



CUPERTINO

PUBLIC WORKS DEPARTMENT

Summary

AGENDA ITEM 29

AGENDA DATE April 6, 2010

SUBJECT AND ISSUE

Conduct a hearing on a petition by Susan Sievert et. al. as amended by Donald Bautista, Jr., for reconsideration of the City Council's February 16, 2010 decision on Scenic Circle access to Stevens Creek Trail and Blackberry Farm Park.

At the conclusion of the hearing on the Petition for Reconsideration, the Council may:

- A. Adopt a resolution denying the Petition for Reconsideration, thereby affirming the original decision, or
- B. Reverse or Modify the February 16, 2010 Council decision on Scenic Circle access to Stevens Creek Trail and Blackberry Farm Park.

BACKGROUND

On February 16, 2010 the City Council considered a staff report and recommendation to construct a trail connection from Scenic Circle across an existing bridge over Stevens Creek to provide access to Stevens Creek Trail and Blackberry Farm Park.

The Council acted to approve the design and construction of an additional public access point to Stevens Creek Trail and Blackberry Farm from the west side of the Creek near Scenic Circle. The Council also gave further direction to Staff to develop a trail alignment option that accessed the park somewhere between the locations detailed in the February 16 staff report for Alternative A and Alternative B to avoid, to the greatest extent possible, a trail entrance directly across the street from the front of residential property.

Upon concluding a preliminary design of the project as directed by Council, staff will report back as part of the FY 2010-2011 Capital Improvement Program (CIP) with a

refined cost estimate and funding of the project to be considered with other proposed CIP projects for the upcoming fiscal year.

On March 1, 2010 a Petition for Reconsideration was filed by Susan Sievert and nine residents on Scenic Circle and Scenic Court. An addendum to the petition was filed March 2, 2010 by Donald Bautista, Jr., one of the signatories to the original petition.

The petition was filed under the provisions of Cupertino Municipal Code (CMC) Section 2.08.096 which allows reconsideration of Council decisions. In accordance with the above noted CMC section, a reconsideration hearing was set for the Council meeting of April 6, 2010. Copies of the Petition and the Addendum are attached.

CMC Section 2.08.096B requires that a petition for reconsideration meet certain specific grounds for the reconsideration. In reviewing the Petition and Addendum to reconsider the Council's decision to provide access from Scenic Circle to Stevens Creek Trail and Blackberry Farm Park, staff cannot find any relevant evidence or proof of facts that support any of the grounds for reconsideration as required by CMC Section 2.08.096 B 1-5.

General Comments Regarding Allegations

Some general comments need to be made with regard to the original petition. It contains numerous allegations irrelevant to the issue for which the petition seeks reconsideration, i.e., the Council's decision to provide access from Scenic Circle to Stevens Creek Trail and Blackberry Farm Park.

The petition appears to rely heavily on allegations which cannot be substantiated. The most extensive of these accusations, which is repeated in several forms in the petition, is the replacement of an existing bridge across Stevens Creek and the alleged "lack of notice" of this event. During the construction project the activity was purely a matter of replacing the existing bridge with another of similar size to maintain access to the irrigation system and for fire suppression on the other side of the bridge. As noted in the e-mail explanation, quoted in the petition itself, such a construction change is within the discretion of the project engineers, with proper permit clearance, which was obtained. There is no legal requirement to notify anyone of this activity. Notification was provided as a courtesy.

Whether the bridge is referred to on plans or other documents as "pedestrian" or "maintenance" is immaterial to the Council's decision to provide the access from Scenic Circle. It does not establish any "predetermination" by the City to create public access from Scenic Circle.

The addendum and its contents filed by Mr. Bautista are addressed in Attachment B to this report.

Upon approval of the Resolution for denial, the Council's original decision of February 16, 2010 to provide access from Scenic Circle to Stevens Creek Trail and Blackberry Farm Park is final and no further action on that decision is required.

FISCAL IMPACT

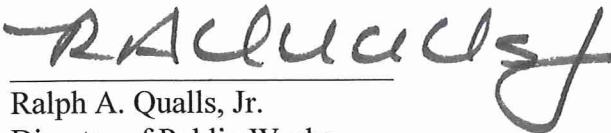
There is no Fiscal Impact to the City.

STAFF RECOMMENDATION

Conduct a hearing on a petition for reconsideration regarding the City Council's decision on Scenic Circle access to Stevens Creek Trail and Blackberry Farm Park.

Adoption of Resolution No. 10 - 073, Denying the Petition of Susan Sievert et. al. seeking Council reconsideration of its decision to provide access from Scenic Circle to Stevens Creek Trail and Blackberry Farm Park.

Submitted by:


Ralph A. Qualls, Jr.
Director of Public Works

Approved for submission:


David W. Knapp
City Manager

Attachments

Attachment A - CMC Section 2.08.096 Reconsideration- Sought by Interested Person.

Attachment B - Petition for Reconsideration – Susan Sievert et. al and Addendum

Attachment C - Resolution No. 10-073 - with City Council Findings

Attachment D – Staff Report Item 17 – Council Meeting February 16, 2010

Attachment E – Minutes Item 17 – Council Meeting February 16, 2010

10. Unfinished business;
11. New business;
12. Ordinances;
13. Staff reports;
14. Council reports;
15. Closed session;
16. Adjournment.

B. The order of business to be taken up at an adjourned meeting shall be that as deemed by the Mayor and the City Council to be proper.

C. The foregoing order of business may, at any regular meeting on motion duly made and carried, be changed or suspended for the period of such meeting.

D. The City Council may, in its discretion, establish time limitations for the presentation or discussion of any item of business; and, may establish a time after which no agenda item of business will be taken up in which case the motion for adjournment will contain the date and time for the completion of agenda business. (Ord. 1697, (part), 1995; Ord. 1561, 1991; Ord. 1457, 1988; Ord. 1393, 1986; Ord. 1329, 1985; Ord. 1259, 1984; Ord. 1192, 1982; Ord. 1133, 1981; Ord. 978, (part), 1980; Ord. 673, (part), 1975; Ord. 389, § 3.5, 1968)

2.08.095 Reconsideration.

A. The Council may, at any time before adjournment of any council meeting, determine to reconsider an item of business previously acted upon at that council meeting. A motion to reconsider may only be made by a councilmember who was a member of the prevailing majority voting on the item. A motion to reconsider may be seconded by any councilmember.

B. If a motion for reconsideration prevails, the Council is then free to reconsider the item either at the same council meeting or at any other council meeting established by the Council; provided, however, that the Council shall not reconsider an item at the same council meeting, in the following instances:

1. Any action involving a public hearing which has been closed;
2. Any action, including appeals, regarding a zoning matter, use permit, subdivision map approval, variance, architectural and site approval or sign exception;
3. Any action involving the granting, modification or revocation of any permit issued by the City;
4. Any action which is quasi-judicial in nature.

C. In such cases, the Council shall reconsider the item at another council meeting date established by the Council and shall direct the City Clerk to provide notification to the relevant parties or the general public, as the case may be. (Ord. 1697, (part), 1995; Ord. 1378, § 1, 1986)

2.08.096 Reconsideration-Sought by Interested Person.

A. The City Clerk shall forthwith mail all notices of decision after the decision of the City Council. Any interested person, prior to seeking judicial review of any adjudicatory decision of the City Council, shall file a petition for reconsideration with the City Clerk within ten days of the date of the mailing of the notice of decision. Failure to file a petition for reconsideration constitutes a waiver of the right to request reconsideration and the City Council's decision shall be final for all purposes. Upon timely receipt of a petition for reconsideration, the City Clerk shall schedule a reconsideration hearing to be commenced by the City Council no later than sixty days after the filing of the petition. Mailed notices of the date, time and place of such hearing will be provided to all interested persons at least ten days prior to the hearing. At the conclusion of the hearing for reconsideration, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all city hearings concerning the matter.

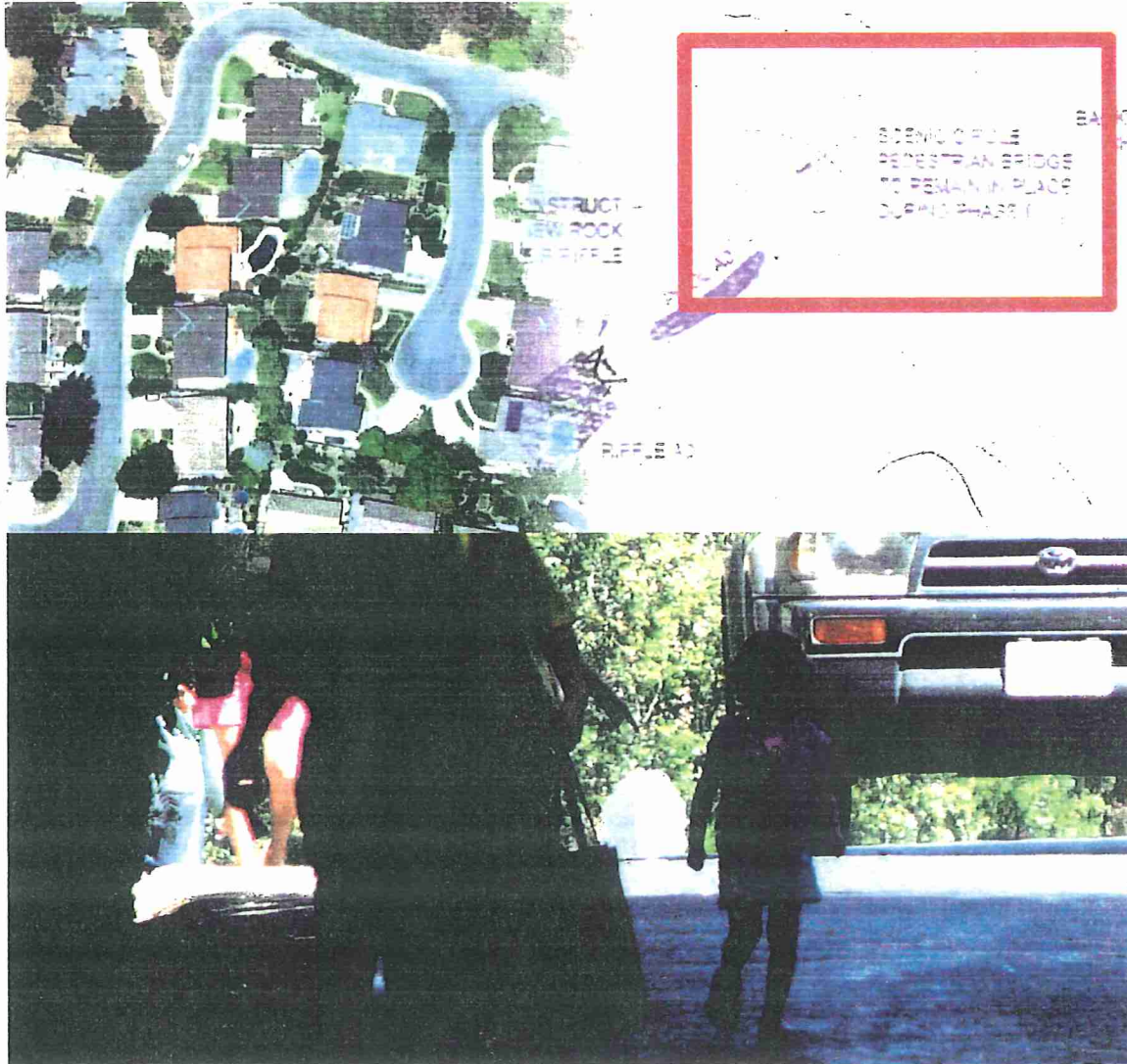
B. A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration, precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.

The grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
2. An offer of relevant evidence which was improperly excluded at any prior city hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by:
 - a. Not preceding in a manner required by law; and/or
 - b. Rendering a decision which was not supported by findings of fact; and/or
 - c. Rendering a decision in which the findings of fact were not supported by the evidence.

C. A petition for reconsideration is subject to a reconsideration fee as prescribed by resolution of the City Council. At the conclusion of the reconsideration hearing, the City Council may, in its sole discretion, refund all, or a portion, of the reconsideration fee. (Ord. 2027 § 1, 2008; Ord. 2008, 2007; Ord. 1807, § 1, 1999)

Petition for the Reconsideration of Council's Decision on Agenda 17: Scenic Circle Access to Stevens Creek Corridor Park



Date of Council Decision:

February 16, 2010

Date of Petition:

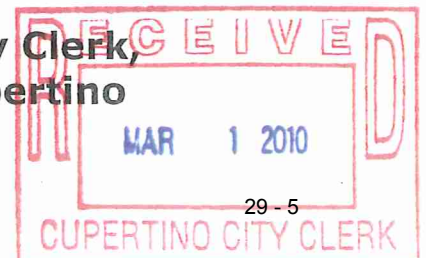
March 1, 2010

Number of Pages:

17

To:

**Kim Smith, City Clerk,
The City of Cupertino**



Public Meeting Law Violation and Fabrications

We believe the whole record demonstrates that the City of Cupertino's decision to open access to Blackberry Farm and the Stevens Creek Trail via Scenic Circle was made without a public hearing prior to the official February 16, 2010 City Council action, which is a violation of California Open Meeting Law (The Brown Act).

A significant and related precursor to this access decision was the installation of a new bridge crossing the Stevens Creek that violated the SCCP Mitigated Negative Declaration (MND), adopted by the City Council on June 20, 2006:

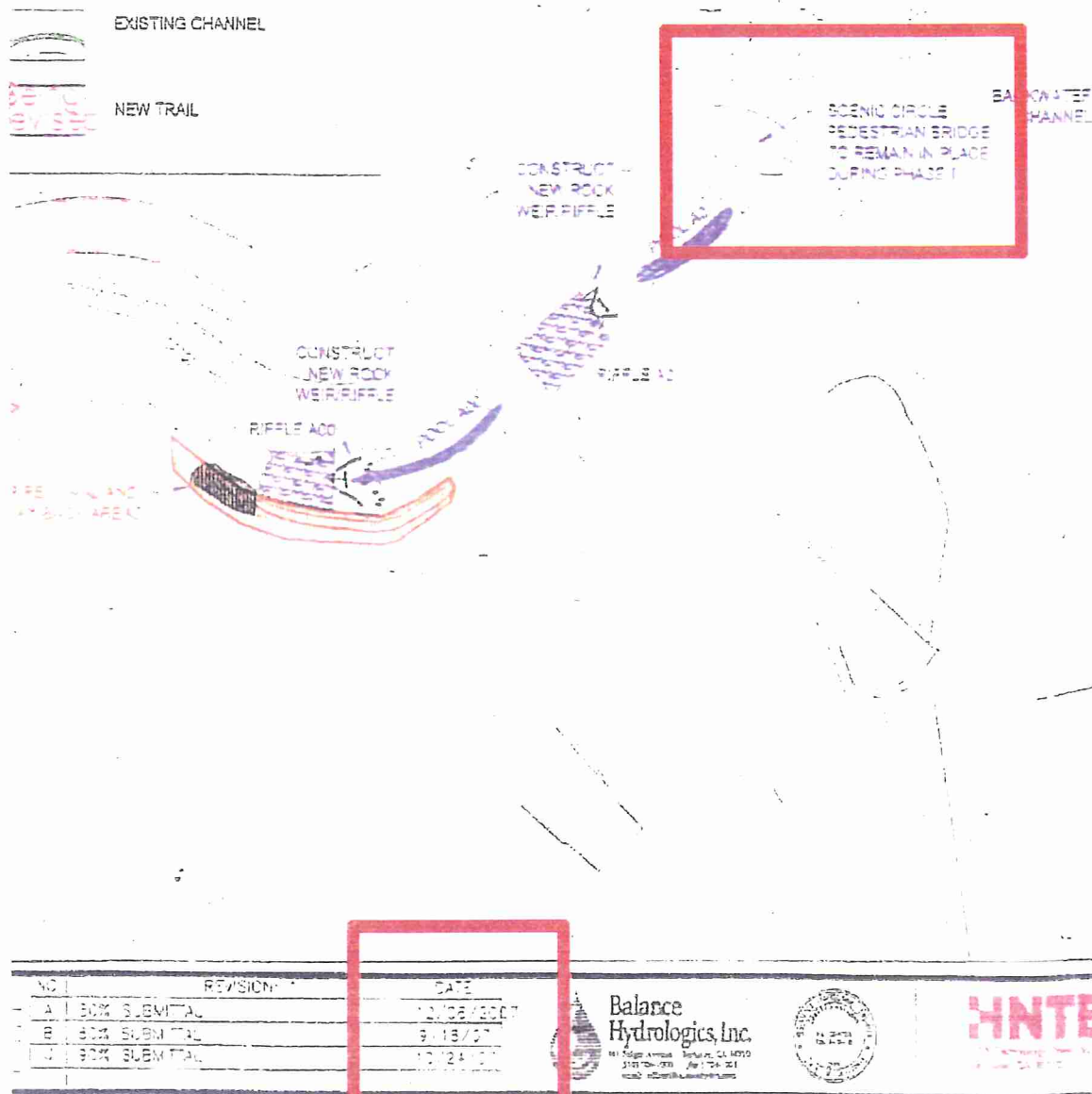
MND Project Description, page 2-16

"2.5.1 Removal of Existing Site Features

...the City Council directed that this bridge be removed and that no access be provided from the Scenic Circle neighborhood. Should any new bridges be considered in the future other than what is proposed in the Master Plan, they would need to go through the permitting and CEQA process separately."



Photo: The Fallen Oak Bridge directed to be removed.
Source: July 17, 2007 Staff Report



2007: "Scenic Circle **Pedestrian** Bridge"

Source: Stevens Creek Construction Plan Sheet - Exhibit C

http://www.cupertino.org/downloads/pdf/SCCP_Exhibit_C.pdf

The new metal bridge that was installed did not "go through the CEQA process separately" indicating the City of Cupertino violated their CEQA requirements. The Director of Public Works' assurances to questioning and concerned Scenic Circle residents that the new bridge replaced an existing "maintenance bridge" and "AT NO TIME will they [the newly installed gates] be open for public use" were blatant fabrications that misled residents into believing they had no reason to worry or challenge this CEQA compliance violation until well after their rights to due process under the law had expired.

Furthermore, the whole record will show that the Fallen Oak bridge was never described or utilized as a maintenance bridge, and therefore the new bridge does not qualify, as the City has argued without any historical basis in fact, as a "Categorical Exemption... replacement or reconstruction of existing utility systems and / or facilities," under "CEQA section 15302 (b)." Rather, it was a narrow wooden "pedestrian bridge" (MND and staff reports) "built without a permit" (staff report) in 1993 by the City of Cupertino. Conversely, maintenance entered the Fallen Oak picnic area by driving through a low flow creek vehicle crossing.

For all intents and purposes, the picnic area had been given back to nature since 2005, and maintenance of nature is an oxymoron. Moreover, maintenance could simply access the area via one of 3 gates installed in the new fence separating Scenic Circle from Blackberry Farm; another unplanned feature not present in the MND that the City guaranteed in writing, "AT NO TIME will they be open for public use."

"Scenic Circle **Pedestrian** Bridge": The clear intent of the new metal bridge that did not go through the required CEQA process is made abundantly clear in a City of Cupertino/Department of Public Works' Channel Restoration drawing that actually renamed the Fallen Oak Bridge the "Scenic Circle **Pedestrian** Bridge." Therefore, the public record and the 2007 date on this drawing clearly demonstrates that the City's decision and intent to open Blackberry Farm and Stevens Creek Trail access to Scenic Circle was made without a public hearing more than two years before the official February 16, 2010 City Council action to open access.

Deception is a violation of the public trust

On December 15, 2009, the Director of Public Works asserted, "There is some reference made here people who spoke here about some hanky panky in the part of the staff of moving the bridge around, absolutely unfounded. We have followed the directions of the City Council and the policy decisions for the life of this project including keeping the maintenance bridge there." However, there is no City Council action on record authorizing the installation of the new metal bridge, which translates the Director's statement into the City Council has violated the Public Meeting Law? Yet, the Director's statement contradicts his previous email communication to Scenic Circle residents.

-----Original Message-----

From: Ralph Qualls [mailto:RalphQ@cupertino.org]

Sent: Monday, October 20, 2008 10:23 AM

As City Engineer and Public Works Director, I personally (no one else) approved the substitution of the metal bridge for the existing wooden bridge and did so at a meeting of our project and construction managers on the site regarding the removal of the concrete obstructions in the creek at that location sometime around the latter half of July 2008.

On July 23, 2008, we sent a courtesy "Notice of Construction Activity" regarding the removal and replacement of the bridge by e-mail to over 400 residents on our mailing list including Scenic Circle residents. I don't know why some did not receive it.

Ralph A. Qualls, Jr.
Director of Public Works
City of Cupertino

It is also remarkable that not a single resident of Scenic Circle received the "Notice of Construction Activity" email and noteworthy to point out its deliver method ("email") contradicts the Director's previous October 2, 2008 "notice" explanation that also failed to reach Scenic Circle residents:

Subject: Stevens Creek - Fallen Oak Picnic Area Bridge
Date: Thu, 2 Oct 2008 15:12:08 -0700
From: RalphQ@cupertino.org

...In addition, prior to beginning this work, an explanatory notice of specifically what and why the city was doing this particular work was hand delivered to the properties in the Scenic Circle area...

Sincerely Ralph A. Qualls, Jr.
Director of Public Works
City of Cupertino

A third explanation of how Scenic Circle residents were notified of the bridge replacement was produced by City Manager David Knapp in an "Items of interest for City Council," dated October 2, 2008. Mr. Knapp informed the City Council, "We sent a letter to all the Scenic Circle neighbors telling them what we were doing." "Sent" implies US Mail, but not a single Scenic Circle resident received this mailed notice.

