be determined by the City in consultation with any regulatory agencies.

Mitigation Measure CUL-4: In accordance with Section 7050.5 of the California Health and Safety Code, if potential human remains are found, immediately notify the lead agency (City of Cupertino or Santa Clara County) staff and the Santa Clara County Coroner of the discovery. The coroner would provide a determination regarding the nature of the remains within 48 hours of notification. No further excavation or disturbance of the identified material, or any area reasonably suspected to overlie additional remains, can occur until a determination has been made. If the County Coroner determines that the remains are, or are believed to be, of Native American ancestry, the coroner would notify the Native

American Heritage Commission within 24 hours. In accordance with California Public Resources Code, Section 5097.98, the Native American Heritage Commission must immediately notify those persons it believes to be the Most Likely Descendant from the deceased Native American. Within 48 hours of this notification, the Most Likely Descendant would recommend to the lead agency their preferred treatment of the remains and associated grave goods.

Mitigation Measure TRIB-1: It is possible for a lead agency to determine that an artifact is considered significant to a local tribe, and thus considered a significant resource under CEQA, even if it would not otherwise be considered significant under CEQA. As such, all Native American tribal finds are to be considered significant until the lead agency has enough evidence to make a determination of significance. In the event that Native American archaeological resources are discovered, or suspected to have been discovered, Native American monitoring will be required before further ground disturbance shall be allowed.

Conditions of Approval

Standard Permit Condition: The following measures shall be applied to development of the project site to reduce and/or avoid impacts to paleontological resources:

- If vertebrate fossils or other paleontological resources are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The City of Cupertino's Project Manager or other suitable representative shall be responsible for submitting the paleontologist's report to the Director of Public Works, and implementing the recommendations of the qualified professional paleontologist. The representative shall submit a report to the Director of Public Works indicating how the paleontologist's recommendations were complied with as soon as all measures have been incorporated into the project.

DRAFT CITY OF CUPERTINO MITIGATED NEGATIVE DECLARATION

As provided by the Environmental Assessment Procedure adopted by the City Council of the City of Cupertino on May 27, 1973, and amended on March 4, 1974, January 17, 1977, May 1, 1978, and July 7, 1980, the City of Cupertino City Council has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project implementation. "Significant effect on the

environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affect by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance (CEQA Guidelines Section 15382).

PROJECT INFORMATION AND LOCATION

Project Name: Lawrence-Mitty Park and Trail Project

Applicant: City of Cupertino

Location: City of Cupertino

PROJECT DESCRIPTION

The 7.83-acre Lawrence-Mitty project site is situated on the east side of Cupertino, between Saratoga Creek and the Lawrence Expressway. The City of Cupertino acquired it with the intent to develop a new park and extend the existing Saratoga Creek Trail. The trail currently terminates at a point on the site adjacent the intersection of Lawrence Expressway and Mitty Way, where a chain link fence and locked gate prevent entry to the remainder of the project site. The project would extend the trail northward through the site to Calvert Drive.

FINDINGS OF DECISION MAKING BODY

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

PUBLIC REVIEW PERIOD

The 30-day public circulation period for the Initial Study and draft MND began on February 12, 2024 and ended on March 13, 2024.

Chad Mosley
Director of Public Works

CERTIFICATE OF THE CITY CLERK

This is to certify that the above Mitigated Negative Declaration was filed in the Office of the City Clerk of the City of Cupertino on _____, 2024.

_____

Kirsten Squarcia
City Clerk

This page intentionally left blank

LAWRENCE-MITTY PARK AND TRAIL PROJECT INITIAL STUDY

TABLE OF CONTENTS

TABLES

FIGURES

APPENDICES

This page intentionally left blank

Chapter 1. Introduction

This Initial Study (IS) evaluates the potential environmental effects of a proposed project for the development of a new public park and extension of an existing creekside trail in the City of Cupertino.

1.1 PROJECT BACKGROUND AND OVERVIEW

The 7.83-acre project site is situated on the east side of Cupertino, between Saratoga Creek and the Lawrence Expressway. The City of Cupertino acquired the site with the intent to develop a new park and extend the existing Saratoga Creek Trail.

The project site includes the existing alignment of what was described as Reach 5 of the San Tomas Aquino / Saratoga Creek Trail Master Plan, prepared for the County of Santa Clara in 1999. The trail extends from the San Francisco Bay Trail near Highway 237 to Prospect Road in San Jose. It parallels San Tomas Aquino Creek from Highway 237 to Monroe Street in Santa Clara, north of the site. From there it follows roadways through Santa Clara, Cupertino and San Jose before rejoining the creek corridor. From the project site, the trail follows the east bank of the creek, paralleling Lawrence Expressway south across Bollinger Road to Murdock Park in San Jose, then over city streets to its terminus at Prospect Road. Reach 5 is described in the San Tomas Aquino / Saratoga Creek Trail Master Plan as extending from Pruneridge Avenue in Santa Clara to Bollinger Road. On the proposed project site, the existing trail currently ends at a point near the intersection of Lawrence Expressway and Mitty Way, where a locked gate prohibits access.

The City of Cupertino has developed multiple citywide parks and planning documents to guide development, including the Parks and Recreation System Master Plan, Bicycle Transportation Plan, Pedestrian Transportation Plan, Climate Action Plan and General Plan. The proposed Lawrence-Mitty Park and Trail Plan will be designed to align with the overall goals of each of these plans. This Initial Study evaluates the environmental impacts of this Plan.

1.2 REGULATORY GUIDANCE

The California Environmental Quality Act (CEQA; Public Resources Code § 21000 et seq.) and the CEQA Guidelines (14 CCR §15000 et seq.) establish the City of Cupertino (City) as the lead agency for the project. The lead agency is defined in CEQA Guidelines Section 15367 as, “the public agency which has the principal responsibility for carrying out or approving a project.” The lead agency is responsible for preparing the appropriate environmental review document under CEQA. The Cupertino City Council serves as the decision-making body for the City and is responsible for adopting the CEQA document and approving the project.

CEQA Guidelines Section 15070 states a public agency shall prepare a proposed Negative Declaration or a Mitigated Negative Declaration when:

1. The Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

2. The Initial Study identifies potentially significant effects, but:

- Revisions in the project plans made before a proposed Mitigated Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where no significant effects would occur, and

- There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

Pursuant to Section 15070, the City has determined a Mitigated Negative Declaration is the appropriate environmental review document for the Lawrence-Mitty Park and Trail Project.

To ensure that the mitigation measures and project revisions identified in a Mitigated Negative Declaration (MND) are implemented, CEQA Guidelines Section 15097(a) requires the City to adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. The City shall prepare a Mitigation, Monitoring and Reporting Plan based on the mitigation measures contained in this IS/MND.

1.3 LEAD AGENCY CONTACT INFORMATION

The lead agency for the project is the City of Cupertino. The contact person for the lead agency is:

Susan Michael, CIP Manager
City of Cupertino Public Works Department
10300 Torre Avenue
Cupertino, CA 95014
Phone: (408) 777-3354 (Public Works)
SusanM@cupertino.gov

1.4 DOCUMENT PURPOSE AND ORGANIZATION

The purpose of this document is to evaluate the potential environmental effects of the Lawrence-Mitty Park and Trail Project. This document is organized as follows:

- Chapter 1 – Introduction. This chapter introduces the project and describes the purpose and organization of this document.

- Chapter 2 – Project Description. This chapter describes the project location, area, site, objectives, and characteristics.

- Chapter 3 – Environmental Checklist and Responses. This chapter contains the Environmental Checklist that identifies the significance of potential environmental impacts (by environmental issue) and a brief discussion of each impact resulting from implementation of the proposed project. This chapter also contains the Mandatory Findings of Significance.

- Chapter 4 – List of Preparers. This chapter provides a list of those involved in the preparation of this document.

- Appendices

Chapter 2. Project Description

2.1 PROJECT PURPOSE

The City of Cupertino has developed multiple Citywide parks and planning documents to guide development, including the Parks and Recreation System Master Plan (PRSMP), Bicycle Transportation Plan (BTP), Pedestrian Transportation Plan (PTP), Climate Action Plan (CAP) and General Plan (GP). The proposed Lawrence-Mitty Park and Trail project will be designed to align with the overall goals of each of these plans.

The 2020 PRSMP creates a cohesive strategy to guide future development, renovation, and management of City parks, recreation facilities, and trails. It was developed after an extensive public engagement process that helped assess community needs and goals while identifying opportunities to meet those needs in the future. It notes that acquiring the Lawrence-Mitty site is an opportunity to increase access to park space on the east side of Cupertino and prioritizes extending the Saratoga Creek Trail northward to Stevens Creek Boulevard. Maps within the PRSMP show the Lawrence-Mitty site as an opportunity for Natural Corridor Enhancements (Creek/Riparian) and for Enhanced Pedestrian and Bike Connectivity.

2.2 PROJECT LOCATION AND SURROUNDING LAND USES

The project site is located on the east side of City of Cupertino, between Saratoga Creek and Lawrence Expressway. Lawrence Expressway forms a portion of the City's eastern boundary, with the City of San Jose located on the east side of the roadway. The site extends from Calvert Drive on the north to a point west of the intersection of Lawrence Expressway and Glentree Drive (located in the City of San Jose) on the south. Existing land uses consist of single-family residential to the west (on the west side of Saratoga Creek), located within Cupertino city limits, and south, located within Cupertino and San Jose city limits, the I-280 freeway and campus industrial to the north, located in the City of Santa Clara, and single- and multi-family residential and Mitty High School to the east (across Lawrence Expressway), located in the City of San Jose. A pedestrian/bike path and bridge extends from Sterling Barnhart Park, west of the site, over Saratoga Creek and intersects the existing trail at approximately the middle of the site. This path and bridge provide a pedestrian and bicycle connection to the trail from the existing residential neighborhood to the west. The project location and surrounding uses are shown on Figure 2.2-1 and Figure 2.2-2.

Existing Conditions

As previously described, the site currently contains an existing paved multi-use trail, with benches and landscaping supplementing the natural vegetation between the trail and the creek in the southern portion of the site. This section of the trail and improvements were installed in approximately 2002 (Cornerstone Earth Group, 2022). The topography is mounded along some exterior portions of the creek corridor, facing Lawrence Expressway. A combination of masonry soundwall and chain link fence separates the trail area from Lawrence Expressway. The trail extends through the northern portion of the site and beginning just north of the intersection of Lawrence Expressway and Mitty Way, the site contains broad open areas between the trail and the creek. These areas also contain mounds along the edge of the riparian corridor. There are also piles consisting of asphalt and concrete mixed with soil, remnants from the site's previous use by the Santa Clara County Roads and Airports Department as a disposal site for construction and demolition waste. The County also used the site as a corporation yard for storage of rock and

gravel. Farther north, the site narrows as the creek corridor approaches the existing trail alignment. The natural riparian tree canopy becomes sparse and the eastern bank of the creek is armored with rock gabions. The creek becomes an engineered trapezoidal channel adjacent to the trail for the stretch between bank armoring and the northern project boundary at Calvert Drive.

There is no direct vehicular access to the project site, except for two existing driveway aprons on Lawrence Expressway that provide access for maintenance vehicles. Locked gates in the chain link fence at these locations prevent unauthorized vehicles from entering the site.

An aerial view of the project site is shown on Figure 2.2-2, and ground-level photos are provided on Figure 2.2-3 through Figure 2.2-8.

Figure 2.2-1 Project Location

Lawrence-Mitty Park and Trail Plan

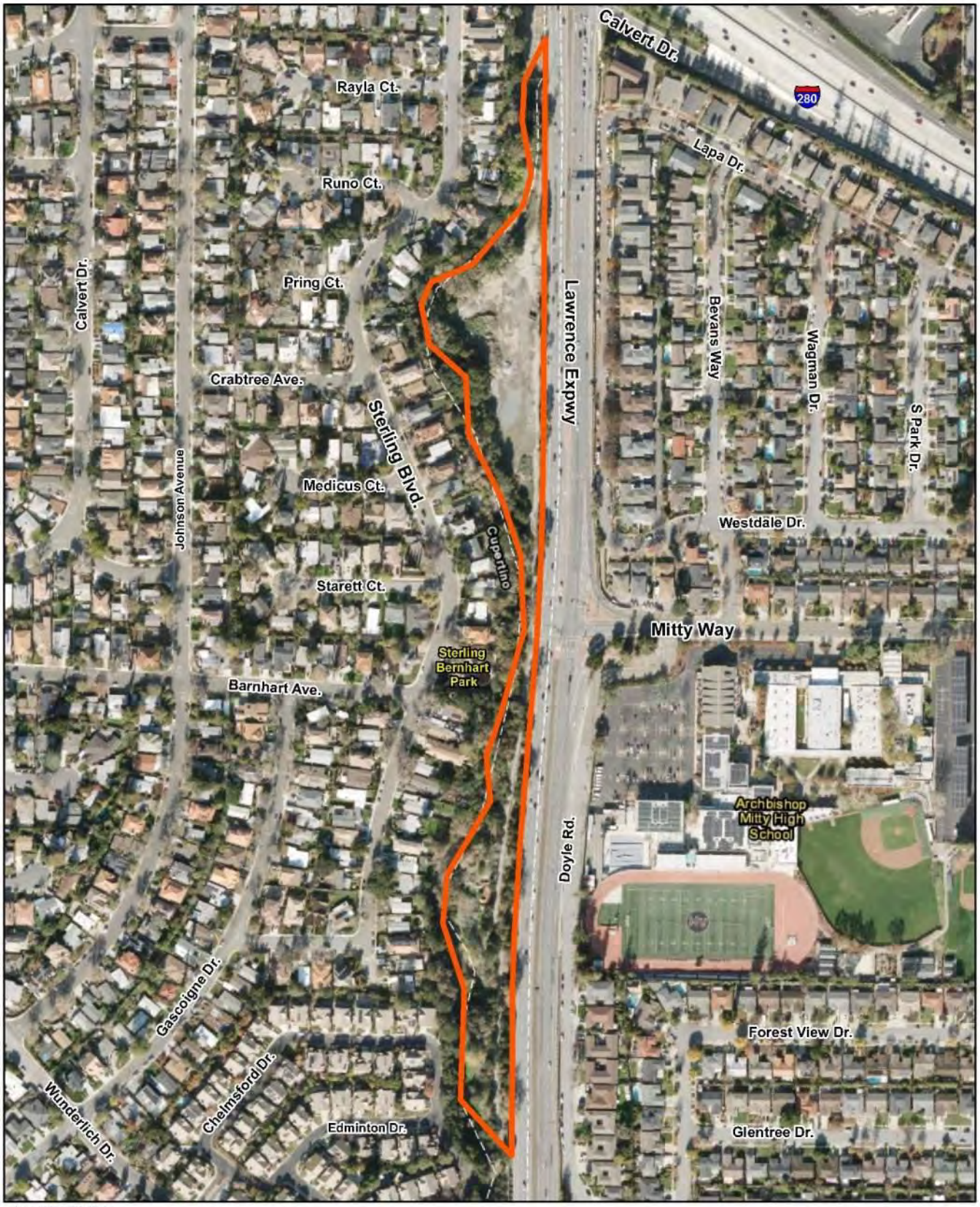


Figure 2.2-2 Project Area

Lawrence-Mitty Park and Trail Plan

Photo 1. Viewing north along the existing Saratoga Creek Trail from the Bridge to Sterling Barnhart Park

Photo 2. Viewing south along the existing Saratoga Creek Trail from the end of the existing soundwall along Lawrence Expressway

Figure 2.2-3 Site Photos 1 and 2

Photo 3. Viewing northeast across the site from atop the berms along Saratoga Creek.

Photo 4. Existing berms, construction and demolition waste piles along the east side of the Saratoga Creek corridor.

Figure 2.2-4 Site Photos 3 and 4

Photo 5. Viewing southwest across the site from the northern maintenance entrance on Lawrence Expressway

Photo 6. Viewing northeast along the armored portion of the creek channel

Figure 2.2-5 Site Photos 5 and 6

Photo 7. Viewing north along the existing Saratoga Creek channel towards Calvert Drive.

Photo 8. Viewing north towards the proposed future trail connection area at the north end of the trail.

Figure 2.2-6 Site Photos 7 and 8

Photo 9. Viewing south along the creek channel from the top of the eastern bank.

Photo 10. Viewing northwest across Saratoga Creek towards existing residences on the west side of the creek.

Figure 2.2-7 Site Photos 9 and 10

Photo 11. View of the existing crosswalk at Lawrence Expressway and Mitty Way from the project site.

Photo 12. Viewing northeast from the existing Saratoga Creek Trail towards the southern maintenance entrance on Lawrence Expressway.

Figure 2.2-9 Site Photos 11 and 12

2.3 PROJECT ELEMENTS

The goal of the Lawrence-Mitty Park and Trail Project is to transform the recently acquired subject vacant site and existing trail corridor into a meaningful recreation resource for the Cupertino community. The community-driven design includes extending the existing multi-use trail along Saratoga Creek and providing a new 2.8-acre park with open space, enhanced riparian and upland plantings, extended bike trail, soft surface trails, play opportunities, shade, seating, and a berm separating it from the adjacent expressway (see Figure 2.3-1 and Figure 2.3-2). The community-driven design elements include:

- Extending the existing multi-use trail along Saratoga Creek, attracting bicyclists and pedestrians to the park;
- Soft surface trails for exercise and enjoyment of the natural area;
- Play features that build on the offerings at Sterling Barnhart, including nest swings, a log and boulder seating circle and a climbing rock;
- Shaded benches and picnic tables for resting and small gatherings
- Several creekside bench overlooks to provide shady resting places with views towards the creek and riparian plantings;
- One creekside deck overlook to provide a close-up view into the creek;
- Visible stormwater improvements, with a dry creek collecting and routing runoff water to the bioretention area for treatment and improving the water quality of the creek;
- Additional riparian plantings east of the existing riparian zone along the creek;
- New upland plantings between the riparian edge and expressway, replacing the paved staging area with shade trees and native species;
- An open meadow with native grasses and wildflowers;
- A landscape berm with trees, as both a visual barrier to the expressway and for noise reduction.
- Space set aside for a future restroom
- Maintenance access/trail turnaround for a future bicycle connection to the North

<u>Operations</u>

Per City regulations, the proposed park and trail would be open from sunrise to a half hour after sunset. The Cupertino Municipal Code, Chapter 13.04, Parks Section 13.04.190, Closing Hours – Prohibitions, states that no person shall remain, stay, or loiter in any public park between the hours of 10:00 p.m. and 6:00 a.m., unless otherwise posted at the public park.

Construction

The project is estimated to disturb a total of approximately three acres of land. Earthwork quantities are estimated in cubic yards (CY) as follows:

- Approximate Cut (reusable): 3,090 CY
- Approximate Fill Needed: 2,900 CY

Total cut for off-haul purposes is estimated at approximately 700 cubic yards of material, which would consist of 650 CY of surface layer of asphalt and approximately 50 CY of lead-contaminated soil (see Chapter 3.9 Hazards and Hazardous Materials for further details regarding lead contamination).

Staging for construction would occur on the previously disturbed portions of the project site. Public road or lane closures are not anticipated to accommodate the proposed construction. The contractor will be required to prepare a construction logistics plan to coordinate construction and maintain access and safety during construction.

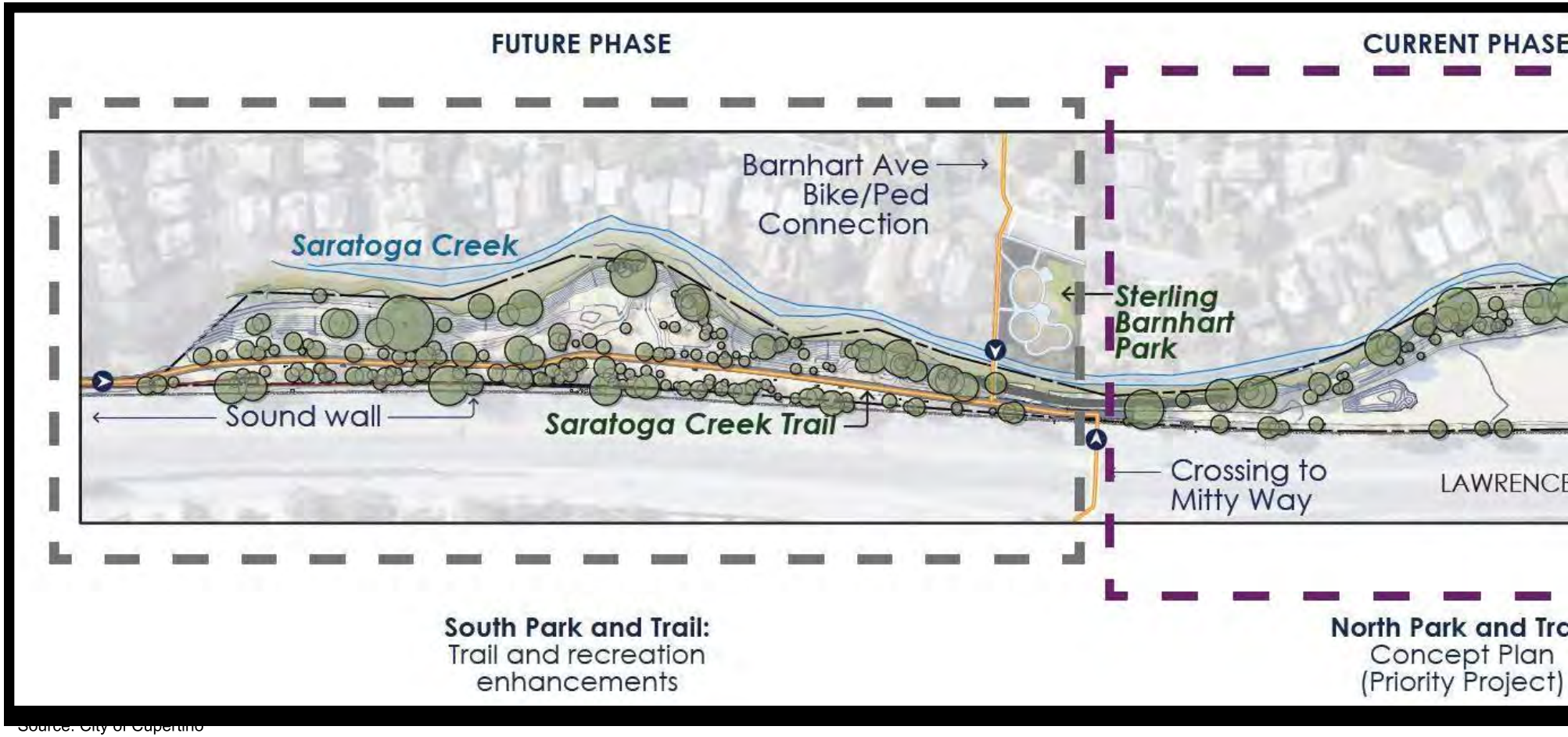
The project must comply with Chapter 10.48.053 (Community Noise Control - Grading, Construction, and Demolition) and Chapter 17.04 (Environmental Standards) of the Municipal Code, which:

- Limits grading, construction, and demolition from 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends provided equipment noise does not exceed 87 dBA at a distance of 25 feet or 80 dBA on any nearby property.
- Limits grading, construction, demolition and utility work conducted within 750 feet of a residential to 7:00 a.m. to 8:00 p.m. on weekdays.

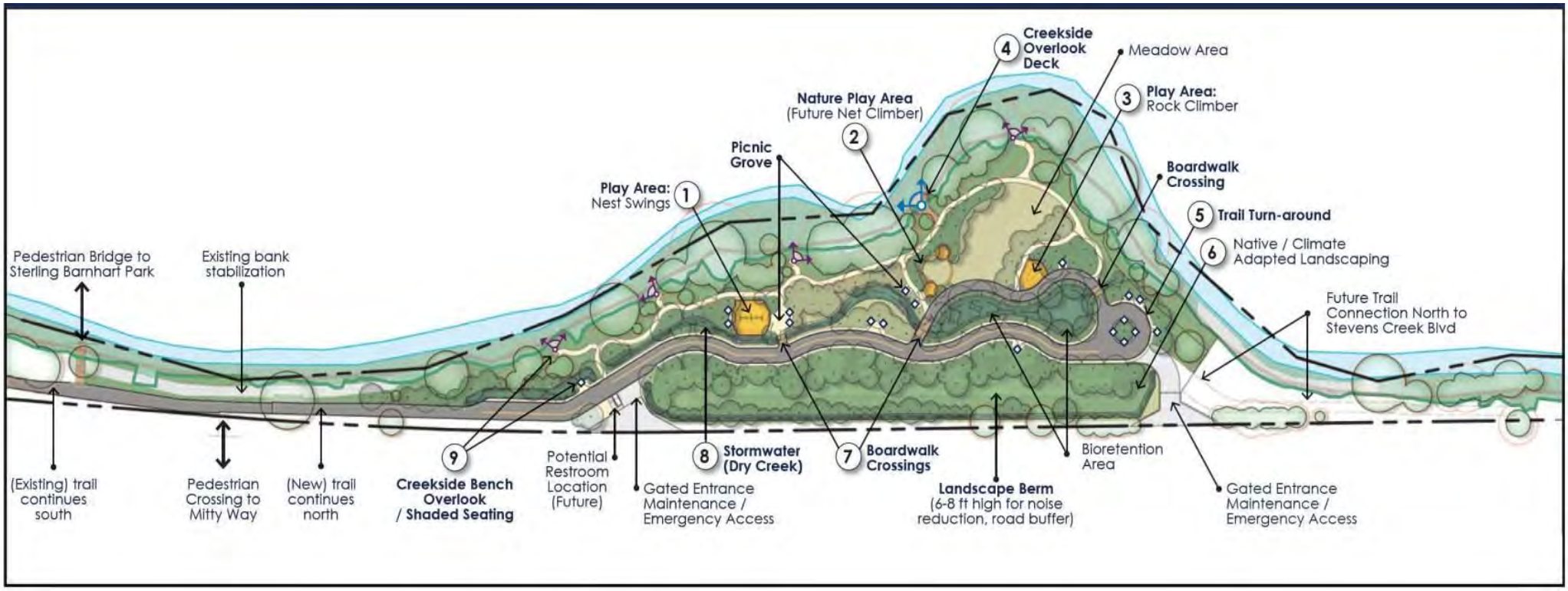
In addition, the activity must meet one of the following two criteria:

1. No individual device produces a noise level more than 87 dBA at a distance of 25 feet (7.5 meters); or
2. The noise level on any nearby property does not exceed 80 dBA.

This section also prohibits construction activities within seven hundred fifty feet of a residential area on Saturdays, Sundays and holidays, and during the nighttime period (8:00 p.m. to midnight, and from midnight to 7:00 a.m., and periods on weekends from 6:00 p.m. to midnight and from midnight to 9:00 a.m.), unless it meets the nighttime standards of Section 10.48.040.



Source: City of Cupertino



Source: City of Cupertino

Figure 2.3-2 Concept Plan North

Lawrence-Mitty Park and Trail Plan

2.4 STANDARD DESIGN AND CONSTRUCTION MEASURES

The City has incorporated the following Standard Designs and Construction Measures into the planning, design, construction, operation, and maintenance of the proposed project to minimize the potential adverse effects of the project on the surrounding community and the environment. These Standard Design and Construction Measures will be included in project construction drawings and/or specifications and as such are considered a part of the project and are not considered mitigation measures.

Table 2.4-1: Standard Design and Construction Measures

Impact Section	*Standard Design and Construction Measure*
Air Quality	**Fugitive Dust.** To reduce potential fugitive dust that may be generated by project construction activities, the City or its contractor shall implement the following BAAQMD basic construction measures when they are appropriate: • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt trackout onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site. Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.

	• Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.
Air Quality	**Construction Emission Reduction/Energy Efficiency Best Management Practices. –** To reduce construction equipment related fuel consumption and emissions of criteria air pollutants, toxic air contaminants, and GHGs, the City shall implement the following best management practices: • Where possible, electrical service shall be provided to construction work areas to avoid the need to power equipment with generators.
Geology/Paleontological Resources	**Standard Permit Condition.** The following measures, per Cupertino Municipal Code Chapter 17.04.050H, shall be applied to development of the project site to reduce and/or avoid impacts to paleontological resources: • If paleontological resources are encountered during ground disturbing and/or other construction activities, all construction shall be temporarily halted or redirected to allow a qualified paleontologist, which shall be retained by the project applicant, to assess the find for significance. If paleontological resources are found to be significant, the paleontological monitor shall determine appropriate actions, in coordination with a qualified paleontologist, City staff, and property owner. Appropriate actions may include, but are not limited to, a mitigation plan formulated pursuant to guidelines developed by the Society of Vertebrate Paleontology and implemented to appropriately protect the significance of the resource by preservation, documentation, and/or removal, prior to recommencing activities. Measures may include, but are not limited to, salvage of unearthed fossil remains and/or traces (e.g., tracks, trails, burrows); screen washing to recover small specimens; preparation of salvaged fossils to a point of being ready for curation (e.g., removal of enclosing matrix, stabilization and repair of specimens, and construction of reinforced support cradles); and identification, cataloging, curation, and provision for repository storage of prepared fossil specimens.

Hydrology/Water Quality	**Erosion Control.** Park projects will be designed in accordance with the most current Chapter 9.18: Stormwater Pollution Prevention and Watershed Protection of the Cupertino Municipal Code, as applicable, and the most current Municipal Regional Stormwater NPDES permit. Projects will be constructed in accordance with the most current version of Section 7.20: Storm Water Pollution Control of the General Conditions of the City's Public Works contract documents. Construction plans will include the City of Cupertino, Public Works Department "Construction Best Management Practices" plan sheet. **Green Stormwater Infrastructure.** The project will be designed consistent with the Santa Clara Valley Urban Runoff Pollution Prevention Program's Green Stormwater Infrastructure Handbook (adopted Sep. 2019). **General Permit for Construction Activity.** The project disturbs more than one acre of land and therefore requires compliance with the requirements of the California General Permit For Stormwater Discharges associated with Construction Activity (Permit No. CAS000002). The Construction General Permit requires the filing of a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB) and preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) during construction. In order to meet the requirements of the National Pollutant Discharge Elimination System (NPDES) program for construction, construction contractors shall install and maintain appropriate BMPs, as shown in the erosion control plans and in accordance with the SWPPP, on all construction projects. BMPs shall be installed in accordance with industry recommended standards, and/or in accordance with the Construction General Permit issued by the state. sediment, construction materials, debris and wastes, and other pollutants must be retained on site and may not be transported from the site via sheet flow, swales, area drains, natural drainage courses, wind, or vehicle tracking to the extent feasible. Under direction of the Contractor's qualified SWPPP practitioner (QSP), erosion and/or sediment control devices shall be modified as needed as the project progresses to ensure effectiveness. The contractor shall download and keep a copy of the SWPPP on site and available for review throughout the entire construction period. **Best Management Practices.** To prevent stormwater pollution and minimize potential sedimentation shall be applied to project construction, including but not limited to the following:

	• Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains. • Earthmoving or other dust-producing activities shall be suspended during periods of high winds. • All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust, as necessary. • Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered. • All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard. • All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily (with water sweepers). • Vegetation in disturbed areas shall be replanted as quickly as possible. All unpaved entrances to the site shall be filled with rock to remove mud from tired prior to entering City streets. A tire wash system shall be installed if requested by the City.
Noise	**Construction Noise.** Project construction shall be restricted to the hours of 7:00 a.m. to 5:00 p.m. on weekdays and 9:00 a.m. to 4:00 p.m. on weekends. This is consistent with and more restrictive of the City's Municipal Code requirements as follows: • Chapter 10.48.051, Landscape Maintenance Activities, states that the use of motorized equipment for landscape maintenance activities for public schools, public and private golf courses, and public facilities is limited to the hours of 7:00 a.m. to 8:00 p.m. on weekdays and 7:00 a.m. to 6:00 p.m. on weekends and holidays. • Chapter 10.48.053, Grading, Construction, and Demolition sets forth standards for construction-related noise: o 1. Grading, construction and demolition activities shall be allowed to exceed the noise limits of Section 10.48.040 during daytime hours (7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on weekends) provided that the equipment

	utilized has high-quality noise muffler and abatement devices installed and in good condition, and the activity meets one of the following two criteria: 1) No individual device produces a noise level more than 87 dBA at a distance of 25 feet; or 2) The noise level on any nearby property does not exceed 80 dBA. ○ 2. Grading, street construction, demolition, and underground utility work are prohibited within 750 feet of a residential area on weekends, holidays, and during the nighttime period (8:00 p.m. to 7:00 a.m. on weekdays and 6:00 p.m. to 9:00 a.m. on weekends). This restriction does not apply to emergency work activities as defined by Section 10.48.030 of the Municipal Code. ○ 3. Construction, other than street construction (and certain emergency work activities), is prohibited on holidays. ○ 4. Construction, other than street construction (and certain emergency work activities) is prohibited during nighttime periods unless it meets the nighttime standards in Section 10.48.040. **Park Usage Noise.** Chapter 13.04, Parks Chapter 13.04.190, Closing Hours – Prohibitions, states that no person shall remain, stay, or loiter in any public park between the hours of 10:00 p.m. and 6:00 a.m., unless otherwise posted at the public park.
Transportation	**Traffic Control** - For all construction projects affecting vehicle, bicycle, or pedestrian circulation patterns, the contractor will provide vehicle traffic control measures to ensure safety and vehicle flow during construction, and which ensure public safety and provide for adequate access to public rights-of-way during construction. All construction projects will require the construction contractor to comply with the most current version of Section 7.21 Traffic Control and Public Safety of the General Conditions of the City's Public Works contract documents which require contractors to give adequate warning to the public of construction and to maintain access to public rights-of-way during construction.

In addition to the measures listed in Table 2.4-1, the City uses several documents to specify standard measures for City sponsored construction projects. These standard measures are specified in City construction contracts and serve to eliminate or reduce environmental impacts associated with construction projects, some of which are intended to ensure the City complies with state and federal laws regarding air emissions, stormwater pollution prevention, and

hazardous materials handling and storage at construction sites. These measures are found in the documents listed below.

The current City documents containing standard measures consist of:

- Department of Public Works Construction Best Management Practices (BMPs) for Stormwater Pollution Prevention and Water Course Protection (pursuant to City Municipal Code Chapter 9.18) (dated September 1, 2016)

- City of Cupertino Public Works Department, Standard Details for Construction within City right-of-way. Undated.

- City of Cupertino Public Works Contract Documents, General Conditions of Project Manual (standard construction contract language)

These documents can be found at: https://www.cupertino.org/our-city/departments/public-works/permitting-development-services/engineering-standards-policies-procedures.

Chapter 3. Environmental Checklist and Responses

1. **Project Title:** Lawrence-Mitty Park and Trail Project

2. **Lead Agency Name and Address:** City of Cupertino, 10300 Torre Avenue, Cupertino, CA 95014

3. **Contact Person and Phone Number:** Susan Michael, (408) 777-3354 (Public Works)

4. **Project Location:** West Side of Lawrence Expressway, between Calvert Drive and Mitty Way

5. **Project Sponsor's Name and Address:** Same as Lead Agency

6. **General Plan Designation:** Public Parks and Open Space

7. **Zoning:** N/A

8. **Description of the Project:** The project consists of a plan for the development of a new public park and extension of the existing Saratoga Creek Trail on an approximately 7.8-acre site, located along the west side of Lawrence Expressway, south of Interstate 280 and adjacent to Saratoga Creek in the City of Cupertino.

9. **Surrounding Land Uses and Setting:** The 7.83-acre project site is situated at the eastern boundary of the City of Cupertino, adjacent to the City of San Jose, between Saratoga Creek and the Lawrence Expressway, south of Interstate 280. The City of Cupertino acquired the site with the intent to develop a new park and extend the existing Saratoga Creek Trail, which currently terminates at the project site. The site is vacant, and contains piles of construction and demolition waste, consisting mostly of asphalt and concrete mixed with soil. The Saratoga Creek riparian corridor occupies the westerly side of the site. Surrounding land uses include single family residential neighborhoods and a public park (Sterling Barnhardt Park) to the west across Saratoga Creek, the Interstate 280 freeway corridor to the north, multi-family housing to the east across Matty Way, and single family residential and the Saratoga Creek Trail to the south. An existing pedestrian/bicycle bridge over Saratoga Creek provides access to the site from Sterling Barnhardt Park and the residential neighborhood to the west.

10. **Other public agencies whose approval is required:** Santa Clara Valley Water District (Valley Water), California Department of Fish and Wildlife and San Francisco Bay Regional Water Quality Control Board.

11. **Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, is there a plan for consultation that includes, for example, the determination of significance of impacts to tribal cultural resources, procedures regarding confidentiality, etc.?** On May 28,2021, the Tamien Nation of the Greater Santa Clara County requested consultation with the City pursuant to PRC section 21080.3.1. Outreach to the Tamien Nation was made and a response was received by Tamien Nation Chairperson Quirina Luna Geary. Additional outreach letters were sent to local area tribes

on January 9, 2024. No requests for consultation from any other tribes have been received. There is no formal plan for consultation currently in place.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐	Aesthetics	☐	Greenhouse Gas Emissions	☐	Public Services
☐	Agricultural and Forestry Resources	☐	Hazards and Hazardous Materials	☒	Recreation
☐	Air Quality	☐	Hydrology/Water Quality	☐	Transportation
☒	Biological Resources	☐	Land Use/Planning	☒	Tribal Cultural Resources
☒	Cultural Resources	☐	Mineral Resources	☐	Utilities/Service Systems
☐	Energy	☐	Noise	☐	Wildfire
☐	Geology/Soils	☐	Population/Housing	☐	Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project COULD have a significant effect on the environment, there WILL NOT be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature Date

Director of Public Works

EVALUATION OF ENVIRONMENTAL IMPACTS

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. "Negative Declaration: Less Than Significant with Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in 5. below, may be cross-referenced).

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration (Section 15063(c)(3)(D)). In this case, a brief discussion should identify the following:

    a. Earlier Analysis Used. Identify and state where they are available for review.

    b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

    c. Mitigation Measures. For effects that are "Less Than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7. Supporting Information Sources. A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9. The explanation of each issue should identify:

    a. the significance criteria or threshold, if any, used to evaluate each question; and

    b. the mitigation measure identified, if any, to reduce the impact to less than significance.

3.1 AESTHETICS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
*Would the project:**				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☒	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage points.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☒	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☒
*Except as provided in Public Resources Code Section 21099				

3.1.1 Environmental Setting

The City of Cupertino is situated on the mid-peninsula in the south Bay Area. Cupertino borders San Jose and Santa Clara to the east, Saratoga to the south, and Sunnyvale and Los Altos to the north. As of the 2010 census, the City had a land area of 11.26 square miles (U.S. Census Bureau 2010). The topography of the City and the surrounding vicinity is generally flat because the City lies in the west-central part of the Santa Clara Valley, which has a broad, mostly flush alluvial plain that extends southward from San Francisco Bay. Linda Vista Park is the only City park not situated on largely flat land. The Santa Cruz Mountains rise up to the west and provide a visual backdrop for the majority of the City. Cupertino is further defined by its largely urban setting.

Scenic Highway Corridors

The California Scenic Highway Program (Streets and Highway Code, Sections 260 through 263) is managed by the California Department of Transportation (Caltrans). The program is intended to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no state-designated scenic highways within the City. The nearest official state-designated scenic highway is SR 9, located approximately 5.2 miles south of the project site.

Sensitive Scenic and Visual Resources

The City defines scenic vistas and scenic corridors in the following manner (page 4.1-21 of General Plan EIR):

> *"Scenic corridors are considered a defined area of landscape, viewed as a single entity that includes the total field of vision visible from a specific point, or series of points along a linear transportation route. Public view corridors are areas in which short-range, medium-range and long-range views are available from publicly accessible viewpoints, such as from city streets. However, scenic vistas are generally interpreted as long-range views of a specific scenic feature (e.g., open space lands, mountain ridges, bay, or ocean views)."*

The eastern part of Cupertino is relatively flat, whereas the western part of the city is characterized by changes in topography as it slopes into the Santa Cruz Mountains. Because Cupertino is largely built out, views of scenic vistas within the City are limited. However, given the flat nature of the majority of the City, views of the Santa Cruz Mountain Range can be captured from portions of major roadway corridors such as Stevens Creek Boulevard and Homestead Road. Views of the Santa Cruz Mountains are likely to increase as a person travels towards the foothills in the western and southern areas of the City.

The City has not designated any major roadways or any other streets/areas in the City as scenic corridors or as being part of a scenic vista. While the General Plan does not specifically address scenic corridors or vistas, it recognizes the views of the foothills (i.e., Montebello) and ridgelines of the Santa Cruz Mountains to the west and other natural features that surround the City as important resources (City of Cupertino 2014).

3.1.2 Regulatory Setting

City of Cupertino General Plan

The Cupertino General Plan: Community Vision 2015 – 2040 (2014) sets the City's policy direction in a number of areas including land use, mobility, housing, open space, infrastructure, public health and safety, and sustainability. The Land Use and Community Character Element contains policies that guide future physical change in Cupertino. Land Use and Community Character Element policies relevant to the proposed project include:

> *Policy LU-3.1: Site Planning.* Ensure that project sites are planned appropriately to create a network of connected internal streets that improve pedestrian and bicycle access, provide public open space and building layouts that support city goals related to streetscape character for various Planning Areas and corridors.
>
> *Policy LU-4.1: Street and Sidewalks.* Ensure that the design of streets, sidewalks and pedestrian and bicycle amenities are consistent with the vision for each Planning Area and Complete Streets policies.
>
> *Policy LU-5.3:* Enhance Connections. Look for opportunities to enhance publicly-accessible pedestrian and bicycle connections with new development or redevelopment.

Policy LU-11.1: Connectivity. Create pedestrian and bicycle access between new developments and community facilities. Review existing neighborhood circulation to improve safety and access for students to walk and bike to schools, parks, and community facilities such as the library.

3.1.3 Impact Discussion

Would the project:

a) Have a substantial adverse effect on a scenic vista?

Less than Significant Impact. For purposes of determining significance under CEQA, a scenic vista is defined as a viewpoint that provides expansive views of a highly valued landscape for the benefit of the public. The Cupertino General Plan has not designated any major roadways or any other streets/areas in the City as scenic corridors or as being part of a scenic vista. There are no officially designated scenic vista points in the Cupertino planning area and there are no officially designated scenic highways in Cupertino. Significant visual resources in the area include the Santa Cruz Mountains, which form a distinctive backdrop to the City looking west.

The proposed new park site, though currently inaccessible to the public, provides minimal views of the Santa Cruz Mountains. Views from the project site are predominantly of Lawrence Expressway and existing residential development to the east, and the existing Saratoga Creek corridor to the west. Views of the Santa Cruz Mountains are largely obstructed by existing trees along the creek and existing trail corridor and sound barrier walls along the Expressway.

Construction activities on the site would be visible to motorists traveling on Lawrence Expressway and from residences east of the expressway. However, they would be temporary, and all construction equipment and signage would be removed from the site following completion of the proposed park and trail improvements.

Overall, the proposed project, including new park and trail amenities and plantings, would not have a substantial adverse effect on existing scenic vistas because existing views of scenic vistas are minimal and construction activities would be temporary in nature. In the long term, the project would enhance the existing site, which includes barren spaces, piles of soil and concrete rubble and debris, and homeless encampments. This impact would be considered less than significant.

b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?

No Impact. The project alignment is not visible from an officially designated state scenic highway. The closest officially designated state scenic highway to project site is State Route (SR) 9, located approximately 4.4 miles southwest of the project site in Saratoga. Therefore, the project would not damage scenic resources within a state scenic highway. The segment of I-280 extending west from Interstate 880 to the Santa Clara/San Mateo County line, located approximately 150 feet north of the northerly terminus of the project site, is eligible for designation as a state scenic highway; however, it does not yet have official designated status.

As described under criterion a), the project site currently provides minimal views of the Santa Cruz Mountains to the west. All project elements, except for new tree plantings, would be at or

near ground level, and therefore would not obstruct existing minimal scenic views. Because the project does not affect scenic resources within a state scenic highway, there would be no impact.

c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

Less than Significant Impact. The proposed project consists of constructing new park and trail amenities along the Saratoga Creek riparian corridor. Park and trail facilities at the northern end of the project site would be constructed predominantly at ground level and would be visible from the adjacent Lawrence Expressway. An existing soundwall along the eastern side of the Expressway would limit ground-level views of the site from the existing residential neighborhood east of the soundwall. Construction equipment would be visible at various locations on the site only for the duration of the construction period. No permanent significant degradation of the existing visual character or quality of the site is anticipated. Rather, the project is anticipated to permanently enhance the scenic quality of the site by adding new, attractive trail amenities and new landscaping. The proposed extension of the existing multi-use San Tomas Aquino/Saratoga Creek Trail through the site is consistent with General Plan Policies LU-4.1, 5.3 and 11.1 which promote the creation of appropriately designed and publicly accessible pedestrian and bicycle connections between new and existing development and community facilities. Therefore, the impact is considered less than significant.

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

No Impact. The proposed project would not include the installation of lights or involve any night time construction.

3.2 AGRICULTURAL AND FOREST RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:*				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use or a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒
*In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.				

3.2.1 Environmental Setting

The project site is located in the City of Cupertino and all proposed project improvements would occur within an existing, urban area. The California Department of Conservation Farmland Mapping and Monitoring Program identifies the area as Urban and Built-up Land (California Department of Conservation 2021).

3.2.2 Impact Discussion

Would the project:

a) **Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?**

b) **Conflict with existing zoning for agricultural use or a Williamson Act contract?**

c) **Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?**

d) **Result in the loss of forest land or conversion of forest land to non-forest use?**

e) **Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?**

No Impact. (Responses a – e). The proposed project would not impact Prime Farmland, Unique Farmland, Farmland of Statewide Importance, forest land, or land under a Williamson Act contract as none are present on site (California Department of Conservation 2018). The project would not convert or cause the conversion of any farmland or forest land to a non-agricultural/non-forest use because the project site is within urban and built-up land surrounded by urban uses. Thus, the project would not result in impacts to any agricultural or forestry resources.

3.3 AIR QUALITY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:*				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☒
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	☐	☒	☐
c) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☐	☐	☒	☐
*Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.				

3.3.1 Environmental Setting

Air quality is a function of pollutant emissions, and topographic and meteorological influences. Physical atmospheric conditions such as air temperature, wind speed and topography influence air quality.

Criteria Air Pollutants

Federal, state, and local governments control air quality through the implementation of laws, ordinances, regulations, and standards. The federal and state governments have established ambient air quality standards for “criteria” pollutants considered harmful to the environment and public health. National Ambient Air Quality Standards (NAAQS) have been established for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), fine particulate matter (particles 2.5 microns in diameter and smaller, or $PM_{2.5}$), inhalable coarse particulate matter (particles 10 microns in diameter and smaller, or PM_{10}), and sulfur dioxide (SO_2). California Ambient Air Quality Standards (CAAQS) are more stringent than the national standards for the pollutants listed above and include the following additional pollutants: hydrogen sulfide (H_2S), sulfates (SO_X), and vinyl chloride. In addition to these criteria pollutants, the federal and state governments have classified certain pollutants as hazardous air pollutants (HAPs) or toxic air contaminants (TACs), such as asbestos and diesel particulate matter (DPM).San Francisco Bay Area Air Basin

San Francisco Bay Area Air Basin

The proposed project is located in the San Francisco Bay Area Air Basin (SFBAAB), an area of non-attainment for both the 1-hour and 8-hour state ozone standards, and the national 24-hour $PM_{2.5}$ standard. The SFBAAB is comprised of nine counties: all of Alameda, Contra Costa, Santa

Clara, San Francisco, San Mateo, Marin, Napa, and the southern portions of Solano and Sonoma. In San Mateo County, $PM_{2.5}$ exceeds the national standard only on about one day each year (BAAQMD 2017a).

The San Francisco Bay Area is generally characterized by a Mediterranean climate with warm, dry summers and cool, damp winters. During the summer daytime high temperatures near the coast are primarily in the mid-60s, whereas areas farther inland are typically in the high-80s to low-90s. Nighttime low temperatures on average are in the mid-40s along the coast and low to mid-30s inland.

The Mediterranean climate is seen along most of the West Coast of North America and is primarily due to a (typically dominating) high-pressure system, located off the west coast of North America, over the Pacific Ocean. During the summer and fall months the high-pressure ridge is at its strongest and therefore provides a more stable atmosphere. Warm temperatures and a stable atmosphere associated with the high-pressure ridge provide favorable conditions for the formation of photochemical pollutants (e.g., O_3) and secondary particulates (e.g., nitrogen oxides (NOx) and SO_2).

Varying topography and limited atmospheric mixing throughout the SFBAAB restrict air movement resulting in reduced dispersion and higher concentrations of air pollutants. The SFBAAB is most susceptible to air pollution during the summer when cool marine air flowing through the Golden Gate can become trapped under a layer of warmer air (a phenomenon known as an inversion) and is prevented from escaping the valleys and bays created by the Coast Ranges.

Existing Emissions Sources

The project site consists of a disturbed lot with natural vegetation primarily near the creek. The site is undeveloped so there are no existing emissions sources in the project site.

Sensitive Receptors

A sensitive receptor is defined by the Bay Area Air Quality Management District (BAAQMD) as a facility or land use that include members of the population that are particularly sensitive to the effects of air pollution, such as children, seniors, or people will illnesses (BAAQMD 2023). These typically include residences, hospitals, and schools. Sensitive air quality receptors within 1,000 feet of the project site include:

- Single family residences west of the project site (across Saratoga Creek) along Sterling Boulevard and Chelmsford Drive.
- Single family residences east of the project site (across Lawrence Expressway) along Doyle Road. These receptors are in the City of San Jose.
- Archbishop Mitty High School and Queen of Apostles School east of the project site (across Lawrence Expressway) along Mitty Way. These receptors are in the City of San Jose.
- Sterling Barnhart Park southwest of the project site along Sterling Boulevard.

3.3.2 Regulatory Setting

In-Use Off-Road Diesel Vehicle Regulation

CARB's In-Use Off-Road Diesel Equipment regulation is intended to reduce emissions of NOx and PM from off-road diesel vehicles, including construction equipment, operating within California. The regulation imposes limits on idling; requires reporting equipment and engine information and labeling all vehicles reported; restricts adding older vehicles to fleets; and requires fleets to reduce their emissions by retiring, replacing, or repowering older engines or installing exhaust retrofits for PM. The requirements and compliance dates of the off-road regulation vary by fleet size, and large fleets (fleets with more than 5,000 horsepower) must meet average targets or comply with Best Available Control Technology (BACT) requirements beginning in 2014. CARB has off-road anti-idling regulations affecting self-propelled diesel-fueled vehicles of 25 horsepower and up. The off-road anti-idling regulations limit idling on applicable equipment to no more than five minutes, unless exempted due to safety, operation, or maintenance requirements. In 2022, CARB approved amendments requiring the use of renewable diesel fuel starting January 1, 2024. Fleets comprised of Tier 4 Final equipment or zero emission equipment are exempt from this requirement.

Bay Area Air Quality Management District

The BAAQMD is the agency primarily responsible for maintaining air quality and regulating emissions of criteria and toxic air pollutants within the SFBAAB. The BAAQMD carries out this responsibility by preparing, adopting, and implementing plans, regulations, and rules that are designed to achieve attainment of state and national air quality standards. The BAAQMD is the agency primarily responsible for maintaining air quality and regulating emissions of criteria and toxic air pollutants within the SFBAAB. The BAAQMD carries out this responsibility by preparing, adopting, and implementing plans, regulations, and rules that are designed to achieve attainment of state and national air quality standards. The BAAQMD currently has more than 100 rules that control and limit emissions from sources of pollutants. Table 3.3-1 summarizes the major BAAQMD rules and regulations that may apply to the proposed project.

Table 3.3-1: Potentially Applicable BAAQMD Rules and Regulations

Regulation	Rule	Description
1- General Provisions and Definitions	1- General Provisions and Definitions	301 – Public Nuisance: Establishes that no person shall discharge quantities of air contaminants or other materials which cause injury, detriment, nuisance or annoyance to any considerable number or person or the public; or which endangers the comfort, repose, health, or safety of any such person or the public.
6 – Particulate Matter	1 – General Requirements	Limits visible particulate matter emissions.
6 – Particulate Matter	6 – Prohibition of Trackout	Limits the quantity of particulate matter through control of trackout of solid

Table 3.3-1: Potentially Applicable BAAQMD Rules and Regulations		
Regulation	**Rule**	**Description**
		materials on paved public roads from construction sites that are greater than one acre in size.
11 – Hazardous Air Pollutants	1 – Lead	Limits and controls the emissions of lead to the atmosphere to no more than 15 pounds per day.
Source: BAAQMD, 2019.		

On April 29, 2017, the BAAQMD adopted its Spare the Air-Cool the Climate 2017 Clean Air Plan (Clean Air Plan). The 2017 Clean Air Plan updates the most recent Bay Area ozone plan, the 2010 Clean Air Plan, in fulfillment of state ozone planning requirements. The Plan focuses on the three following goals:

- Attain all state and national air quality standards.
- Eliminate disparities among Bay Area communities in cancer health risk from toxic air contaminants; and
- Reduce Bay Area GHG emissions to 40 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050.
- The plan includes 85 distinct control measures to help the region reduce air pollutants and has a long-term strategic vision which forecasts what a clean air Bay Area will look like in the year 2050. The control measures aggressively target the largest source of GHG, ozone pollutants, and particulate matter emissions – transportation. The 2017 Clean Air Plan includes more incentives for electric vehicle infrastructure, off-road electrification projects such as Caltrain and shore power at ports, and reducing emissions from trucks, school buses, marine vessels, locomotives, and off-road equipment (BAAQMD 2017b).

<u>City of Cupertino General Plan</u>

The Environmental Resources and Sustainability Element of the City's General Plan includes goals, policies, and strategies to help the City improve sustainability and the ecological health and the quality of life for the community. The following goals, policies, and strategies from the General Plan may be applicable to the proposed project:

- Goal ES-4 Maintain healthy air quality levels.
- Policy ES-4.1 New Development. Minimize the air quality impacts of new development projects and air quality impacts that affect new development.
- Strategy ES-4.1.1 Toxic Air Contaminants. Continue to review projects for potential generation of TACs at the time of approval and confer with the BAAQMD on controls needed if impacts are uncertain.

- Strategy ES-4.1.2 Dust Control. Continue to require water application to non-polluting dust control measures during demolition and the duration of the construction period.

3.3.3 Impact Discussion

Would the proposed project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

No Impact. The proposed project would not conflict with nor obstruct implementation of the BAAQMD 2017 Clean Air Plan. The 2017 Clean Air Plan includes increases in regional construction, area, mobile, and stationary source activities, and operations in its emission inventories and plans for achieving attainment of air quality standards. Chapter 5 of the 2017 Clean Air Plan contains the BAAQMD's strategy for achieving the plan's climate and air quality goals. This control strategy is the backbone of the 2017 Clean Air Plan. The proposed project would not result in a change in land use, population, or vehicle miles traveled. The 2017 Clean Air Plan's focus on long-term air quality improvement would account for the proposed project's short-term construction emissions. Thus, the proposed project would not conflict with the 2017 Clean Air Plan.

b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Less Than Significant Impact. The project would generate both short-term construction emissions and long-term operational emissions; however, as described in more detail below, the proposed project would not generate short-term or long-term emissions that exceed BAAQMD-recommended criteria air pollutant thresholds.

Construction Emissions

The proposed project involves the extension of an existing multi-use trail along Saratoga Creek and installation of a park with new vegetation, stormwater facilities, and landscaping. Construction activities would disturb the entire site and include site preparation, grading, park construction, paving, and plant establishment and maintenance. Site preparation and grading would require a maximum net export of approximately 700 cubic yards of soils, while aggregate would be imported to the site. Construction activities are anticipated to begin in early-2024 and last approximately 12 months. The project's potential construction emissions were estimated using the California Emissions Estimator Model (CalEEMod), Version 2022.1. The project's construction phasing and the typical pieces of heavy-duty, off-road construction equipment that would be used during each phase are summarized in Table 3.3-2.

Table 3.3-2: Construction Activity, Duration, and Typical Equipment

Construction Activity	***Duration (Days)[(A)]***	***Typical Equipment Used[(B)]***
Site Preparation	23	Grader, Scraper, backhoe
Grading	42	Backhoe, grader, dozer
Park Construction	131	Forklift, trencher, backhoe

Paving	10	Paver, roller, tractor
Plant Establishment and Maintenance	56	Forklift

(A) Days refers to total active workdays in the construction phase, not calendar days.
(B) The typical equipment list does not reflect all equipment that would be used during the construction phase. Not all equipment would operate eight hours per day each workday.

The project's estimated construction criteria air pollutant emissions are shown in Table 3.3-3. Please refer to Appendix A for CalEEMod output files and detailed construction emissions assumptions.

Table 3.3-3: Estimated Project Construction Criteria Air Pollutant Emissions

Year[(A)]	**Pollutant Emissions (Tons per Year)**						
	ROG	**NO_X**	**CO**	**PM_{10}**		**$PM_{2.5}$**	
				Dust[(B)]	**Exhaust**	**Dust[(B)]**	**Exhaust**
2024	0.1	0.8	0.9	0.1	<0.1	<0.1	<0.1
Year[(A)]	**Pollutant Emissions (Average Pounds per Day)**						
	ROG	**NO_X**	**CO**	**PM_{10}**		**$PM_{2.5}$**	
				Dust[(B)]	**Exhaust**	**Dust[(B)]**	**Exhaust**
2024	0.5	4.3	4.6	0.5	0.2	0.2	0.2
BAAQMD CEQA Threshold	**54**	**54**	**--**	**BMPs**	**82**	**BMPs**	**54**
Potentially Significant Impact?	**No**	**No**	**No**	**No**	**No**	**No**	**No**

Source: BAAQMD 2023, see Appendix A: Air Quality Emissions Report
(A) Emissions estimates are based on cumulative time of construction.
(B) For all projects, the BAAQMD recommends implementing nine basic construction best management practices (BMPs) to control fugitive dust from construction activities.

As shown in Table 3.3-3, the proposed project's potential construction emissions would be below all BAAQMD significance thresholds for criteria air pollutant emissions. The project would be required to comply with the BAAQMD's nine recommended fugitive dust best management practices (BMPs) through the implementation of General Plan Policy ES-4.1.2: Dust Control. These fugitive dust BMPs are as follows (BAAQMD 2023, pg. 5-5):

<u>BAAQMD Basic Best Management Practices for Construction-Related Fugitive Dust Emissions</u>

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt trackout onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.

- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.

- Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted layer of wood chips, mulch, or gravel.

- Publicly visible signs shall be posted with the telephone number and name of the person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's General Air Pollution Complaints number shall also be visible to ensure compliance with applicable regulations.

Operational Emissions

The proposed project would generate a minor amount of emissions of regulated air pollutants from landscaping equipment and maintenance activities; however, the proposed project is a small (less than 3 acres), local-serving park that would not generate substantial vehicle trips or require extensive landscaping and maintenance activities. For these reasons, potential project emissions would not exceed the BAAQMD's thresholds of significance. This impact would be less than significant.

c) Expose sensitive receptors to substantial pollutant concentrations?

Less Than Significant Impact. Sensitive residential receptors are located to the east and west of the project site. Project-related construction activities would emit $PM_{2.5}$ from equipment exhaust. Nearly all the project's $PM_{2.5}$ emissions from equipment exhaust would be diesel particulate matter (diesel PM), a TAC. In addition, a small amount of lead-laden soil is present adjacent to Lawrence Expressway (see Table 3.3-3). Although project construction would emit criteria and hazardous air pollutants, these emissions would not result in substantial pollutant concentrations. As described above, the potential project construction emissions would be below all BAAQMD construction emission thresholds and heavy-duty construction equipment would operate intermittently during the daytime. Construction of the proposed project is anticipated to last no more than approximately 12 months, at least 2.5 months of which being plant establishment and maintenance. The City would implement BMPs that would reduce potential emissions of fugitive dust and limit diesel construction equipment idling to no more than five minutes. Potential emissions of lead-laden dust would be controlled through the implementation of Mitigation Measures HAZ-1a and HAZ-1b, which would involve obtaining soil samples prior to construction and determining whether or not contaminated soil is on-site with concentrations above established construction/trench worker thresholds. If so, a Site Management Plan shall be prepared and implemented to manage the cleanup of potential contamination. Please refer to Section 3 Hazards and Hazardous Materials, for further details.

The proposed project would not result in long-term increases in emissions that would create substantial pollutant concentrations.

For the reasons described above, the proposed project would not expose sensitive receptors to substantial pollutant concentrations. This impact would be less than significant.

d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Less Than Significant Impact. Construction of the project would generate typical odors associated with construction activities, such as fuel and oil odors. The odors generated by the project would be intermittent and localized in nature and would disperse quickly as fluids cool and off-gassing ceases. Therefore, the project would not create emissions or odors that adversely affect a substantial number of people. This impact would be less than significant.

3.4 BIOLOGICAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☒	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☒	☐	☐
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☒	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

The following discussion and analyses are based in part on a Biological Constraints Analysis (BCA) prepared for the project by MIG. A copy of the report dated April 2022 is included in Appendix B.

The purpose of the BCA is to describe sensitive biological resources that have the potential to occur in the study area, potential impacts to those resources resulting from the proposed future park and trail development of the site, and conceptual measures to avoid significant impacts defined by the California Environmental Quality Act (CEQA). The BCA will be used during project planning and environmental review. The project design is currently in its planning stages, but it is assumed that no major activities are planned to occur within Saratoga Creek. However, the

analysis discusses potential constraints on performing any work that may impact Saratoga Creek and its riparian corridor should such work design plans necessitate that.

Field surveys of the study area were conducted by MIG Senior Biologists Kim Briones, M.S. and David Gallagher, M.S. on January 26, 2022. The surveys were conducted to provide a project-specific impact assessment for the site's development as described in the project description. Specifically, surveys were conducted to (1) assess existing biotic habitats and plant and animal communities in the parcel, (2) assess the study area for its potential to support special-status species and their habitats, and (3) identify and map potential jurisdictional habitats (e.g., waters of the U.S./state), and other sensitive biological resources.

3.4.1 Environmental Setting

General Study Area Description

The study area is located in the eastern portion of Cupertino, California and is composed of portions of Saratoga Creek along the entire west portion of the study area, an existing paved trail along the southern portion of the study area on the east side of Saratoga Creek, and an existing soil pile storage and staging area along the northern portion of the study area. Additionally, a series of berms composed of debris and soil are located along the east side of the creek. In the northern portion of the study area, these berms are located between the storage and staging area and the creek, and in the southern portion of the study area, they are present between the paved trail and the creek. The southern end of the Lawrence-Mitty site is also adjacent to Sterling-Barnhart Park, a 0.6-acre neighborhood park. The property's northern boundary contains a sound wall and chain link fence that separates the site from Calvert Drive, which serves as an on-ramp for Lawrence Expressway and Southbound I-280.

Elevations within the study area range from approximately 155 to 230 feet (NAVD88) above sea level (Google Inc. 2022). The site is underlain by one soil type: Urban landelspark complex, 0–2% slopes (NRCS 2022a). This soil type is a mix of "Urban land" soils with some other soil type. Urban land soil map units consist primarily of disturbed or human-transported materials into the area. This soil map unit is classified as "well-drained" and is not listed as hydric in Santa Clara County on the National Hydric Soils List (NRCS 2022b).

Existing Land Cover Types, Habitats, and Natural Communities

The study area is located within the San Francisco Bay Area Subregion of the Central Western Californian Region, both contained within the larger California Floristic Province (Baldwin et al. 2012). Where applicable, vegetation communities were mapped using CDFW's Vegetation Classification and Mapping Program's (VegCAMP) currently accepted list of vegetation alliances and associations (CDFW 2022). The reconnaissance-level field survey identified four natural communities, habitats, and land cover types in the study area: (1) Mixed Oak Forest and Woodland Alliance; (2) Coast Live Oak Woodland and Forest Alliance; (3) Intermittent Stream; and (4) Developed. Existing natural communities and land cover types in the study area are summarized in Table 3.4-1, and their distribution within the study area is depicted in Appendix A of the BCA, Figure 3.4-1 to Figure 3.4-4 and Appendix B, Photographs 1–10.

Table 3.4-1: Summary of Existing Land Cover Types, Habitats, and Natural Communities	
Land Cover Types, Habitats, Natural Communities	***Acres***
Mixed Oak Forest and Woodland Alliance	3.93
Coast Live Oak Woodland and Forest Alliance	1.82
Intermittent Stream	1.01
Developed	3.39
Study Area Total	**10.15**

Mixed Oak Forest and Woodland Alliance

Mixed oak forest and woodland alliance vegetation community occurs along Saratoga Creek. Within the study area, the riparian habitat is composed entirely of this vegetation community as the individual trees are either rooted below the top of bank of Saratoga Creek or just at the top of the creek bank and have a tree canopy that overhangs the stream channel (Appendix B, Photos 1 and 2 of the BCA). This community also overhangs portions of a berm along the east side of the creek, both in the northern portion of the study area (Appendix B Photo 2 and 3 of the BCA) and the southern portion of the study area (Appendix B Photo 4 of the BCA). The berm is sparsely to heavily vegetated with trees and shrubs, and in some areas, it defines the top of bank of the creek. Within this natural community, valley oak (Quercus lobata), coast live oak (Quercus agrifolia), and California sycamore (Platanus occidentalis) are co-dominant. Other trees present include blue gum eucalyptus (Eucalyptus globulous), elderberry (Sambucus sp.), arroyo willow (Salix lasiolepis), red willow (Salix laevigata), glossy privet (Ligustrum lucidum), and shamel ash (Fraxinus uhdei). These trees form a nearly continuous canopy, except in the southern portion of the creek and the engineered portions of the creek where bank stabilizing structures (e.g., gabions) are present. The understory consists of a combination of shrubs and herbaceous species, including Himalayan blackberry (Rubus armeniacus), English ivy (Hedera helix), castor bean (Ricinus communis), French broom (Genista monspessulana), periwinkle (Vinca minor), mugwort (Artemesia vulgaris), and horehound (Marrubium vulgare), and grasses including smilo grass (Stipa miliacea).

Despite the heavily urbanized surroundings, the study area's mixed oak forest and woodland alliance support many common wildlife species acclimatized to urban environments. Leaf litter, downed tree branches, low-growing forbs, and fallen logs provide cover for amphibians and reptiles, including California slender salamander (Batrachoseps attenuatus), western fence lizard (Sceloporus occidentalis), and the southern alligator lizard (Elgaria multicarinata). Additionally, amphibians such as the Pacific chorus frog (Hyliola regilla) may move through the area when water is present in the creek. Common avian species that are resident in this habitat include bushtit (Psaltriparus minimus), dark-eyed junco (Junco hyemalis), house finch (Haemorhous mexicanus), California towhee (Melozone crissalis), Bewick’s wren (Thryomanes bewickii), white-breasted nuthatch (Sitta carolinensis), oak titmouse (Baeolophus inornatus), and Anna’s hummingbird (Calypte anna). All these species were observed in this community during the site visit. Small mammals such as the California mouse (Peromyscus californicus), deer mouse (Peromyscus maniculatus), non-native eastern grey squirrel (Sciurus carolinensis), and the San Francisco dusky-footed woodrat (Neotoma fucipes annectens) may nest in this habitat. During

the survey, California ground squirrels (Otospermophilus beecheyi) and their burrows were observed in the vegetation community along the southern portion of the study area. Several mature trees provide suitable nesting habitat for red-tailed hawk (Buteo jamaicensis) and Cooper's hawk (Accipiter cooperii); however, no old nests were observed in these trees during the survey. Roosting bats such as the Yuma myotis (Myotis yumanensis) and Mexican free-tailed bats (Tadarida brasiliensis) may day roost in suitable cavities and crevices on trees.