Environmental Planning Consultant Jana Sokale produced yet another explanation when seeking permission from permitting agencies, the US Army Corp of Engineers, the San Francisco Regional Water Quality Control Board, and the National Oceanic and Atmospheric Administration:

From: Jana Sokale [JanaSLC@aol.com]
Sent: Sunday, August 17, 2008
To: Costa, Holly N SPN [Holly.N.Costa@usace.army.mil];
Daniel Logan [Dan.Logan@noaa.gov]
Cc: Gail Seeds [Gails@cupertino.org]; Terry Greene
TerryG@cupertino.org
Subject: Cupertino-Requesting Concurrence with Retaining
Wall Removal on Stevens Creek-File # 2006-30064oS

"...The City of Cupertino wishes to temporarily lift aside an existing pedestrian bridge (planned to remain in the original project) to remove approximately 45 foot long x 10 feet 8 inch wide concrete and cinder block retaining wall and facing located on the east bank of Stevens Creek ... A 48-foot long x 7 foot wide pedestrian bridge will be repositioned across the creek after the habitat enhancement have been completed."

Not exactly: The "existing bridge" was not "temporarily" lifted aside. Rather, it was demolished and Ms. Sokale failed to mention the bridge that was "repositioned" was a completely different metal bridge for a wooden bridge. It is also significant to note that she describes the bridge as pedestrian, and not maintenance.

Most importantly, there has been no indication that the City Manager and/or the City Council have taken any action to launch an inquiry into the new metal bridge that did not go through the required CEQA process, even after an investigation was specifically requested by a Scenic Circle resident during the City Council's Agenda Item No. 18 public comment period on December 15, 2009.

****PLEASE SEE "EXHIBIT A" AT THE END OF THIS DOCUMENT TO SEE HOW OUR CONCERNS CONTINUE****

A Categorical Exemption Notice Example

The following notice is a typical Notice of Exemption from CEQA, which was found posted in full view in the Stevens Creek County Park.

File#: 15779 10/30/2009

County of Santa Clara, California • Parks and Recreation Department
298 Garden Hill Drive, Los Gatos, California 95032 / Telephone (408) 355-2200

Notice of Exemption from CEQA

☒ County Clerk
County of Santa Clara

☐ Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Title Renovation of Chestnut Picnic Area Stevens Creek County Park		Title none
Project Location Stevens Creek County Park, 11401 Stevens Canyon Road, Cupertino, CA 95014		APN (s) 351-21-009
County of Santa Clara Parks and Recreation Department	Person or Agency Carrying out Project County of Santa Clara Parks and Recreation Department	
Project Description (including purpose and location of project) The project involves the renovation of six (6) existing picnic sites and barbeque areas at the Chestnut picnic area at Stevens Creek County Park. The picnic sites will be approximately 12 feet by 16 feet and 10 inches deep with a concrete pad 30 inches by 30 inches outside the picnic pad for a barbeque. Each picnic site will have a barbeque and picnic table. The six renovated picnic areas will be located on the same site as the existing picnic areas and have the same use.		
Exemption Statute (check one/indicate type and Statute/CEQA Guideline section number) <input type="checkbox"/> Statutory Exemption: <input checked="" type="checkbox"/> Categorical Exemption: Article 19, Section 15302 class 2 Replacement or Reconstruction. <input type="checkbox"/> Other:		
The project consists of the renovation of six picnic sites at the Chestnut picnic area at Stevens Creek County Park and will benefit park users. The project involves no or negligible expansion of the existing use.		
Signature Dan Hill Kimberly Brosseau	Title Senior Park Maintenance Worker Park Planner	Telephone Number 408-867-6922 408-355-2230
Signature <i>Kim Brosseau</i>		Date 10/29/09

The following Notice of Construction Activity was found posted on the City's Web site, but it was never found posted in Scenic Circle, nor does it justify the bridge construction activity as a "Notice of Exemption from CEQA."



PUBLIC WORKS DEPARTMENT

July 23, 2008

NOTICE OF CONSTRUCTION ACTIVITY

**STEVENS CREEK BRIDGE - VICINITY OF
SCENIC CIRCLE**

This notice is to advise all interested parties that the temporary wooden bridge that crosses the creek at what used to be called the Fallen Oak Picnic area, adjacent to Scenic Circle, will be temporarily removed for construction access in the creek. This work will commence on Wednesday July 30, 2008. The bridge crossing will be restored at the same location after the work in the creek is complete and before Blackberry farm is reopened to the public.

If you have any questions please contact Terry Greene, City Architect at:

408 - 777-3354

terryg@cupertino.org

**RALPH A. QUALLS, JR.
DIRECTOR OF PUBLIC WORKS**

A pattern of negligence/a window into the future

On July 4, 2009, Blackberry Farm reopened with a parking lot that was reduced from the MND plan of 350 spaces to 167 without a public hearing or City Council action, and without a parking and traffic study to determine what the impacts of said reduction would have on the surrounding neighborhoods.



Photo: August 2009, the Monta Vista Neighborhood after the reduction in the Blackberry Farm parking lot from the original 1100 spaces to 167 (instead of the MND planned 350 spaces).

The Monta Vista neighborhood (across the creek/Blackberry Farm, and east of Scenic Circle) suffered significant impacts and requests by residents for an environmental impact study of the newly created spillover parking/traffic circulation/public safety issue have been repeatedly ignored by the City of Cupertino.

At the February 16, 2010 City Council meeting, the concerns that the Scenic Circle neighborhood will suffer the same fate as the Monta Vista neighborhood as a direct result of the reduced Blackberry Farm parking lot were not addressed, and any thoughts or conclusions expressed regarding impacts were unsupported by any facts, studies, or qualified analysis. Furthermore, the City Council's decision does not include adequate provision to mitigate the adverse impact that increased parking will have on the Scenic Circle neighborhood, and residents are deeply concerned and crestfallen that their now quiet, serene, and peaceful neighborhood will be converted into a congested parking lot due to overflow parking from the Blackberry Farm planning error.

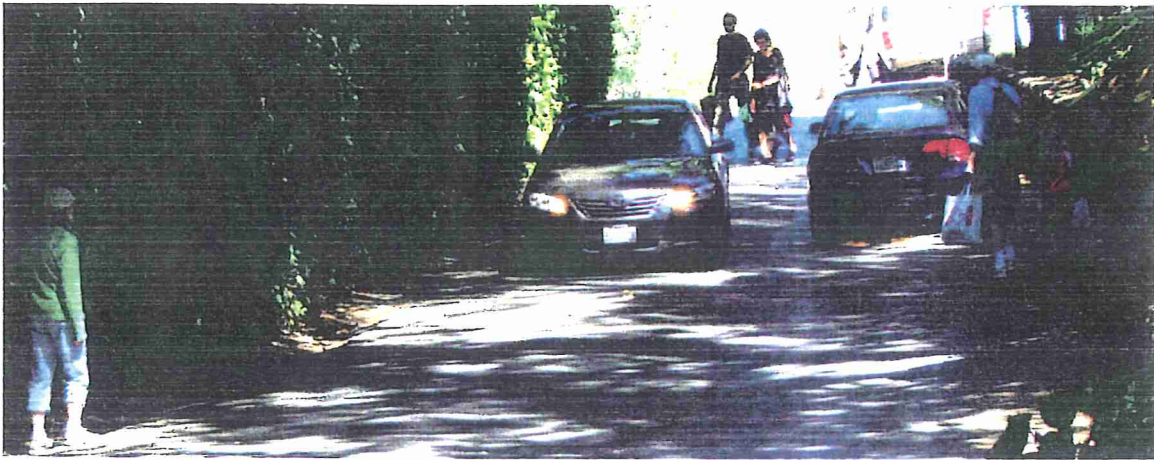
Additionally, a February 18, 2010 request for "detailed specifics regarding the upcoming CEQA process" has been ignored by City staff, including a benign question "How do interested parties sign up to be notified so they may follow the CEQA process?" It is indeed an eerie reminder of the MND/CEQA expert's advice to the City Council:

From: Christine Schneider, Thomas Read Associates

There is no provision in the California Environmental Quality Act (CEQA) Statutes or Guidelines that stipulates that a Lead Agency must respond to comments generated during the public comment period of an IS/MND. (2006 SCCP MND Staff Report)

The consultant's advice legitimizes Scenic Circle's concerns, and when using the impacted Monta Vista neighborhood and MND process as a model example, there has been nothing to suggest that Scenic Circle's concerns will be taken seriously in the future.

A Safe/Safer Route to School, or a liability to the taxpayers?



Photo, 2009: Blackberry Farm Entrance Driveway.

The City has failed to present any data to quantify Scenic Circle through Blackberry Farm as a safe/safer route to school. Moreover, after the children make it down Scenic Circle's steep slope and around the blind turn, they will cross a new bridge that did not go through a CEQA process, and encounter the hazardous 480' substandard Blackberry Farm entrance driveway that escaped any study of feasible alternatives or mitigations in the MND process.

Perhaps the faint drawing in the MND of a phantom 4-foot ^{wide 2-28-2010 gh} boardwalk along the driveway is supposed to be a deferred mitigation for this "safety issue"? (Note: the build date is unspecified, and deferred mitigations are impermissible under CEQA.)



Photo, 2009: Blackberry Farm Entrance Driveway.

The driveway's asphalt measures just 17' wide in some spots, and staff advised the City Council in a public meeting that it had no pedestrian

or bicycle lane, with an improvement cost of approximately \$1.1 million dollars.



Photo, 2009: Blackberry Farm Entrance Driveway.

After dodging Blackberry Farm partygoers (alcohol consumption permitted), the children will land in what was described by staff as a "safety issue," a narrow "chokepoint" with no sidewalks, and with an uncertainty if sidewalks are "feasible." Note: If the City complies with its General Plan and county resident Monta Vista annexation proceedings, sidewalks are not required until properties redevelop, meaning sidewalks are not currently feasible.



Photo, 2009: The San Fernando to Byrne Avenue "chokepoint."

Frankly, we are stunned that the City of Cupertino first exacerbated this well-known safety hazard with their parking planning error; horrified they continue to look the other way; and astonished they have now approved a \$200,000 project that introduces school children into this heartbreak just waiting to happen.

Civil rights violation

In its meeting of March 15, 2005, the City Council approved a motion for an east side trail alignment that buffers The Meadows neighborhood with a generous 100 foot setback from their property lines. The gross disparity between that decision and the City Council's February 16, 2010 decision to open a new trailhead access gate less than 40 feet from Scenic Circle property lines is outrageously unequal and discriminatory, and thus a civil rights violation.

EXHIBIT A

-----Original Message-----

From: Max Bokelman [mailto:maxbok@att.net]
Sent: Wednesday, December 16, 2009 7:22 AM
To: Ralph Qualls; 'i yuen'
Cc: donbautistajr@hotmail.com; ekm103@yahoo.com; David Knapp; larry.loo@amd.com; Terry Greene; Gail Seeds; Kris Wang; Gilbert Wong; Barry Chang; Orrin Mahoney; Mark Santoro
Subject: RE: Re:Stevens Creek - Fallen Oak Picnic Area Bridge

Mr. Qualls

Comments I made at last night's Council meeting, that the replacement bridge was put in without Council approval, were based in part on your message of October 20, 2008 as follows:

Max Bokelman

-----Original Message-----

From: Ralph Qualls [mailto:RalphQ@cupertino.org]
Sent: Monday, October 20, 2008 10:23 AM
To: 'i yuen'
Cc: Max Bokelman; donbautistajr@hotmail.com; ekm103@yahoo.com; David Knapp; larry.loo@amd.com; Terry Greene; Gail Seeds
Subject: RE: Re:Stevens Creek - Fallen Oak Picnic Area Bridge

M. Yuen et al:

As City Engineer and Public Works Director, I personally (no one else) approved the substitution of the metal bridge for the existing wooden bridge and did so at a meeting of our project and construction managers on the site regarding the removal of the concrete obstructions in the creek at that location sometime around the latter half of July 2008.

On July 23, 2008, we sent a courtesy "Notice of Construction Activity" regarding the removal and replacement of the bridge by e-mail to over 400 residents on our mailing list including Scenic Circle residents. I don't know why some did not receive it.

Ralph A. Qualls, Jr.
Director of Public Works
City of Cupertino

-----Original Message-----

From: Ralph Qualls [mailto:RalphQ@cupertino.org]
Sent: Wednesday, December 16, 2009 11:01 AM
To: Max Bokelman; 'i yuen'
Cc: donbautistajr@hotmail.com; ekm103@yahoo.com; David Knapp; larry.loo@amd.com; Terry Greene; Gail Seeds; Kris Wang; Gilbert Wong; Barry Chang; Orrin Mahoney; Mark Santoro
Subject: RE: Re:Stevens Creek - Fallen Oak Picnic Area Bridge

Mr. Bokelman--

I do not see how you (or anyone else) could possibly interpret my message as doing anything outside of the Council's approval--my remarks of last night stand--anyone who suggests that the staff acted outside of the Council's policy or approvals is dead wrong and as I advised the Council upon Mr. Santoro's question, it isn't just a matter of opinion but a matter of record and unimpeachable fact--but, of course, people are free to believe whatever they want to--Thank you for your note and, all things aside, best wishes for a happy and safe holiday season.

Ralph A. Qualls, Jr.
Director of Public Works
City of Cupertino


--- On Wed, 12/16/09, Max Bokelman <maxbok@att.net> wrote:

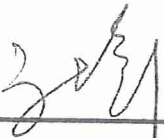
From: Max Bokelman <maxbok@att.net>
Subject: RE: Re:Stevens Creek - Fallen Oak Picnic Area Bridge
To: "'Ralph Qualls'" <RalphQ@cupertino.org>, "'i yuen'" <i_yuen@yahoo.com>
Cc: donbautistajr@hotmail.com, ekm103@yahoo.com, "'David Knapp'" <Davidk@cupertino.org>, larry.loo@amd.com, "'Terry Greene'" <TerryG@cupertino.org>, "'Gail Seeds'" <Gails@cupertino.org>, "'Kris Wang'" <Kwang@cupertino.org>, "'Gilbert Wong'" <gwong@cupertino.org>, "'Barry Chang'" <BChang@cupertino.org>, "'Orrin Mahoney'" <Omahoney@cupertino.org>, "'Mark Santoro'" <MSantoro@cupertino.org>
Date: Wednesday, December 16, 2009, 11:14 AM


Yes, indeed Ralph, let the matter of record and unimpeachable fact stand. Best wishes to you and yours for a happy and safe holiday season also.

Sincerely,
Max Bokelman

Appellants:

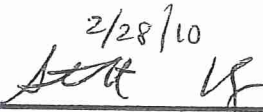
SUSAN GIEVERT  2-28-10 10301 BYRNE AVE
MONTAVISTA / CUPERTINO

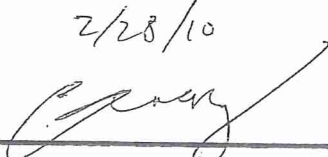
Jean J. Zuo  2-28-10 10380 Riviera Road
Cupertino, CA. 95014

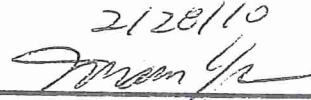
JK TSAI  2-28-10 10464 SCENIC CT.

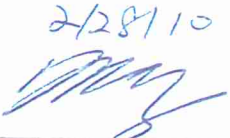
MAX BOKELMAN  10432 SCENIC CIRCLE 2-28-10

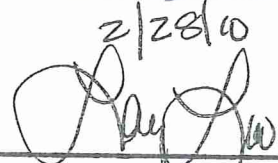
DON BAUTISTA JR  2-28-10
10434 SCENIC CIRCLE CUPERTINO 95014

STEWART KELLY  2/28/10 10452 Scenic Circle
Cupertino, CA 95014

BANG CAN  2/28/10 10451 SCENIC CIRCLE
Cupertino, CA 95014

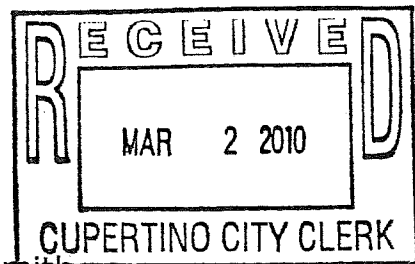
IMAM YUEN  2/28/10 10463 SCENIC CT.

DANS WANG  2/28/10 10461 Scenic Circle. Cupertino 95014

LARRY LO  2/28/10 10442 SCENIC CIRCLE Cupertino 95014

CITY OF CUPERTINO
 REC'D BY: RICHARDW 01000044817
 PAYOR: JUEI K TSAI
 TODAY'S DATE: 03/01/10
 REGISTER DATE: 03/01/10 TIME: 10:34
 DESCRIPTION AMOUNT
 CUST ID: PETITION FEE J TSAI
 APPEAL \$259.00
 TOTAL DUE: \$259.00
 TENDERED: \$259.00
 CHANGE: \$0.00
 CHECK: \$259.00
 REF NUM: 1021

Petition for
 Reconsideration
 Scenic Circle Access



Date: March 1, 2010

To: The City of Cupertino / City Clerk, Kimberly Smith

From: The Scenic Circle Access to Stevens Creek Corridor Park Petition for the Reconsideration Appellants

Subject: Addendum to the Petition for the Reconsideration of Council's Decision on Agenda 17: Scenic Circle Access to Stevens Creek Corridor Park, dated February 16, 2010

Total pages of Addendum: 3

Per the City of Cupertino Clerk's request on March 1, 2010, we respectfully submit this **addendum to our Petition for the Reconsideration of Council's Decision on Agenda 17: Scenic Circle Access to Stevens Creek Corridor Park, dated February 16, 2010**, outlining and summarizing our grounds for reconsideration.

1.) New relevant evidence with, in the exercise of reasonable diligence, could not have been produced at an earlier city hearing.

Petition section: Public Meeting Law Violation and Fabrications, p.2

Summary of Public Meeting Law Violation:

p.2 - The discovery of a 2007 Public Works drawing on the City's Web site with a callout for the "Scenic Circle Pedestrian Bridge" demonstrates that the City of Cupertino's decision to open access to Blackberry Farm and the Stevens Creek Trail via Scenic Circle was made without a public hearing prior to the official February 16, 2010 City Council action, which is a violation of California Open Meeting Law (The Brown Act). Drawing:
http://www.cupertino.org/downloads/pdf/SCCP_Exhibit_C.pdf

Summary of new fabrications:

a) p.3 - The use of the word "pedestrian" in the 2007 drawing impeaches the City's repeated Categorical Exemption "maintenance bridge" argument/fabrication for the new bridge that did not receive a CEQA review.

b) p.6 - Environmental Planning Consultant Jana Sokale's email

referring to the bridge as pedestrian replacing pedestrian impeaches the City's Categorical Exemption argument/fabrication.

c) p.6 - Ms. Sokale misrepresented the bridge/facts (and the taxpayers) when seeking permission from permitting agencies, the US Army Corp of Engineers, the San Francisco Regional Water Quality Control Board, and the National Oceanic and Atmospheric Administration: The "existing bridge" was removed and demolished, not "temporarily lifted aside, " and she failed to mention the bridge that was "repositioned" was a completely different metal bridge for a wooden bridge.

2.) An offer of relevant evidence which was improperly excluded at any prior city hearing.

Petition Section: A Safe/Safer Route to School, or a liability to the taxpayers? p.10

p.10 - The unsafe Blackberry Farm entrance driveway is a relevant part of the project's safer route to school. Not only was it "improperly excluded" additional information has been discovered that argues it was intentionally excluded, with the motivation being cost:

Staff Report, February 20, 2007

Staff recommends that any subsequent consideration by the Council of the issues surrounding the re-opening of the Scenic Circle gate be deferred to another Council meeting and taken up as a separate item apart from the School Traffic safety issues noted above.

Staff notes that if the Stevens Creek Corridor area beyond the Scenic Circle gate were to be re-opened to the tri-schools commute the resulting requirements for provision of facilities dedicated to safety and accessibility for a safe route to school could have a significant cost impact on the Stevens Creek Corridor project.

3.) Proof of facts which demonstrate that the City Council proceeded without, or in excess of its, jurisdiction.

Petition Section: Civil rights violation, p.12

p.12 - The unequal City Council decisions for trail setbacks of 100' for one neighborhood vs. less than 40' for another is excessive, and therefore discriminatory.

4.) Proof of fact which demonstrate that the City Council failed to provide a fair hearing.

p.9 - The concerns that the Scenic Circle neighborhood will suffer the same fate as the Monta Vista neighborhood as a direct result of the reduced Blackberry Farm parking lot were **again** not addressed, and any thoughts or conclusions expressed regarding impacts were unsupported by any facts, studies, or qualified analysis.

5.) Proof of facts which demonstrate that the City Council abused its discretion by: a. Not preceding in a manner required by law:

Petition section: Public Meeting Law Violation and Fabrications, p.2

p.2 - The discovery of a 2007 Public Works drawing on the City's Web site with a callout for the "Scenic Circle Pedestrian Bridge" demonstrates that the City of Cupertino's decision to open access to Blackberry Farm and the Stevens Creek Trail via Scenic Circle was made without a public hearing prior to the official February 16, 2010 City Council action, which is a violation of California Open Meeting Law (The Brown Act). Drawing:
http://www.cupertino.org/downloads/pdf/SCCP_Exhibit_C.pdf

5b. Rendering a decision which was not supported by finding of fact;
5c. Rendering a decision in which the findings of fact were not supported by the evidence.

Petition section: A Safe/Safer Route to School, or a liability to the taxpayers?, p.10

p.10 - The City has failed to present any data to quantify Scenic Circle through Blackberry Farm as a safe/safer route to school.

DONALD BAUTISTA JR



29-25
3/2/10

RESOLUTION NO. 10- 073

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO DENYING THE PETITION OF SUSAN SIEVERT, ET AL. AS AMENDED BY DONALD BAUTISTA, JR. SEEKING COUNCIL RECONSIDERATION OF ITS DECISION ON SCENIC CIRCLE ACCESS TO STEVENS CREEK TRAIL AND BLACKBERRY FARM

WHEREAS, on February 16, 2010, the Cupertino City Council received a staff report and recommendation to construct a trail connection from Scenic Circle across an existing bridge over Stevens Creek to provide access to Stevens Creek Trail and Blackberry Farm Park.

WHEREAS, the Cupertino City Council acted to approve the design and construction of an additional public access point to Stevens Creek Trail and Blackberry Farm from the west side of the Creek near Scenic Circle.