Coast Live Oak Woodland and Forest Alliance

The Coast Live Oak Woodland and Forest Alliance vegetation community is located adjacent to most the riparian community and extends to the eastern edge of the study area. Although this plant community is located adjacent to the riparian community, it is differentiated from the riparian community where there is a break in the tree canopy. Thus, this plant community is not part of the riparian community. The community is dominated by mature coast live oak trees. Other trees present included California buckeye (Aesculus californica), toyon (Heteromeles arbutifolia), Monterey pine (Pinus radiata), and strawberry tree (Arbutus unedo). This community forms a mix of continuous canopy to areas with sparser canopy (Appendix B. Photo 5 of the BCA). The understory is open and sparsely vegetated with a variety of native and non-native shrubs, including holly oak (Quercus ilex) and coyote brush (Baccharis pilularis); and herbaceous vegetation including Himalayan blackberry, French broom, fennel (Foeniculum vulgare), milk thistle (Silybum marianum), wild mustard (Hirschfeldia incana), Spanish broom (Cytisus multiflorus), and Mexican sage (Salvia longistyla); and grasses including smilo grass, and ripgut brome (Bromus diandrus).

Due to the proximity of this vegetation community to the adjacent mixed oak forest and woodland alliance vegetation community and developed areas (see below), many of the avian, mammal, and reptile wildlife species that occur in those areas may occasionally occupy and/or move through this plant community.

Intermittent Stream

Saratoga Creek is an intermittent stream that originates along Castle Rock Ridge in the Santa Cruz Mountains. At the upper reach of the watershed, the creek flows through natural forested hills, then through low-density residential foothills, and finally through high-density residential areas of the Santa Clara Valley floor. Major tributaries to Saratoga Creek include San Andres, Bonjetti, and Booker Creeks. Saratoga Creek is a tributary to San Tomas-Aquino Creek, approximately three miles to the north. Saratoga/San Tomas-Aquino Creek eventually drains into the San Francisco Bay via Guadalupe Slough. Within the study area, Saratoga Creek consists primarily of a natural channel (Appendix B, Photo 6 of the BCA). However, slope erosion control features, including concrete sacks, rock gabion walls, and riprap are present in several locations along the east and west creek banks (Appendix B, Photo 7 of the BCA), and the northern portion of the channel consists of an engineered concrete trapezoidal channel (Appendix B, Photo 8). The channel bottom supports a combination of sand, gravel, and cobble substrate along its entirety. At the time of the site visit, no surface water was present, and the stream channel was unvegetated.

Due to the lack of persistent flows, the creek has limited value to aquatic wildlife. However, in high rain years, the stream may provide habitat for native amphibians and fish such as Pacific chorus frogs and California roach (Lavinia symmetricus). Other wildlife species such as mallards (Anas platyrhynchos), raccoon (Procyon lotor), and non-native Virginia opossum (Didelphis virginiana)

may forage on invertebrates when water is present. Aerial foragers such as black phoebes (Sayornis nigricans) and barn swallows (Hirundo rustica) may also forage for insects when water is present. However, the lack of persistent water likely precludes most species of fish and aquatic amphibians much of the time. That said, the creek also provides an important movement corridor supporting shelter and foraging habitat for many urban-adapted wildlife in the area.

Developed

The developed landcover type consists of an approximately eight-foot-wide paved trail, former soil stockpile and staging area, portions of a berm along the east side of Saratoga Creek, and a pedestrian bridge (Appendix B, Photos 9 and 10 of the BCA). The trail extends from Bollinger Road outside the study area to just north of Mitty Way within the study area. Although the trail intersects with the coast live oak woodland and forest, no vegetation is present within the trail itself. The storage and staging area consists of a mostly unvegetated hard-pack gravel area with several piles of soil, aggregate, asphalt, stone, and rubble (soil piles). A berm composed of these materials borders the west side of the storage and staging area on the east side of the creek (Appendix B, Photo 3 of the BCA). Although portions of this berm are within the riparian community, some portions are outside the riparian community and designated as developed. The gravel area is mostly devoid of vegetation; however, non-native grasses and herbs have colonized the soil piles, berm, and edges of the gravel area. Vegetation includes smilo grass, ripgut brome, common fumitory (Fumaria officinalis), cut leaved geranium (Geranium dissectum), fennel, and milk thistle, among others. Additionally, several native trees and shrubs, including coast live oak, valley oak, and California buckeye are either growing directly in the berm or are rooted in the berm.

Due to the scarcity of vegetation, the developed portions of the study area provide relatively low-quality habitat for wildlife species. However, many wildlife species that occur in the adjacent mixed oak forest and woodland and coast live oak woodland and forest communities likely move through developed areas en route to neighboring habitats. The wildlife most often associated with developed areas are those that are urban-adapted species tolerant of human disturbance, including introduced species such as the house sparrow (Passer domesticus), European starling (Sturnus vulgaris), rock pigeon (Columba livia), house mouse (Mus musculus), and Norway rat (Rattus norvegicus). Several common native species also occupy this landcover type, the San Francisco dusky-footed woodrat, raccoon (Procyon lotor), killdeer (Charadrius vociferus), dark-eyed junco, house finch, and California towhee, among other species.

3.4.2 Regulatory Setting

Federal Regulations

Endangered Species Act

Individual plant and animal species listed as rare, threatened, or endangered under state and federal Endangered Species Acts are considered special-status species. Federal and state endangered species legislation has provided the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Permits may be required from both the USFWS and CDFW if project activities would result in the take of a species listed as threatened or endangered. To “take” a listed species, as

defined by the State of California, is "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill" these species. Take is more broadly defined by the federal Endangered Species Act to include harm of a listed species.

In addition to species listed under state and federal Endangered Species Acts, Sections 15380(b) and (c) of the CEQA Guidelines provide that all potential rare or sensitive species, or habitats capable of supporting rare species, must be considered as part of the environmental review process. These may include plant species listed by the California Native Plant Society and CDFW-listed Species of Special Concern.

U.S. Migratory Bird Treaty Act

The U.S. Migratory Bird Treaty Act (MBTA) states it is "unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill; attempt to take, capture or kill; possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or in part, of any such bird or any part, nest or egg thereof…" In short, under MBTA it is illegal to disturb a nest that is in active use, since this could result in killing a bird, destroying a nest, or destroying an egg. The U.S. Fish and Wildlife Service (USFWS) enforces MBTA. The MBTA does not protect some birds that are non-native or human-introduced or that belong to families that are not covered by any of the conventions implemented by MBTA. In 2017, the USFWS issued a memorandum stating that the MBTA does not prohibit incidental take; therefore, the MBTA is currently limited to purposeful actions, such as directly and knowingly removing a nest to construct a project, hunting, and poaching.

Clean Water Act

The Clean Water Act (CWA) is the primary federal law regulating water quality. The implementation of the CWA is the responsibility of the U.S. Environmental Protection Agency (EPA). However, the EPA depends on other agencies, such as the individual states and the U.S. Army Corps of Engineers (USACE), to assist in implementing the CWA. The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 404 and 401 of the CWA apply to activities that would impact waters of the U.S. The USACE enforces Section 404 of the CWA and the California State Water Resources Control Board enforces Section 401.

Section 404

As part of its mandate under Section 404 of the CWA, the EPA regulates the discharge of dredged or fill material into "waters of the United States" (U.S.). "Waters of the U.S." include territorial seas, tidal waters, and non-tidal waters in addition to wetlands and drainages that support wetland vegetation, exhibit ponding or scouring, show obvious signs of channeling, or have discernible banks and high-water marks. Wetlands are defined as those areas "that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (33 CFR 328.3(b)). The discharge of dredged or fill material into waters of the U.S. is prohibited under the CWA except when it is in compliance with Section 404 of the CWA. Enforcement authority for Section 404 was given to the USACE, which it accomplishes

under its regulatory branch. The EPA has veto authority over the USACE's administration of the Section 404 program and may override a USACE decision with respect to permitting.

Substantial impacts to waters of the U.S. may require an Individual Permit. Projects that only minimally affect waters of the U.S. may meet the conditions of one of the existing Nationwide Permits, provided that such permits' other respective conditions are satisfied. A Water Quality Certification or waiver pursuant to Section 401 of the CWA is required for Section 404 permit actions (see below).

Section 401

Any applicant for a federal permit to impact waters of the U.S. under Section 404 of the CWA, including Nationwide Permits where pre-construction notification is required, must also provide to the USACE a certification or waiver from the State of California. The "401 Certification" is provided by the State Water Resources Control Board through the local Regional Water Quality Control Board (RWQCB). The RWQCB issues and enforces permits for discharge of treated water, landfills, storm-water runoff, filling of any surface waters or wetlands, dredging, agricultural activities and wastewater recycling. The RWQCB recommends the "401 Certification" application be made at the same time that any applications are provided to other agencies, such as the USACE, USFWS, or NOAA Fisheries. The application is not final until completion of environmental review under CEQA. The application to the RWQCB is similar to the pre-construction notification that is required by the USACE. It must include a description of the habitat that is being impacted, a description of how the impact is proposed to be minimized and proposed mitigation measures with goals, schedules, and performance standards. Mitigation must include a replacement of functions and values, and replacement of wetland at a minimum ratio of 2:1, or twice as many acres of wetlands provided as are removed. The RWQCB looks for mitigation that is on site and in-kind, with functions and values as good as or better than the water-based habitat that is being removed.

Sensitive Habitat Regulations

Wetland and riparian habitats are considered sensitive habitats under CEQA. They are also afforded protection under applicable federal, state, and local regulations, and are generally subject to regulation by the United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), CDFW, and/or the USFWS under provisions of the federal Clean Water Act (e.g., Sections 303, 304, 404) and State of California Porter-Cologne Water Quality Control Act.

Fish and Game Code Section 1602

Streambeds and banks, as well as associated riparian habitat, are regulated by the CDFW per Section 1602 of the Fish and Game Code. Work within the bed or banks of a stream or the adjacent riparian habitat requires a Streambed Alteration Agreement from the CDFW.

State Regulations

<u>California Environmental Quality Act (CEQA)</u>

CEQA requires public agencies to review activities which may affect the quality of the environment so that consideration is given to preventing damage to the environment. When a lead agency issues a permit for development that could affect the environment, it must disclose the potential environmental effects of the project. This is done with an "Initial Study and Negative Declaration" (or Mitigated Negative Declaration) or with an "Environmental Impact Report." Certain classes of projects are exempt from detailed analysis under CEQA if they meet specific criteria and are eligible for a Categorical Exemption.

CEQA Guidelines Section 15380 defines endangered, threatened, and rare species for purposes of CEQA and clarifies that CEQA review extends to other species that are not formally listed under the state or federal Endangered Species acts but that meet specified criteria. The state maintains a list of sensitive, or "special-status," biological resources, including those listed by the state or federal government or the California Native Plant Society (CNPS) as endangered, threatened, rare or of special concern due to declining populations. During CEQA analysis for a proposed project, the California Natural Diversity Data Base (CNDDB) is usually consulted. CNDDB relies on information provided by the California Department of Fish and Wildlife (CDFW), USFWS, and CNPS, among others. Under CEQA, the lists kept by these and any other widely recognized organizations are considered when determining the impact of a project.

California Endangered Species Act

The California Endangered Species Act (CESA; Fish and Game Code 2050 et seq.) generally parallels FESA. It establishes the policy of the State to conserve, protect, restore, and enhance threatened or endangered species and their habitats. Section 2080 of the California Fish and Game Code prohibits the take, possession, purchase, sale, and import or export of endangered, threatened, or candidate species, unless otherwise authorized by permit or by the regulations. "Take" is defined in Section 86 of the California Fish and Game Code as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." This definition differs from the definition of "take" under FESA. CESA is administered by CDFW. CESA allows for take incidental to otherwise lawful projects but mandates that State lead agencies consult with the CDFW to ensure that a project would not jeopardize the continued existence of threatened or endangered species.

California Fish and Game Code Sections 1600-1607

Sections 1600-1607 of the California Fish and Game Code require that a Notification of Lake or Streambed Alteration application be submitted to CDFW for "any activity that may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake." CDFW reviews the proposed actions in the application and, if necessary, prepares a Lake or Streambed Alteration Agreement (LSAA or SAA), that includes measures to protect affected fish and wildlife resources.

Native Plant Protection Act

The Native Plant Protection Act (NPPA) was created in 1977 with the intent to preserve, protect, and enhance rare and endangered plants in California (California Fish and Game Code sections

1900 to 1913). The NPPA is administered by CDFW, which has the authority to designate native plants as endangered or rare and to protect them from "take." CDFW maintains a list of plant species that have been officially classified as endangered, threatened, or rare. These special-status plants have special protection under California law and projects that directly impact them may not qualify for a categorical exemption under CEQA guidelines.

Fully Protected Species and Species of Special Concern

The classification of California fully protected (CFP) species was the CDFW's initial effort to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, amphibians and reptiles, birds, and mammals. Most of the species on these lists have subsequently been listed under CESA and/or FESA. The Fish and Game Code sections (§5515 for fish, §5050 for amphibian and reptiles, §3511 for birds, §4700 for mammals) deal with CFP species and state that these species "…may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected species" (CDFW Fish and Game Commission 1998). "Take" of these species may be authorized for necessary scientific research. This language makes the CFP designation the strongest and most restrictive regarding the "take" of these species. In 2003, the code sections dealing with CFP species were amended to allow the CDFW to authorize take resulting from recovery activities for state-listed species.

California species of special concern (CSSC) are broadly defined as animals not listed under FESA or CESA, but which are nonetheless of concern to CDFW because they are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. This designation is intended to result in special consideration for these animals by CDFW, land managers, consulting biologists, and others, and is intended to focus attention on the species to help avert the need for costly listing under FESA and CESA, and cumbersome recovery efforts that might ultimately be required. This designation also is intended to stimulate collection of additional information on the biology, distribution, and status of poorly known at-risk species, and focus research and management attention on them. Although these species generally have no special legal status, they are given special consideration under CEQA during project review.

California Migratory Bird Protection Act

Fish & Game Code section 3513 states that federal authorization of take or possession is no longer lawful under the state Fish & Game Code if the federal rules or regulations are inconsistent with state law. The California Migratory Bird Protection Act (MBPA) was passed in September 2019 to provide a level of protection to migratory birds in California consistent with the U.S. MBTA prior to the 2017 rule change limiting protection of migratory birds under the U.S. MBTA to purposeful actions (i.e., directly and knowingly removing a nest to construct a project, hunting, and poaching). Thus, under the MBPA, protections for migratory birds in California are consistent with rules and regulations adopted by the United States Secretary of the Interior under the U.S. MBTA before January 1, 2017. The MBPA reverts to existing provisions of the U.S. MBTA on January 20, 2025.

Nesting Birds

Nesting birds, including raptors, are protected under California Fish and Game Code Section 3503, which reads, "It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto." In addition, under California Fish and Game Code Section 3503.5, "it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto." Passerines and non-passerine land birds are further protected under California Fish and Game Code 3513. As such, CDFW typically recommends surveys for nesting birds that could potentially be directly (e.g., actual removal of trees/vegetation) or indirectly (e.g., noise disturbance) impacted by project-related activities. Disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "take" by CDFW.

Non-Game Mammals

Sections 4150-4155 of the California Fish and Game Code protects non-game mammals, including bats. Section 4150 states "A mammal occurring naturally in California that is not a game mammal, fully protected mammal, or fur-bearing mammal is a nongame mammal. A non-game mammal may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission." The non-game mammals that may be taken or possessed are primarily those that cause crop or property damage. Bats are classified as a non-game mammal and are protected under California Fish and Game Code, in addition to being protected if they are a listed species (e.g., CSSC, CFP, state or federal threatened, or state or federal endangered).

Sensitive Vegetation Communities

Sensitive vegetation communities are natural communities and habitats that are either unique in constituent components, of relatively limited distribution in the region, or are of particularly high wildlife value. These communities may or may not necessarily contain special-status species. Sensitive natural communities are usually identified in local or regional plans, policies, or regulations, or by the CDFW (i.e., CNDDB) or the USFWS. The CNDDB identifies a number of natural communities as rare, which are given the highest inventory priority (Holland 1986; CDFW 2016). Impacts to sensitive natural communities and habitats must be considered and evaluated under CEQA (CCR: Title 14, Div. 6, Chap. 3, Appendix G).

<u>Porter-Cologne Water Quality Control Act</u>

The intent of the Porter-Cologne Water Quality Control Act (Porter-Cologne) is to protect water quality and the beneficial uses of water, and it applies to both surface and groundwater. Under this law, the State Water Resources Control Board develops statewide water quality plans, and the RWQCBs develop basin plans, which identify beneficial uses, water quality objectives, and implementation plans. The RWQCBs have the primary responsibility to implement the provisions of both statewide and basin plans. Waters regulated under Porter-Cologne, referred to as "waters of the State," include isolated waters that are not regulated by the USACE. Projects that require a USACE permit, or fall under other federal jurisdiction, and have the potential to impact waters of the State are required to comply with the terms of the Water Quality Certification Program. If a proposed project does not require a federal license or permit, any person discharging, or proposing to discharge, waste (e.g., soil) to waters of the State must file a Notice of Intent (NOI)

or a Report of Waste Discharge and receive either waste discharge requirements (WDRs) or a waiver to WDRs before beginning the discharge.

State and Local Requirements to Control Construction-Phase and Post-Construction Water Quality Impacts:

Construction Phase

The CWA has nationally regulated the discharge of pollutants to the waters of the U.S. from any point source since 1972. In 1987, amendments to the CWA added Section 402(p), which established a framework for regulating nonpoint source stormwater discharges under the National Pollutant Discharge Elimination System (NPDES). The NPDES is a permitting system for the discharge of any pollutant (except for dredge or fill material) into waters of the U.S. In California, this permit program is administered by the RWQCBs. The NPDES Construction General Permit requirements apply to clearing, grading, and disturbances to the ground such as excavation. Construction activities on one or more acres are subject to a series of permitting requirements contained in the NPDES Construction General Permit. This permit requires the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) that includes Best Management Practices (BMPs) to be implemented during project construction. The project sponsor is also required to submit a Notice of Intent (NOI) with the State Water Resources Control Board Division of Water Quality. The NOI includes general information on the types of construction activities that would occur on the site.

Post-Construction Phase.

In many Bay Area counties, including Santa Clara County, projects must also comply with the *California Regional Water Quality Control Board, San Francisco Bay Region, Municipal Regional Stormwater NPDES Permit No. CAS612008* (Water Board Order No. R2-2022-0018). This permit, also referred to as the MRP, requires that all new and redevelopment projects implement BMPs and incorporate Low Impact Development (LID) measures into the design that prevents stormwater runoff pollution, promotes infiltration, and holds/slows down the volume of water coming from a site. LID measures can include the use of green roofs, pervious surfaces, tree planters, bioretention and/or detention basins, among other methods.

Local Regulations

City of Cupertino Municipal Code

The following provisions of the City of Cupertino Municipal Code (CMC) help to minimize adverse effects to biological resources as a result of development in Cupertino.

Chapter 14.15, Landscape Ordinance

Implements the California Water Conservation in Landscaping Act of 2006 by establishing new water-efficient landscaping and irrigation requirements. In general, any building or landscape

projects that involve more than 2,500 square feet of landscape area are required to submit a Landscape Project Submittal to the Director of Community Development for approval. Existing and established landscapes over one acre, including cemeteries, are required to submit water budget calculations and audits of established landscapes.

Chapter 14.18, Protected Trees

Provides regulations for the protection, preservation, and maintenance of trees of certain species and sizes. Removal of a protected tree requires a permit from the City of Cupertino. "Protected" trees include trees of a certain species and size in all zoning districts; heritage trees in all zoning districts; any tree required to be planted or retained as part of an approved development application, building permit, tree removal permit, or code enforcement action in all zoning districts; and approved privacy protection planting in R-1 zoning districts. Protected trees include trees of the following species that have a minimum single trunk diameter of 12 inches (38-inch circumference) or a minimum multi-trunk diameter of 24 inches (75-inch circumference) measured as 4.5 feet from the natural grade: native oak tree species (Quercus spp.), including coast live oak (Quercus agrifolia), valley oak (Quercus lobata), black oak (Quercus kelloggii), blue oak (Quercus douglasii), and interior live oak (Quercus wislizeni); California buckeye (Aesculus californica); big leaf maple (Acer macrophyllum); deodar cedar (Cedrus deodara); blue atlas cedar (Cedrus atlantica 'Glauca'); bay laurel or California bay (Umbellularia californica); and western sycamore (Platanus racemosa).

Cupertino General Plan

The Cupertino General Plan Community Vision 2015-2040 (City of Cupertino 2015) includes policies that are relevant to the protection of biological resources and applicable to the proposed project. The policies are identified in Chapter 6, Environmental Resources and Sustainability, of the General Plan and are listed below.

> **Policy ES-5.2 Development Near Sensitive Areas** - Encourage the clustering of new development away from sensitive areas such as riparian corridors, wildlife habitat and corridors, public open space preserves and ridgelines. New developments in these areas must have a harmonious landscaping plan approved prior to development.
>
> **Policy ES-5.3 Landscaping in and Near Natural Vegetation** - Preserve and enhance existing natural vegetation, landscape features and open space when new development is proposed within existing natural areas. When development is proposed near natural vegetation, encourage the landscaping to be consistent with the palate of vegetation found in the natural vegetation.
>
> **Policy ES-5.6 Recreation and Wildlife** - Provide open space linkages within and between properties for both recreational and wildlife activities, most specifically for the benefit of wildlife that is threatened, endangered, or designated as species of special concern.

Valley Water – Water Resources Protection Ordinance

This ordinance protects water resources managed by the Santa Clara Valley Water District (Valley Water) by regulating modifications, entry, use or access to water district facilities and/or water

district easements. Valley Water uses the Water Resources Protection Manual to administer the Water Resources Protection Ordinance. The manual includes requirements, recommendations, and design guides for protection of riparian corridors, native landscaping, temporary erosion control options, encroachment between top of bank, trail construction, and flood protection. Saratoga Creek within the project area is subject to Valley Water jurisdiction.

3.4.3 Impact Discussion

Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

Special-Status Plant Species

No Impact. According to the constraints analysis, there are 45 special-status plant species that could potentially occur within the project area. All 45 of those potentially occurring special-status plant species were determined to be absent from the project site for at least one of the following reasons: (1) a lack of specific habitat (e.g., freshwater marsh) and/or edaphic requirements (e.g., serpentine soils) for the species in question; (2) the geographic range of the species does not overlap the study area; (3) the species is known to be extirpated from the site vicinity, and/or (4) the habitats within the study area are too degraded to reasonably expect any special-status species to occur there. Because there is no potential for special-status plant species to occur within the study area, no mitigation measures would be required for the Plan.

Special Status Animals

Less than Significant with Mitigation. The constraints analysis determined that based on USFWS and CNDDB databases and other data sources, as well as an assessment of the habitats within the study area, several special-status species occur within the study area region, including the southwestern pond turtle, yellow warbler, and San Francisco dusky-footed woodrat. Although those three species have some potential to occur within the study area, most of the species that were considered in the analysis are not expected to occur within the study area due to the lack of suitable habitat (e.g., grassland, marsh, serpentine, perennial stream), the site is outside the range of the species, and/or it is isolated from the nearest known extant population by development or otherwise unsuitable habitat. Other species considered for occurrence because potentially suitable habitat is present but determined to have no potential to occur are the Central California Coast steelhead and California red-legged frog. Those species considered for occurrence and the reasons they were determined to occur or not occur are discussed below.

Southwestern Pond Turtle. The southwestern pond turtle occurs in ponds, streams, and other wetland habitats in the Pacific slope drainages of California (Bury and Germano 2008). Ponds or slack-water pools with suitable basking sites (such as logs) are an important habitat component for this species, and southwestern pond turtles do not commonly occur along high-gradient streams. Females lay eggs in upland habitats, in clay or silty soils in unshaded areas. Juveniles occur in shallow aquatic habitats with emergent vegetation and ample invertebrate prey. Nesting habitat is typically found within 600 feet of aquatic habitat (Jennings and Hayes 1994), but if no

suitable nesting habitat can be found close by, adults may travel overland considerable distances to nest.

Saratoga Creek is an intermittent stream and was dry at the time of the survey. Southwestern pond turtles are not expected to be present in the creek due to the lack of emergent vegetation and lack of upland breeding habitat along the stretch of the creek. However, the creek may provide potential dispersal habitat for turtles in years when water is present for sufficient periods of time. Pond turtles are not known to occur within the study area but have been documented in San Tomas-Aquino Creek, near the confluence with Calabazas Creek, and in San Tomas-Aquino Creek, approximately 6.5 and nine miles north of the study area (CNDDB 2022). Even though the study area contains suitable dispersal habitat for western pond turtle, it is highly unlikely that pond turtles would disperse into the study area due to the greater than six-mile distance separating the site from the nearest recorded occurrence, and due to the high levels of disturbance and isolation from natural habitats in the region. Additionally, barriers to aquatic dispersal of fish further downstream may also block pond turtle movement. Nonetheless, this species may occur elsewhere in Saratoga Creek (e.g., upstream), thus; it is possible that an individual could occasionally disperse into the study area. Although the majority of the Plan would be constructed outside the riparian corridor, minor work within the riparian corridor or creek itself (e.g.,stormwater outfall) and work adjacent to the riparian area could result in injury or mortality of turtles due to equipment, vehicle traffic, and foot traffic, a potentially significant impact under CEQA due to the regional rarity of this species.

> **Impact BIO-1.** Project construction and project activities could result in direct and indirect impacts to the southwestern pond turtle.
>
> **Mitigation Measure BIO-1a. Conduct Preconstruction Survey.** No more than 24 hours prior to the date of initial ground disturbance, a pre-construction survey for southwestern pond turtle will be conducted within the impact area by a qualified biologist. The survey will consist of walking the limits of impact to ascertain the possible presence of the species. The qualified biologist will investigate all potential areas that could be used by southwestern pond turtle for feeding, sheltering, movement, and other essential behaviors.
>
> A qualified biologist is an individual who shall have a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting surveys for each amphibian and reptile special-status species that may be present within the project areas. During or following academic training, the qualified biologist shall have achieved a high level of professional experience and knowledge in biological sciences and special-status species identification, ecology, and habitat requirements. Additionally, the qualified biologist must be permitted or authorized to handle and relocate southwestern pond turtle.
>
> **Mitigation Measure BIO-1b. Worker Environmental Awareness Program.** All construction personnel will participate in a worker environmental awareness program. These personnel will be informed about the possible presence of all special-status species and habitats associated with the species identified here to be potentially present in the parcel and that unlawful take of the animal or destruction of its habitat is a violation of law. Prior to construction activities, a qualified biologist will instruct all construction personnel about (1) the description and status of the species; (2) the importance of their

associated habitats; (3) a list of measures being taken to reduce impacts on these species during project construction and implementation; and (4) measures to be followed if special-status species are encountered during construction activities. A fact sheet conveying this information will be prepared for distribution to the construction crew and anyone else who enters the project site.

Mitigation Measure BIO-1c. Install Wildlife Exclusion Barrier. Prior to any ground disturbance in the work area, a temporary wildlife exclusion barrier will be installed along the limits of disturbance. A qualified biologist will inspect the area prior to installation of the barrier. The barrier will be designed to allow the southwestern pond turtles to leave the work area and prevent them from entering the work area. The fence will remain in place until all development activities have been completed. This barrier will be inspected daily and maintained and repaired as necessary to ensure that it is functional and is not a hazard to southwestern pond turtles on the outer side of the barrier.

Mitigation Measure BIO-1d. Construction Monitoring. A qualified biologist or biological monitor will be onsite during all project activities that may result in the take of any special-status species. The qualified biologist will be given the authority to freely communicate verbally, telephone, electronic mail, or in writing at any time with construction personnel, any other person(s) at the project site, otherwise associated with the project, and regulatory agencies (e.g., USFWS or CDFW). The qualified biologist or biological monitor will have oversight over implementation of all the mitigation measures and will have the authority and responsibility to stop project activities if they determine any of the measures are not being fulfilled.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the project area and be familiar with the habits and behavior of those species.

Yellow Warbler. The yellow warbler is an uncommon breeder in riparian habitats in Santa Clara County. Suitable breeding habitat consists of moist riparian corridors, often dominated with an overstory of mature cottonwoods and western sycamores, a midstory of box elder and willow, and a dense shrub understory (Bousman 2007). Yellow warblers have been documented in Saratoga Creek (Cornell Lab of Ornithology 2022); however, within the study area Saratoga Creek and its associated riparian habitat does not support a dense understory habitat to support breeding. That said, yellow warblers are common migrants throughout the South Bay in spring and fall, and the species may occur on the site during migration. However, because the yellow warbler is a species of special concern only when breeding, those occurring as migrants are not considered a special-status species and would not be affected by the Plan.

San Francisco Dusky-Footed Woodrat. The San Francisco dusky-footed woodrat occurs in a variety of woodland and scrub habitats. They prefer riparian and oak woodland forests with dense understory cover, or thick chaparral habitat, and build large, complex houses of sticks and other woody debris, which may be maintained by a series of occupants for several generations (Carraway and Verts 1991; Lee and Tietje 2005). They often build these stick houses in the canopy of trees. Woodrats also build nests in human-made structures such as electrical boxes, sheds, pipes, abandoned vehicles, wooden pallets, and portable storage containers. The

breeding season for dusky-footed woodrat begins in February and sometimes continues through September, with females bearing a single brood of one to four young per year (Carraway and Verts 1991).

Suitable habitat for dusky-footed woodrat is present throughout the study area in the mixed oak forest and woodland and coast live oak woodland and forest habitats within the study area. Additionally, 11 active woodrat middens were observed within the coast live oak woodland habitat and six other middens were observed in the mixed oak forest and woodland habitat, though five of those middens are located at or below the top of bank areas. Therefore, San Francisco dusky-footed woodrat is determined to be present within the study area.

There is some potential that the woodrat middens within the upland areas (outside riparian corridor) could be impacted by park and trail development. Although San Francisco dusky-footed woodrats are abundant regionally, they are a California Species of Special Concern. Furthermore, they are ecologically important as prey a resource for a variety of predatory species, and woodrat middens provide dens and refugia for a variety of invertebrate, reptile, amphibian, and small mammal species, the loss of active middens would be significant under CEQA.

> **Impact BIO-2:** Project construction and project activities could result in direct and indirect impacts to the San Francisco dusky-footed woodrat.
>
> **Mitigation Measure BIO-2a: Pre-Construction Survey for San Francisco Dusky-Footed Woodrats.** Within 30 days prior to the start of construction activities, a qualified biologist shall map all San Francisco dusky-footed woodrat houses within a 50-foot buffer around the project footprint. Environmentally sensitive habitat fencing shall be placed to protect the houses with a minimum 50-foot buffer. If a 50-foot buffer is not feasible, a smaller buffer may be allowable based on advice from a qualified biologist with knowledge of woodrat ecology and behavior, or Mitigation Measure BIO-2b may be implemented.
>
> **Mitigation Measure BIO-2b: Relocation of Woodrat Houses.** In the unlikely event that one or more woodrat houses are determined to be present and physical disturbance or destruction of the houses cannot be avoided, then the woodrats shall be evicted from their houses and the nest material relocated outside of the disturbance area, prior to onset of activities that would disturb the house, to avoid injury or mortality of the woodrats. The reproductive season for San Francisco dusky-footed woodrats typically starts in February or March and breeding activity usually continues to July but can extend into September. Thus, relocation efforts should be completed in the fall to minimize the potential for impacts on young woodrats in the house. Additionally, it is recommended that the period between the completion of the relocation efforts and the start of construction activities be minimized to reduce the potential for woodrats to reconstruct houses in the project footprint prior to the start of construction activities.

Relocation generally involves first choosing an alternate location for the house material based on the following criteria: 1) proximity to current nest location; 2) safe buffer distance from planned work; 3) availability of food resources; and 4) availability of cover. An alternate house structure will then be built at the chosen location. Subsequently, during the evening hours (i.e., within 1 hour prior to sunset), a qualified biologist will slowly dismantle the existing woodrat house to allow any woodrats to flee and seek cover. All sticks from the nest will be collected and spread over the

alternate structure. However, alternative relocation measures can be employed as advised by a qualified wildlife biologist in consultation with CDFW.

With the Implementation of Mitigation Measure BIO-2a and BIO-2b, impacts to San Francisco dusky-footed woodrats would be less than significant.

Central California Coast Steelhead. The Central California Coast steelhead Distinct Population Segment (DPS) is known to occur in some South Bay streams. Historically, steelhead runs occurred in many streams on the Santa Clara Valley floor, including Saratoga Creek. However, passage barriers within many of these streams preclude passage through these watersheds. One such barrier exists at the confluence of Saratoga Creek and San Tomas-Aquino Creek approximately 3 miles north of the study area, and this precludes upstream migration or outmigration of resident/non-anadromous rainbow trout, which are known to occur in the upper reaches of the Saratoga Creek Watershed (Leidy et al 2005, SCBWMI 2001). Additionally, due to the intermittent nature of the creek and the lack of water during migratory periods in the spring and fall, there is no potential for out migration or upstream migration. Thus, steelhead are determined to be absent from Saratoga Creek within the study area.

***California Red-legged Frog*.** The California red-legged frog inhabits freshwater pools, streams, and ponds throughout the Central California Coast Range and isolated portions of the western slope of the Sierra Nevada (Fellers 2005). Its preferred breeding habitat consists of deep perennial pools with emergent vegetation for attaching egg clusters (Fellers 2005), as well as shallow benches to act as nurseries for juveniles (Jennings and Hayes 1994). However, red-legged frogs will also breed in small, shallow pools as well as intermittent streams. Non-breeding frogs may be found adjacent to streams and ponds and may travel up to two miles from their breeding locations across a variety of upland habitats to other suitable non-breeding habitats (Bulger et al. 2003; Fellers and Kleeman 2007). However, the distance moved is highly site-dependent and is influenced by the local landscape (Fellers and Kleeman 2007). California red-legged frogs generally disperse during the wet season from mid-October to mid-April.

The California red-legged frog has been documented approximately five miles west of the study area along Permanente Creek and within the Gate of Heaven Cemetery, and approximately 5.5 miles south of the study area within Saratoga Creek (CNDDB 2022). Although Saratoga Creek was dry at the time of the survey, areas of potential pooling and shelves were observed within the creek. However, there have been no documented occurrences of the California red-legged frog during extensive surveys of creeks in the Santa Clara Valley floor, including Saratoga Creek. Thus, this species is considered to be extirpated from the urbanized Santa Clara Valley floor due to intensive development, habitat alteration, and presence of non-native predators, including bullfrogs, and is not expected to occur on the site (Valley Water 2011).

Roosting Bats

Less than Significant with Mitigation. Bats and other non-game mammals are protected by California Fish and Game Code Section 4150, which states that all non-game mammals or parts thereof may not be taken or possessed except as provided otherwise in the code or in accordance with regulations adopted by the commission. Activities resulting in mortality of non-game mammals (e.g., destruction of an occupied nonbreeding bat roost, resulting in the death of bats),

or disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), may be considered "take" by the CDFW.

Within the study area, trees within the riparian corridor provide potentially suitable roosting habitat for common colonially roosting bat species such as the Yuma myotis and Mexican free-tailed bat. Potentially suitable roosting habitat within the riparian area includes tree cavities, crevices, and exfoliating bark. Many of the trees within the study area do not support habitat suitable to support large maternity colonies, but smaller cavities and crevices may support small numbers of roosting bats. Additionally, the Moorpark Avenue Bridge directly adjacent to the northern portion of the study area provides potentially suitable roosting habitat in the form of expansion joints, and these structures could potentially support bat maternity colonies. However, no bats were observed within the joints, nor were any signs of bat presence (e.g., guano or urine staining) detected within or below the joints of the bridge during the reconnaissance site visit, indicating that bats are not currently roosting in the bridge.

Activities such as tree removal could result in injury or mortality of common bat species, or disturbance that causes the loss of a maternity colony (resulting in the death of young). Additionally, because the Moorpark Avenue Bridge is located adjacent to the study area there is some potential for noise from construction of the project to impact maternity colonies if present. Such impacts would be considered significant under CEQA.

> **Impact BIO-3:** Project construction activities could potentially result in the abandonment of roosting bat nest sites.
>
> **Mitigation Measure BIO-3a: Pre-Construction Survey for Roosting Bats.** A survey of culverts within the project site, including a 50-foot buffer (as feasible) shall be conducted by a qualified bat biologist no less than 30 days before the start of construction-related activities (including but not limited to mobilization and staging, clearing, grubbing, tree removal, vegetation removal, fence installation, demolition, and grading). If construction activities are delayed by more than 30 days, an additional bat survey shall be performed. The survey may be conducted at any time of year but should be conducted in such a way to allow sufficient time to determine if special-status bats or maternity colonies are present on the site. The results of the survey shall be documented.
>
> If no habitat or signs of bats are detected during the habitat suitability survey, no further surveys are warranted. If suitable habitat is present and signs of bat occupancy (e.g., guano pellets or urine staining) are detected, Mitigation Measure BIO-3b shall apply.
>
> **Mitigation Measure BIO-3b: Acoustic Survey.** If suitable habitat is present and signs of bat occupancy are detected, a follow-up dusk emergence survey shall be conducted no less than 30 days prior to construction activities. A dusk survey will determine the number of bats present and will also include the use of acoustic equipment to determine the species of bats present. The results of the survey shall be documented. If an active roost is observed within the project site, Mitigation Measure BIO-3c shall apply.
>
> **Mitigation Measure BIO-3c: Roost Buffer.** If a day roost or a maternity colony is detected and is found sufficiently close to work areas to be disturbed by construction activities, the qualified biologist shall determine the extent of a construction-free buffer zone to be established around the roost in consultation with CDFW. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment

staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading shall be permitted. Monitoring shall be required to ensure compliance with relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.

The implementation of Mitigation Measures BIO-3a to BIO-3c would reduce impacts to roosting bats to a less than significant level.

Nesting Birds

Less Than Significant with Mitigation. All migratory bird species and their nests are protected under the MBTA and California Fish and Game Code. Project activities must comply with the provisions of the MBTA and California Fish and Game Code (i.e., avoid take of protected nesting birds). Therefore, project-related impacts to nesting birds would be considered significant under CEQA.

Construction disturbance during the avian breeding season (February 1 through September 15, 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. In addition, noise and increased construction activity could temporarily alter foraging behavior, potentially resulting in the abandonment of nest sites.

Impact BIO-4: Construction disturbance during the avian breeding season could cause the incidental loss of eggs or nestlings, or cause the abandonment of nests, resulting in the incidental take of protected nesting birds.

Mitigation Measure BIO-4: Pre-Construction/Pre-Disturbance Survey for Nesting Birds.

Avoidance. To the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code would be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31.

Pre-Construction Surveys. If it is not possible to schedule construction activities between September 1 and January 31, then preconstruction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests would be disturbed during project implementation. These surveys shall be conducted no more than five days prior to the initiation of any site disturbance activities and equipment mobilization, including tree, shrub, or vegetation removal, fence installation, grading, etc. If project activities are delayed by more than five days, an additional nesting bird survey shall be performed. During this survey, the biologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, culverts) in and immediately adjacent to the impact area for nests. Active nesting is present if a bird is building a nest, sitting in a nest, a nest has eggs or chicks in it, or adults are observed carrying food to the nest. The results of the surveys shall be documented.

If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist will determine the extent of a construction-free buffer zone to be established around the nest (typically up to 1,000 feet for raptors and up to 250 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. Within the buffer zone, no site disturbance and mobilization of heavy equipment, including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading will be permitted until the chicks have fledged. Monitoring shall be required to ensure compliance with MBTA and relevant California Fish and Game Code requirements. Monitoring dates and findings shall be documented.

The implementation of Mitigation Measure BIO-4 would reduce impacts to nesting birds to a less than significant level.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service?

Less Than Significant with Mitigation.

Waters of the U.S./State and California Department of Fish and Wildlife Regulated Habitats. The U.S. Army Corps of Engineers (USACE) regulates waters of the U.S. under Section 404 of the Clean Water Act (CWA) and the Regional Water Quality Control Board (RWQCB) regulates waters of the state under Section 401 of the CWA. Within the study area, Saratoga Creek meets the definition of waters of the U.S/state and any impacts on these habitats would be subject to jurisdiction by the USACE and RWQCB. Within the study area, waters of the U.S. include the channel of Saratoga Creek up to the ordinary high-water mark (OHWM). The USACE defines the OHWM as “the line on the shore that is established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriated means that consider the characteristics of the surrounding areas.” Waters of the state include the same features regulated by the USACE but may also extend to the top of bank (TOB) or beyond. The jurisdictional limits of the USACE (OHWM) and RWQCB (TOB) are shown in Appendix A, Figure 3.4-1, through Figure 3.4-4, and below. The TOB is also shown in these figures to show the possible limits of the RWQCB, which in practice is generally the extent of RWQCB jurisdiction because actions below TOB have a high potential to affect water quality. However, the RWQCB may assume jurisdiction to the outer drip line of the riparian canopy outside of the TOB, which parallels CDFW’s jurisdiction (see below) depending on potential project impacts to water quality. The jurisdictional limits of RWQCB for a given project is based on a review of the vegetation communities, other land cover types, and the project description.

Source: Google Earth 2020; MIG 2022

- Study Area
- Ordinary High Water Mark (OHWM)
- Top of Bank (TOB)
- Riparian Canopy
- Coast Live Oak Woodland and Forest Alliance (1.82 acres)
- Mixed Oak Forest and Woodland Alliance (3.93 acres)
- Developed (3.39 acres)
- Intermittent Stream (1.01 acres)
- San Francisco Dusky-Footed Woodrat Midden
- Bat Roost Habitat

Figure 3.4-1 Land Cover Types, Habitats, and Natural Communities

Lawrence-Mitty Park and Trail Plan

MIG

Source: Google Earth 2020; MIG 2022

- Study Area
- Ordinary High Water Mark (OHWM)
- Top of Bank (TOB)
- Riparian Canopy
- Coast Live Oak Woodland and Forest Alliance (1.82 acres)
- Mixed Oak Forest and Woodland Alliance (3.93 acres)
- Developed (3.39 acres)
- Intermittent Stream (1.01 acres)
- San Francisco Dusky-Footed Woodrat Midden

Figure 3.4-2 Land Cover Types, Habitats, and Natural Communities

Lawrence-Mitty Park and Trail Plan

MIG

Source: Google Earth 2020; MIG 2022

- Study Area
- Ordinary High Water Mark (OHWM)
- Top of Bank (TOB)
- Riparian Canopy
- Coast Live Oak Woodland and Forest Alliance (1.82 acres)
- Mixed Oak Forest and Woodland Alliance (3.94 acres)
- Developed (3.38 acres)
- Intermittent Stream (1.01 acres)
- San Francisco Dusky-Footed Woodrat Midden

Figure 3.4-3 Land Cover Types, Habitats, and Natural Communities

Lawrence-Mitty Park and Trail Plan

Source: Google Earth 2020; MIG 2022

- Study Area
- Ordinary High Water Mark (OHWM)
- Top of Bank (TOB)
- Riparian Canopy
- Coast Live Oak Woodland and Forest Alliance (1.82 acres)
- Mixed Oak Forest and Woodland Alliance (3.93 acres)
- Developed (3.39 acres)
- Intermittent Stream (1.01 acres)
- San Francisco Dusky-Footed Woodrat Midden

Figure 3.4-4 Land Cover Types, Habitats, and Natural Communities

Lawrence-Mitty Park and Trail Plan

MIG

The California Fish and Game Code includes regulations governing the use of, or impacts to, many of the state's fish, wildlife, and sensitive habitats, including the bed and banks of rivers, lakes, and streams. Saratoga Creek, including the bed and banks of the creek up to the outer limits of the riparian canopy, which extends beyond the TOB, are subject to CDFW jurisdiction under Section 1600 et seq. of the California Fish and Game Code (Appendix A, Figures 3a to 3d). CDFW also may exert jurisdiction beyond the TOB and riparian vegetation depending on an assessment of the potential impacts to wildlife and habitats within the study area.

The California Department of Fish and Wildlife regulates and tracks sensitive natural communities and ranks vegetation alliances (CDFW 2022). The riparian woodland within Saratoga Creek was mapped as Mixed Oak Forest and Woodland Alliance as defined by CDFW's Vegetation Classification and Mapping Program (VegCAMP) (CDFW 2022). This alliance is ranked as G4/S4, meaning that globally and locally it is "apparently secure." Nevertheless, CDFW considers riparian communities to be sensitive because they provide important ecological functions and values.

The proposed project would not include any park or trail improvements that would encroach into the channel or banks below the TOB of Saratoga Creek. Some of the proposed features of the project, such as the multi-use trail, creekside decks/overlooks, and native plant restoration areas would be developed within the identified Mixed Oak Forest and Woodland Alliance habitat area between the TOB and the edge of the riparian canopy however, which would make the project subject to the permitting and mitigation requirements of the CDFW. Compliance with these requirements, as well as implementation of Mitigation Measures BIO-1a-d, Bio-2a and 2b, BIO-3a-c, and BIO-4, described above, would reduce potential impacts to riparian habitat or other sensitive natural communities to less than significant.

c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

No Impact. The proposed project would not include any park or trail improvements that would encroach into the channel or banks below the TOB of Saratoga Creek, and would therefore not impact the channel bed or banks of the creek.

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Less than Significant Impact. Wildlife corridors are essential for a variety of common and special-status species including many mammals, fish, herptiles, and birds, and they are increasingly important in urban landscapes with fragmented habitat patches. In the region of the study area, Saratoga Creek traverses across a developed urban landscape and is not located adjacent to any natural areas for nearly 13 miles between the foothills in Saratoga to the Bay. Thus, the creek functions as an isolated corridor primarily for wildlife that are commonly found in developed areas. Additionally, the site has limited value for fish and other aquatic-dependent organisms during portions of the year when the creek is dry. Due to the highly developed conditions in the project region, the vegetation communities along Saratoga Creek within the study area functions as an important corridor for a variety of resident and migratory species to shelter, forage, and breed.

Although the adjacent Lawrence Expressway and surrounding developed areas are lighted with streetlights and street lamps, much of the study area is shielded from this lighting by trees along the site, and the site itself does not currently have artificial lighting. Artificial lighting in and near riparian corridors can interfere with various processes such as movement patterns, feeding and breeding behavior of birds and mammals, and potentially other wildlife taxa that make daily/seasonal movements through Saratoga Creek. Impacts on wildlife movement may be considered significant under CEQA.

No lighting is currently proposed in the Park Plan. If a restroom is built in the future, it may have exterior lighting but would be subject to Cupertino Municipal Code section 19.102.040 which states that outdoor lighting is required to be fully shielded fixtures and directed downward to meet the particular need and away from adjacent properties and right-of-way. Low-voltage lighting is excepted from the use of shields provided that they use no more than ten (10) watt incandescent bulb or LED equivalent, or maximum of 150 lumens (Cupertino Municipal Code 19.102.104(B)(1.a), whichever is less and not directed toward the right-of-way. The location of these park and trail features outside of the riparian corridor would also protect the functionality of the creek corridor as a movement corridor for wildlife, and reduce potential impacts caused by human activity.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Less Than Significant Impact.

Protected Trees. According to Title 14, Chapter 14.18 Protected Trees of the City's Municipal Code, protected trees include trees of a certain species and size in all the City's zoning districts, heritage trees in all zoning districts, any tree required to be planted or retained as part of an approved development application, building permit, tree removal permit or code enforcement action in all zoning districts, and approved privacy protection planting in R-1 zoning districts. Protected trees include trees of the following species that have a minimum single trunk diameter of 12 inches (38-inch circumference) or a minimum multi-trunk diameter of 24 inches (75-inch circumference) measured as 4.5 feet from the natural grade:

- native oak tree species including coast live oak, valley oak, black oak, blue oak, and interior live oak
- California buckeye
- big leaf maple
- deodar cedar
- blue atlas cedar
- bay laurel or California bay; and
- western sycamore.

A tree survey was conducted by SBCA Tree Consulting in February 2022 (SBCA 2022) and BKF subsequently mapped these trees in April 2022. A copy of the tree survey report and the BKF

Civil Site Exhibit are included in Appendix B of this Initial Study. The tree survey identified 364 trees of 26 species. Of the 364 trees that were surveyed, 119 trees are protected trees that meet the Title 14, Chapter 14.18 definition of Protected Trees. It is assumed that the City will comply with the tree removal requirements contained in their ordinance, including replacing protected trees removed at a 1:1 or 2:1 replacement ratio and tree protection measures, such as implementation of tree protection zones (i.e., protecting trees that are intended to remain on the site from incidental project disturbance) and development of a tree protection plan by a certified arborist, for trees that will be preserved.

The SBCA report recommended that 16 of the existing trees on the site be removed, including coast live oak, Monterey pine, and London plane trees. Poor health and structure were among the reasons cited for the removals. Several of the trees were also determined to have poor suitability for retention due their location beneath high voltage wires, making future pruning and maintenance problematic. Others were recommended for removal due to current and expected future decline. In addition to the 16 trees recommended for removal in the report, the project proposes to remove three trees (one coast live oak and two California sycamores) within the riparian canopy in order to make space for the proposed creek overlook amenity. These three are described in the arborist report as having poor suitability for retention and poor structure.

Conformance with the City's tree removal ordinance requirements will reduce potential impacts to less than significant.

Valley Water – Water Resources Protection Ordinance. This ordinance protects water resources managed by Valley Water by regulating modifications, entry, use or access to water district facilities and/or water district easements. Valley Water uses the Water Resources Protection Manual (Valley Water 2006) to administer the Water Resources Protection Ordinance. The manual includes requirements, recommendations, and design guides for protection of riparian corridors, native landscaping, temporary erosion control options, encroachment between top of bank, trail construction, and flood protection.

The existing Saratoga Creek Trail and Saratoga Creek within the study area may be subject to Valley Water jurisdiction if work encroaches within Valley Water property or easements. The proposed Plan would need to comply with the conditions of the Water Resources Protection Ordinance if any design feature results in the modification of any Valley Water facility including, but not limited to, grading and the removal or installation of vegetation. Such actions would require an encroachment permit from Valley Water.

The project would comply with the requirements and design guidelines of the Valley Water's Resources Protection Manual (Santa Clara Valley Water District 2006) for any activities that would occur within the limits of Valley Water's property. The manual outlines requirements for activities related to riparian corridor protection, general landscaping, encroachments between the TOB, stormwater outfalls, site drainage, and trail constructions. Some of these requirements include the planting of native species, locating paved areas outside of riparian corridors, directing nighttime lighting away from riparian corridors, using drought-tolerant landscaping, and avoidance of new outfalls, among other requirements and recommendations. Conformance with these requirements would reduce potential impacts to less than significant.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

No Impact. There is no adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan that applies to the project site. Thus, the proposed project would not conflict with such a plan.

3.5 CULTURAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	☐	☒	☐	☐
c) Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☒	☐	☐

The following discussion is based on an Archaeological Review prepared for the project by Basin Research Associates (October 12, 2023). The report is confidential and held on file by the City.

3.5.1 Environmental Setting

Prehistoric Period

The project area is within the territory of the Tamyen (Tamien) tribelet of the Ohlone or Ohlone/Costanoan Native Americas. The Tamyen held the eastern Santa Clara Valley along the Guadalupe River to present-day Cupertino on upper Stevens Creek to the east.

No known prehistoric, ethnographic and/or mission era settlements or contemporary Native American resources, including sacred places and/or traditional use areas, have been identified in or adjacent to the project.

Hispanic Period

The Spanish philosophy of government in northwestern New Spain was directed at the founding of presidios, missions, and secular towns with the land held by the Crown (1769-1821), while the later Mexican Period policy (1822-1848) stressed individual ownership of the land (Hart 1987). The project site is within former Rancho Quito, granted by Governor Alvarado to Jose Zenon Fernandez and Jose Noriega, his son-in-law, on March 12, 1841. They transferred the land to Ignacio Alviso on July 8, 1844 and it was patented to his son, Manuel Alviso, with heirs of Fernandez on May 14, 1866. Jose Ramon Arguello purchased Alviso's land and lived at the junction of Saratoga Avenue and Quito Road until his death in 1876. None of the known routes of Spanish expeditions proceed through or near the project.

No known Hispanic Period dwellings or features (e.g., corrals, outstations, orchards, trails/roads, etc.) have been identified in or adjacent the project site.

American Period

Cupertino was incorporated as Santa Clara County's thirteenth city in October 1955. The village of Cupertino – initially known as "West Side" was established at the crossroads of the Saratoga-Sunnyvale Road (present-day De Anza Boulevard) and Stevens Creek Road. The 1899 USGS Palo Alto topographic quadrangle shows "West Side" Stevens Creek Boulevard and De Anza Boulevard , approximately 2.0 miles west of the project alignment.; "Cupertino" is not mapped. Later topographic quadrangles show "Cupertino" place at the West Side/crossroads location. The "Cupertino" post office was established in 1882 and discontinued in 1894 while the "Westside" post office was established in 1892 and changed to "Cupertino" in 1900. Features of note in the general study area are limited to creeks, roads and the early population clusters associated with "Cupertino." Present-day Lawrence Expressway adjacent to the Lawrence-Mitty Park alignment has been in existence since at least 1866 and known variously as Saratoga-Alviso Road north of Stevens Creek Road (1876), later as Lawrence Road (1942), but in 1953 and 1961 as Doyle Road. The Lawrence Road/Doyle Road alignment was transformed into an Expressway between 1961 and 1973.

Saratoga Creek within the Lawrence-Mitty Park project site is an engineered channel. Historic maps label the creek variously: as the "Arroyo Quito or Campbells Creek" in 1873. "Campbells Creek" in 1866, 1876, 1899 (surveyed 1895) and 1940s and as "Saratoga Creek" in 1953 onward. The creek was apparently intermittent in the 1940s and subject to engineering by 1953. The vicinity of the project site was agricultural through 1953 with urbanization on the west side of the project site between 1953 and 1961 in keeping with the post-World War II development of the Santa Clara Valley.

No known significant or listed American Era sites or places are located in and/or adjacent to the project site.

Records Search Results and Native American Outreach

Records Search

A prehistoric and historic site record and literature search was completed by the CHRIS/NWIC (File No. 23-0201 dated 9/09/2023 by Murazzo). Reference material from the Bancroft Library, University of California, Berkeley and Basin Research Associates, San Leandro was also consulted. Specialized listings for cultural resources include:

- California History Plan (CAL/OHP 1973);
- California Inventory of Historic Resources (CAL/OHP 1976);
- Five Views: An Ethnic Sites Survey for California (CAL/OHP 1988);
- National Register of Historic Places (NRHP) listings in Santa Clara County (USNPS 2023ac);
- Built Environment Resources Directory (BERD) for Santa Clara County (CAL/OHP 2023a);

- California Historical Resources for Santa Clara County (CAL/OHP 2023b); Archaeological Determinations of Eligibility for Santa Clara County [ADOE] (CAL/OHP 2023c); and,

- Other relevant sources (see References Cited).

The CHRIS/NWIC records search was negative for recorded archaeological sites, built environment resources, and/or reported resources within or adjacent to the project site. Three reports are on file with the CHRIS/NWIC within the project site or adjacent. All are negative for resources. The reports include: Proposed HOV lanes along Lawrence Expressway; a 13-acre triangular parcel near Lawrence Expressway and Bollinger Road; and 43 proposed/existing spreader dam locations.

No listed or known National Register of Historic Places (NRHP) and/or California Register of Historical Resources (CRHR) were identified in or adjacent to the project site. No potentially significant local, state or federal cultural resources/historic properties, landmarks, or points of interest have been identified in or adjacent to the project site.

Native American Outreach

The Native American Heritage Commission (NAHC) was contacted for a review of the Sacred Lands File (SLF). The results were positive and the NAHC recommended contacting recommended Native Americans individuals and groups. As previously stated at the beginning of Chapter 3, outreach to the Tamien Nation of the Greater Santa Clara County was made by the City in response to their May 28, 2021 request for consultation City pursuant to PRC section 21080.3.1, and a response was received by Tamien Nation Chairperson Quirina Luna Geary. In addition to the Tamien Nation, outreach letters were sent via email on January 9, 2024 to the remaining tribes on the list provided by the NAHC. No responses were received by the tribes, and no other agencies, departments or local historical societies were contacted regarding landmarks, potential historic sites or structures.

No known prehistoric, ethnographic and/or mission era settlements or contemporary Native American resources, including sacred places and/or traditional use areas, have been identified in or adjacent to the project.

Field Inventory

An archaeological field inventory was conducted within a 0.25-mile radius of the project site by Basin Research Associates on October 5, 2023. No surface or subsurface indications of prehistoric or historic archaeological material or culturally modified sediments were observed within or adjacent to the project alignment or within or adjacent to Saratoga Creek.

3.5.2 Regulatory Setting

Federal

National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act of 1966 (NHPA) and the Archaeological Resource Protection Act of 1979. These laws maintain processes for determination of the effects on historical properties eligible for listing in the National Register of

Historic Places (NRHP). Section 106 of the NHPA and related regulations (36 Code of Federal Regulations [CFR] Part 800) constitute the primary federal regulatory framework guiding cultural resources investigations and require consideration of effects on properties that are listed or eligible for listing in the NRHP. Impacts to properties listed in the NRHP must be evaluated under CEQA**.**

State

California Environmental Quality Act

Pursuant to CEQA, a historical resource is a resource listed in, or eligible for listing in, the California Register of Historical Resources (CRHR). In addition, resources included in a local register of historic resources or identified as significant in a local survey conducted in accordance with state guidelines are also considered historic resources under CEQA, unless a preponderance of the facts demonstrates otherwise. Per CEQA, the fact that a resource is not listed in or determined eligible for listing in the CRHR or is not included in a local register or survey shall not preclude a Lead Agency, as defined by CEQA, from determining that the resource may be a historic resource as defined in California Public Resources Code (PRC) Section 5024.1. CEQA applies to archaeological resources when (1) the archaeological resource satisfies the definition of a historical resource or (2) the archaeological resource satisfies the definition of a "unique archaeological resource." A unique archaeological resource is an archaeological artifact, object, or site that has a high probability of meeting any of the following criteria:

1. The archaeological resource contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information.

2. The archaeological resource has a special and particular quality such as being the oldest of its type or the best available example of its type.

3. The archaeological resource is directly associated with a scientifically recognized important prehistoric or historic event or person.

Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are outlined in Public Resources Code Sections 5097 and 5097.98. These codes protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to resolve disputes regarding disposition of such remains.

Pursuant to Public Resources Code Section 5097.98, in the event of human remains discovery, no further disturbance is allowed until the county coroner has made the necessary findings regarding the origin and disposition of the remains. If the remains are of a Native American, the county coroner must notify the NAHC. The NAHC then notifies those persons most likely to be related to the Native American remains. The code section also stipulates the procedures that the descendants may follow for treating or disposing of the remains and associated grave goods.

Health and Safety Code, Sections 7050 and 7052

Health and Safety Code Section 7050.5 declares that, in the event of the discovery of human remains outside a dedicated cemetery, all ground disturbances must cease, and the county coroner must be notified. Section 7052 establishes a felony penalty for mutilating, disinterring, or otherwise disturbing human remains, except by relatives.

Penal Code Section 622.5

Penal Code Section 622.5 provides misdemeanor penalties for injuring or destroying objects of historic or archaeological interest located on public or private lands but specifically excludes the landowner.

Government Code Section 6254(r)

Government Code explicitly authorizes public agencies to withhold information from the public relating to Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

Government Code Section 6250 et. seq.

Records housed in the Information Centers of the California Historical Resources Information System (CHRIS) are exempt from the California Public Records Act.

California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.12

Historical resources eligible for listing in the CRHR must meet the significance criteria described previously and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR if it maintains the potential to yield significant scientific or historical information or specific data.

The concept of integrity is essential to identifying the important physical characteristics of historical resources and, therefore, in evaluating adverse changes to them. Integrity is defined as “the authenticity of a historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource's period of significance.” The processes of determining integrity are similar for both the CRHR and NRHP and use the same seven variables or aspects to define integrity that are used to evaluate a resource's eligibility for listing. These seven characteristics include 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Native American Historical, Cultural, and Sacred Sites Act

The California Native American Historical, Cultural, and Sacred Sites Act applies to both state and private lands. The act requires that upon discovery of human remains, construction or excavation activity must cease and the county coroner be notified.

3.5.3 Impact Discussion

Would the project:

a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?

No Impact. As stated in Section 3.5.1, there are no historical resources or historic structures located on or near the project site. Additionally, construction activities would be restricted to the project footprint. Therefore, there would be no change in the significance of a historical resource. No impact would occur.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

Less than Significant With Mitigation Incorporated. As stated in Section 3.5.1, the CHRIS/NWIC records search was negative for recorded archaeological sites. Additionally, results of the archaeological field inventory identified no archaeological resources on or near the project site, including along the Saratoga Creek. This suggests a low potential for exposing subsurface archaeological materials within or adjacent to the proposed project. Although the potential for discovery of materials is low, the possibility still exists that materials could be unearthed during construction activities. For this reason, the following mitigation measures, based on recommendations contained in the Basin report, are included in the project.

> **Mitigation Measure CUL-1:** The City of Cupertino (City) shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Significant prehistoric cultural resources are defined as human burials, features or other clusterings of finds made, modified or used by Native American peoples in the past. The prehistoric and protohistoric indicators of prior cultural occupation by Native Americans include artifacts and human bone, as well as soil discoloration, shell, animal bone, sandstone cobbles, ashy areas, and baked or vitrified clays. Prehistoric materials may include:
>
> a. Human bone - either isolated or intact burials.
>
> b. Habitation (occupation or ceremonial structures as interpreted from rock rings/features, distinct ground depressions, differences in compaction (e.g., house floors).
>
> c. Artifacts including chipped stone objects such as projectile points and bifaces; groundstone artifacts such as manos, metates, mortars, pestles, grinding stones, pitted hammerstones; and, shell and bone artifacts including ornaments and beads.

d. Various features and samples including hearths (fire-cracked rock; baked and vitrified clay), artifact caches, faunal and shellfish remains (which permit dietary reconstruction), distinctive changes in soil stratigraphy indicative of prehistoric activities.

e. Isolated artifacts.

Mitigation Measure CUL-2: It is recommended that prior to the start of ground disturbing construction, the City should implement a Worker Awareness Training (WAT) program for cultural resources. Training shall be required for all construction personnel participating in ground disturbing construction to alert them to the archaeological sensitivity of the project area and provide protocols to follow in the event of a discovery of archaeological materials. The training shall be provided by a Registered Professional Archaeologist (RPA).

The RPA shall develop and distribute for job site posting an "ALERT SHEET" summarizing potential archaeological finds that could be exposed and the protocols to be followed as well as points of contact to alert in the event of a discovery.

Mitigation Measure CUL-3: The City shall retain a Professional Archaeologist on an “on-call” basis during ground disturbing construction to review, identify and evaluate any potential cultural resources that may be inadvertently exposed during construction. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under the California Environmental Quality Act (CEQA).

If the Professional Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource under CEQA, he/she shall notify the City and other appropriate parties of the evaluation and recommend mitigation measures to mitigate to a less-than significant impact in accordance with California Public Resources Code Section 15064.5. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery among other options. The completion of a formal Archaeological Monitoring Plan (AMP) and/or Archaeological Treatment Plan (ATP) that may include data recovery may be recommended by the Professional Archaeologist if significant archaeological deposits are exposed during ground disturbing construction. Development and implementation of the AMP and ATP and treatment of significant cultural resources will be determined by the City in consultation with any regulatory agencies.

c) Disturb any human remains, including those interred outside of dedicated cemeteries?

Less than Significant with Mitigation Incorporated. No known human remains are present on the project site. If human remains are inadvertently uncovered during project activities, adherence to Mitigation Measure CUL-1 would reduce impacts to less than significant.

Mitigation Measure CUL-4: In accordance with Section 7050.5 of the California Health and Safety Code, if potential human remains are found, immediately notify

the lead agency (City of Cupertino or Santa Clara County) staff and the Santa Clara County Coroner of the discovery. The coroner would provide a determination regarding the nature of the remains within 48 hours of notification. No further excavation or disturbance of the identified material, or any area reasonably suspected to overlie additional remains, can occur until a determination has been made. If the County Coroner determines that the remains are, or are believed to be, of Native American ancestry, the coroner would notify the Native American Heritage Commission within 24 hours. In accordance with California Public Resources Code, Section 5097.98, the Native American Heritage Commission must immediately notify those persons it believes to be the Most Likely Descendant from the deceased Native American. Within 48 hours of this notification, the Most Likely Descendant would recommend to the lead agency their preferred treatment of the remains and associated grave goods.

3.6 ENERGY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☐	☐	☐	☒
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	☐	☒

3.6.1 Environmental Setting

Energy consumption is closely tied to the issues of air quality and GHG emissions, as the burning of fossil fuels and natural gas for energy has a negative impact on both, and petroleum and natural gas currently supply most of the energy consumed in California.

In general, California's per capita energy consumption is relatively low, in part due to mild weather that reduces energy demand for heating and cooling, and in part due to the government's proactive energy-efficiency programs and standards. According to the California Energy Commission, Californians consumed about 287,826 gigawatt hours (GWh) of electricity and 11,711 million therms of natural gas in 2022 (CEC 2023a and CEC 2023b). The CEC estimates that by 2030, California's electricity consumption will reach between 326,026 GWh and 354,209 GWh with an annual growth rate of 0.99 to 1.59 percent (CEC 2017), and natural gas consumption is expected to reach between 13,207 million and 14,190 million BTU with an annual growth rate of 0.25 to 0.77 percent (CEC 2017).

In 2022, total electricity use in Santa Clara County was 17,102 million kilowatt hours (kWh), including 12,852 million kWh of consumption for non-residential land uses (CEC 2023a). Natural gas consumption was 424 million therms in 2021, including 190 million therms from non-residential uses (CEC 2023b).

Energy conservation refers to efforts made to reduce energy consumption to preserve resources for the future and reduce pollution. It may involve diversifying energy sources to include renewable energy, such as solar power, wind power, wave power, geothermal power, and tidal power, as well as the adoption of technologies that improve energy efficiency and adoption of green building practices. Energy conservation can be achieved through increases in efficiency in conjunction with decreased energy consumption and/or reduced consumption from conventional energy sources.