WHEREAS, the Council also gave further direction to Staff to develop a trail alignment option that accessed the park somewhere between the locations detailed in the February 16 staff report for Alternative A and Alternative B to avoid, to the greatest extent possible, a trail entrance directly across the street from the front of residential property.

WHEREAS, the Cupertino City Council's decision was within its discretion and made at a properly noticed public meeting.

WHEREAS, Susan Sievert, et al., and Donald Bautista requested that the City Council reconsider its decision under the provisions of Section 2.08.096 of the City's ordinance code; and

WHEREAS, the City Council has considered all relevant evidence presented by the parties at all hearings, including evidence presented at the April 6, 2010 reconsideration hearing.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. The petitioners' Reconsideration Petition is defective on its face in that it does not offer proof of facts as required by Municipal Code Section 2.08.096.
2. The petitioners have made no offer of new relevant evidence that, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing. (See Municipal Code § 2.08.096B(1).)
3. The City Council did not exclude any evidence presented by the petitioners at any prior city hearing. (See Municipal Code § 2.08.096B(2).)
4. The City Council has proceeded entirely within its jurisdiction. (See Municipal Code § 2.08.096B(3).)

5. The petitioners have failed to present any evidence that the City Council failed to provide a fair hearing. (See Municipal Code § 2.08.096B(2).)
6. The petitioners have failed to demonstrate that the City Council abused its discretion regarding approving the design and construction of an additional public access point to Stevens Creek Trail and Blackberry Farm from the west side of the Creek near Scenic Circle and giving direction to Staff to develop a trail alignment option to access the park somewhere between the locations detailed in the February 16 staff report for Alternative A and Alternative B. (See Municipal Code § 2.08.096B(5).) Specifically, the City Council determines that:
 - a. The City Council proceeded in a manner required by law.
 - b. The City Council's decision is supported by findings of fact attached as Exhibit A.
 - c. The findings of fact related to the City Council's decision were supported by substantial evidence in the record of proceedings.
7. The petitioners' Petition for Reconsideration of the City Council's decision of February 16, 2010 on item 17 is DENIED, thereby affirming the original decision.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6th day of April, 2010, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

City Clerk

Mayor, City of Cupertino

EXHIBIT A

CITY COUNCIL FINDINGS IN RESPONSE TO PETITION FOR RECONSIDERATION

Municipal Code section 2.08.096 states:

“A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for consideration precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.”

The grounds for reconsideration are limited to the following:

- 1) An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing.
- 2) An offer of relevant evidence which was improperly excluded at any prior city hearing.
- 3) Proof of facts which demonstrate that the city council proceeded without, or in excess of its jurisdiction.
- 4) Proof of facts which demonstrate that the city council failed to provide a fair hearing.
- 5) Proof of facts which demonstrate that the city council abused its discretion by:
 - a) Not proceeding in a manner required by law; and / or
 - b) Rendering a decision which was not supported by findings of fact; and / or
 - c) Rendering a decision in which the findings of fact were not supported by the evidence.”

Original Petition and Addendum

The original petition consisted of 16 pages of allegations and accusations with diagrams and pictures, partial quotes and e-mails, which have no relevance with respect to the required findings criteria.

The grounds in Mr. Bautista's addendum to the petition are more deliberately and narrowly drawn with respect to the grounds for reconsideration required by the CMC and are those to which the following response applies. The rest of the material in the original petition, most of which is not referenced in Mr. Bautista's addendum, is either immaterial or irrelevant and therefore not a part of the response.

1. New relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier city hearing:

Finding: The petitioner has failed to provide relevant evidence of any kind that the Brown Act was violated in any way. The comments do not provide relevant evidence which in the exercise of reasonable diligence, could not have been produced at any earlier city hearing. In addition, the comments are inaccurate and based on personal opinion rather than facts.

Petition	Response
Alleged Public Meeting Law Violation and Related Complaints: a.) the discovery of a 2007	The City provided proper Brown Act compliant notification of the Council's intention to consider providing access from the Scenic Circle residential area to

<p>Public Works drawing on the City's web site with a notation "Scenic Circle Pedestrian Bridge" demonstrates that the City of Cupertino's decision to open access to Blackberry farm and the Stevens Creek trail via Scenic Circle was made <u>without a public hearing</u> prior to the official February 16, 2010 City Council action, which is a violation of California Open Meeting Law (The Brown Act).</p>	<p>Stevens Creek Trail and Blackberry Farm Park at the February 16, 2010 Council meeting. This information was mailed to the Council members, posted on the City's web site, and public notices were posted more than 72 hours prior to the public meeting.</p> <p>As a courtesy to the residents of Cupertino, the City notified approximately 546 residents by email of the agenda item two working days and two weekend days before the meeting took place.</p> <p>The description of a bridge type like this is irrelevant with respect to the Brown Act.</p>
<p>b.) The use of the word "pedestrian" in the 2007 drawing impeaches the City's repeated Categorical Exemption "maintenance bridge" argument/fabrication for the new bridge that did not receive a CEQA review.</p>	<p>The word pedestrian is used to define the bridge as a non-vehicular bridge. A pedestrian bridge has been in this location for many years and was present when the City purchased the property from a private group picnic operator in the early 1990s. The bridge was also present when the CEQA review was conducted for the construction of the Stevens Creek Trail. That review addressed the impacts of removing the bridge if the City chose to do so.</p> <p>Public access to Stevens Creek Trail from Scenic Circle was not contemplated in the early stages of planning the Stevens Creek Corridor Park project so the CEQA review did not address its potential impacts.</p> <p>The bridge was given the terminology of a maintenance bridge when the old picnic area was restored to a native plantings area and it was determined that maintenance personnel would be using it.</p> <p>On February 16, 2010 City Council directed staff to initiate a CEQA review for an access trail between Scenic Circle and Stevens Creek Trail. That environmental process is now underway.</p>
<p>c.) Environmental Planning Consultant Jana Sokale's email referring to the bridge as pedestrian replacing pedestrian impeaches the City's Categorical</p>	<p>Ms. Sokale's use of the term "pedestrian bridge" rather than calling it a "maintenance bridge" was irrelevant to the concurrence being sought from the agencies.</p>

Exemption argument/fabrication.	CEQA Guideline 15302(b) permits replacement or reconstruction of existing facilities of this type without additional CEQA review.
d.) Ms. Sokale misrepresented the bridge/facts (and the taxpayers) when seeking permission from permitting agencies, the US Army Corp of Engineers, the San Francisco Regional Water Quality Control Board, and the National Oceanic and Atmospheric Administration: The “existing bridge” was removed and demolished, not “temporarily lifted aside, “and she failed to mention the bridge that was “repositioned” was a completely different metal bridge for a wooden bridge.	The material of the bridge that was to be temporarily removed, and the material of the replacement bridge, following the completion of creek bank modification and restoration, was irrelevant to the concurrences being sought. As noted and referenced in the staff report, replacing the bridge span at the same location with a better material for the improved safety of the maintenance personnel using it, was entirely within the discretion of the project engineers, with proper agency concurrence, which was obtained.

2. An offer of relevant evidence which was improperly excluded at any prior City hearing:

Finding: The petitioner has offered no new relevant evidence that was excluded at any prior City Council meeting, nor proven that any evidence was previously excluded by the City Council. The complaint is an opinion of the petitioner and offers no new relevant information. City staff always advises Council about significant cost impacts of particular actions being considered for the benefit of the community.

Petition	Response
<p>Complaint</p> <p>The unsafe Blackberry Farm entrance driveway is a relevant part of the project’s safer route to school. Not only was it “improperly excluded” additional information has been discovered that argues it was intentionally excluded, with the motivation being cost.</p> <p>Excerpts from <i>Staff Report, February 20, 2007</i> – <i>Staff recommends that any subsequent consideration by the Council of the issues surrounding the re-opening of the Scenic Circle gate be deferred to another Council meeting and taken up as a separate item apart</i></p>	<p>The declaration that the driveway entrance is unsafe is an opinion of the petitioner that is not shared by City staff.</p> <p>The February 16, 2010 Council meeting, at which Scenic Circle Access was considered and addressed by many Cupertino residents, was consistent with the quoted portions of the February 20, 2007 Staff Report. The Council considered the cost of three alternatives for re-opening the gate and constructing an access trail, on February 16, 2010, as a separate item, apart from the School Traffic safety issues noted in the February 20, 2007 staff report.</p>

<p><i>from the School Traffic safety issues noted above.</i></p> <p><i>Staff notes that if the Stevens Creek Corridor area beyond the Scenic Circle gate were to be re-opened to the tri-schools commute the resulting requirements for provision of facilities dedicated to safety and accessibility for a safe route to school could have a significant cost impact on the Stevens Creek Corridor project.</i></p>	<p>An additional paragraph in the 2007 staff report, ignored by the petitioner, makes it clear staff was not trying to hide relevant information:</p> <p><i>“This discussion could be advertised throughout the Scenic Circle neighborhood and the rest of the school community so that all interested stakeholders will be encouraged to participate in the discussion. The Council could then either re-affirm its original decision to keep the gate closed or consider other options.”</i></p> <p>The potential cost of re-opening the gate on Scenic Circle to provide access to Stevens Creek Trail and Blackberry Farm was discussed at the February 16, 2010 Council meeting.</p>
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3. Proof of facts which demonstrate that the City Council proceeded without, or in excess of its jurisdiction.

Finding: The petitioner has not provided proof of facts that demonstrate that the Council has proceeded without or in excess of its jurisdiction.

Petition	Response
<p>Alleged Civil Right Violation:</p> <p>The unequal City Council decisions for trail setbacks of 100' (feet) for one neighborhood vs. less than 40' (feet) for another is excessive, and therefore discriminatory.</p>	<p>A civil right is an enforceable right or privilege, which, if interfered with by another, gives rise to an action for injury. Examples of civil rights are freedom of speech, press, assembly, and the right to vote. Distances for trail setbacks are not civil rights and do not impinge on civil rights.</p> <p>In the original discussions regarding the alignment of Stevens Creek Trail, staff and Council expressed concern for protecting residential privacy by making an attempt <u>where feasible</u> (emphasis added) to locate the trail 100 feet from a residence. This was accomplished in most locations.</p> <p>It should be noted that access to the trail via the existing driveway from San Fernando allows pedestrians and cyclists to pass closer than 100</p>

	feet from the residences. Access to the trail from Scenic Circle is considered to be similar.
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4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing

Finding: The petitioner has not provided any proof of facts that demonstrate the Council failed to provide a fair hearing. To the contrary, a review of the hearing on February 16, 2010 shows that the Council heard lengthy testimony from the petitioners, neighborhood residents, and concerned parents, as well as factual information presented by the City staff.

Petition	Response
<p>Complaint:</p> <p>The concerns that the Scenic Circle neighborhood will suffer the same fate as the Monta Vista neighborhood as a direct result of the reduced Blackberry Farm parking lot were again not addressed, and any thoughts or conclusions expressed regarding impacts were unsupported by an facts, studies, or qualified analysis.</p>	<p>On February 16, 2010 the Council directed staff to initiate the environmental review process to determine what, if any, significant impacts might exist with the opening of the Scenic Circle Access to the Stevens Creek Trail and Blackberry Farm Park. That environmental review process has begun.</p>

5. Proof of facts which demonstrate that the City Council abused its discretion by:

- a.) Not proceeding in a manner required by law; and/or**
- b.) Rendering a decision which was not supported by findings of fact; and/or**
- c.) Rendering a decision in which the findings of fact were not supported by the evidence.**

Finding: The petitioner has not provided any proof of facts that demonstrate the Council abused its discretion in any manner. The petitioner's comment indicates a significant misunderstanding of the public meeting process.

Petition	Response
<p>Alleged Public Meeting Violation:</p> <p>The discovery of a 2007 Public Works drawing on the City's web site with a notation "Scenic Circle Pedestrian Bridge" demonstrates that the City of Cupertino's decision to open access to Blackberry Farm and the Stevens Creek Trail via Scenic Circle was made without a public hearing prior to the official February 16, 2010 City Council action, which is a violation of California Open Meeting Law (The Brown</p>	<p>At the February 16, 2010 City Council meeting there was an extensive public hearing about opening access between Scenic Circle and the Stevens Creek Trail and Blackberry Farm Park.</p> <p>Previously, the Council received requests from the neighborhood during open comments at its public meeting on October 20, 2009. It formally discussed the staff recommendation that a task force be formed on November 30, 2009. Again on December 15, 2009, it</p>

<p>Act).</p> <p>Complaint:</p> <p>The City has failed to present any data to quantify Scenic Circle through Blackberry Farm as a safe/safer route to school.</p>	<p>considered the access issue but did not make a decision. . These agendas and meetings were properly noticed and in full compliance with the Brown Act.</p> <p>As noted in the discussions of other Grounds above, the Council made decisions based on all the facts that were relevant and supported by information provided and considered at the meeting. An environmental review is in progress.</p>
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CUPERTINO

PUBLIC WORKS DEPARTMENT

Summary

AGENDA ITEM 17

AGENDA DATE February 16, 2010

SUBJECT AND ISSUE

Scenic Circle Access to Stevens Creek Corridor Park

1. Approve the design and construction of an additional public access point to Stevens Creek Corridor Park and Blackberry Farm from the west side of the Creek near Scenic Circle.
2. If approved, consideration of three alternative project options and approval of Alternative B as a new capital improvement project and budget in the amount of \$235,000 to design and construct the ADA modifications to the existing maintenance footbridge and a code compliant access trail from Scenic Circle to the east side of Stevens Creek in Blackberry Farm.

BACKGROUND

On December 6, 2005 the City Council voted to close the gate providing access to Blackberry Farm from Scenic Circle. The Council action followed extensive discussion on the issue.

The Council discussed the access issue again on October 17, 2006 and agreed to consider forming a task force to look into the issue, as long as it addresses the larger issue of safety in the Monta Vista High School, Kennedy Middle School, and Lincoln Elementary School area. Council did not act to reopen the gate at that time. Council asked Staff to return with proposals on forming such a task force.

The gate remained closed throughout the construction of the Stevens Creek Corridor Trail and Blackberry Farm Park. During the construction of the trail and the renovation of the park, the construction crew removed the north bridge (close to Blackberry Farm Golf Course), replaced the middle bridge with a new bridge, and temporarily removed the south bridge (close to the playground). The south bridge was restored in the same location, after the work in Stevens Creek was completed. The neighboring community was notified of this action by e-mail on July 23, 2008 in a Notice of Construction Activity. The south bridge is currently used for maintenance purposes only by staff.

The Stevens Creek Corridor Trail and Blackberry Farm Park reopened on July 4, 2009. The Director of Parks and Recreation established a Blackberry Farm Operations Advisory Committee to provide the department advice on the day to day operations of the trail and park. At its October 12, 2009 meeting, some of the neighbors brought the issue of providing a safe route to walk and bike to school through Blackberry Farm to the committee. The committee discussed ideas such as having the route accessible from Scenic Circle, during school hours only, with Parks and Recreation contract staff opening and closing the gate. Those who supported closing the gate in 2005 continued to oppose opening the gate for on the basis of neighborhood safety, parking, and traffic.

Parents brought up the same issue during open forum at the October 20, 2009 City Council meeting and spoke of the need for a safe route to the tri-school area now that Blackberry Farm and Stevens Creek Corridor Trail are open.

Staff proposed two options for a task force to consider this issue at the November 30, 2009 City Council meeting. The Council voted to bring the reopening of Scenic Circle gate issue to the December 15, 2009 City Council meeting.

ANALYSIS

On December 15, 2009, in considering the issue of opening a new access trail to Stevens Creek and Blackberry Farm, Council reviewed a preliminary project scope and description for the access. At the Council meeting staff specifically noted that the estimate was very preliminary and was not based on any design or engineering of such a project nor did it account for the potential environmental impact or permitting process.

At the conclusion of the discussion Council did not make a decision regarding the access point from Scenic Circle but directed Staff to investigate two additional alternatives to the staff alternative presented in the December 15th meeting. That original alternative is now referred to as Alternative A. The other alternatives are referred to as Alternatives B and C. The following is a summary of the alternatives. More specific details of each alternative are provided in the attached Exhibit A, B and C respectively.

The following discussion and description of alternatives is for Council's consideration should it approve a project for an additional access to the park from the west side of Stevens Creek.

DISCUSSION

Additional Public Access Trail to Stevens Creek Corridor Trail and Blackberry Farm

Over the years, since Council acted to close the Scenic Circle access gate in December 2005, Staff has maintained a neutral position on the issue owing to the imminent construction of the Stevens Creek Corridor Project which would require closure of all access points during construction.

However, since the matter has again been raised by neighbors and parents as well as by Council, Staff has reconsidered that issue and recommends that the additional access be approved. There are several reasons that form the basis for this Staff recommendation. These include the following:

1. Safer route for school children to the tri-school area on McClellan Road and Bubb Road.
The current route following McClellan Road or Stevens Creek Boulevard from Scenic to the Tri-School area tends to generate higher vehicular speeds owing to the downhill grades and some sight distances issues at the hairpin turns occurring over this reach of McClellan Road. A safe and code compliant trail and bridge through Blackberry farm would offer a more direct and safer route to school.
2. Convenient access for neighbors and park users to the west of Blackberry Farm Park.
Stevens Creek Corridor Trail and Blackberry Farm Park, particularly since reopening after completion of \$14 Million in public improvements and recreation facilities, is an amenity that should provide convenient and safe access for the entire community. An additional access point, which would effectively be a branch of the existing Stevens Creek Corridor Trail, would accomplish that goal and more conveniently open the Park and Trail for the neighborhoods to the west of the creek.
3. Supports the City's goals for alternative transportation and a Green environment.
The City has consistently supported projects that accommodate and encourage walking and bicycling throughout the community. An additional access point from the west side of the creek would achieve that goal of furthering opportunities for people to walk and bike through this important recreation area.

For all the above reasons, Staff has concluded that the appropriate recommendation for the Council's consideration is to identify and approve funding for a new Capital Improvement Project to provide an additional ADA and code compliant trail branch and bridge for access from Scenic Circle across Stevens Creek to Blackberry Farm and connecting to the existing Stevens Creek Corridor Trail. The following outlines three alternatives for Council to consider for such a project.

General Conditions and Design requirements

Certain elements and costs are common to all three alternatives, such as the work necessary to make the existing maintenance bridge ADA and pedestrian code compliant. The width of the pathway and surface material in all alternatives A, B and C are assumed to be similar.

A number of trail surface materials were considered during the analysis phase. The existing CEQA documents prohibit the use of petroleum products such as asphalt or oil impregnated gravel. Because a portion of the trail near the bridge is in the flood plain, other construction materials that typically contain chemicals or minerals that would be harmful to the steelhead cannot be used as well.

When annual maintenance costs are taken into consideration, the number of trail surface alternatives is further reduced. For the purposes of the cost estimates the surface material for trail is presumed to be the same material in all three alternatives.

During the final design phase it may be determined that the surface material for the portion of the trail that is above the flood plain could be a different material but it has been assumed to be the same for all three alternatives. However, this determination will have only a minor effect on the cost estimate, if any.

The significant variability of the alternatives, aside from the length of the trail, has mainly to do with the number of native and non-native trees that must be removed to accommodate the trail alignment and the attendant additional work required in the environmental review process as a result. These variables are discussed in each alternative below and shown in more detail in the Exhibits attached to this report.

Alternative A

This alternative begins at Scenic Circle near the intersection of Scenic Court. It is the shortest trail alternative at approximately 200 feet in length, of which most is in the flood plain. A small number of trees will need to be removed for the trail alignment, including a small young oak, three elms in poor condition, and one willow. One nearly dead walnut tree will also need to be removed. A summary of the project budget is provided below with additional detail provided in Attachment 1.

Environmental Compliance	\$ 25,000
Design & Construction Management	45,000
Construction	95,000
<u>Construction Contingency</u>	<u>15,000</u>

Total Alternative A	\$180,000
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The estimated total cost of Alternative A is higher than was first presented to Council in December. The recent investigations of the other alternatives and the compliant surface materials as well as additional engineering of the trail conditions have more accurately identified the scope of the design, construction and environmental costs that needed to be added to the project budget.

Alternative B

This alternative begins on Scenic Circle but further upstream from Alternative A. It is approximately 250 feet in length, most of which is in the flood plain. One 14-inch non-native Chinese elm tree will have to be removed to allow the trail alignment to avoid crossing over the sensitive root systems of a significant native oak and a walnut tree. Three other small trees will also need to be removed.

However, even with the tree removals, this project, because of the additional meandering of the trail will be the most environmentally appropriate for the setting. In addition, this alternative will help alleviate the expressed concerns of neighbors who are closest to the park boundary.

A summary of the project budget is provided below with additional detail in Attachment 1.

Environmental Compliance	\$ 30,000
Design & Construction Management	50,000
Construction	135,000
Construction Contingency	20,000

Total Alternative B **\$235,000**

Alternative C

This alternative begins on Scenic Circle, the furthest upstream and at the intersection of the Simms haul road and is approximately 1,260 feet long. Council asked Staff to consider a trail alignment that would allow the trail to be set back from the street and adjacent to the creek to the fullest extent possible.

Upon careful inspection of the entire length of that segment, it was discovered that significant excavation and retaining wall construction would be necessary in some locations immediately next to the creek. For these reasons, this alignment was found to be impractical and infeasible and was not studied further.

However, to develop this third alternative, a different trail alignment was studied that placed the trail for most of its length immediately behind the existing curb on Scenic Circle with limited locations where it might be feasible for the alignment to meander away from the curb into open spaces. Unfortunately, even this less intrusive alignment still may require the removal of at least four significant and protected oak trees, one with a trunk diameter of more than 3 feet. An additional 27, mostly native, trees would be affected and may have to be removed.

As such, it is expected that these impacts alone, along with anticipated difficulties in obtaining the necessary permits could very likely make this an unacceptable alternative, but it is provided here for Council consideration because it was specifically requested.

It should be noted that a sidewalk for the entire length of this alternative already exists on the opposite side of the street and is available for pedestrians. It is also common practice for cyclists to use the street instead of sidewalks when they are adjacent to each other. It is assumed that a trail just behind the curb would be treated more like a sidewalk than a trail. A summary of the project budget is provided below. More detail is provided in Attachment 1.