3.6.2 Regulatory Setting

Since increased energy efficiency is so closely tied to the State's efforts to reduce GHG emissions and address global climate change, the regulations, policies, and action plans aimed at reducing GHG emissions also promote increased energy efficiency and the transition to renewable energy

sources. The U.S. EPA and the State address climate change through numerous pieces of legislation, regulations, planning, policy-making, education, and implementation programs aimed at reducing energy consumption and the production of GHG.

The proposed project would not involve the development of facilities that include energy intensive equipment or operations. While there are numerous regulations that govern GHG emissions reductions through increased energy efficiency, the following regulatory setting description focuses only on regulations that: 1) provide the appropriate context for the proposed project's potential energy usage; and 2) may directly or indirectly govern or influence the amount of energy used to develop and operate the proposed improvements. For example, the project would not result in permanently occupied buildings and thus the State building code requirements pertaining to energy efficiency are not discussed below. See the Environmental and Regulatory Setting discussion in Section 3.8, Greenhouse Gas Emissions, for a description of the key regulations related to global climate change, energy efficiency, and GHG emission reductions.

CARB Low Carbon Fuel Standard Regulation (LCFSR)

CARB initially approved the LCFS regulation in 2009, identifying it as one of the nine discrete early action measures in its original 2008 Scoping Plan to reduce California's GHG emissions. Originally, the LCFS regulation required at least a 10% percent reduction in the carbon intensity of California's transportation fuels by 2020 (compared to a 2010 baseline). On September 27, 2018, CARB approved changes to the LCFS regulation that require a 20% reduction in carbon intensity by 2030.

3.6.3 Impact Discussion

Would the project:

a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

No Impact. The proposed park plan project would not involve wasteful, inefficient, or unnecessary consumption of energy resources. During construction, the project would conform to the City of Cupertino's standard construction Best Management Practices, which include reducing construction equipment-related fuel consumption. Once operational, the principal use of the future park and trail would be by pedestrians, bicyclists and park users. The proposed project would provide local open space and support an increase in bicycle and pedestrian trips by increasing trails in the area. Therefore, the project would not result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources.

b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

No Impact. The proposed park plan project would not conflict with or obstruct a state or local plan for renewable energy or energy efficiency because there are no such plans that directly apply to the project.

3.7 GEOLOGY AND SOILS

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Would the project:				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? *Note: Refer to Division of Mines and Geology Special Publication 42.*	☐	☐	☐	☒
ii) Strong seismic ground shaking?	☐	☐	☐	☒
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☒
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☒	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☒
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☒

3.7.1 Environmental Setting

Regional Geologic Setting

The Coast Ranges geomorphic province of California stretches from the Oregon border south almost to Point Conception. In the San Francisco Bay Area, most of the Coast Ranges developed on abasement of tectonically mixed Cretaceous- and Jurassic-aged (70 to 200 million years old) rocks of the Franciscan Complex. Younger sedimentary and volcanic units locally cap these

basement rocks. Younger superficial deposits reflecting the geologic conditions of the last million years or so cover most of the Coast Ranges.

The San Andreas Fault system has produced the dominant north-west oriented structural and topographic trend seen throughout the Coast Ranges today. It reflects the boundary between the North American tectonic plate to the east and the Pacific tectonic plate to the west. The San Andreas fault system is about 40 miles wide in the Bay area and extends from the San Gregorio fault near the coastline to the Coast Ranges-Central Valley blind thrust fault at the western edge of the Great Central Valley. The San Andreas Fault is the dominant structure within the system, capable of producing the highest magnitude earthquakes. Many other subparallel or branch faults within the system are equally active and nearly as capable of generating large earthquakes.

Local Geology

The City of Cupertino is located in the eastern portion of the Santa Clara Valley. The Santa Clara Valley, an alluvial basin, is oriented northwest to southeast and is bounded by the Santa Cruz Mountains to the west and the Hamilton/Diablo Range to the east. The Santa Clara Valley was formed when sediments derived from the Santa Cruz Mountains and the Hamilton/Diablo Range were exposed by continued tectonic uplift and regression of the inland sea that had previously inundated this area. Bedrock in this area is made up of the Franciscan Complex, a diverse group of igneous, sedimentary, and metamorphic rocks of Late Jurassic to Cretaceous age (70 to 140 million years old). Overlaying the bedrock at substantial depths are marine and terrestrial sedimentary rocks of Tertiary and Quaternary age.

Regional Seismicity

The San Francisco Bay area is one of the most seismically active regions in the United States. Significant earthquakes occurring in the Bay area are generally associated with crustal movement along well-defined, active fault zones of the San Andreas Fault system. The closest active faults in the San Andreas Fault system are the Hayward fault, approximately 12.9 miles to the northeast, and the Calaveras fault, approximately 14.8 miles to the northeast.

The faults considered capable of generating significant earthquakes are generally associated with the well-defined areas of crustal movement, which trend northwesterly. The San Andreas Fault generated the great San Francisco earthquake of 1906 and the Loma Prieta earthquake of 1989, and passes approximately 5.3 miles southwest of the project site. Other major active faults in the Bay area include the Hayward, Calaveras, and the San Gregorio Fault Zone.

3.7.2 Regulatory Setting

State

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Fault Zoning Act regulates development in California near known active faults due to hazards associated with surface fault ruptures. There are no Alquist-Priolo earthquake fault zones on the project site (California Geological Survey, 1974).

Seismic Hazard Mapping Act

The Seismic Hazard Mapping Act was passed in 1990 following the Loma Prieta earthquake to reduce threats to public health and safety and to minimize property damage caused by earthquakes. The act directs the U.S. Department of Conservation to identify and map areas prone to the earthquake hazards of liquefaction, earthquake-induced landslides, and amplified ground shaking. The act requires site-specific geotechnical investigations to identify potential seismic hazards and formulate mitigation measures prior to permitting most developments designed for human occupancy within the Zones of Required Investigation.

California Building Code

The 2022 California Building Codes (CBC) covers grading and other geotechnical issues, building specifications, and non-building structures.

California Public Resources Code

Section 5097 of the Public Resources Code specifies the procedures to be followed in the event of the unexpected discovery of historic, archaeological, and paleontological resources, including human remains, historic or prehistoric resources, paleontological resources on nonfederal land. The disposition of Native American burial falls within the jurisdiction of the California Native American Heritage Commission (NAHC). Section 5097.5 of the Code states the following:

No person shall knowingly and willfully excavate upon, or remove, destroy, injure or deface any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over such lands. Violation of this section is a misdemeanor.

3.7.2 Impact Discussion

Would the project:

a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other significant evidence of a known fault?

ii) Strong seismic ground shaking?

iii) Seismic-related ground failure, including liquefaction?

iv) Landslides?

No Impact. The project alignment is not located within an earthquake fault zone, liquefaction zone, or landslide zone. Thus, the likelihood of damage to the trail alignment, bridge, or relocated maintenance ramp is considered remote. In the event of a major earthquake on one of the region's active faults, strong ground shaking at the project alignment would likely occur, but no new

structures or facilities designed for human occupancy are included in the project. Therefore, there would be no substantial risk of loss of life or property expected from seismic ground shaking at the site. The project would not exacerbate any hazardous seismic conditions.

b) Result in significant soil erosion or the loss of topsoil?

Less Than Significant Impact. Construction of the project would disturb the ground and expose soils, thereby increasing the potential for wind- and water-related erosion and sedimentation at the site until the completion of construction and ground disturbance is stabilized. As discussed in Section 3.10 Hydrology and Water Quality of this Initial Study, the proposed project would implement erosion control measures during and after construction consistent with the National Pollutant Discharge Elimination System (NPDES) Construction General Permit and Municipal Regional Permit. Compliance with these requirements would ensure the project would not result in substantial soil erosion or the loss of topsoil.

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

Less Than Significant Impact. As discussed above, the project site is not located within a landslide hazard zone and is not in the vicinity of a slope that could be affected by a landslide. The project alignment is not located within a liquefaction hazard zone, and the soils underlying the alignment are generally not susceptible to liquefaction. Therefore, the project would not result in on- or off-site landslide, subsidence, liquefaction, or collapse.

The project site is located adjacent to Saratoga Creek. Creek banks can be susceptible to lateral spreading. however, portions of the creek adjacent to the project site have engineered rock gabion banks, reducing the potential for lateral spreading along those portions of the project site. Because of the low susceptibility to liquefaction and the engineered banks of the creek, the project would not result in lateral spreading risks.

d) Be located on expansive soil, as noted in the 2010 California Building Code, creating substantial direct or indirect risks to life or property?

Less Than Significant Impact. Although no specific subsurface soil investigations were conducted for the project, expansive soils are known to exist throughout the South Bay Area, including the City of Cupertino. Expansive soils are clay rich soils that have the ability to undergo large volume changes with changes in moisture content. The large fluctuations in volume, often referred to as shrink/swell potential, can adversely impact building and structure foundations. Because the project is a park facility with a pedestrian and bicycle trail and does not involve the construction of buildings or other structures, any potential impact from expansive soils on the site would be considered less than significant.

e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

No Impact. The project proposes construction of a park and bicycle and pedestrian trail. No septic systems would be constructed or used; therefore, no impacts related to septic systems would occur.

f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

No Impact. There are no known paleontological sites or unique geological features in the project area. Because project construction would generally be limited to the upper four feet or less of soil, the risk of encountering paleontological resources during construction is considered low. Although the likelihood of encountering paleontological resources during project construction activities is low, they could be encountered. Therefore, the project would implement the following standard permit condition to protect such resources in the event they are encountered:

> **Standard Permit Condition:** The following measures shall be applied to development of the project site to reduce and/or avoid impacts to paleontological resources:
>
> - If vertebrate fossils or other paleontological resources are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The City of Cupertino's Project Manager or other suitable representative shall be responsible for submitting the paleontologist's report to the Director of Public Works, and implementing the recommendations of the qualified professional paleontologist. The representative shall submit a report to the Director of Public Works indicating how the paleontologist's recommendations were complied with as soon as all measures have been incorporated into the project.

Implementation of the Standard Permit Condition ensures that the proposed project would not significantly impact paleontological resources.

3.8 GREENHOUSE GAS EMISSIONS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with an applicable, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

3.8.1 Environmental Setting

Gases that absorb and emit infrared thermal radiation (heat) in the atmosphere and affect regulation of the Earth's temperature are known as greenhouse gases (GHGs). There are many compounds present in the Earth's atmosphere which are GHGs, including but not limited to water vapor (H_2O), carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O). GHGs allow solar radiation (sunlight) to enter the atmosphere freely. When solar radiation strikes the earth's surface, it is either absorbed by the atmosphere, land, and ocean surface, or reflected back toward space. The land and ocean surface that has absorbed solar radiation warms up and emits infrared radiation toward space. GHGs absorb some of this infrared radiation and "trap" the energy in the earth's atmosphere. Entrapment of too much infrared radiation produces an effect commonly referred to as the "greenhouse effect." Human activities since the beginning of the Industrial Revolution (approximately 1750) have increased atmospheric GHG concentrations. Average global surface temperatures have risen as a result of GHG emissions. This increase in globally averaged surface temperatures is commonly referred to as "Global Warming," although the term "Global Climate Change" is preferred because effects associated with increased GHG concentrations are not just limited to higher global temperatures (NOAA 2023a).

GHGs that contribute to climate regulation are a different type of pollutant than criteria or hazardous air pollutants because climate regulation is global in scale, both in terms of causes and effects. Some GHGs are emitted to the atmosphere naturally by biological and geological processes such as evaporation (water vapor), aerobic respiration (carbon dioxide), and off-gassing from low oxygen environments such as swamps or exposed permafrost (methane); however, GHG emissions from human activities such as fuel combustion (e.g., carbon dioxide) and refrigerants use (e.g., hydrofluorocarbons) significantly contribute to overall GHG concentrations in the atmosphere, climate regulation, and global climate change.

Human production of GHG has increased steadily since pre-industrial times (approximately pre-1880) and atmospheric carbon dioxide concentrations have increased from a pre-industrial value of 280 parts per million (ppm) in the early 1800's to 420 ppm in August 2023 (NOAA, 2023b). The effects of increased GHG concentrations in the atmosphere include climate change (increasing temperature and shifts in precipitation patterns and amounts), reduced ice and snow cover, sea level rise, and acidification of oceans. These effects in turn will impact food and water supplies, infrastructure, ecosystems, and overall public health and welfare.

The 1997 United Nations' Kyoto Protocol international treaty set targets for reductions in emissions of four specific GHGs – carbon dioxide, methane, nitrous oxide, and sulfur hexafluoride – and two groups of gases – hydrofluorocarbons and perfluorocarbons. These GHGs are the primary GHGs emitted into the atmosphere by human activities. The six common GHGs are described below.

Carbon Dioxide (CO_2). CO_2 is released to the atmosphere when fossil fuels (oil, gasoline, diesel, natural gas, and coal), solid waste, and wood or wood products are burned.

Methane (CH_4). CH_4 is emitted during the production and transport of coal, natural gas, and oil. Methane emissions also result from the decomposition of organic waste in municipal solid waste landfills and the raising of livestock.

Nitrous oxide (N_2O). N_2O is emitted during agricultural and industrial activities, as well as during combustion of solid waste and fossil fuels.

Sulfur hexafluoride (SF_6). SF_6 is commonly used as an electrical insulator in high voltage electrical transmission and distribution equipment such as circuit breakers, substations, and transmission switchgear. Releases of SF_6 occur during maintenance and servicing as well as from leaks of electrical equipment.

Hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs). HFCs and PFCs are generated in a variety of industrial processes.

GHG emissions from human activities contribute to overall GHG concentrations in the atmosphere and the corresponding effects of global climate change (e.g., rising temperatures, increased severe weather events such as drought and flooding). GHGs can remain in the atmosphere long after they are emitted. The potential for a GHG to absorb and trap heat in the atmosphere is considered its global warming potential (GWP). The reference gas for measuring GWP is CO_2, which has a GWP of one. By comparison, CH_4 has a GWP of 25, which means that one molecule of CH_4 has 25 times the effect on global warming as one molecule of CO_2. Multiplying the estimated emissions for non-CO_2 GHGs by their GWP determines their carbon dioxide equivalent (CO_2e), which enables a project's combined global warming potential to be expressed in terms of mass CO_2 emissions. GHG emissions are often discussed in terms of Metric Tons of CO_2e, or $MTCO_2e$.

Existing GHG Emission Sources at the Project Site

As described in the Chapter 2 Project Description, the site is undeveloped. Therefore, there are no existing GHG emission sources at the project site.

3.8.2 Regulatory Setting

State Regulations

California Global Warming Solutions Act (AB32) and Related Legislation

California Air Resources Board (CARB) is the lead agency for implementing Assembly Bill (AB) 32, the California Global Warming Solutions Act adopted by the Legislature in 2006. AB 32

requires the CARB to prepare a Scoping Plan containing the main strategies that will be used to achieve reductions in GHG emissions in California.

Executive Order B-30-15, 2030 Carbon Target and Adaptation, issued by Governor Brown in April 2015, sets a target of reducing GHG emissions by 40 percent below 1990 levels in 2030. By directing state agencies to take measures consistent with their existing authority to reduce GHG emissions, this order establishes coherence between the 2020 and 2050 GHG reduction goals set by AB 32 and seeks to align California with the scientifically established GHG emissions levels needed to limit global warming below two degrees Celsius.

To reinforce the goals established through Executive Order B-30-15, Governor Brown went on to sign SB-32 and AB-197 on September 8, 2016. SB-32 made the GHG reduction target to reduce GHG emissions by 40 percent below 1990 levels by 2030 a requirement as opposed to a goal. AB-197 gives the Legislature additional authority over CARB to ensure the most successful strategies for lowering emissions are implemented, and requires CARB to, "protect the state's most impacted and disadvantaged communities …[and] consider the social costs of the emissions of greenhouse gases."

The second update to the scoping plan, the 2017 Climate Change Scoping Plan Update (CARB, 2017a), was adopted by CARB in December 2017. The primary objective for the 2017 Scoping Plan Update is to identify the measures required to achieve the mid-term GHG reduction target for 2030 (i.e., reduce emissions by 40 percent below 1990 levels by 2030) established under Executive Order B-30-15 and SB 32. The 2017 Scoping Plan Update identifies an increased need for coordination among State, Regional, and local governments to realize the potential for GHG emissions reductions that can be gained from local land use decisions.

The third update to the scoping plan, the 2022 Scoping Plan (CARB 2022a), was released in May 2022 and adopted by CARB in December 2022. The plan presents a scenario for California to meet the State goal of reducing GHG emissions 40% below 1990 levels by 2030 and to achieve carbon neutrality by 2045 (CARB 2022a).

Regional Regulations

BAAQMD 2017 Clean Air Plan

As discussed in Section 3.3, Air Quality, the BAAQMD's 2017 Clean Air Plan is a multi-pollutant plan focused on protecting public health and the climate. The 2017 Clean Air Plan lays the groundwork for a long-term effort to reduce Bay Area GHG emissions 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050, consistent with GHG reduction targets adopted by the state of California. As opposed to focusing solely on the nearer 2030 GHG reduction target, the 2017 Clean Air Plan makes a concerted effort to imagine and plan for a successful and sustainable Bay Area in the year 2050. In 2050, the Bay area is envisioned as a region where:

- Energy efficient buildings are heated, cooled, and powered by renewable energy;
- The transportation network has been redeveloped with an emphasis on non-vehicular modes of transportation and mass-transit;
- The electricity grid is powered by 100 percent renewable energy; and

- Bay Area residents have adopted lower-carbon intensive lifestyles (e.g., purchasing low-carbon goods in addition to recycling and putting organic waste to productive use).

The 2017 Clean Air Plan includes a comprehensive, multipollutant control strategy that is broken up into 85 distinct measures and categorized based on the same economic sector framework used by CARB for the AB 32 Scoping Plan Update.[1] The accumulation of all 85 control measures being implemented support the three overarching goals of the plan. These goals are:

- Attain all state and national air quality standards;
- Eliminate disparities among Bay Area communities in cancer health risk from toxic air contaminants; and
- Reduce Bay Area GHG Emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.

Cupertino Climate Action Plan

The City of Cupertino Climate Action Plan (CAP) 2.0 presents a set of GHG reduction and climate adaptation measures for the City to meet its carbon footprint target. The CAP has targeted communitywide carbon neutrality by 2040 and has set emissions goals as 3.39 $MTCO_2e$ per person by 2030. The CAP contains measures and actions to achieve these emissions targets.

The City's Climate Action Plan includes the following measure related to transportation and land use emissions:

- Measure TR-4: Re-focus transportation infrastructure away from single occupancy gasoline vehicles to support the bicycle/pedestrian, public transit, and ZEV goals of Measures TR-1, TR-2, and TR-3.

The CAP also includes the following measure to increase carbon sequestration:

- Measure CS-2: Leverage the carbon sequestration potential of open space and carbon removal.

Cupertino Municipal Code

Chapter 16.72 of the City's Municipal Code, Requirement for Construction and Demolition Waste Recycling, is intended to ensure maximum diversion of construction and demolition waste generated by new construction or remodeling projects within the City. Section 16.72.040 requires covered projects to recycle or divert at least sixty-five percent (65%), or meet the amounts, criteria and requirements specified in the applicable California Green Building Standards Code, whichever is more restrictive, of all materials generated for discard by the project. The 2022

[1] The sectors included in the AB 32 Scoping Plan Update are: stationary (industrial) sources, transportation, energy, buildings, agriculture, natural and working lands, waste management, water, and super-GHG pollutants.

CalGreen code, which took effect on January 1, 2023, specifies the same 65% diversion rate as the City's code.

3.8.3 Impact Discussion

Global climate change is the result of GHG emissions worldwide; individual projects do not generate enough GHG emissions to influence global climate change. Thus, the analysis of GHG emissions is by nature a cumulative analysis focused on whether an individual project's contribution to global climate change is cumulatively considerable.

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

b) Conflict with an applicable policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less than Significant Impact (Responses a-b). The proposed project would generate GHG emissions from short-term construction activities over an approximately 12-month period. Construction activities would generate GHG emissions from fuel combustion in equipment as well as worker, vendor, and haul trips to and from the project site. As estimated using CalEEMod, project construction activities could generate a total of 149 $MTCO_2e$. Averaged over an assumed 30-year project lifetime, construction GHG emissions would be approximately 5 $MTCO_2e$ per year. Operation of the project would produce some GHG emissions associated with energy use for lighting and landscaping; however, the project would include several features that have GHG-related benefits, including the reuse of clean soil on-site for creation of the berm, the incorporation of native landscaping, and pedestrian and bicycle connectivity which could support a reduction in vehicle trips. These features would help offset GHG emissions associated with the project. The proposed project's emissions would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions, including the City's Climate Action Plan, BAAQMD Clean Air Plan, and 2022 Scoping Plan. The policies contained in the Clean Air Plan and the 2022 Scoping Plan generally do not apply to a trail and park project because such projects do not generate substantial vehicle trips or GHG emissions. The proposed project would also be consistent with the City's CAP as developing the nature park is likely to enhance sequestration in the project site, and extension of the trail would support bicycle and pedestrian trips. This impact would be less than significant.

3.9 HAZARDS AND HAZARDOUS MATERIALS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☒	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☐	☒
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?	☐	☐	☐	☒

The following discussions and analyses are based in part on a *Phase I Environmental Site Assessment Update and Phase II Soil Quality Evaluation* prepared by Cornerstone Earth Group (Cornerstone). A copy of the report, dated February 25, 2022, is included in Appendix C. The report updates the *Phase I ESA and Preliminary Soil Quality Evaluation* that Cornerstone prepared previously for the site, dated April 18, 2016.

3.9.1 Environmental Setting

The project site had historically been used for agricultural purposes. The Roads Maintenance Division of the Santa Clara County Roads and Airports Department used the site for several decades to dispose of construction and demolition waste generated by road repair or construction activities. The waste material reportedly consisted primarily of asphalt and concrete mixed with soil. Stockpiles of this waste material are visible on the site in aerial photographs dating back to 1974 and still currently exist on the northern portion of the site. The southern portion of the project site was developed with a paved extension of the San Tomas Aquino/Saratoga Creek Trail in

approximately 2002 and included the installation of landscaping and benches for seating. The northern portion of the site remained in use by the County as a corporation yard, mainly of the storage of rock and gravel. There has been no material storage use on the project site since the City of Cupertino acquired the site from the County of Santa Clara in 2020.

Site Reconnaissance

Cornerstone staff visited the site on January 13, 2022 to observe the current site conditions and note any significant changes since the completion of their prior Phase I (Environmental Site Assessment (ESA) in 2016. The site reconnaissance was conducted by walking the site. In general, no significant changes to the site were apparent since completion of the prior Phase I ESA. The northern portion of the site was observed to be undeveloped and used for storage of rock and gravel, along with storage or disposal of construction and demolition waste. Debris from homeless encampments was observed at several locations. Most of the northern portion of the site was asphalt paved, except for perimeter areas bordering Lawrence Expressway to the east and Saratoga Creek to the west.

Construction and demolition waste was observed to have been placed on-site along the top of the eastern bank of Saratoga Creek, and extending along most of the site's western boundary, both on the northern portion of the site, and on the southern portion of the site between the trail and Saratoga Creek. The debris appeared likely to have been generated by the County during road repair or construction activities. In general, the piled material appeared to be approximately five to ten feet higher than the original ground surface elevation. The stockpiled debris/soil contained fine to coarse asphalt and concrete grindings, along with larger pieces of asphalt and concrete with dimensions ranging from a few inches to several feet. Some of the concrete debris was observed to have fallen from the top of the creek bank to the creek bed. As observed by Cornerstone in 2016, a square shaped area within the northern storage yard area was also observed where the asphalt had been removed and replaced by rock and gravel. This area appeared to possibly have been used as a vehicle wash area.

3.9.2 Regulatory Setting

Overview

The storage, use, generation, transport, and disposal of hazardous materials and waste are highly regulated under federal and state laws. Federal regulations and policies related to development include the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund, and the Resource Conservation and Recovery Act. In California, the EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (CalEPA). In turn, local agencies have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

Worker health and safety and public safety are key issues when dealing with hazardous materials. Proper handling and disposal of hazardous material is vital if it is disturbed during project construction. Cal/OSHA enforces state worker health and safety regulations related to construction activities. Regulations include exposure limits, requirements for protective clothing, and training requirements to prevent exposure to hazardous materials. Cal/OSHA also enforces occupational health and safety regulations specific to lead and asbestos investigations and abatement.

Cornerstone conducted a review of federal, state and local regulatory agency databases provided by Environmental Data resources (EDR) to evaluate the likelihood of contamination incidents at and near the project site. The proposed project's park and trail alignment were not identified in the researched regulatory agency databases. Based on the information presented in the agency database report, no off-site spill incidents were reported that would appear likely to significantly impact soil, soil vapor, or groundwater beneath the project site. The potential for impact was based on Cornerstone's interpretation of the types of incidents, the locations of the reported incidents in relation to the site, and the assumed groundwater flow direction.

Federal

United States Environmental Protection Agency

The United States Environmental Protection Agency (EPA) was created in 1970 to serve as a single source collection of all federal research, monitoring, standard-setting, and enforcement activities to make sure there is appropriate protection of the environment. The EPA's duty is to create and enforce regulations that protect the natural environment and apply the laws passed by Congress. The EPA is also accountable for establishing national criteria for various environmental programs and enforcing compliance.

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the EPA was given power to seek out those parties responsible for any release and assure their cooperation in the cleanup.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) enacted in 1976 governs the disposal of solid waste and hazardous materials. The Resource Conservation and Recovery Act gives the EPA the power to control the generation, transportation, treatment, storage, and disposal of hazardous substances that cannot be disposed of in ordinary landfills. It also allows for each state to apply their own hazardous waste programs instead of implementing the federal program on the condition that the state's program is just as strict in its requirements. This state program must be permitted by the EPA in order to be used.

State

California Environmental Protection Agency

The California Environmental Protection Agency (Cal/EPA) was established in 1991 and is comprised of: the California Air Resources Board, the State Water Resources Control Board, the Regional Water Quality Control Board, CalRecycle, the Department of Toxic Substances Control, the Office of Environmental Health Hazard Assessment, and the Department of Pesticide Regulation. This integrated group amalgamates all of California's environmental authority agencies into one and has led the state of California in developing and applying numerous progressive environmental policies in America. The primary goal of the Cal/EPA is to restore, protect, and enhance the environment.

Regional Water Quality Control Board

The RWQCB oversees cases involving groundwater contamination within the San Francisco Bay Area from Spills, Leaks, Incidents and Clean-up (SLIC) cases while the County of Santa Clara's Department of Environmental Health would oversee most leaking underground storage tank (LUST) cases. In the incidence of a spill at a project site, the applicant would notify the County of Santa Clara and a lead regulator (County, RWQCB or DTSC) would be determined.

Cortese List

The Cortese list was authorized by the state legislature in 1985. A list of several types of hazardous materials is gathered by a few agencies as directed by the statute.

Government Code Section 65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

1. All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

2. All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

3. All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

4. All sites listed pursuant to Section 25356 of the Health and Safety Code.

All sites included in the Abandoned Site Assessment Program. Government Code Section 65962.5. (c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

1. All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

2. All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

3. All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

According to the Cornerstone report, the proposed project site is not on the Hazardous Waste and Substances Sites (Cortese) List.

California Department of Toxic Control

The California Department of Toxic Control, a department of the Cal/EPA, is the primary agency in California for regulating hazardous waste, cleaning up existing contamination, and finding ways to reduce the amount of hazardous waste produced in California. The California Department of Toxic Control regulates hazardous waste primarily under the authority of the Federal Resource Conservation and Recovery Act and the California Health and Safety Code (primarily Division 20, Chapters 6.5 through 10.6, and Title 22, Division 4.5). Other laws that affect hazardous waste are specific to handling, storage, transportation, disposal, treatment, reduction, cleanup, and emergency planning.

Local

City of Cupertino Emergency Operations Plan

The City of Cupertino Emergency Operations Plan (EOP) is an all-hazards document describing the City incident management organization, compliance with relevant legal statutes, other relevant guidelines, whole community engagement, continuity of government focus, and critical components of the incident management structure. The incident management system is a component-based system designed to be scaled up and components activated as necessary to reflect the incident/event's escalation from routine incident(s) to emergency, disaster, or catastrophe affecting the City. The EOP is not intended to address specific emergency responses, scenarios, hazards, or threats. Functional and hazard specific annexes to the EOP will outline specific response activities for response organizations.

3.9.3 Impact Discussion

Would the project:

a) **Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?**

Less Than Significant Impact. Construction, operation, and maintenance of the proposed trail would not result in hazardous materials routinely being transported, used, or disposed of in quantities that would result in a significant hazard to the public. Project construction would involve the use of hazardous materials, including fuels, oils, solvents, paints, and other building materials. During construction, these materials would be stored and used in relatively small quantities in compliance with local and state safety requirements. Operation of the proposed park and trail may include the use of maintenance and landscaping chemicals in small quantities. The limited use of hazardous materials under the proposed project would not pose a significant risk to the public or environment.

b) **Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?**

Less Than Significant Impact. The project proposes construction of a park and trail that would use small quantities of hazardous materials, primarily in the form of landscaping and cleaning supplies. Such use as part of the project operation would not cause a hazard to the public or the

environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

Cornerstone conducted a limited soil quality evaluation to evaluate potential impacts to soil quality associated with past agricultural uses on the site. Soil samples also were collected on the site from areas adjacent to Lawrence Expressway to evaluate potential lead impacts; elevated lead concentrations are sometimes encountered next to older and/or heavily traveled highways in California, primarily due to historical leaded gasoline use. Additionally, soil samples were collected from a suspected truck wash location on the site and from the observed construction and demolition waste.

Previous Investigation - Lead

Cornerstone had previously performed a limited soil quality evaluation at the site in 2016. Several soil samples collected adjacent to Lawrence Expressway contained lead concentrations that were greater than its residential DTSC-SL. Cornerstone concluded that the elevated lead concentrations were likely the result of aerially deposited lead associated with the adjacent expressway. To further evaluate the lateral and vertical extent of aerially deposited lead, and to further evaluate lead concentrations in soil at the site, Cornerstone performed additional soil sampling in January 2022, as summarized below.

The detected total lead concentrations were compared to its residential DTSC-SL of 80 mg/kg. In addition, STLC lead (California hazardous waste limit) and TCLP lead (federal hazardous waste limit) concentrations were compared to their respective regulatory values of 5 milligrams per liter (mg/L). Elevated lead concentrations (up to 130 mg/kg) were detected in several soil samples collected at the base of the chain-link fence line that separates the site from Lawrence Expressway (several feet from the edge of the roadway pavement). Lead concentrations in three of the soil samples exceeded the residential screening level (DTSC-SL) of 80 mg/kg. The elevated lead concentrations appeared likely to have been the result of aerially deposited lead associated with the adjacent expressway.

To supplement the previous soil sampling data, three additional 4-point composite samples were collected in 2016 from construction and demolition waste stockpiles located on the northern portion of the site. These samples were analyzed for organochlorine pesticides, PCBs, the seventeen California Administrative Manual metals, and asbestos, along with selected soluble metal concentrations (chromium, lead and nickel). Three discrete samples additionally were analyzed for VOCs and TPHg. The detected organochlorine pesticide concentrations did not exceed their respective residential RSLs, and no PCBs, VOCs, TPHg, or asbestos were detected. The detected total metal concentrations appeared to be typical of natural background concentrations. The detected soluble metal concentrations did not exceed their respective soluble threshold limit concentrations (STLCs).

Agricultural Chemicals

Organochlorine pesticides were not detected in the soil samples at concentrations exceeding residential screening levels (US EPA RSLs and DTSC-SLs). Thus, the site did not appear to have been significantly impacted by past agricultural activities.

Construction and Demolition Waste

Analyses of samples of the construction and demolition waste did not detect organochlorine pesticides at concentrations exceeding residential screening levels, and no polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs) or total petroleum hydrocarbons as gasoline (TPHg) were detected. Additionally, the detected metals concentrations appeared to be typical of natural background concentrations.

Truck Wash Location

Analyses of a sample collected from sediments within the gravel in the suspected truck wash location detected total petroleum hydrocarbons as oil (TPHo) at 340 milligrams per kilogram (mg/kg), which does not exceed the RWQCB's current Tier 1 Environmental Screening Level (ESL) for TPHo of 1,600 mg/kg. The detected metal concentrations in the analysis appeared to be typical of natural background concentrations, and no VOCs were detected.

Conclusions

No screening levels are published for properties used for park or recreational purposes. The available screening levels are based on potential health risks and exposure assumptions in residential and commercial settings. Exposure assumptions for park users would be different from residential and commercial users. For example, the anticipated length of time that a park visitor would be exposed to impacted soil in a park setting would be less than the duration of exposure in a residential setting. Thus, the residential screening levels may be lower than what is adequate to protect human health in a park setting.

Given the short duration of time that park visitors are expected to be present within the planned park, Cornerstone concluded that the observed lead concentrations do not pose a significant risk to human health under the planned land use scenario. Furthermore, statistical analysis of the lead data shows that soil quality at the site is not significantly impacted by lead with the exception of a thin strip (less than approximately 20 feet wide) of shallow soil (upper approximate one foot) along the eastern property boundary adjacent to Lawrence Expressway. The project includes the excavation and off-haul of the lead-contaminated soil to a depth of approximately one foot in some portions of the site and disposal at an appropriately permitted facility. Other portions of the site with lead contamination such as the proposed berm areas, are proposed to be capped with a minimum 2-foot layer of clean soil. In accordance with the recommendations of the Cornerstone report, the City will seek regulatory oversight from an appropriate agency, such as the Santa Clara County Department of Environmental Health to oversee and approve the satisfactory handling and removal and capping of the lead impacted soil.

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or hazardous waste within one-quarter mile of an existing or proposed school?