Environmental Compliance	\$ 45,000
Design & Construction Management	80,000
Construction	350,000
Construction Contingency	55,000

Total Alternative C **\$530,000**

SUMMARY OF ALTERNATIVES

<u>Alternative and Scope</u>	<u>Total Cost (Budget)</u>
A – Bridge ADA retrofits, 200 feet (+/-) Trail, some minor Tree removal	\$180,000
B – Bridge ADA retrofits, 250 feet (+/-) trail, minor tree removal, Tree protection from trail construction	\$235,000
C – Bridge ADA retrofits, 1,260 foot (+/-) trail, some behind Curb on Scenic, Major Tree removal	\$530,000

FISCAL IMPACT

Taking no action will have no cost impact.

Directing staff to proceed with any one of the three alternatives discussed above will result in a funding requirement from the General Fund. Staff's recommendation for Alternative B will require a total project budget of \$235,000.

On January 19, the Council approved a project budget for Scenic Circle access in the amount of \$125,000. To budget for Alternative B will require an additional allocation of \$110,000 as follows:

Project Budget Approved January 19, 2010	\$125,000
<u>Project Budget Estimate – Alternative B</u>	<u>(\$235,000)</u>
Additional Funding Required	\$110,000

Staff further recommends that, in accordance with previous Council direction on other new CIP projects that such funding be considered as part of the 2010-2011 Capital Improvement program along with other proposed CIP projects for the upcoming fiscal year.

STAFF RECOMMENDATION

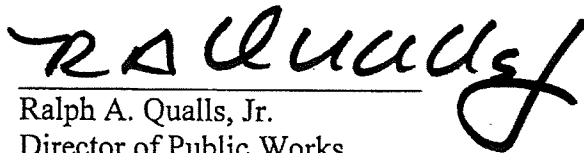
Scenic Circle Access to Stevens Creek Corridor Park

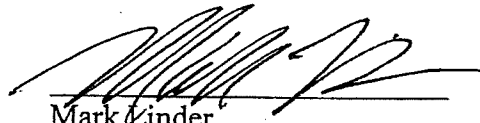
1. Approve the design and construction of an additional public access point to Stevens Creek Corridor Park and Blackberry Farm from the west side of the Creek near Scenic Circle.
2. If approved, consideration of three alternative project options and approval of Alternative B as a new capital improvement project and budget in the amount of \$235,000 to design and construct the ADA modifications to the existing maintenance footbridge and a code compliant access trail from Scenic Circle to the east side of Stevens Creek in Blackberry Farm.
3. Staff further recommends that, in accordance with previous Council direction on other new CIP projects that such funding be considered as part of the 2010-2011 Capital Improvement program along with other proposed CIP projects for the upcoming fiscal year.

However, should Council decide to take no action, the existing bridge will continue to be used for maintenance access to the landscaping on the west side of the creek.

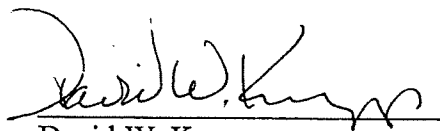
Submitted by:

Submitted by:


Ralph A. Qualls, Jr.
Director of Public Works


Mark Linder
Director of Parks and Recreation

Approved for Submission:


David W. Knapp
City Manager

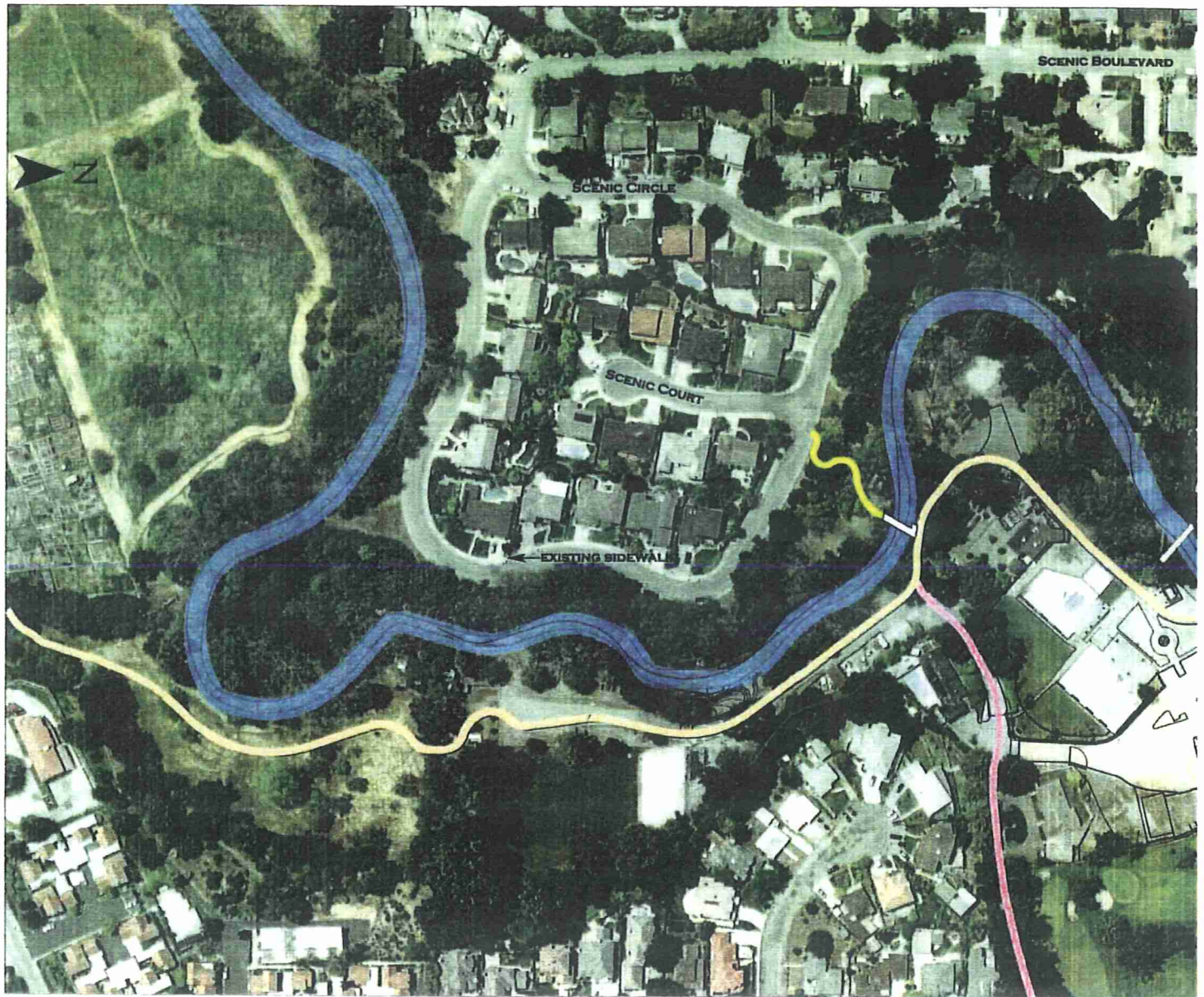
Attachment 1 – Alternative Cost Summary and maps of Alternatives A, B, and C.

ATTACHMENT 1

SCENIC CIRCLE ACCESS ALTERNATIVES COST SUMMARY

FEB. 16, 2010

	ALTERNATIVE ALIGNMENT	ALTERNATIVE ALIGNMENT	ALTERNATIVE ALIGNMENT
	A	B	C
ENVIRONMENTAL			
CEQA CLEARANCE			
FILING FEES			
BIOLOGICAL SURVEYS			
ARBORIST			
TOTAL, ENVIRONMENTAL	\$25,000	\$30,000	\$45,000
DESIGN & CONSTRUCTION MANAGEMENT			
LANDSCAPE ARCHITECT			
CIVIL ENGINEER			
GEOTECHNICAL ENGINEER			
SURVEY			
CONSTRUCTION MANAGEMENT			
INSPECTION & TESTING			
BIDDING COSTS			
TOTAL, DESIGN & CONSTRUCTION MANAGEMENT	\$45,000	\$50,000	\$80,000
CONSTRUCTION			
DEMO, SITE PREP, EARTHWORK			
MOBILIZATION			
DEMOLITION			
GRADING			
ENGINEERED FILL/OFFHAUL			
TREE PROTECTION			
TRAFFIC CONTROL			
SUBTOTAL	\$23,000	\$42,000	\$125,000
TRAIL, BRIDGE UPGRADES, SITE WORK			
TRAIL CONSTRUCTION			
FENCING MODIFICATIONS & NEW GATE			
BRIDGE MODIFICATIONS			
ADA RAMPS			
SITE WORK			
SUBTOTAL	\$65,000	\$82,000	\$190,000
RESTORATION PLANTING			
PLANTINGS			
IRRIGATION			
EROSION CONTROL			
TREE REPLACEMENT			
PLANT MAINTENANCE			
SUBTOTAL	\$7,000	\$11,000	\$35,000
TOTAL, CONSTRUCTION	\$95,000	\$135,000	\$350,000
CONSTRUCTION CONTINGENCY	\$15,000	\$20,000	\$55,000
TOTAL PROJECT	\$180,000	\$235,000	\$530,000