Less Than Significant Impact. Archbishop Mitty High School is the nearest school to the project site, located approximately 200 feet east of the site across Lawrence Expressway. There are no other schools within one-quarter mile of the site. The proposed park and trail use on the site would not require the use and/or handling of acutely hazardous materials or generate hazardous waste. Small quantities of hazardous materials, primarily in the form of landscaping and cleaning supplies

would be expected to be used occasionally for landscape and play structure maintenance but would not result in any impacts to the school.

Grading and construction activities on the site would be limited and construction vehicle and equipment emissions would not significantly affect nearby sensitive receptors (see Section 3.3.3. for additional information). As discussed in the response to Checklist Question c), above, soils contaminated with lead would be removed from the site for disposal at an appropriate landfill facility, under the oversight of the Santa Clara County Department of Environmental Health. This regulatory oversight would ensure that sensitive receptors, including Archbishop Mitty High School, would not be impacted by the removal and off-haul of lead-contaminated soil from the project site.

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

No Impact. Cornerstone conducted a review of federal, state and local regulatory agency databases provided by Environmental Data Resources (EDR) to evaluate the likelihood of contamination incidents at and near the Site. The database sources and the search distances are in general accordance with the requirements of ASTM E 1527-13. A list of the database sources reviewed, a description of the sources, and a radius map showing the location of reported facilities relative to the project site are presented in Appendix A of the Cornerstone report (See C of this Initial Study).

The project site was not identified in the researched regulatory agency databases, and no off-site spill incidents were reported that would appear likely to significantly impact soil, soil vapor or groundwater beneath the site based on Cornerstone's interpretation of the types of incidents, the locations of the reported incidents in relation to the site and the assumed groundwater flow direction.

The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (otherwise known as the Cortese List)(CalEPA 2021, DTSC 2021, SWRCB 2021). Additionally, there are no Cortese list sites immediately adjacent to the proposed project or within the City of Cupertino.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

No Impact. The project alignment is not within an airport land use plan or within two miles of a public or public use airport. The closest airport to the project site is Norman Y. Mineta San Jose International Airport, located approximately 4.6 miles northeast of the project site.

f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Less Than Significant Impact. During construction of the proposed park and trail, construction vehicles and equipment would access the site from the existing maintenance entrances on Lawrence Expressway. Lawrence Expressway is identified as an Evacuation Route by the City of

Cupertino Office of Emergency Management, however, construction vehicles and equipment would remain on-site during construction activities, and flaggers would be employed to maintain traffic flows on Lawrence Expressway as necessary throughout the construction period. Operation of the proposed park and trail, which would only be accessible by pedestrians and bicyclists and proposes no on-site parking, would not be expected to physically interfere with emergency response. For these reasons, the project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?

No Impact. The project site is not within the wildland-urban interface (ABAG 2021). However, it is located near areas that are designated as within the wildland-urban interface which are located approximately 2.9 miles southwest of the site. The project does not propose new structures within areas designated within the wildland-urban interface and are therefore not subject to wildfire-related building practices. The project would not expose people or structures to significant risk of loss due to wildland fires.

3.10 HYDROLOGY AND WATER QUALITY

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	☐	☐	☒	☐
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☐	☒	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i) Result in substantial erosion or siltation on- or off-site;	☐	☐	☒	☐
ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	☐	☐	☐	☒
iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	☐	☒	☐
iv) Impede or redirect flood flows?	☐	☐	☐	☒
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☐	☒
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	☐	☒

3.10.1 Environmental Setting

As stated in Section 1.1, Saratoga Creek flows adjacent to the project alignment. Saratoga Creek originates on the northeastern slopes of the Santa Cruz Mountains, within what is known as the West Valley Watersheds. The West Valley Watersheds comprise an 85-square-mile area of several smaller watersheds, including San Tomas Aquino Creek (of which Saratoga Creek is a major tributary), Calabazas Creek, and the Sunnyvale East and Sunnyvale West channels. These watersheds are primarily characterized by channelized creeks on the valley floor and more natural streams in the hillsides. Most of Saratoga Creek contains natural channel with some modifications (e.g., gabion walls) and a few sections of hardened channel.

Groundwater

Cupertino is within the Santa Clara subbasin of the Santa Clara Valley Groundwater Basin. The Santa Clara Subbasin extends from the southern edge of San Francisco Bay through the Coyote Valley to approximately Cochrane Road in Morgan Hill. Groundwater movement generally follows the surface water patterns flowing from the interior of the subbasin northerly toward San Francisco Bay. Groundwater levels within Cupertino are generally 50 feet or more below ground surface (bgs). The basin is divided into confined and recharge areas. Almost all of the City of Cupertino is located within the Santa Clara subbasin recharge area. The creeks that flow through the City also provide seepage and groundwater recharge.

Water Quality

Surface water quality is affected by point source and non-point source (NPS) pollutants. Point source pollutants are emitted at a specific point, such as a pipe, while NPS pollutants are generated by surface runoff from diffuse sources such as streets, paved areas, and landscape areas. Point source pollutants are mainly controlled with pollutant discharge regulations established by the San Francisco Bay RWQCB through National Pollutant Discharge Elimination System, or waste discharge requirements (see Regulatory section, below).

NPS pollutants are more difficult to monitor and control and are important contributors to reductions in surface water quality in urban areas. Typical stormwater runoff pollutants include oil, grease, and metals accumulated in streets, driveways, parking lots, and rooftops, as well as pesticides, herbicides, particulate matter, nutrients, animal waste, and other substances from landscaped areas. Currently, surface runoff from the project site and surrounding area generally drains to Saratoga Creek. After project completion, surface runoff from newly paved surfaces on the project site would drain into adjacent bioretention facilities for treatment then be discharged to Saratoga Creek.

Flooding

According to flood mapping prepared by the Federal Emergency Management Agency (FEMA), the majority of the project site is located outside the limits of the 100-year flood plain. The 100-year flood flows in the project area are limited to the Saratoga Creek corridor (channel and banks), which are designated as being within a Special Flood Hazard Area, Zone A. The proposed park and trail areas would not be within a Special Hazard Flood area but are designated as being within Zone D (Area of Undetermined Flood Hazard).

The project site is not located within a designated dam failure inundation area, which is an area that may be flooded in the event of a complete dam failure. Additionally, due to the project's inland location and distance from the nearest body of water (i.e., San Francisco Bay), it is not subject to seiche or tsunami hazards, or sea level rise. The project alignment is located on the valley floor and not subject to mudflows.

3.10.2 Regulatory Setting

Federal

Clean Water Act

Under the Clean Water Act (CWA) of 1977, the United States Environmental Protection Agency (USEPA) seeks to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The statute employs a variety of regulatory and non-regulatory tools to reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. The CWA authorizes the USEPA to implement water quality regulations. The National Pollutant Discharge Elimination System (NPDES) permit program under Section 402(p) of the CWA controls water pollution by regulating stormwater discharges into the waters of the United States (US). California has an approved state NPDES program. The USEPA has delegated authority for water permitting to the State Water Resources Control Board (SWRCB), which has divided the state into nine regional basins, each under the jurisdiction of a Regional Water Quality Control Board (RWQCB).

Section 401 requires an applicant for any Federal permit that proposes an activity that may result in a discharge to "waters of the U.S." to obtain certification from the State that the discharge will comply with other provisions of the CWA. In California, a Water Quality Certification is provided by the State Water Resources Control Board and/or RWQCB.

Section 404 authorizes the USACE to regulate the discharge of dredged or fill material to waters of the U. S., including wetlands. The USACE issues individual site-specific or general (Nationwide) permits for such discharges.

Federal Emergency Management Agency (FEMA)

FEMA administers the National Flood Insurance Program (NFIP), which provides subsidized flood insurance to communities that comply with FEMA regulations, which limit development in flood plains. FEMA also issues Flood Insurance Rate Maps (FIRMs) that identify which land areas are subject to flooding. These maps provide flood information and identify flood hazard zones in the community. The design standard for flood protection is established by FEMA, with the minimum level of flood protection for new development set as the 100-year flood event, also described as a flood that has a 1-in-100 chance of occurring in any given year.

National Pollutant Discharge Elimination System

As previously discussed, the NPDES permit program was established by the CWA to regulate municipal and industrial discharges to surface waters of the U.S. from their municipal separate storm sewer systems (MS4s). Under the NPDES Program, all facilities which discharge pollutants from any point source into waters of the U.S. are required to obtain an NPDES permit. Point source discharges include discharges from publicly owned treatment works (POTWs), discharges from industrial facilities, and discharges associated with urban runoff, such as stormwater. The NPDES permit programs in California are administered by the SWRCB and the nine RWQCBs.

State

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Act (Water Code Sections 1300 et seq.) is the basic water quality control law in California. The Act established the SWRCB, (see also below) and divided the state into nine regional basins, each under the jurisdiction of a RWQCB. The Act authorizes the SWRCB and RWQCBs to issue and enforce Waste Discharge Requirements, NPDES permits, Section 401 water quality certifications, or other approvals.

State Water Resources Control Board

The SWRCB is the primary State agency responsible for the protection of the state's water quality and groundwater supplies. Construction activities that disturb one or more acres of land must comply with the requirements of the SWRCB Construction General Permit (2009-0009-DWQ) as amended by 2010-0014-DWQ. Under the terms of the permit, applicants must file permit registration documents with the SWRCB prior to the start of construction. The registration documents include a Notice of Intent (NOI), risk assessment, site map, Stormwater Pollution Prevention Plan (SWPPP), annual fee, and a signed certification statement.

San Francisco Bay Regional Water Quality Control Board

The San Francisco Bay RWQCB is the regional authority responsible for planning, permitting and enforcement of the CWA. Cupertino is within the jurisdiction of the San Francisco Bay RWQCB (Region 2), which covers most of the Bay Area region, including Santa Clara County. The San Francisco Bay RWQCB addresses region-wide water quality issues through the Water Quality Control Plan for San Francisco Bay Region (Basin Plan), which is updated every 3 years. The Basin Plan was adopted in 1993 and updated most recently in May 2017. The Basin Plan designates beneficial uses of the State waters within Region 2, describes the water quality that must be maintained to support such uses, and provides programs, projects, and other actions necessary to achieve the standards established in the Basin Plan.

The SWRCB issued county-wide municipal stormwater permits in the early 1990s to operators of MS4s serving populations over 100,000 (Phase 1). On November 19, 2015, the San Francisco Bay RWQCB re-issued a single regional municipal stormwater discharge permit known as the Municipal Regional Stormwater NPDES Permit (MRP) to regulate stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. The MRP was most recently updated in May 2022.

Provision C.3 of the MRP (New Development and Redevelopment) allows the co-permittees to require the implementation of appropriate source control, site design, and stormwater treatment measures in new development and redevelopment projects to address stormwater runoff pollutant discharges and prevent increases in runoff flows to local waterways.

Impervious trails built to direct stormwater runoff to adjacent vegetated areas, or other non-erodible areas, preferably away from creeks or toward the outboard side of levees are excluded from Provision C.3 requirements as specified in Provision C.3.b.ii.(4)(d). In order to comply with Provision C.3 of the MRP, project sponsors are required to submit a Storm Water Management

Plan (SWMP) with building plans, to be reviewed by the City of Cupertino Public Works Department. The SWMP must be prepared under the direction of a licensed and qualified professional.

California Fish and Game Code

The California Department of Fish and Wildlife (CDFW) protects streams, water bodies, and riparian corridors through the streambed alteration agreement process under Section 1600 to 1616 of the California Fish and Game Code. The California Fish and Game Code establishes that "an entity may not divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river stream, or lake (Fish and Game Code Section 1602(a)) without notifying the CDFW, incorporating necessary mitigation and obtaining a streambed alteration agreement. The CDFW's jurisdiction extends from the top of banks and often includes the outer edge of riparian vegetation canopy cover.

Emergency Services Act

The Emergency Services Act, under California Government Code Section 8589.5(b), calls for public safety agencies whose jurisdiction contains populated areas below dams, to adopt emergency procedures for the evacuation and control of these areas in the event of a partial or total failure of the dam. The Governor's Office of Emergency Services (OES) is responsible for the coordination of overall state agency response to major disasters and assisting local governments in their emergency preparedness, response, recovery, and hazard mitigation efforts. In addition, the Cal OES Dam Safety Program provides assistance and guidance to local jurisdictions on emergency planning for dam failure events and is also the designated repository of dam failure inundation maps.

Regional

Valley Water

Valley Water, previously known and referred to herein as Santa Clara Valley Water District (SCVWD), is a water resources agency responsible for balancing flood protection needs with the protection of natural watercourses and habitat in the Santa Clara Valley. Valley Water serves 16 cities and 1.8 million residents, provides wholesale water supply, operates three water treatment plants, and provides flood protection along the creeks and rivers within the county. Valley Water implements the Clean, Safe Creeks and Natural Flood Protection (CSC) Plan that created a countywide special parcel tax for flood protection, improved water quality and safety, healthy creek and bay ecosystems and trails, parks, and open space along waterways.

Valley Water reviews plans for development projects near streams to ensure that the proposed storm drain systems and wastewater disposal systems will not adversely impact water quality in the streams. In addition, Valley Water reviews projects for conformance to Valley Water flood control design criteria, stream maintenance and protection plans, and groundwater protection programs.

Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) – The SCVURPPP is an association of 13 cities and towns in the Santa Clara Valley, together with the County of Santa Clara and Valley Water. The RWQCB has conveyed responsibility for implementation of

stormwater regulations to the member agencies of SCVURPPP. The SCVURPPP incorporates regulatory, monitoring, and outreach measures aimed at improving the water quality of South San Francisco Bay and the streams of the Santa Clara Valley to reduce pollution in urban runoff to the "maximum extent practicable." The SCVURPPP maintains compliance with the MRP and promotes stormwater pollution prevention within that context. Participating agencies (including the City of Cupertino) must meet the provisions of the MRP by ensuring that new development and redevelopment mitigate water quality impacts to stormwater runoff both during the construction and operation of projects. See discussion of MRP above.

Local

Cupertino General Plan

The following are relevant goals and policies from the Environmental Resources and Sustainability Element, Health and Safety Element, and Infrastructure Elements of the Cupertino General Plan that are related to hydrology and water quality.

Environmental Resources and Sustainability Element:

- *Goal ES-7*: Ensure protection and efficient use of all water resources.
- *Policy ES-7.1 Natural Water Bodies and Drainage Systems.* In public and private development, use Low Impact Development (LID) principles to manage stormwater by mimicking natural hydrology, minimizing grading and protecting or restoring natural drainage systems.
- *Policy ES-7.2 Reduction of Impervious Surfaces*. Minimize stormwater runoff and erosion impacts resulting from development and use low impact development (LID) designs to treat stormwater or recharge groundwater
- *Policy ES-7.3 Pollution and Flow Impacts*. Ensure that surface and groundwater quality impacts are reduced through development review and voluntary efforts.
- *Policy ES-7.8 Natural Water Courses*. Retain and restore creek beds, riparian corridors, watercourses and associated vegetation in their natural state to protect wildlife habitat and recreation potential and assist in groundwater percolation. Encourage land acquisition or dedication of such areas.
- *Policy ES-7.11 Water Conservation and Demand Reduction Measures*. Promote efficient use of water throughout the City in order to meet State and regional water use reduction targets.

Health and Safety Element:

- *Goal HS-7*. Protect people and property from risks associated with floods.
- *Policy HS-7.3 Existing Non-Residential Uses in the Flood Plain*. Allow commercial and recreational uses that are now exclusively within the flood plain to remain in their present use or to be used for agriculture, provided it doesn't conflict with Federal, State and regional requirements.

- *Policy HS-7.4 Construction in Flood Plains*. Continue to implement land use, zoning and building code regulations limiting new construction in the already urbanized flood hazard areas recognized by the Federal Flood Insurance Administrator.

- *Policy HS-7.5: Hillside Grading*. Restrict the extent and timing of hillside grading operations to April through October except as otherwise allowed by the City. Require performance bonds during the remaining time to guarantee the repair of any erosion damage. Require planting of graded slopes as soon as practical after grading is complete.

Infrastructure Element:

- *Policy INF-4.1 Planning and Management.* Create plans and operational policies to develop and maintain an effective and efficient stormwater system.

Municipal Code

The City's Municipal Code is another primary tool that guides development in the City. It identifies land use categories, site development regulations, and other general provisions that ensure consistency between the General Plan and proposed development projects. The Municipal Code contains all ordinances for the City. The following chapters contain directives pertaining to hydrology and water quality issues:

- Chapter 9.18, Stormwater Pollution Prevention and Watershed Protection provides regulations and legal effect to the MRP issued to the City and ensures ongoing compliance with the most recent version of the NPDES permit regarding municipal stormwater and urban runoff requirements. The code contains permit requirements for construction projects and new development or redevelopment projects.

- Chapter 9.19, Water Resources Protection requires property owners to obtain permits for modification of property adjacent to a stream.

- Chapter 14.15, Landscape Ordinance, implements the California Water Conservation in Landscaping Act of 2006 establishing new water-efficient landscaping and irrigation requirements.

- Chapter 16.18, Interim Erosion and Sediment Control Plan requires implementation of an Interim Erosion and Sediment Control Plan calculating maximum runoff for the 10-year storm event and measures to be undertaken to retain sediment on site, surface and erosion control measures, and vegetative measures.

- Chapter 16.52, Prevention of Flood Damage, applies to all Special Flood Hazard Areas within the City (i.e., subject to flooding during the 100-year storm). A development permit must be obtained before new construction, substantial improvements, or development begins in any area of special flood hazard. It also specifies construction standards that must be implemented to protect buildings and improvements from flood damage.

3.10.3 Impact Discussion

Would the project:

a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

Less Than Significant Impact. The proposed project would not violate any water quality standards or waste discharge requirements. The proposed project could impact water quality during the short-term construction period through the accidental release of construction fuels or fluids near the creek or through an increase in sedimentation or erosion due to ground disturbance.

The project involves more than one acre of disturbance and is therefore required to obtain coverage under the State Water Resources Control Board General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order 2009-0009-DWQ). The Construction General Permit requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP). In addition to the SWPPP required by the SWRCB General Permit, Standard Design and Construction Measures include preparation of an erosion control plan for erosion and sediment control, tracking control, non-stormwater management control (including, but not limited to, dewatering operations, paving and grinding operations, illicit connections/discharge, and non-stormwater discharges), waste management and materials pollution control (spill prevention and control, solid, liquid, and hazardous waste management, etc.). These measures ensure the project would not violate water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality.

b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

Less than Significant Impact. The proposed new park and trail would not require a significant amount of water for project operations. Water use is anticipated for irrigation of landscaped areas throughout the park and trail alignment. Native and drought resistant species are planned to minimize operational water use for irrigation. The project is not located on any designated groundwater recharge areas and would not substantially divert any natural overland flow of runoff to the adjacent creek. Therefore, the project would not substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

i) Result in substantial erosion or siltation on- or off-site;

Less than Significant Impact. The proposed project would not alter the existing drainage pattern of the site or area nor result in substantial erosion or siltation. The project would be constructed adjacent to Saratoga Creek, however it does not propose any physical alteration of the creek channel or banks. The project would construct stormwater runoff-generating impervious surfaces

in the form of multi-use trails, however, runoff from these surfaces would either flow directly into adjacent landscaped areas or be conveyed to on-site bioretention treatment facilities, which would be installed at various locations throughout the site, reducing the potential for erosion and siltation impacts to the creek. All other hard surfaces of the proposed park and trail features (interpretive signs, picnic tables, play structures, etc.) would drain directly to adjacent landscaping or pervious surfaces. Additionally, the project includes an erosion control plan with BMPs that would be implemented throughout project construction to prevent erosion or siltation from disturbed area. The impact is considered less than significant.

ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;

No Impact. The proposed project would not substantially increase the rate or amount of surface water runoff because the existing stockpiles of construction and demolition debris and most of the asphalt paved areas of the site (excepting existing trail segments) would be removed and replaced with pervious surfaces. Surface runoff would be further reduced by the proposed installation of bioretention facilities, which would in addition to removing pollutants, reduce the flow rates and volumes of stormwater runoff from the site. Therefore, the project would not result in flooding on- or off-site.

iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

Less than Significant Impact. As described above, the project would result in a net reduction in impervious surface area on the site, and the proposed addition of bioretention facilities would reduce flows and volumes of stormwater runoff being discharged from the site. The proposed trails and other impervious site features proposed would drain to the bioretention areas or directly to adjacent vegetated areas or other non-erodible permeable areas to ensure the project does not exceed existing runoff rates and volumes and to treat stormwater prior to discharge into the creek. Therefore, the impact from additional runoff, or polluted runoff is considered less than significant.

iv) Impede or redirect flood flows?

No Impact. The project includes the construction of a park and multi-use trail, with features and amenities such as active play areas, interpretive displays, pedestrian paths, fencing, seating, and landscaped areas. The locations of some of these proposed features could overlap with designated flood hazard zone areas near the creek, however, there are no structures proposed that would block or otherwise impede flood flows. Therefore, the project would not impede or redirect flood flows.

d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

No Impact. The terms tsunami or seiche are described as ocean waves or similar waves in large water bodies, usually created by undersea fault movement or by a coastal or submerged landslide. The project site is approximately six miles south of the San Francisco Bay shoreline

tsunami zone and is also at approximately 195 feet above mean sea level. Therefore, the project is not at risk to release pollutants in the event of a seiche or tsunami since there is no nearby waterbody. Additionally, the project does not propose work, storage areas or other areas that are potential sources for polluted water that could be released in the event of a flood.

e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

No Impact. As noted above, while the project would result in a net reduction of impermeable surfaces over existing conditions, and the proposed park and trail features would drain to bioretention facilities and/or adjacent vegetated areas or other non-erodible permeable areas. Therefore, the project would not conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan. The impact is considered less than significant.

3.11 LAND USE AND PLANNING

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☒

3.11.1 Environmental Setting

The project site is located along the City of Cupertino's eastern border, adjacent to the Saratoga Creek riparian corridor south of I-280. The site is bounded by Lawrence Expressway on the east, Saratoga Creek on the west, Calvert Drive on the north and Chelmsford Drive on the south. As previously described, the site contains a segment of the San Tomas Aquino / Saratoga Creek Trail, a paved multi-use trail. The property has historically been used for agricultural purposes, and by the 1970's portions of the site were used by the Santa Clara County Roads and Airports Department as a disposal site for construction and demolition waste and as a corporation yard for storage of rock and gravel. The City acquired the property in 2020 and the Santa Clara County Local Agency Formation Commission finalized the annexation to the City in 2022.

Land uses surrounding the site are primarily residential, with single-family neighborhoods located to the west and south, and single- and multi-family neighborhoods and a private high school to the east across Lawrence Expressway, a six-lane major arterial street. A pedestrian/bicycle bridge over Saratoga Creek connects the project site to the existing City park (Sterling Barnhard Park) and single-family neighborhood on the west side of the creek.

3.11.2 Regulatory Setting

Local

City of Cupertino General Plan

The Cupertino General Plan: Community Vision 2015 - 2040 (2014) sets the City's policy direction in a number of areas including land use, mobility, housing, open space, infrastructure, public health and safety, and sustainability. The Land Use and Community Character Element contains policies that guide future physical change in Cupertino. Land Use and Community Character Element policies relevant to the proposed project include:

- *Policy LU-3.1:* Site Planning. Ensure that project sites are planned appropriately to create a network of connected internal streets that improve pedestrian and bicycle access, provide public open space and building layouts that support city goals related to streetscape character for various Planning Areas and corridors.

- *Policy LU-4.1:* Street and Sidewalks. Ensure that the design of streets, sidewalks and pedestrian and bicycle amenities are consistent with the vision for each Planning Area and Complete Streets policies.

- *Policy LU-5.3:* Enhance Connections. Look for opportunities to enhance publicly-accessible pedestrian and bicycle connections with new development or redevelopment.

- *Policy LU-11.1: Connectivity.* Create pedestrian and bicycle access between new developments and community facilities. Review existing neighborhood circulation to improve safety and access for students to walk and bike to schools, parks, and community facilities such as the library.

Cupertino Parks and Recreation System Master Plan

The 2020 Cupertino Parks and Recreation Master Plan creates a cohesive strategy to guide future development, renovation, and management of City parks, recreation facilities, and trails. The Master Plan provides direction for the City as it improves and enhances the City's parks through the year 2040. The Master Plan was developed after an extensive public engagement process that helped assess community needs and goals while identifying opportunities to meet those needs in the future. The Master Plan includes the "acquisition of the Lawrence-Mitty property along Saratoga Creek" among its goals for equitable access, and also lists the addition of trail amenities, enhancement and protection of the riparian corridor, and addition of green infrastructure among its recommended 'Enhancements to Existing Trails." The Master Plan further "encourages connections northward to Stevens Creek Boulevard and to regional destinations" for the Saratoga Creek Trail.

Cupertino Bicycle Transportation Plan

In June 2016, the City Council adopted the 2016 Bicycle Transportation Plan. The Plan is a long-range planning document designed to encourage bicycling as a safe, practical, and healthy alternative to motor vehicles. It addresses present and future needs of the bicycling community, lays the groundwork for grant funding eligibility for bicycle projects, and is in close alignment with the goals set by the Cupertino Bicycle Pedestrian Commission to significantly increase the attractiveness and safety of bicycling throughout the City, with a particular focus on safe connectivity to schools. A goal of the Cupertino Bicycle Transportation Plan that relates to the project is as follows:

- Goal 3: Increase and improve bicycle access to community destinations across the City of Cupertino for all ages and abilities.

The Bicycle Transportation Plan includes a Trail Feasibility Study (Chapter 4) which described the extension of the Saratoga Creek Trail as having greatly improved utility if it is able to connect to the Cupertino Loop Trail, and stated that it would require collaboration with Caltrans and Valley Transportation Authority.

Cupertino Pedestrian Transportation Plan

To encourage walking as a viable way to get around Cupertino, the City Council adopted the 2018 Pedestrian Transportation Plan in February 2018. The Plan outlines physical improvements to the City that will provide improved access for all ages and abilities. The following goals of the plan apply to the project:

- Goal 1: Improve pedestrian safety and reduce the number and severity of pedestrian-related collisions, injuries, and fatalities.
- Goal 2: Increase and improve pedestrian access to community destinations across the City of Cupertino for people of all ages and abilities.
- Goal 3: Continue to develop a connected pedestrian network that fosters an enjoyable walking experience.

The Plan identifies the Saratoga Creek Trail among the trails for which pedestrian and bicycle counts for the planning and evaluation of the City's trail systems should be conducted.

3.11.2 Impact Discussion

Would the project:

a) Physically divide an established community?

No Impact. The project consists of a plan for the development of a new public park and extension of the existing Saratoga Creek Trail. The project does not include any physical barriers such as new roads or fences such that existing land use patterns would change resulting in a division of an established community. To the contrary, the project would improve connectivity within the community by establishing a new park that is open to the public and by extending an existing multi-use trail.

b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

No Impact. The project would extend the existing Saratoga Creek Trail and create a new public park. The project supports the land uses that are already present in the project area such as residential neighborhoods. The project would not conflict with the current General Plan land use and Zoning designations. Further, the project site is not within an area that is under a specific plan.

3.12 MINERAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local -general plan, specific plan or other land use plan?	☐	☐	☐	☒

3.12.1 Environmental Setting

There are several sites in the City of Cupertino that are designated by the Surface Mining and Reclamation Act (SMARA) as containing mineral deposits which are of regional significance, including Hanson Permanente Quarry and Stevens Creek Quarry; however, these quarries are located outside the City limits under the jurisdiction of Santa Clara County (City of Cupertino 2014). The project site is located in an MRZ-3 zone, meaning it contains mineral deposits the significance of which cannot be evaluated from available data. The City's General Plan shows the site is in an area that is "Urban/Suburban Developed – Unsuitable for Extraction." As such, project site is not within an area designated as containing mineral deposits of importance.

3.12.2 Regulatory Setting

State

Surface Mining and Reclamation Act

The Surface Mining and Reclamation Act (SMARA) was enacted by the California legislature in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. As mandated under SMARA, the State Geologist has designated mineral land classifications in order to help identify and protect mineral resources in areas within the state subject to urban expansion or other irreversible land uses which would preclude mineral extraction. SMARA also allowed the State Mining and Geology Board (SMGB), after receiving classification information from the State Geologist, to designate lands containing mineral deposits of regional or statewide significance.

3.12.3 Discussion

Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

No Impact (Responses a – b). There are no known mineral resources of regional value or local importance on or adjacent to the project site. Therefore, the project would not result in the loss of availability of known mineral resources.

3.13 NOISE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or in other applicable standards of other agencies?	☐	☐	☒	☐
b) Generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

3.13.1 Environmental Setting

Noise may be defined as loud, unpleasant, or unwanted sound. The frequency (pitch), amplitude (intensity or loudness), and duration of noise all contribute to the effect on a listener, or receptor, and whether the receptor perceives the noise as objectionable, disturbing, or annoying.

The Decibel Scale (dB)

The decibel scale (dB) is a unit of measurement that indicates the relative amplitude of a sound. Sound levels in dB are calculated on a logarithmic basis. An increase of 10 dB represents a tenfold increase in acoustic energy, while 20 dBs is 100 times more intense, 30 dBs is 1,000 more intense, and so on. In general, there is a relationship between the subjective noisiness, or loudness of a sound, and its amplitude, or intensity, with each 10 dB increase in sound level perceived as approximately a doubling of loudness.

Sound Characterization

There are several methods of characterizing sound. The most common method is the “A-weighted sound level,” or dBA. This scale gives greater weight to the frequencies of sound to which the human ear is typically most sensitive. Thus, most environmental measurements are reported in dBA, meaning decibels on the A-scale.

Human hearing matches the logarithmic A-weighted scale, so that a sound of 60 dBA is perceived as twice as loud as a sound of 50 dBA. In a quiet environment, an increase of 3 dB is usually perceptible, however, in a complex noise environment such as along a busy street, a noise increase of less than 3 dB is usually not perceptible, and an increase of 5 dB is usually perceptible.

Normal human speech is in the range from 50 to 65 dBA. Generally, as environmental noise exceeds 50 dBA, it becomes intrusive and above 65 dBA noise becomes excessive. Nighttime activities, including sleep, are more sensitive to noise and are considered affected over a range of 40 to 55 dBA. Table 3.13-1 lists typical outdoor and indoor noise levels in terms of dBA.

Table 3.13-1: Typical Outdoor and Indoor Noise Levels

Common Outdoor Activities	Noise Level (dBA)	Common Indoor Activities
	-110-	Rock Band
Jet flyover at 1,000 feet		
	-100-	
Gas lawn mower at 3 feet		
	-90-	
Diesel truck at 50 feet at 50 mph		Food blender at 3 feet
	-80-	Garbage disposal at 3 feet
Noise urban area, daytime		
Gas lawnmower, 100 feet	-70-	Vacuum cleaner at 10 feet
Commercial area		Normal speech at 3 feet
Heavy traffic at 300 feet	-60-	
		Large business office
Quiet urban daytime	-50	Dishwasher next room
Quite urban nighttime	-40-	Theater, large conference room (background)
Quiet suburban nighttime		
	-30-	Library
Quite rural nighttime		Bedroom at night
	-20-	
		Broadcast/recording studio
	-10-	
Lowest threshold of human hearing	-0-	Lowest threshold of human hearing

Source: Caltrans 2013

Sound levels are typically not steady and can vary over a short time period. The equivalent noise level (L_{eq}) is used to represent the average character of the sound over a period of time. The L_{eq} represents the level of steady noise that would have the same acoustical energy as the sum of the time-varying noise measured over a given time period. L_{eq} is useful for evaluating shorter time periods over the course of a day. The most common L_{eq} averaging period is hourly, but L_{eq} can describe any series of noise events over a given time period.

Variable noise levels are values that are exceeded for a portion of the measured time period. Thus, L01 is the level exceeded one percent of the time and L90 is the level exceeded 90 percent of the time. The L90 value usually corresponds to the background sound level at the measurement location.

Noise exposure over the course of an entire day is described by the day/night average sound level, or L_{dn}, and the community noise equivalent level, or CNEL. Both descriptors represent the 24-hour noise impact on a community. For L_{dn}, the 24-hour day is divided into a 15-hour daytime period (7 AM to 10 PM) and a nine-hour nighttime period (10 PM to 7 AM) and a 10 dB "penalty" is added to measure nighttime noise levels when calculating the 24-hour average noise level. For example, a 45 dBA nighttime sound level would contribute as much to the overall day-night average as a 55 dBA daytime sound level. The CNEL descriptor is similar to L_{dn}, except that it includes an additional 5 dBA penalty beyond the 10 dBA for sound events that occur during the evening time period (7 PM to 10 PM). The artificial penalties imposed during L_{dn} and CNEL calculations are intended to account for a receptor's increased sensitivity to sound levels during quieter nighttime periods.

Sound Propagation

The energy contained in a sound pressure wave dissipates and is absorbed by the surrounding environment as the sound wave spreads out and travels away from the noise generating source. Theoretically, the sound level of a point source attenuates, or decreases, by 6 dB with each doubling of distance from a point source. Sound levels are also affected by certain environmental factors, such as ground cover (asphalt vs. grass or trees), atmospheric absorption, and attenuation by barriers. Outdoor noise is also attenuated by the building envelope so that sound levels inside a residence are from 10 to 20 dB less than outside, depending mainly on whether windows are open for ventilation or not.

When more than one point source contributes to the sound pressure level at a receiver point, the overall sound level is determined by combining the contributions of each source. Decibels, however, are logarithmic units and cannot be directly added or subtracted together. Under the dB scale, a doubling of sound energy corresponds to a 3 dB increase in noise levels. For example, if one noise source produces a sound power level of 70 dB, two of the same sources would not produce 140 dB – rather, they would combine to produce 73 dB.

Under controlled conditions in an acoustical laboratory, the trained, healthy human ear can discern 1-dB changes in sound levels when exposed to steady, single-frequency ("pure-tone") signals in the mid-frequency (1,000–8,000 Hz) range. In typical noisy environments, changes in noise of 1 to 2 dB are generally not perceptible. However, it is widely accepted that people can begin to detect sound level increases of 3 dB in typical noisy environments. Further, a 5-dB increase is generally perceived as a distinctly noticeable increase, and a 10-dB increase is generally perceived as a doubling of loudness.

Noise Effects

Noise effects on human beings are generally categorized as:

- Subjective effects of annoyance, nuisance, and/or dissatisfaction

- Interference with activities such as speech, sleep, learning, or relaxing
- Physiological effects such as startling and hearing loss

Most environmental noise levels produce subjective or interference effects; physiological effects are usually limited to high noise environments such as industrial manufacturing facilities or airports.

Predicting the subjective and interference effects of noise is difficult due to the wide variation in individual thresholds of annoyance and past experiences with noise; however, an accepted method to determine a person's subjective reaction to a new noise source is to compare it to the existing environment without the noise source, or the "ambient" noise environment. In general, the more a new noise source exceeds the ambient noise level, the more likely it is to be considered annoying and to disturb normal activities.

Under controlled conditions in an acoustical laboratory, the trained, healthy human ear is able to discern 1-dB changes in sound levels when exposed to steady, single-frequency ("pure-tone") signals in the mid-frequency (1,000–8,000 Hz) range. In typical noisy environments, changes in noise of 1 to 2 dB are generally not perceptible. However, it is widely accepted that people are able to begin to detect sound level increases of 3 dB in typical noisy environments. Further, a 5 dB increase is generally perceived as a distinctly noticeable increase, and a 10 dB increase is generally perceived as a doubling of loudness that would almost certainly cause an adverse response from community noise receptors.

Groundborne Vibration

Vibration is the movement of particles within a medium or object such as the ground or a building. As is the case with airborne sound, groundborne vibrations may be described by amplitude and frequency. Vibration amplitudes are usually expressed in peak particle velocity (PPV) or root mean squared, in inches per second (in/sec). PPV represents the maximum instantaneous positive or negative peak of a vibration signal and is most appropriate for evaluating the potential for building damage. Human response to groundborne vibration is subjective and varies from person to person.

Existing Noise Environment

The City's noise environment consists of transportation and non-transportation related noise sources. The General Plan Health and Safety Element identifies traffic noise as the predominant noise source in the City.

The project site is located south of I-280 and west of Lawrence Expressway. Traffic along I-280 and Lawrence Expressway is the primary driver of noise levels in the project's vicinity. Other noise sources in proximity of the project site include local activities on the residential land uses west of the site.

MIG conducted an ambient noise survey of the project area to inform the development of the plan (MIG 2022). Ambient noise measurements were collected by MIG staff in the project area between approximately 7:00 AM to 6:00 PM on Thursday, February 17, 2022, and from 8:00 AM to 3:00 PM on Saturday, February 19, 2022. The ambient noise levels were digitally measured and stored using three Larson Davis SoundTrack LxT sound level meters that meet American

National Standards Institute requirements for a Type 1 integrating sound level meter. Each sound meter was calibrated immediately before and after the monitoring period using a reference one-kilohertz (1kH) check frequency and 114 dB sound pressure level and found to be operating within normal parameters for sensitivity. Ambient noise measurements were continuously collected over the sample periods in 1-minute intervals to capture short-term noise events and increases in noise levels above typical background conditions. Weather conditions during the monitoring were generally clear and sunny. Temperatures ranged from the high 50's in the mornings to the high 70's in the late afternoon. Winds were calm throughout the ambient noise monitoring survey. The ambient noise monitoring conducted included one long-term (LT) and 10 short-term (ST) measurements at locations selected to:

- Provide direct observations and measurements of existing noise sources at and in the vicinity of the proposed Lawrence-Mitty Park and Trail; and

- Determine typical ambient noise levels at and in the vicinity of the proposed trail alignment.

The ambient noise monitoring locations are described below and in Figure 3.13-1:

- LT-1: Site LT-1 was located in the northern part of the project site, approximately 85 feet from the centerline of Lawrence Expressway.

- ST-01 to ST-10: Short-term sites were located throughout the project site to assess how noise levels vary across the area, including how noise levels differ in areas where noise barriers do and not currently exist.

Figure 3.13-1: Ambient Noise Monitoring Locations

Based on observations made during the ambient noise monitoring, traffic noise on Lawrence Expressway is the major contributor to existing noise levels measured at the project site. I-280 is also a consistent but less substantial contributor to existing noise levels in the northern part of the site. Aircraft overflights also contribute to the existing noise environment at the site. Adjacent to Lawrence Expressway (within 150 feet of the centerline), traffic noise levels (e.g., LT-01, ST-03, and ST-04) were consistently measured above 70 dBA L_{eq} or higher in the northern part of the site, with the exception of the early morning period on Saturday, February 19, 2022. The highest sustained traffic noise levels were measured at the intersection of Lawrence Expressway and Mitty Way (ST-04). This may or may not be due to vehicle acceleration and deceleration into and out of the stop-controlled intersection. Traffic noise levels were generally 2 dBA to 3 dBA higher in the northern part of the site (LT-01, ST-03) than the southern part of the site (ST-05) due to less topography and harder ground conditions. Farther away from Lawrence Expressway (150 to 250 feet from the road centerline), in the northern part of the site, traffic noise was still predominant but below 64 dBA L_{eq} (ST-08 and ST-09). Noise levels on the western boundary of the site, adjacent to the Saratoga Creek (ST-07 and ST-10), were less than 59 dBA L_{eq}. In the northern and widest part of the site (ST-10), measured noise levels were at or below 56 dBA L_{eq}. In this area, traffic noise was still predominant but noise from nearby residential properties and wildlife were audible. Table 3.13-2 and Table 3.13-3 summarize the results of the long-term and short-term measurements, respectively.

Table 3.13-2: Hourly Average Noise Levels at LT-01 (dBA L_{eq})

Time	Thursday 02/17/22	Saturday 02/19/22
7:00 AM	71	--
8:00 AM	70	67
9:00 AM	69	69
10:00 AM	69	69
11:00 AM	69	70
12:00 PM	70	70
1:00 PM	70	69
2:00 PM	70	72
3:00 PM	71	--
4:00 PM	73	--
5:00 PM	71	--

Source: MIG 2022

Table 3.13-3: Measured Noise Levels on Thursday 02/17/22 (10-minute average, dBA L_{eq})						
Time	**LT-01**	**ST-03**	**ST-04**	**ST-08**	**ST-09**	**ST-10**
9:20 AM	68.5	--	69.9	--	--	--
9:30 AM	68.2	--	69.8	--	--	--
9:40 AM	68.5	--	70.1	--	--	--
9:50 AM	68.8	--	70.5	--	--	--
10:00 AM	68.1	--	70.2	--	--	--
10:10 AM	68.3	--	69.9	--	--	--
11:00 AM	68.4	69.9	69.3	--	--	--
11:10 AM	68.4	69.8	69.5	--	--	--
11:20 AM	71.2	70.7	70.2	--	--	--
11:30 AM	69.3	70.6	70.6	--	--	--
11:40 AM	69.7	70.9	70.8	--	--	--
11:50 AM	69.2	70.7	70.8	--	--	--
12:00 PM	70.0	71.4	--	--	--	--
12:10 PM	70.1	71.7	--	64.2	--	--
12:20 PM	68.6	70.2	--	61.8	--	--
12:30 PM	69.3	70.7	--	62.4	--	--
12:40 PM	71.9	72.1	--	64.6	--	--
12:50 PM	69.2	70.7	--	62.5	--	--
1:00 PM	69.9	70.6	--	63.2	--	--
1:30 PM	68.7	--	--	--	61.7	54.7
1:40 PM	69.2	--	--	--	62.1	55.4
1:50 PM	69.8	--	--	--	62.6	55.8
2:00 PM	69.2	--	--	--	62.4	55.8
2:10 PM	69.7	--	--	--	62.6	55.7
2:20 PM	69.5	--	--	--	62.4	55.7
2:30 PM	70.2	--	--	--	62.8	--
2:40 PM	70.3	--	--	--	63.0	--
Source: MIG 2022						

Further details regarding the ambient noise survey conducted in the project site vicinity are presented in the Noise Conditions Report Lawrence Mitty Park and Trail Site Cupertino, CA (MIG, 2022).

Sensitive Receptors

Noise sensitive receptors are areas where unwanted sound or increases in sound may have an adverse effect on people or land uses. Residential areas, hospitals, schools, and parks are examples of noise receptors that could be sensitive to changes in existing environmental noise levels. Sensitive noise receptors in proximity of the project site include:

- Single-family residential receptors west of the project site (across Saratoga Creek) along Sterling Boulevard and Chelmsford Drive.
- Single-family residential receptors east of the project site (across Lawrence Expressway) along Doyle Road. These receptors are in the City of San Jose.
- Archbishop Mitty High School and Queen of Apostles School along Mitty Way.
- Sterling Barnhart Park southwest of the project site along Sterling Boulevard.

3.13.2 Regulatory Setting

State Regulations

California Department of Transportation

The California Department of Transportation' (Caltrans) Transportation and Construction Vibration Guidance Manual provides a summary of vibration criteria that have been reported by researchers, organizations, and governmental agencies (Caltrans, 2020). Chapters six and seven of this manual summarize vibration detection and annoyance criteria from various agencies and provide criteria for evaluating potential vibration impacts on buildings and humans from transportation and construction projects. These criteria are summarized in Table 3.13-4 and Table 3.13-5.

Table 3.13-4: Caltrans' Vibration Criteria for Building Damage

Structural Integrity	Maximum PPV (in/sec)	
	Transient	Continuous
Historic and some older buildings	0.50	0.25
Older residential structures	0.50	0.30
New residential structures	1.00	0.50
Modern industrial and commercial structures	2.00	0.50
Source: Caltrans, 2020		

Table 3.13-5: Caltrans' Vibration Criteria for Human Response		
Human Response	**Maximum PPV (in/sec)**	
	Transient	**Continuous**
Slightly perceptible	0.035	0.012
Distinctly perceptible	0.24	0.035
Strongly perceptible	0.90	0.10
Severely perceptible	2.00	0.40
Source: Caltrans, 2020		

Local Regulations

Cupertino General Plan

The Health and Safety Element of the City's General Plan includes goals, policies, and strategies to ensure that the community continues to enjoy a high quality of life through reduced noise pollution, effective project design and noise management operations. The following goals, policies, and strategies from the General Plan apply to the proposed project:

1. *Goal HS-8*. Minimize noise impacts on the community and maintain a compatible noise environment for existing and future land use.

2. *Policy HS-8.3 Construction and Maintenance Activities.* Regulate construction and maintenance activities. Establish and enforce reasonable allowable periods of the day, during weekdays, weekends and holidays for construction activities. Require construction contractors to use the best available technology to minimize excessive noise and vibration from construction equipment such as pile drivers, jack hammers, and vibratory rollers.

3. *Policy HS-8.5 Neighborhoods.* Review residents' needs for convenience and safety and prioritize them over the convenient movement of commute or through traffic where practical.

Cupertino Municipal Code

The City's Municipal Code sets forth the following requirements that may be relevant to the proposed project:

4. Chapter 10.48, Community Noise Control

- Section 10.48.010, Definitions, defines "Noise disturbance" as any sound which:

    1. Endangers or injures the safety or health of humans or animals; or

    2. Annoys or disturbs a reasonable person of normal sensitivities; or

    3. Endangers or damages personal or real property.

- Section 10.48.040, Daytime and Nighttime Maximum Noise Levels, sets forth that individual noise sources, or groups of noise sources, shall not produce a noise level that exceeds the levels set forth in Table 3.13-6, (It should be noted that the Municipal Code does not establish noise levels for trails).

Table 3.13-6: Daytime and Nighttime Maximum Noise Levels		
Land Use at Point of Origin	**Maximum Noise Level**	
	Daytime	**Nighttime**
Residential	60 dBA	50 dBA
Nonresidential	65 dBA	55 dBA
Source: Section 10.48.040 of the City Municipal Code (City of Cupertino, 2023)		

5. Section 10.48.050, Brief Daytime Incidents, sets forth that during the daytime period only, brief noise incidents exceeding the limits in Chapter 10.48 are allowed providing that the sum of the noise duration in minutes plus the excess noise level does not exceed twenty in a two-hour period, as shown in Table 3.13-7.

Table 3.13-7: Brief Daytime Noise Incident Levels	
Noise Increment Above Normal Standard	**Noise Duration in 2-Hour Period**
5 dBA	15 minutes
10 dBA	10 minutes
15 dBA	5 minutes
19 dBA	1 minute
Source: Section 10.48.050 of the City Municipal Code (City of Cupertino, 2023)	

- Section 10.48.051, Landscape Maintenance Activities, sets forth that the use of motorized equipment for landscape maintenance activities for public schools, public and private golf courses, and public facilities is limited to the hours of 7:00 AM to 8:00 PM on weekdays and 7:00 AM to 6:00 PM on weekends and holidays. The section also states that the use of motorized equipment for landscape maintenance activities is exempt from the noise limits set forth in Section 10.48.040 (see Table 3.13-4) provided reasonable efforts are made by the user to minimize disturbances to nearby residents by, for example, installation of appropriate mufflers or noise baffles, running equipment only the minimal period necessary, and locating equipment so as to generate minimum noise levels on adjoining properties.

- Section 10.48.053, Grading, Construction, and Demolition sets forth standards for construction-related noise:

    1. Grading, construction and demolition activities shall be allowed to exceed the noise limits of Section 10.48.040 during daytime hours (7:00 AM to 8:00 PM on weekdays and 9:00 AM to 6:00 PM on weekends) provided that the equipment utilized has high-quality noise muffler and abatement devices installed and in good

condition, and the activity meets one of the following two criteria: 1) No individual device produces a noise level more than 87 dBA at a distance of 25 feet; or 2) The noise level on any nearby property does not exceed 80 dBA.

2. Grading, street construction, demolition, and underground utility work are prohibited within 750 feet of a residential area on weekends, holidays, and during the nighttime period (8:00 PM to 7:00 AM on weekdays and 6:00 PM to 9:00 AM on weekends). This restriction does not apply to emergency work activities as defined by Section 10.48.030 of the Municipal Code.

3. Construction, other than street construction (and certain emergency work activities), is prohibited on holidays.

4. Construction, other than street construction (and certain emergency work activities) is prohibited during nighttime periods unless it meets the nighttime standards in Section 10.48.040 (see Table 3.13-4).

6. Chapter 13.04, Parks
    - Section 13.04.190, Closing Hours – Prohibitions, states that no person shall remain, stay, or loiter in any public park between the hours of 10:00 PM and 6:00 AM, unless otherwise posted at the public park.

3.13.3 Impact Discussion

Would the project:

a) **Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or in other applicable local, state, or federal standards?**

Less than Significant Impact. The proposed project would result in construction noise as facilities are installed and operational noise from people recreating in the completed park. The project would generate construction noise from on-road construction vehicles (e.g., haul trucks, concrete deliveries, and other vendor deliveries) and heavy-duty off-road construction equipment (e.g., bulldozers, backhoes, etc.). These construction activities would temporarily increase noise levels at properties near the site. The typical noise levels that could be generated by equipment at the site are presented below in Table 3.13-8.

Table 3.13-8: Typical Construction Equipment Noise Levels

Equipment	Noise Level at 50 feet (L_{max})[A]	Percent Usage Factor[B]	Estimated Equipment Noise Level at Distance (L_{eq})[C]					
			25 Feet	50 Feet	65 Feet	75 Feet	100 Feet	125 Feet
Backhoe	80	40	82	76	74	72	70	68
Bulldozer	85	40	87	81	79	77	75	73
Pneumatic tools	85	50	88	82	80	78	76	74

Table 3.13-8: Typical Construction Equipment Noise Levels								
Equipment	**Noise Level at 50 feet (L_{max})(A)**	**Percent Usage Factor(B)**	**Estimated Equipment Noise Level at Distance (L_{eq})(C)**					
			25 Feet	**50 Feet**	**65 Feet**	**75 Feet**	**100 Feet**	**125 Feet**
Delivery Truck	85	40	87	81	79	77	75	73
Vibratory Roller	80	20	79	73	71	69	67	65
Scraper	85	40	87	81	79	77	75	73

Sources: Caltrans, 2013; FHWA, 2010

(A) L_{max} noise levels based on manufacturer's specifications.

(B) Usage factor refers to the amount (percent) of time the equipment produces noise over the time period

(C) Estimate does not account for any atmospheric or ground attenuation factors. Calculated noise levels based on Caltrans, 2009: L_{eq} (hourly) = L_{max} at 50 feet – 20log (D/50) + 10log (UF), where: L_{max} = reference L_{max} from manufacturer or other source; D = distance of interest; UF = usage fraction or fraction of time period of interest equipment is in use.

As shown in Table 3.13-8, the worst case construction equipment noise levels associated with the project are predicted to be approximately 82 dBA L_{eq} and 85 dBA L_{max}, at 50 feet (e.g., noise levels associated with the operation of pneumatic tools or a bulldozer). When two or more pieces of equipment are operating in close proximity, construction noise levels could be approximately 85 dBA L_{eq} and 88 dBA L_{max} at a distance of 50 feet. Section 10.48.053 of the City's Municipal Code exempts construction noise from the noise limits defined in Section 10.48.040 if activities occur during daytime hours (7:00 AM to 8:00 PM on weekdays and 9:00 AM to 6:00 PM on weekends), provided that the equipment utilized has high-quality noise muffler and abatement devices installed and in good condition. Activities associated with grading and water utility work (for irrigation) that would occur within 750 feet of residential areas also would not be allowed to occur on Saturdays, Sundays, holidays, or nighttime hours consistent with the provisions of Municipal Code Section 10.48.053(B). The construction activities also need to meet one of the following two criteria:

- No individual device shall produce noise levels exceeding 87 dBA at a distance of 25 feet; or

- The noise level measured at any nearby property shall not exceed 80 dBA.

As shown in Table 3.13-8 typical construction equipment noise levels would not exceed 80 dBA at a distance of 65 feet. For the proposed project, the nearest receptors on Sterling Boulevard, across Saratoga Creek, are more than 65 feet from potential heavy equipment operations in the project site, which would not occur closer than the top of the creek bank. Therefore, potential project noise levels would not exceed 80 dBA at any nearby property as specified per City's Municipal Code Section 10.48.053(B). Noise associated with construction of the proposed project would have a less than significant impact.

Once operational, the proposed project would provide space for recreation, with operating hours from sunrise to a half hour after sunset provided no person shall remain, stay, or loiter in any public park between the hours of 10:00 PM and 6:00 AM per the City's Municipal Code Section 13.04.190. As shown in Table 3.13-8, existing ambient noise levels in the project area ranged

from approximately 54 to 56 dBA L_{eq} on the western portion near the creek and from 68 to 72 dBA L_{eq} on the eastern portion near Lawrence Expressway. Activities within the park would include play area activity on the nest swings and climbing rock, and benches and picnic tables for small gatherings. Activities along the trail segments of the project site would include bicycling, walking, and jogging. Noise levels generated by activity along the trail would be minimal. Typical noise levels generated by people talking or laughing would range from 50 to 55 dBA at 20 feet. The loudest noise sources would include warning whistles or bells from bicycles or a person shouting, which would typically range from 65 to 70 dBA at 20 feet. The passing and temporary noise sources that could occur from use of the proposed trail would not have a material effect on long-term ambient noise levels in proximity of the project site. The distance between the project area and the nearest receptors to the west of the site (at least 65 feet across Saratoga Creek) would attenuate play and human voice noise levels below the daytime noise limit allowed for adjacent residential properties (60 dBA daytime) with allowed brief daytime noise incidents by the City's Municipal Code (Section 10.48.040 and 10.48.050). Furthermore, any landscaping and/or maintenance activities required for the project would be required to comply with Municipal Code Section 10.48.051. For these reasons, the potential noise associated with the park operations would be a less than significant impact.

b) Generation of excessive groundborne vibration or groundborne noise levels?

Less Than Significant Impact. The project would require the use of construction equipment that could generate groundborne vibrations; however, these potential vibrations would not be perceptible at nearby residences. The proposed project is separated from the closest receptors by the Saratoga Creek, which limits the direct transmission of vibrations from the project area to receptors to the west. The distance between the project site and all other potential receptors (at least 200 feet) would attenuate potential groundborne vibrations to imperceptible levels. The proposed project does not include the use of specific vibration generating equipment, such as pile drivers, which could produce vibration levels powerful enough to damage existing rip rap and other concrete infrastructure associated with creek bank stabilization. This impact would be less than significant.

c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. The project site is not within an airport land use plan nor is it within two miles of a public or private airport. San Jose International Airport is the closest airport to the project site, approximately four miles to the northeast. The project would not expose people residing or working in the project area to excessive noise levels, and there would be no impact.

3.14 POPULATION AND HOUSING

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Induce a substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☒	☐
b) Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☒	☐

3.14.1 Environmental Setting

Based on information from the U.S. Census Bureau, the City of Cupertino population was estimated to be approximately 58,622 in 2021 (U.S. Census Bureau 2021). The average number of persons per household in Santa Clara in 2021 was 2.88. Approximately 24,490 jobs were provided within the City of Cupertino in 2010, and the Association of Bay Area Governments Projections 2040 shows a projected increase to 37,980 jobs by the year 2040 (ABAG/MTC 2017).

3.14.2 Impact Discussion

Would the project:

a) **Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?**

b) **Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?**

Less than Significant Impact. (Responses a – b). The project provides new recreation facilities on a site that is not currently developed for any uses. The proposed improvements do not include new housing for additional population within the City, nor does the project remove existing housing as none is currently present at the site. The proposed project would not remove any existing housing, nor would it displace any people necessitating the construction of replacement housing elsewhere. Therefore, no impact would occur.

3.15 PUBLIC SERVICES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
i) Fire protection?	☐	☐	☒	☐
ii) Police protection?	☐	☐	☒	☐
iii) Schools?	☐	☐	☐	☒
iv) Parks?	☐	☐	☒	☐
v) Other public facilities?	☐	☐	☒	☐

3.15.1 Environmental Setting

Fire Protection

Fire protection services for the project area are provided by the Santa Clara County Fire Department. The Santa Clara County Fire Department provides fire suppression, emergency medical and fire marshal services, hazardous materials regulation and response, rescue and extrication, public education, and fire investigation services in the City of Cupertino (City of Cupertino 2023b). The closest station to the project site is Cupertino Fire Station #1.

Police Protection

Police protection services for the project area are provided by the Santa Clara County Sheriff's Office, West Valley Division, located at 1601 South De Anza Boulevard (City of Cupertino 2023c). The West Valley Division provides routine law enforcement and community-oriented services to the City of Cupertino. There are 28 deputies allocated to the City of Cupertino.

Schools

The project area is located in the Cupertino Union School District, which covers the communities of Cupertino, San Jose, Sunnyvale, Santa Clara, Saratoga, and Los Altos. The school district operates 21 elementary schools, 7 middle schools, and 1 preschool within the City of Cupertino (City of Cupertino 2023d). High schools in the City of Cupertino are within the Fremont Union High School District. The closest schools to the project site are Archbishop Mitty High School located

to the east right across Lawrence Expressway, and De Vargas Elementary School located approximately 0.29 mile southeast of the project site.

Parks

The City of Cupertino owns or manages approximately 214 acres of parks, trails, creek corridors, sports fields, and recreation facilities at 53 sites located throughout the City. Recreational opportunities include community parks, neighborhood parks, special use sites, trail corridors, and school fields managed by the City (City of Cupertino 2023e). There are also a number of Santa Clara County and regional open space parks along the Montebello foothills and Santa Cruz Mountains within the City's sphere of influence; County and regional facilities also provide recreation opportunities for Cupertino residents. The closest recreational facility is John Mise Park, located approximately 0.27 mile east of the project site.

Other Public Facilities

The Cupertino Civic Center complex (Cupertino Library, Community Hall, City Hall, and Library Field) is located approximately 1.7 miles west of the project site.

3.15.2 Regulatory Setting

Local

Cupertino Parks and Recreation System Master Plan

The 2020 Cupertino Parks and Recreation Master Plan creates a cohesive strategy to guide future development, renovation, and management of City parks, recreation facilities, and trails. The Master Plan provides direction for the City as it improves and enhances the City's parks through the year 2040. The Master Plan was developed after an extensive public engagement process that helped assess community needs and goals while identifying opportunities to meet those needs in the future. The Master Plan includes the implementation of the Cupertino Loop Trail over the next two to four years. As discussed previously, the Loop Trail would include the I-280Trail segments.

Cupertino Bicycle Transportation Plan

In June 2016, the City Council adopted the 2016 Bicycle Transportation Plan. The Plan is a long-range planning document designed to encourage bicycling as a safe, practical, and healthy alternative to motor vehicles. It addresses present and future needs of the bicycling community, lays the groundwork for grant funding eligibility for bicycle projects, and is in close alignment with the goals set by the Cupertino Bicycle Pedestrian Commission to significantly increase the attractiveness and safety of bicycling throughout the City, with a particular focus on safe connectivity to schools. A goal of the Cupertino Bicycle Transportation Plan that relates to the project is as follows:

- Goal 3: Increase and improve bicycle access to community destinations across the City of Cupertino for all ages and abilities.

The Plan recommended a series of Class I shared use paths. When joined together with low-stress on-street facilities, this would form the "Cupertino Loop Trail," providing access around

Cupertino, largely separated from vehicle traffic. This network would support recreational riders and long-range bicycle trips. The I-280 Trail would form a segment of the Loop Trail.

Cupertino Pedestrian Transportation Plan

To encourage walking as a viable way to get around Cupertino, the City Council adopted the 2018 Pedestrian Transportation Plan in February 2018. The Plan outlines physical improvements to the City that will provide improved access for all ages and abilities. The following goals of the plan apply to the project:

- Goal 1: Improve pedestrian safety and reduce the number and severity of pedestrian-related collisions, injuries, and fatalities.
- Goal 2: Increase and improve pedestrian access to community destinations across the City of Cupertino for people of all ages and abilities.
- Goal 3: Continue to develop a connected pedestrian network that fosters an enjoyable walking experience.

3.15.3 Impact Discussion

Would the project:

a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

i) Fire protection?

Less than Significant Impact. The new park and extended trail would draw users to the site, which does not currently allow public access. As a result, the project may slightly increase the need for fire protection services. The project would be designed in accordance with current fire codes and would provide for emergency access to the park and trail alignment. The project would not require the construction of new fire stations. The project's impact on fire protection services would be less than significant.

ii) Police?

Less than Significant Impact. As stated, the project would draw users to the site, which does not currently allow public access. As a result, calls for emergency services may increase slightly, thereby increasing the need for police services, though only marginally. The project would not require the construction of new police facilities. The project's impact on police services would be less than significant.

iii) Schools?

No Impact. The project does not include housing and would not induce population growth; therefore, the project would not increase the demand for school services.

iv) Parks?

Less than Significant Impact. The project would potentially increase existing demand on City park facilities by establishing a new park and extending an existing trail. By extending the existing Saratoga Creek Trail, the project may increase the use of local parks and amenities in the area due to improved access to these facilities. However, it is not anticipated that the project would increase recreational use to the extent that new facilities would be needed. Therefore, the project's impact on parks would be less than significant.

v) Other public facilities?

Less than Significant Impact. The project may increase the use of public facilities in the vicinity by establishing a new park and extending an existing trail. It is not anticipated that the project would increase use of public facilities to the extent that new facilities would be needed. Therefore, the project's impact on other public facilities would be less than significant.

3.16 RECREATION

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☒	☐	☐

3.16.1 Environmental Setting

The City of Cupertino owns or manages approximately 224 acres of parks, trails, creek corridors, sports fields, and recreation facilities at 32 sites located throughout the City (City of Cupertino 2022). Recreational opportunities include community parks, neighborhood parks, special use sites, trail corridors, and school fields managed by the City. There are also a number of Santa Clara County and regional open space parks along the Montebello foothills and Santa Cruz Mountains within the City's sphere of influence; County and regional facilities also provide recreation opportunities for Cupertino residents.

3.16.2 Regulatory Setting

State

Government Code Section 66477

The Quimby Act (included within Government Code Section 66477) requires local governments to set aside parkland and open space for recreational purposes. It provides provisions for the dedication of parkland and/or payment of fees in lieu of parkland dedication to help mitigate the impacts from new residential developments. The Quimby Act authorizes local governments to establish ordinances requiring developers of new residential subdivisions to dedicate parks, pay a fee in lieu of parkland dedication, or perform a combination of the two.

Local

City of Cupertino General Plan

The Cupertino General Plan: Community Vision 2015 - 2040 (2014) sets the City's policy direction in a number of areas including land use, mobility, housing, open space, infrastructure, public health and safety, and sustainability. Policies from the General Plan's Environmental Resources and Sustainability Element and Recreation, Parks, and Community Service Element that are relevant to the proposed project include:

Policy ES-7.5: Groundwater Recharge Sites. Support the Santa Clara Valley Water District efforts to find and develop groundwater recharge sites within Cupertino and provide public recreation where possible.

Policy RPC-2.1: Parkland Acquisition. The City's parkland acquisition strategy should be based upon three broad objectives:

- Distributing parks equitably throughout the City;
- Connecting and providing access by providing paths, improved pedestrian and bike connectivity and signage; and
- Obtaining creek lands and restoring creeks and other natural open space areas, including strips of land adjacent to creeks that may be utilized in creating buffer areas, trails and trail amenities.

Policy RPC-2.3: Parkland Distribution. Strive for an equitable distribution of parks and recreational facilities throughout the City. Park acquisition should be based on the following priority list. Accessibility to parks should be a component of the acquisition plan.

- High Priority: Parks in neighborhoods or areas that have few or no park and recreational areas.
- Medium Priority: Parks in neighborhoods that have other agency facilities such as school fields and district facilities, but no City parks.
- Low Priority: Neighborhoods and areas that have park and recreational areas which may be slightly less than the adopted City's park land standard.
- Private Development: Consider pocket parks in new and renovated projects to provide opportunities for publicly-accessible park areas.

Policy RPC-2.4: Connectivity and Access. Ensure that each home is within a half-mile walk of a neighborhood park or community park with neighborhood facilities; ensure that walking and biking routes are reasonably free of physical barriers, including streets with heavy traffic; provide pedestrian links between parks, wherever possible; and provide adequate directional and site signage to identify public parks.

Policy RPC-2.5: Range of Park Amenities. Provide parks and recreational facilities for a variety of recreational activities.

Policy RPC-4.1: Recreational Intensity. Design parks appropriately to address the facility and recreational programming required by each special area and neighborhood based on current and future plans for the areas.

Policy RPC-5.1: Open Space and Trail Linkages. Dedicate or acquire open space land along creeks and utility through regional cooperation, grants and private development review.

Policy RPC-5.2: Pedestrian and Bicycle Paths. Develop a citywide network of pedestrian and bicycle pathways to connect employment centers, shopping areas and neighborhoods to services including parks, schools, libraries and neighborhood centers.

Policy RPC-7.1: Sustainable Design. Ensure that City facilities are sustainably designed to minimize impacts on the environment.

Policy RPC-7.3: Maintenance. Design facilities to reduce maintenance and ensure that facilities are maintained and upgraded adequately.

Cupertino Parks and Recreation System Master Plan

The 2020 Cupertino Parks and Recreation Master Plan creates a cohesive strategy to guide future development, renovation, and management of City parks, recreation facilities, and trails. The Master Plan provides direction for the City as it improves and enhances the City's parks through the year 2040. The Master Plan was developed after an extensive public engagement process that helped assess community needs and goals while identifying opportunities to meet those needs in the future.

Cupertino Bicycle Transportation Plan

In June 2016, the City Council adopted the 2016 Bicycle Transportation Plan. The Plan is a long-range planning document designed to encourage bicycling as a safe, practical, and healthy alternative to motor vehicles. It addresses present and future needs of the bicycling community, lays the groundwork for grant funding eligibility for bicycle projects, and is in close alignment with the goals set by the Cupertino Bicycle Pedestrian Commission to significantly increase the attractiveness and safety of bicycling throughout the City, with a particular focus on safe connectivity to schools. A goal of the Cupertino Bicycle Transportation Plan that relates to the project is as follows:

- Goal 3: Increase and improve bicycle access to community destinations across the City of Cupertino for all ages and abilities.

The Plan recommended a series of Class I shared use paths. When joined together with low-stress on-street facilities, this would form the "Cupertino Loop Trail," providing access around Cupertino, largely separated from vehicle traffic. This network would supports recreational riders and long-range bicycle trips.

Cupertino Pedestrian Transportation Plan

To encourage walking as a viable way to get around Cupertino, the City Council adopted the 2018 Pedestrian Transportation Plan in February 2018. The Plan outlines physical improvements to the City that will provide improved access for all ages and abilities. The following goals of the plan apply to the project:

- Goal 1: Improve pedestrian safety and reduce the number and severity of pedestrian-related collisions, injuries, and fatalities.

- Goal 2: Increase and improve pedestrian access to community destinations across the City of Cupertino for people of all ages and abilities.

- Goal 3: Continue to develop a connected pedestrian network that fosters an enjoyable walking experience.

3.16.3 Impact Discussion

Would the project:

a) Increase the use of existing neighborhood or regional parks or other recreational facilities such that significant physical deterioration of the facility would occur or be accelerated?