ALTERNATIVE A

DATE: 2/8/10

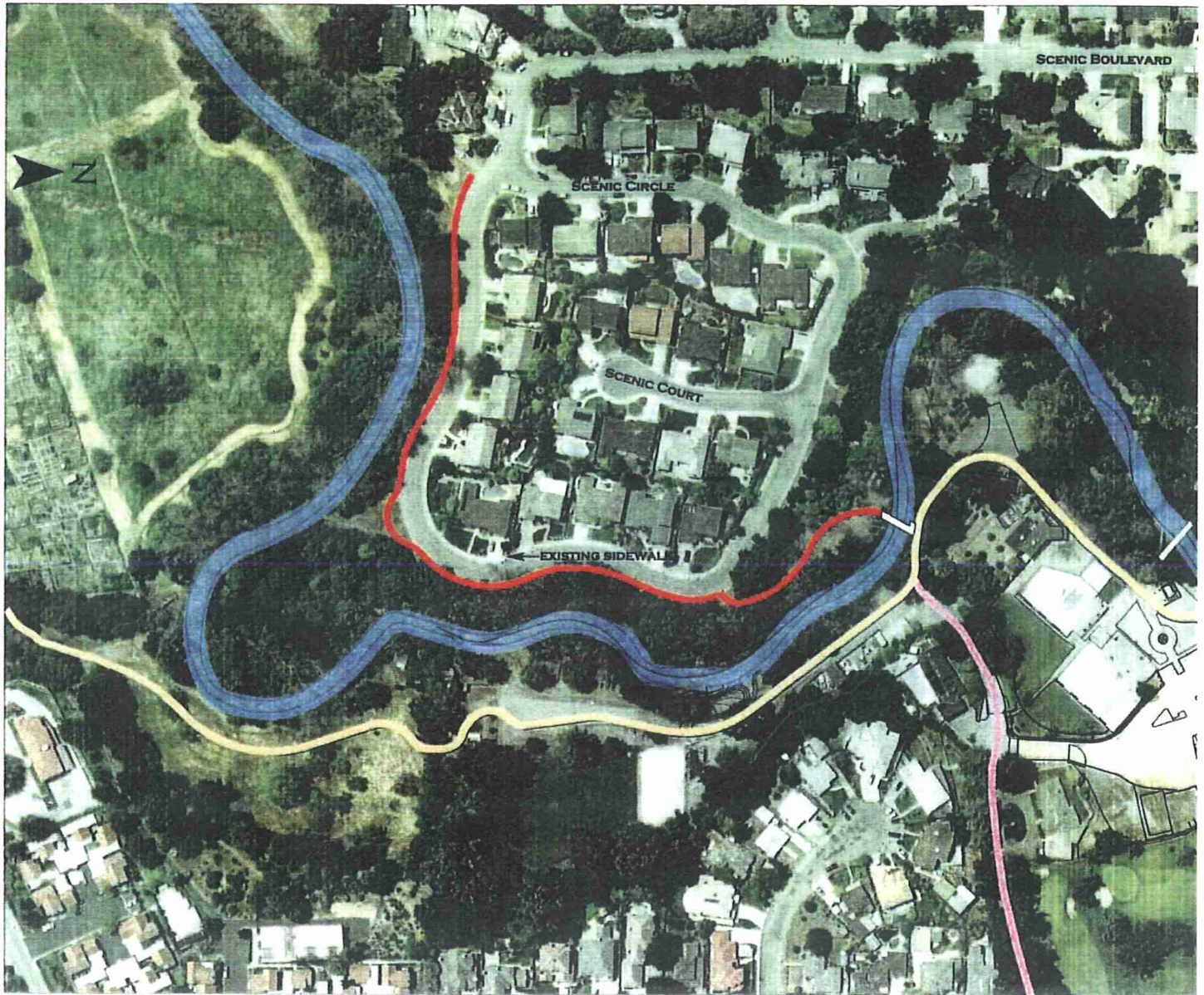
SCENIC CIRCLE TRAIL FEASIBILITY STUDY - CITY OF CUPERTINO



ALTERNATIVE B

DATE: 2/8/10

SCENIC CIRCLE TRAIL FEASIBILITY STUDY - CITY OF CUPERTINO



ALTERNATIVE C

SCENIC CIRCLE TRAIL FEASIBILITY STUDY - CITY OF CUPERTINO

DATE: 2/8/10

Attachment E

UNFINISHED BUSINESS

17. Scenic Circle access to Stevens Creek Corridor Park:

- A. Approve the design and construction of an additional public access point to Stevens Creek Corridor Park and Blackberry Farm from the west side of the Creek near Scenic Circle
- B. If approved, consider three alternative project options and approve Alternative B as a new capital improvement project and budget in the amount of \$235,000 to design and construct the ADA modifications to the existing maintenance footbridge and a code compliant access trail from Scenic Circle to the east side of Stevens Creek in Blackberry Farm

Public Works Director Ralph Qualls reviewed the staff report and each alternative via a PowerPoint presentation and video of the area.

Jill Moody said that she doesn't agree with connecting Scenic Circle to Blackberry Farm and especially doesn't like Alternative B since it is directly across from her house. She didn't think that residents' views should be blocked because of intrusive noise and cars.

Steve Moody (also speaking on behalf of Bill Hawkes) said that he is glad Alternative C is being ruled out because it would be intrusive to the neighborhood; the entrance to the park in Alternative B would be directly across from his house; and he felt another Alternative D should be proposed which would use the Simms property. He was unhappy about the idea of looking across the street and seeing cars instead of trees and noted that children's safety is the reason for this issue, but he doesn't think too many kids would use the access. He asked Council to leave things the way they are and let people find their own way to the park.

Suman Ganapathy, President of the Monta Vista PTA, said that any of the alternatives would be fine with them and urged Council to accept the staff's recommendation to approve the access through Blackberry Farm. She noted that their concern is safety to the children getting to school and the high volume of traffic on McClellan and Stevens Creek Blvd. She said that the school would try to coordinate with the bike/walk to school week with the Walk One Week program to be sure students take advantage of the trail once it's opened.

Deborah Jamison said that the community has discussed this issue, and Council has made a decision, many times in the past. She noted that it would be difficult to construct a handicapped-accessible trail that would also accommodate bicycle traffic, and the intrusion would impact wildlife in the area. She said that no native plants would be destroyed in the alignment of Alternative A and that the trailhead wouldn't be directly in front of anyone's house; Alternative B would require removal of habitat, impact the creek habitat, and puts the trailhead directly in front of a resident's house; Alternative C is out

as already discussed. She said she has been waiting for Simms renovation and wants to be sure there is money for that, hoping that people would actually want to go through that area once it's restored. She urged Council to schedule a site visit and walk each alternative before making a decision.

Jim Bodwin spoke against an Alternative D through the Simms Property because no one would use it. He said that Alternative A would be more visible from the street and would discourage teenagers from hiding and drinking.

Bob Hoxsie said he supports the staff recommendation to create access to the park. He noted that Alternative B would have more impact on the residents and the goal is to be cost effective while still preserving the environment and not impacting residents.

Janet Trankle urged Council to open access from Scenic Circle to Blackberry Farm. She said that her son rides his bike everyday to school and he must ride on either McClellan, which has lots of traffic, or go on Stevens Creek to Orange Ave. She said that the kids would use the access and that Scenic Circle is a public street into a public park. She noted that she didn't think many cars would drive down Scenic Circle to access the park that way and that most people would walk or bike to the area.

Judy Wilson, Vice President PTA Monta Vista, said that it's the stated goal of the Council to encourage alternative transportation whenever possible and keep kids safe. She urged Council to support opening up the access.

Carol Stanek urged Council to open the access. She showed names from the minutes of a past Council meeting of all the people who were for opening access. She also showed pictures of car traffic and bikes on McClellan Road noting the unpaved areas. She said that Alternative C is not viable; Alternative B would have additional meandering of the trail and not a straight access for the kids; Alternative A is the cheapest, has the least environmental impact and the money is already allocated.

Anne Ng, speaking on behalf the Friends of Stevens Creek Trail, said that they support access wherever possible, have no opinion on where the access is located, and would like the access to be available during park hours. Speaking on her own behalf, she said that this would definitely be a safer route to school and that Alternative A is the least disruptive to the environment. She did not think people would drive down Scenic Circle to reach the park.

Max Bokelman said that he lives on Scenic Circle and is disappointed with the proposal because it departs from the stated problem of concern for safety of students and now extends to provide unrestricted access from Scenic Circle to the trail and park. He said the fence now in place is a result of many public discussions and Council decisions to preserve the character of the neighborhood and protect it from disturbances experienced in the past. He urged Council to give consideration to the concerns of the residents of Scenic Circle and any contain any action to address the stated problem of safety for students to and from school.

Mark Burns said that in 2005 it was decided to not open the access and this discussion has been going on since 2001 for many reasons stated again tonight. He urged Council to give more weight to residents who have a house in front or down the street from the gate because their properties would be devalued. He urged Council to spend the money set aside for capital improvement for safety of the routes already in existence and to not try and solve the safety issue by opening access and hurting the neighbors who live on the street. He said the Alternative E would be to do nothing at all.

Craig Lee said that he supports building a gate and path into Blackberry Farm and the budget for the necessary improvements, but doesn't support approving a design now. He urged Council to approve a task force to advise the City on the design and other issues such as parking, biking on a steep street that contains a blind curve, pedestrians impacted from bicycles, safety of walking across the bridge, risk of personal and property crime in the area, and would the City provide enhanced enforcement leading to more sheriff costs.

Shani Kleinhaus, speaking for the Audubon Society, said she they are not voicing an opinion regarding access but want to focus on the California Environmental Quality Act (CEQA) process. She said that they support a shorter design through the meadow which should be kept as natural as possible. Speaking on her own behalf she urged Council to remove the bridge to keep the integrity and beauty of the park.

Norm Donovan said that he has two children who will bike to Kennedy Middle School. He noted that the new alternative of providing access through the park is safer and urged Council to move ahead as quickly as possible with Alternative A, and he would be willing to tell people the new gate is open to create awareness. He felt that Alternative D through the Simms Property is unsafe.

JK Tsai said the Scenic neighborhood is quiet right now and he doesn't want to promote that people use the street for access because it would damage the community's safety. He said he opposes any option to open access and that the decision was already made to keep the gate closed and to not spend any money on this.

Julie Wing said that she is a block leader adjacent to Scenic Circle and that many neighbors wanted to be here tonight. She said that the residents of Scenic Circle are taking a narrow approach to community in not wanting people to go down their street to get into the park. She said it would be a nicer use of the neighborhood to be able to ride into the park rather than drive. She also noted that most people don't know about Scenic Circle and would use the main entrance for access anyway.

Daniel Nguyen, Chair of the Public Safety Commission, but speaking on his own behalf, said that he supports opening access for all the reasons already stated. He said that people could walk to the park in two minutes instead of driving five minutes and Cupertino is trying to promote walkability. He said that he would advertise this access as a safer route to school; supports adding additional patrols by the sheriff; and parking issues should be mitigated by possibly limiting who can park there with permits or by striping.

Phil Pflager said that providing safe access to students is a good idea but other residents would also like to have access to the park which is supported by City tax dollars.

Chang moved and Mahoney seconded to open the gate for access to the park. Santoro added a friendly amendment to design the access to be something between Alternative A and Alternative B leaving that up to staff to decide; have the gate be opened during park hours and coordinate with the schools to see if additional time is needed to get students to school; and authorize staff to proceed using the money already budgeted. Chang and Mahoney accepted the friendly amendment. The motion carried unanimously.

Council recessed from 8:40 p.m. to 8:55 p.m.

PUBLIC HEARINGS

18. Consider Application No. SPA-2008-01, City of Cupertino, Stevens Creek Boulevard between Highway 85 and eastern City limits - Heart of the City Specific Plan Amendments to achieve conformance with the General Plan.

Conduct the first reading of Ordinance No. 10-2055: "An Ordinance of the City Council of the City of Cupertino amending the Heart of the City Specific Plan to update the Heart of the City Specific Plan and achieve conformance with the General Plan."

Senior Planner Aki Snelling reviewed the staff report via a PowerPoint presentation.

At 9:27 p.m. Mayor Wang opened the public hearing.

Jennifer Griffin said that the Heart of the City makes sure the City has the same look and feel from one end to another including trees, wide boulevards, a rural feel, and includes both residential and high tech. She urged Council to be sure the eastern end of the City retains its character, including the double row of ash trees along Stevens Creek Boulevard and the 35-foot setbacks. She said she didn't think it was a good idea to include South De Anza Blvd. in the plan since it's a unique area that needs its own document.

Norm Hackford recommended removing reference to the Crossroads Streetscape plan because the plan doesn't exist, people don't like it, and it hasn't been approved. He urged Council to leave the reference on page 8 regarding a central area, but to remove it in other places.

Darrel Lum referenced an article showing that other communities are trying to replicate what Cupertino has done. He said that the plan should include 2005 boundaries; should be a specific plan; agrees with staff's suggestion to not include South De Anza area but to have it be its own plan; agrees with the previous speaker's recommendations; a 35-foot easement should be continuous along Highway 85 to Tantau; any developments could have an exception but they should come to Council through a public hearing.