Less than Significant Impact. The proposed project would not induce population growth (see Response 3.14.3a); therefore, it would not substantially increase the use of existing neighborhood and regional parks or other recreational facilities. However, by improving pedestrian and bicycle access to local parks and amenities in the site vicinity, the project may marginally increase the use of nearby parks and recreation facilities. The project may also reduce or spread out users at existing trail facilities by lengthening available pedestrian and cycling paths in the area. The potential small increase in use of City parks and recreational facilities would not result in substantial physical deterioration of these facilities.

b) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Less Than Significant with Mitigation. The project would connect the Saratoga Creek Trail through the site and create a park for recreational activities. The project would increase the park and trail facilities in the immediate area, thereby providing additional recreational opportunities for the public. Mitigation Measures and Standard Conditions have been included in the project to reduce potential adverse impacts to a less than significant level. (see Sections 3.4.3, 3.5.3 and 3.18.3 of this Initial Study).

3.17 TRANSPORTATION

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	☐	☐	☒	☐
b) Conflict or be inconsistent with CEQA Guidelines section 15064.3(b), which pertains to vehicle miles travelled?	☐	☐	☒	☐
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
d) Result in inadequate emergency access?	☐	☐	☒	☐

The information contained in this section is based on an initial assessment of Vehicle Miles Traveled (VMT), multimodal access, and pedestrian safety prepared by Hexagon Transportation Consultants, dated February 24, 2022. Relevant information from this report has been incorporated into the project description and is included as Appendix D.

3.17.1 Environmental Setting

Existing Multimodal Access and Pedestrian Safety

The Saratoga Creek Trail is a multi-use path that runs along the west side of Lawrence Expressway and extends from English Drive in the south to Mitty Way in the north. Currently, the trail ends at a gate approximately 40 feet north of the Lawrence Expressway and Mitty Way crosswalk. The existing pedestrian and bicycle facilities are generally located south of the existing pedestrian/bicycle bridge over the creek that connects the site to Sterling Barnhart Park on the west side of the creek.

There are existing pedestrian facilities at the signalized intersections of Lawrence Expressway and Mitty Way and Lawrence Expressway and Moorpark Avenue/Bollinger Road. The intersection of Lawrence Expressway and Mitty Way includes a crosswalk along the south leg with push buttons, curb ramps with truncated domes, and pedestrian signal heads. The intersection of Lawrence Expressway and Moorpark Avenue/Bollinger Road includes crosswalks along each leg with push buttons, curb ramps with truncated domes, and pedestrian signal heads per the requirements set forth in the Americans with Disabilities Act (ADA). The existing pedestrian facilities at these two intersections provide access between the Saratoga Creek Trail and the sidewalks along the adjacent roadways. North of the project site, pedestrian facilities at the signalized intersection of Lawrence Expressway and Southbound I-280 On-Ramp/Calvert Drive are limited to a crosswalk on the east leg. A sidewalk extends south along the east side of Lawrence Expressway to Doyle Road, which provides an indirect connection via local

neighborhood streets between the Lawrence/Southbound I-280/Calvert intersection and the Saratoga Creek Trail. While there are short segments of sidewalk along Lawrence Expressway at intersections near the project site, there are no pedestrian facilities along the east and west sides of Lawrence Expressway that would enable residents to walk from intersection to intersection.

In the project vicinity, bicycles are permitted to ride on Lawrence Expressway. Bicycle detector pavement markings are provided on the roadway shoulders at the approaches to signalized intersections on Lawrence Expressway. Due to the high speed and volume of traffic on the expressway, bicyclists are advised to exercise caution.

The Sterling Barnhart Park is located southwest of the intersection of Lawrence Expressway and Mitty Way. Pedestrian and bicycle access between the Saratoga Creek Trail and the adjacent Rancho Rinconada neighborhood is available through the park. The unsignalized intersection of Sterling Boulevard and Barnhart Avenue, located on the residential (west) side of the Sterling Barnhart Park and Saratoga Creek Trail includes a marked crosswalk on the north leg. This crosswalk includes curb ramps with truncated domes in conformance to the ADA. The crosswalk also has pedestrian crossing warning signs and an overhead light to ensure visibility of pedestrians at night.

The project site has an existing driveway along Lawrence Expressway that is used by City maintenance vehicles. The existing driveway is located approximately 620 feet south of the Lawrence Expressway and Southbound I-280 On-Ramp/Calvert Drive intersection. The existing driveway provides sufficient storage for two vehicles to park side-by-side, without encroaching on the adjacent southbound shoulder area of Lawrence Expressway.

There is no on-site public parking and no direct vehicular access to the project site or Saratoga Creek Trail for the general public. To access the site by vehicle, visitors need to park on the adjacent residential streets near Sterling Barnhart Park and walk through the park to the multi-use path. Alternatively, park and trail visitors may park in the residential neighborhood east of Lawrence Expressway and then use the crosswalk on the south leg of the Lawrence/Mitty intersection.

3.17.2 Impact Discussion

Would the project:

a) **Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?**

Less Than Significant Impact. The proposed project consists primarily of the construction of a new public park and extension of an existing recreational trail that is included in and consistent with the City's Pedestrian Transportation Plan and Bicycle Transportation Plan. The proposed project would include pedestrian and bicycle improvements to provide better trail access from the surrounding public street network. According to the Valley Transportation Authority (VTA) Transportation Impact Analysis (TIA) Technical Guidelines, a project would create an impact on pedestrian and bike circulation if: (1) it would reduce, sever or eliminate existing or planned bike/pedestrian access and circulation in the area; (2) it would preclude, modify, or otherwise affect proposed bicycle and pedestrian projects and/or policies identified in an adopted plan; or

(3) it would cause a change to existing bike paths such as alignment, width of the trail ROW, or length of the trail. The proposed project would not meet any of these criteria. For these reasons, the project would not conflict with a program, plan, ordinance or policy addressing the circulation system including transit, roadway, bicycle, and pedestrian facilities.

Project construction would add temporary vehicle trips to project roadways from construction crews, and delivery of equipment and materials. Project construction-related vehicle trips would be temporary and intermittent, occurring throughout the day, but also during the AM (7:00–9:00) and PM (4:00–6:00) peak hour time periods. These impacts would be temporary and therefore considered a less than significant impact.

b) Conflict or be inconsistent with CEQA Guidelines section 15064.3(b), which pertains to vehicle miles travelled?

Less Than Significant Impact. CEQA Guidelines Section 15064.3(b) states that transportation projects that reduce, or have no impact on, vehicle miles traveled (VMT) should be presumed to cause a less than significant transportation impact.

The City adopted a new VMT policy on March 2, 2021 based on the Senate Bill (SB) 743. According to the City Ordinance, some projects may be screened out, or assumed to have a less-than-significant impact on VMT if they fall within the following categories:

1. Local serving retail of up to 50,000 square feet.

2. 100% affordable housing projects.

3. Projects located within 1/4 mile of Stevens Creek Blvd (from SR 85 east), measured in walking distance.

4. Small projects that generate less than 110 new trips per day, and do not exceed square footage thresholds.

The potential new daily vehicle trips that may be generated by the proposed project were estimated by applying trip rates for public parks published in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 11th Edition (0.78 daily vehicle trips per acre) to the size of the project site (7.83 acres). Based on the ITE trip rate, the proposed project is expected to generate fewer than 10 daily vehicle trips each day. This is considered a conservative (high) estimate of project-generated traffic because a portion of the site has limited improvement potential due to Saratoga Creek and other areas will provide for open space with only passive recreational uses rather than more intense, active park uses like sports fields. Furthermore, project vehicle trips are expected to be quite low because there is no direct public vehicle access to the project site. Therefore, according to the Cupertino VMT policy, the project would qualify as a small project that may be screened out of a detailed VMT analysis and assumed to have a less than significant impact on VMT.

c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

No Impact. The project would construct a linear extension of an existing paved multi-use trail and a new public park that includes play areas, creek overlooks, seating areas and landscaping. The

geometric design of the trail and park are designed to be ADA-compliant facilitate safe pedestrian and bicycle travel, safe play, and passive recreation. There are no hazardous or dangerous elements of the proposed project design. There are no incompatible uses.

d) Result in inadequate emergency access?

Less than Significant Impact. As described in Section 3.9, Hazards and Hazardous Materials, the proposed project would not interfere with emergency response access in the project area. Construction of the project would not prevent emergency vehicles from accessing the project area. The contractor will be required to prepare a construction logistics plan to coordinate construction and maintain access and safety during construction. The impact is considered less than significant.

3.18 TRIBAL CULTURAL RESOURCES

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
Cause a substantial adverse change in the significance of a tribal cultural resources, defined in Public Resources Code section 21074 as either a site, feature, place cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?	☐	☒	☐	☐
ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe.	☐	☒	☐	☐

3.18.1 Environmental Setting

Please see Section 3.5.1 for a discussion of the cultural and tribal cultural setting of the area.

3.18.2 Regulatory Setting

Native American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American tribe claiming affiliation.

Native American Heritage Commission, Public Resources Code Sections 5097.9 – 5097.991

Section 5097.91 of the Public Resources Code (PRC) established the Native American Heritage Commission (NAHC), whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands. Under Section 5097.9 of the PRC, a state policy of noninterference with the free expression or exercise of Native American religion was articulated along with a

prohibition of severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites or sacred shrines located on public property. Section 5097.98 of the PRC specifies a protocol to be followed when the NAHC receives notification of a discovery of Native American human remains from a county coroner. Section 5097.5 defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historic, or paleontological resources located on public lands.

California Native American Graves Protection and Repatriation Act of 2001

Codified in the California Health and Safety Code Sections 8010–8030, the California Native American Graves Protection Act (NAGPRA) is consistent with the federal NAGPRA. Intended to "provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect," the California NAGPRA also encourages and provides a mechanism for the return of remains and cultural items to lineal descendants. Section 8025 established a Repatriation Oversight Commission to oversee this process. The act also provides a process for non–federally recognized tribes to file claims with agencies and museums for repatriation of human remains and cultural items.

Assembly Bill 52

Assembly Bill (AB) 52 specifies that a project that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. AB 52 requires a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requests in writing to the lead agency, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project.

3.18.3 Impact Discussion

Would the project:

a) Cause a substantial adverse change in the significance of a tribal cultural resources, defined in Public Resources Code section 21074 as either a site, feature, place cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?

ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe?

a) Less Than Significant with Mitigation. Under CEQA, a significant resource is one that is listed in a California or local historic register or is eligible to be listed. As such, lead agencies have a responsibility to evaluate such resources against the California Register criteria prior to making a finding as to a proposed project's impacts to historical resources (PRC § 21084.1, 20174, 14 CCR § 15064.5(3).

It is possible for a lead agency to determine that an artifact, site, or feature is considered significant to a local tribe, without necessarily being eligible for the CRHR. A determination of such by a lead agency would make an artifact a significant resource under CEQA. Ground disturbing activity has the potential of archaeological discovery. Mitigation Measure TRIB-1, below, would safeguard any tribal cultural resources if they are found to be present.

> **Impact TRIB-1**: Project construction could disturb or damage unknown tribal cultural resources resulting in an adverse change in the significance of the tribal resource.
>
> **Mitigation Measure TRIB-1:** It is possible for a lead agency to determine that an artifact is considered significant to a local tribe, and thus considered a significant resource under CEQA, even if it would not otherwise be considered significant under CEQA. As such, all Native American tribal finds are to be considered significant until the lead agency has enough evidence to make a determination of significance. In the event that Native American archaeological resources are discovered, or suspected to have been discovered, Native American monitoring will be required before further ground disturbance shall be allowed.

3.19 UTILITIES AND SERVICE SYSTEMS

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the project:				
a) Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunication facilities, the construction or relocation of which could cause significant environmental effects?	☐	☐	☒	☐
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☐	☐	☐	☒
c) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☒
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	☒	☐
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	☐	☐	☐	☒

3.19.1 Environmental Setting

Water Service

The San José Water Company (SJWC) and the California Water Service Company primarily provide water service to the project site vicinity (City of Cupertino 2020). The California Water Service Company also maintains the water system. There is an existing 12.75-inch SJWC line that extends from Mitty Way on the east side of Lawrence Expressway across the project site to Sterling Avenue, east of Saratoga Creek. This line connects to other water lines through Sterling Barnhart Park and the Lawrence Expressway and Mitty Way intersection, and supplies irrigation water for existing landscaping at the south end of the site. A 5-foot SJWC maintenance easement runs along the east side of the site.

Storm Drainage

There are no structures or buildings within the proposed park and trail alignment. Stormwater runoff from the paved portions of the trail either percolates into the ground or flows toward the Saratoga Creek channel.

Wastewater/Sanitary Sewer Service

The Cupertino Sanitary District provides sanitary sewer service to the project vicinity (City of Cupertino 2020). The Cupertino Sanitary District collects and transports wastewater to the San José/Santa Clara Regional Wastewater Facility (RWF) located in north San José. The Cupertino Sanitary District purchases 7.85 million gallons per day of water treatment capacity from the RWF. Approximately five million gallons of wastewater a day is generated within the Cupertino Sanitary District and conveyed to the RWF. The project site does not currently generate wastewater.

Solid Waste

Garbage and recycling collection services in the City of Cupertino are provided by Recology (City of Cupertino 2020). Solid waste collected from the City is delivered to Newby Island Sanitary Landfill (NISL). The project site does not currently generate solid waste.

3.19.2 Regulatory Setting

State

State Water Code

Pursuant to the State Water Code, water suppliers providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre-feet (approximately 980 million gallons) of water annually must prepare and adopt an urban water management plan (UWMP) and update it every five years. As part of a UWMP, water agencies are required to evaluate and describe their water resource supplies and projected needs over a 20-year planning horizon, water conservation, water service reliability, water recycling, opportunities for water transfers, and contingency plans for drought events.

Assembly Bill 939

The California Integrated Waste Management Act of 1989, or AB 939, established the Integrated Waste Management Board, required the implementation of integrated waste management plans, and mandated that local jurisdictions divert at least 50 percent of solid waste generated (from 1990 levels), beginning January 1, 2000, and divert at least 75 percent by 2010. Projects that would have an adverse effect on waste diversion goals are required to include waste diversion mitigation measures.

Assembly Bill 341

AB 341 sets forth the requirements of the statewide mandatory commercial recycling program. Businesses that generate four or more cubic yards of garbage per week and multi-family dwellings

with five or more units in California are required to recycle. AB 341 sets a statewide goal for 75 percent disposal reduction by the year 2020.

Senate Bill 1383

SB 1383 establishes targets to achieve a 50 percent reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The bill grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that at least 20 percent of currently disposed edible food is recovered for human consumption by 2025.

3.19.2 Impact Discussion

Would the project:

a) **Require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunication facilities, the construction or relocation of which could cause significant environmental effects?**

Less than Significant Impact. The proposed project consists of a plan for the development of a new public park and extension of the existing Saratoga Creek Trail. Minor increases in the demand for water would result from irrigation of new landscaping with the project, as well as a drinking fountain. Existing irrigation facilities in the south park of the site will remain with the project. All new water services proposed for the project site would likely connect to the existing SJWC 12.75-inch water line that is located on the property near the Saratoga Creek Trail and Mitty Way. SJWC will require notification of the proposed services to confirm the existing line has capacity for the project's demand. If a plumbed restroom is included at the park, then water and sewer service lines would also be required for plumbing fixtures. Since the restroom is not yet designed, it is possible a pit type toilet could be installed that would not require connection to water or sewer service. In this case, the pit toilet would require regular maintenance to remove sanitary waste water that would be disposed of at a treatment plant. These additional service lines would not be expected to require substantial new construction or relocation of existing facilities that would cause significant environmental effects, as the SJWC easement containing the 12.75-inch line is 20 feet wide.

Any existing stormwater drainage facilities damaged by construction would be repaired and replaced in place and would not be increased in size or relocated. Therefore, the project would have no impact.

b) **Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?**

c) **Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?**

No Impact. (Responses b - c). No additional water supply is being sought as part of the project. Water demand by construction workers and construction uses would be negligible. Operation of the proposed project would not be expected to result in any permanent substantial increase in

water demand as future water use is limited to irrigation for drought tolerant landscaping and potentially a single plumbed restroom and or water fountain. Therefore, the project would not require or result in the construction of new water or wastewater treatment facilities or the expansion of existing facilities. During project construction, portable toilets would be provided by the contractor which would be processed at a local facility, in accordance with State and local regulations. The wastewater created from portable toilets used during project constriction is also negligible.

d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Less than Significant Impact. A small amount of construction waste would be expected to be generated by the project over the short-term. The proposed park and trail improvements would include the provision of on-site trash receptacles, however, the amount of trash generated by future park and trail users would not be expected to result in exceedances of State or local standards or exceedances of the capacity of local infrastructure. Therefore, the impact would less than significant.

e) Comply with Federal, State, and local management and reduction statutes and regulations related to solid waste?

No Impact. The project would not conflict with any federal, state or local statutes and regulations related to solid waste.

3.20 WILDFIRE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Is the project located near state responsibility areas or lands classified as very high fire hazard severity zones?	☐ Yes		☒ No	
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☐	☐	☐	☒
c) Require the installation of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	☐	☒
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	☐	☒

3.20.1 Environmental Setting

The project site is located in the City of Cupertino in a fully urbanized area. The site is not located in an area designated as a Very High Fire Hazard Severity Zone (CAL FIRE 2022). The nearest area with a very high fire hazard designation is located in and directly adjacent to the Fremont Older Open Space Preserve, approximately 3.4 miles southwest of the project site.

3.20.2 Impact Discussion

If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

c) **Require the installation of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?**

d) **Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?**

No Impact (a through d)**.** As discussed in the Environmental Setting section provided above, the project site is not located in a Very High Fire Hazard Severity Zone. The nearest such zone is located over 3.4 miles southwest of the project site.

3.21 MANDATORY FINDINGS OF SIGNIFICANCE

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☒	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means the incremental effects of a project are considerable when viewed in connection with the efforts of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☒	☐	☐

3.21.1 Discussion

a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Less Than Significant with Mitigation. The proposed project would not degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. There are sensitive biological resources in the project area, including southwestern pond turtle, San Francisco dusky-footed woodrat, bats and nesting birds that would be protected through the implementation of Mitigation Measures BIO-1a through 1d, BIO-2a and 2b, BIO-3a through 3c, and BIO-4, included in the project. Mitigation is also included in the project to reduce potentially significant impacts to Cultural Resources and Tribal Cultural Resources (Mitigation Measures CUL-1 through 3, and TRIB-1).

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means the incremental effects of a project are considerable when viewed in connection with the efforts of past projects, the effects of other current projects, and the effects of probable future projects)?

Less Than Significant. Under Section 15065(a)(3) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has potential environmental effects "that are individually limited, but cumulatively considerable." As defined in Section 15065(a)(3) of the CEQA Guidelines, cumulatively considerable means "that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Using this definition, a project that has no impact in a given impact category cannot have a cumulatively considerable contribution because its contribution is zero.

The project evaluated in this Initial Study is limited to the construction of off-street trail and public park improvements. Due to the nature of this proposed project, many types of impacts that are frequently associated with development projects (e.g., housing, offices, commercial uses, etc.) would not occur. For example, as described in Section 3 of this Initial Study, operation of the trail and park would have no adverse impacts on agriculture and forestry resources, land use, mineral resources, population and housing, and wildfire.

There are no other projects proposed or that would be under construction in the same general area as the proposed project. Therefore, short-term, construction related impacts of the project (e.g., dust, potential soil contamination, noise and vibration, nesting bird disturbance, and water quality) would not combine with the impacts of other projects and would not be cumulatively considerable Furthermore, mitigation measures and/or Standard Conditions are included in the project to reduce construction-related impacts to a less than significant level.

As described in Section 3.13 Noise, the passing and temporary noise sources that could occur from use of the proposed trail and park would not have a material effect on long-term ambient noise levels in proximity of the project site. Because noises would be localized, intermittent, and at low levels that would not significantly affect many nearby residences, they would not be cumulatively considerable.

As described in Section 3.4 Biological Resources, the project could affect sensitive biological resources in both the short- and long-term. These impacts, however, would not result in a cumulatively significant loss of such resources, because there are no other proposed projects or projects that would be under construction in the same general area as the proposed project. In addition, the project would implement a number of mitigation measures to reduce impacts on both common and special-status species, as described in Section 3.4. Therefore, the project would not contribute to cumulative impacts on biological resources.

There are no planned or proposed developments in the project area that could contribute to cumulative aesthetic, air quality, hydrology and water quality, public services, recreation, or utilities and service systems impacts. The project's archaeological and biological resources and geology and soils impacts are specific to the project alignment and would not contribute to cumulative impacts elsewhere.

The project's impacts to GHG emissions are discussed in Section 3.8, and it was concluded that the project would have a less than significant impact on GHG emissions.

Based on the discussion above, the project would not result in cumulatively considerable impacts.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less Than Significant with Mitigation. Consistent with Section 15065(a)(4) of the CEQA Guidelines, a lead agency shall find that a project may have a significant effect on the environment where there is substantial evidence that the project has the potential to cause substantial adverse effects on human beings, either directly or indirectly. Under this standard, a change to the physical environment that might otherwise be minor must be treated as significant if people would be significantly affected. This factor relates to adverse changes to the environment of human beings generally, and not to effects on particular individuals. While changes to the environment that could indirectly affect human beings would be represented by all of the designated CEQA issue areas, those that could directly affect human beings include construction- related air quality, hazardous materials, and noise. Implementation of mitigation measures identified in Section 3, however, would reduce these impacts to a less than significant level. No other direct or indirect adverse effects on human beings have been identified.

Chapter 4. List of References

Association of Bay Area Governments (ABAG). Bay Area Hazards: Wildland-Urban Interface. Accessed March 1, 2022 at https://mtc.maps.arcgis.com/apps/mapviewer/index.html?layers=d45bf08448354073a26675776f2d09cb

Baldwin, B.G., D.H. Goldman, D. J. Keil, R. Patterson, T.J. Rosatti, and D.H. Wilken, editors. 2012. The Jepson Manual: Vascular plants of California, second edition. University of California Press, Berkeley.

Basin Research Associates. Archaeological Review Memorandum – In Support of Environmental Clearance, Lawrence-Mitty Park and Trail Project, Barrington Bridge Lane to Rayla Ct, City of Cupertino, Santa Clara County. October 12, 2023.

Bay Area Air Quality Management District (BAAQMD). 2017a. "Air Quality Standards and Attainment Status". BAAQMD, Research & Data, Air Quality Standards & Attainment Status. January 5, 2017. Accessed on December 29, 2021 at http://www.baaqmd.gov/research-and-data/air-quality-standards-and-attainment-status.

_____2023. California Environmental Quality Act Air Quality Guidelines. San Francisco, CA. Last updated April 20, 2023.

Bousman, W.G. 2007. Yellow warbler Dendroica petechia. Pages 376-377 in W.G. Bousman, editor. Breeding bird atlas of Santa Clara County. Santa Clara Valley Audubon Society, Cupertino, California.

Bulger, J.B., N.J. Scott, Jr., and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs Rana aurora draytonii in coastal forests and grasslands. Biological Conservation 110: 85-95.

Bury, R.B. and D.J. Germano. 2008. Actinemys marmorata (Baird and Girard 1852) - western pond turtle, Pacific pond turtle in G.J. Rhodin, C.H. Pritchard, P.P. van Dijk, R.A. Saumure, K.A. Buhlmann, and J.B. Iverson, editors. Conservation biology of freshwater turtles and tortoises: A compilation project of the IUCN/SSC Tortoise and Freshwater Turtle Specialist Group. Chelonian Research Monographs.

California Department of Conservation. 2021. Santa Clara County Important Farmland 2018. Division of Land Resource Protection. August. Accessed on October 15, 2021 at https://filerequest.conservation.ca.gov/RequestFile/2834917

California Department of Fish and Game. 2007. Vegetation Classification and Mapping Program List of California Vegetation Alliances and Rarity Ranking.

California Department of Forestry and Fire Protection (CAL FIRE). 2022. Fire Hazard Severity Zone Viewer. Accessed February 14, 2022 at https://egis.fire.ca.gov/FHSZ/.

California Department of Fish and Wildlife. 2022. VegCAMP Natural Communities Lists. Accessed December 2021 from https://www.wildlife.ca.gov/data/vegcamp/natural-communities.

California Natural Diversity Data Base. 2022. Results of electronic records search. Rarefind 5. California Department of Fish and Wildlife, Biogeographic Data Branch. Accessed January 2022 from http://www.dfg.ca.gov/biogeodata/cnddb/mapsanddata.asp.

California Native Plant Society. 2022. Inventory of Rare, Threatened, and Endangered Plants of California. Version 8-02. Accessed January 2022 from http://www.rareplants.cnps.org/advanced.html.

California Department of Toxic Substances (DTSC). 2021. EnviroStor Database. Accessed March 1, 2022 at https://www.envirostor.dtsc.ca.gov/public/map/?myaddress=Mitty+Way.California Department of Transportation (Caltrans). 2022. California State Scenic Highway System Map. Accessed February 7, 2022 at https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways.

California Department of Water Resources. 2022. Division of Safety of Dams, California Dam Breach Inundation Maps. Accessed August 9, 2023 at: https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2

California Energy Commission (CEC) 2015. 2015 Integrated Energy Policy Report. Sacramento, CA. 2015.

_____. 2023a. “Electricity Consumption by County.” Electricity Consumption by County. CEC, Energy Consumption Database. n.d. Accessed April 10, 2023 at http://ecdms.energy.ca.gov/elecbycounty.aspx.

_____. 2023b. “Gas Consumption by County.” Gas Consumption by County. CEC, Energy Consumption Database. n.d. Accessed April 10, 2023 at http://ecdms.energy.ca.gov/gasbycounty.aspx .

California Environmental Protection Agency (CalEPA). 2021. Cortese List Data Resources. Accessed March 1, 2022 at https://calepa.ca.gov/sitecleanup/corteselist/.

CalFire. 2008. Santa Clara County Very High Fire Severity Zones in LRA as Recommended by CALFIRE. October 8. Accessed on September 14, 2021 at https://osfm.fire.ca.gov/media/6536/fhszl_map43.jpg

Carraway L.N. and B.J. Verts. 1991. Neotoma fuscipes. Mammalian Species No. 386, The American Society of Mammalogists. 10 pp.

City of Cupertino. 2022. Cupertino General Plan: Community Vision 2015 – 2040. February 7, 2022.

City of Cupertino. 2019. City of Cupertino Land Use Map. Accessed on October 15, 2021 at: https://www.cupertino.org/home/showpublisheddocument/13148/637045848489430000.

City of Cupertino, Emergency Operations Plan, Base Plan. June 18, 2019. https://www.cupertino.org/home/showpublisheddocument/24990/637019800695800000. Accessed February 28, 2022.

City of Cupertino. 2022. Office of Emergency Management website. Accessed March 1, 2022 at https://www.cupertino.org/home/showpublisheddocument/24990/637019800695800000.

City of Cupertino. I-280 Trail Initial Study/Mitigated Negative Declaration. June 2022.

City of Cupertino. Regnart Creek Trail Initial Study/Mitigated Negative Declaration. February 2020.

City of Cupertino.2023. Schools. Available: https://www.cupertino.org/our-city/schools. Accessed October 2023.

County of Santa Clara. 2007. Santa Clara County General Plan Resource Conservation Element. Accessed July 19, 2021. https://www.sccgov.org/sites/dpd/DocsForms/Documents/GP_Book_A.pdfCornerstone Earth Group. Phase I Environmental Site Assessment Update and Phase II Soil Quality Evaluation. February 25, 2022.

Cornell Lab of Ornithology. 2022. eBird. http://www.ebird.org/. Accessed January 2022.

Fellers, G.M. 2005. *Rana draytonii* California red-legged frog. In M. Lannoo, ed. Amphibian Declines: The Conservation Status of United States Species. University of California Press. CA: Berkeley. Pp 552-554.

Fellers, G.M. and P.M. Kleeman. 2007. California red-legged frog (*Rana draytonii*) movement and habitat use: implications for conservation. Journal of Herpetology 41(2): 276-286.

FEMA 2022. FEMA Flood Map Service Center. FIRM panel 06085C0228H, effective 5/18/2009. Accessed August 9, 2023 at: https://msc.fema.gov/portal/search?AddressQuery=cupertino%20ca#searchresultsanchor

Fukushima, L., and E.W. Lesh. 1998. Adult and juvenile anadromous salmonid migration timing in California streams. California Fish and Game 84:133-145.

Google Inc. 2022. Google Earth Pro (Version 7.1.5.1557) [Software]. Available from earth.google.com.

Hall, E.R. 1981. The Mammals of North America. 2nd edition. Volume II. John Wiley and Sons, New York, New York.

Hexagon Transportation Consultants. Vehicle Miles Traveled, Multimodal Access, and Pedestrian Safety at Lawrence Mitty Park and Trail in Cupertino, California February 4, 2022.

Holland, R. F. 1986. Preliminary descriptions of the terrestrial natural communities of California. Unpublished report. California Department of Fish and Game, Natural Heritage Division, Sacramento, CA.

H. T. Harvey & Associates. 2017. Lawrence Mitty Park Proposed Berm and Fill Removal. Technical Report prepared for David J. Powers and Associates, Inc. April 6.

Jennings, M.R. and M.P. Hayes. 1994. Amphibian and reptile species of special concern in California. California Department of Fish and Game, Inland Fisheries Division.

Lee, D.E. and W.D. Tietje. 2005. Dusky-footed woodrat demography and prescribed fire in a California oak woodland. Journal of Wildlife Management 69(3):1211-1220.

Leidy, R.A., G.S. Becker, and B.N. Harvey. 2005. Historical distribution and current status of steelhead/rainbow trout (*Oncorhynchus mykiss*) in streams of the San Francisco Estuary, California. Center for Ecosystem Management and Restoration, Oakland, CA.

Natural Resources Conservation Service (NRCS). 2022a. Web Soil Survey. U.S. Department of Agriculture. Accessed February 2022 from http://websoilsurvey.nrcs.usda.gov.

National Oceanic and Atmospheric Administration (NOAA) 2023a. Trends in Atmospheric Carbon Dioxide Mauna Loa, Hawaii. Earth System Research Laboratory. Global Monitoring Division. Last updated September 5, 2023. Web: https://gml.noaa.gov/ccgg/trends/

_____2023b. Basics of the Carbon Cycle and the Greenhouse Effect. Accessed online April 28, 2023 at: https://gml.noaa.gov/outreach/carbon_toolkit/

Patch website. Early Land Grants and Two Local Ranchos. https://patch.com/california/cupertino/bp--early-land-grants-and-two-local-ranchos#google_vignette. Accessed on August 8, 2023.

SBCA Tree Consulting. 2022. Lawrence Mitty Park Tree Survey. Prepared for MIG.

Santa Clara County. Santa Clara County Geologic Hazard Zones Map. October 26, 2012. https://stgenpln.blob.core.windows.net/document/GEO_GeohazardATLAS.pdf. Accessed August 8, 2023.

Santa Clara Valley Water District (Valley Water)3. 2006. Water Resources Protection Manual.

Santa Clara Valley Water District (Valley Water). 2011. Final Subsequent Environmental Impact Report for the Multi-Year Stream Maintenance Program Update.

Santa Clara Basin Watershed Management Initiative (SCBWMI) 2001. Watershed management plan, Volume One unabridged, watershed characteristics report, Chapter 7: natural setting (amended December 2003). Santa Clara Basin Watershed Management Initiative.

Sawyer, J.O. and T. Keeler-Wolf. 1995. A Manual of California Vegetation. California Native Plant Society. Sacramento, CA.

State Water Resources Control Board (SWRCB). 2021. GeoTracker Database. Accessed March 1, 2022 at https://geotracker.waterboards.ca.gov/map/?CMD=runreport&myaddress=Mitty%20Way%20San%20Jose

Town of Los Altos Hills. 2016. Climate Action Plan 2025 Summary. Accessed on July 19, 2021, at http://losaltoshills.granicus.com/MetaViewer.php?event_id=267&meta_id=53391.

Town of Los Altos. Municipal Code. Accessed July 1, 2021 at: http://www.losaltoshills.ca.gov/199/Municipal-Code

U.S. Fish and Wildlife Service (USDFW). 202. IPaC Information for Planning and Conservation. Accessed February 2022 from https://www.fws.gov/service/information-planning-and-consultation.

Valley Transportation Authority. Transportation Impact Analysis Guidelines. October 2014.

Zeiner, D.C., W.F. Laudenslayer Jr., K.E. Mayer, and M. White, editors. 1990. California's Wildlife. Volume III: Mammals. California Department of Fish and Game, Sacramento, California.

This page intentionally left blank

Chapter 5. List of Preparers

MIG, Inc.
2055 Junction Avenue, Suite 205
San Jose, CA 95131
(650) 327-0429
www.migcom.com

Environmental Analysis and Document Preparation

Mike Campbell, AICP – Director of Environmental Analysis
Chris Dugan – Director of Air Quality, Greenhouse Gas and Noise Services
Christina Lau – Project Manager
David Gallagher – Senior Biologist
Kim Briones – Senior Biologist
Alex Broskoff – Biologist/GIS Analyst
Rose Redlich – CEQA Analyst/Graphics

Basin Research Associates
1933 Davis Street, Suite 214
San Leandro, CA 94577

Cultural Resources Services

Colin I. Busby, Ph.D., RPA – Principal

Cornerstone Earth Group
1259 Oakmead Parkway
Sunnyvale, CA 94085

Environmental Site Assessments

Ron L. Helm, C.E.G. – Senior Principal Geologist
Nick Brettner, P.G. – Project Geologist

Hexagon Transportation Consultants, Inc.
100 Century City Court, Suite 501
San Jose, CA 95112

VMT, Multimodal Access, and Pedestrian Safety Assessment

Michelle Hunt – Principal
Rueben Rodriguez, P.E., T.E. - Associate

This page is intentionally blank.