

JOINT USE AGREEMENT

*District File No.
CPRU 28312*

SANTA CLARA VALLEY WATER DISTRICT, a public corporation, hereinafter referred to as "District;" and the City of Cupertino, hereinafter referred to as "City," AGREE this 20th day of January 2004, as follows:

RECITALS:

- A. District is the owner of certain real property (hereinafter "the Premises"), described on "Exhibit A" hereto, so marked and by this reference made a part hereof.
- B. City and District recognize that the Premises are regulated by a variety of federal, state, and local agencies.
- C. City and District, in cooperation with the California Department of Water Resources, the U.S. Army Corps of Engineers, and the California Department of Fish and Game, agree to use the Premises for nonvehicular (except for maintenance, emergency, and enforcement vehicles) and recreational purposes and for flood control and water conservation purposes.
- D. City has ascertained that adequate funds have been appropriated to construct and operate its proposed facilities on the Premises and that adequate funds have been appropriated to meet all of its obligations contained in this agreement.
- E. The parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement thereof under the following terms and conditions:

AGREEMENT:

1. District shall and does hereby grant permission to City to use the Premises for the following purpose or purposes and subject to the following special restrictions:

Bicycle and pedestrian access
2. Except for District-owned facilities, City shall provide and maintain recycling and garbage receptacles for public use, and provide for adequate waste removal service with respect to City-owned improvements. City shall also provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from signs installed in conjunction with and/or accessory to the establishment of a public park and pathway consistent with its implementation of the same program at comparable City facilities.
3. The public pathway and corridor, the subject of this Agreement, may be patrolled by City personnel and ranger services under contract with City and/or volunteers supervised by City. District shall have no obligation whatsoever to provide or pay for such services.

ENACTED COPY - Contract Admin. Unit
ACMT. # A276EM Req. # 2730

4. City must remove and if it so chooses, replace recreational improvements installed by the City in the event District is required to improve, maintain or repair Regnart Creek in any manner for District purpose's. District shall inform City in preconstruction planning, as described in Paragraph 7, in the event a District flood control project is needed, to minimize District's project impact on City's improvements to the Premises.
5. Damage to District's or City's facilities arising from public use of the Premises under this Agreement shall be the responsibility of City.
6. City and District staff shall meet whenever necessary for the purpose of scheduling routine maintenance, including, but not limited to:
 - Maintenance issues related to improvements;
 - Method and timing of issues related to affected wildlife;
 - Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative as required prior to commencement of such work, in order to minimize public impacts.
 - The requirements of this section do not apply in emergency situations.
7. In non-emergency situations, City and District staff shall meet whenever necessary for the purpose of scheduling routine maintenance, including, but not limited to:
 - (a) Maintenance issues related to improvements;
 - (b) Method and timing of issues related to affected wildlife;
 - (c) Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative as required prior to commencement of such work, in order to minimize public impacts;

City shall bear the cost and expense of any security, police or other expenditure necessary to temporarily prohibit or control public access to the Premises, which expenditure District would not ordinarily incur in order to complete scheduled routine maintenance pursuant to this provision.

Damage occurring to City's structures or paving by reason of District's non-negligent maintenance or other activity during scheduled routine maintenance pursuant to this provision, or by reason of natural forces, will not be the responsibility of District to repair or restore. All such costs for such repair or restoration are to be born by City.

In emergency situations, District shall respond without notice or a requirement to meet or consult with City. City's information will be available through community emergency response systems, which are not the subject of this Agreement.

8. Native plants selected by a licensed landscape architect with native habitat experience should be used for revegetation purposes.
9. Construction work during spring nesting season will be avoided whenever possible. The parties acknowledge that the spring nesting season occurs between February 1 and July 1. If construction must be done during the nesting season, a survey by a qualified biologist will be undertaken to determine the presence of nesting. If no nesting activity is reported, then the work may proceed. If nesting activity is reported,

the biologist is expected to recommend the implementation of adequate mitigation measures. Environmental impact shall be considered prior to all work. Any and all work related to this clause shall be completed in accordance with applicable federal, state, and local environmental health and safety regulations including the federal Migratory Bird Act of 1918 and any amendments thereto.

10. The parties shall cooperate to create and install signage, which benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Chief Executive Officer of the District and the Director of Public Works of the City or their designees shall meet and confer on a periodic basis to plan and install appropriate signage which serves the needs of both parties.

All signs excepting existing ones or publications that identify the facility (e.g. park, trail) by name should include the District's logo in equal size and symmetric relationship to any other logos. All signs or publications that are intended to interpret the water resources should be developed in cooperation with the District's Public Information Office and should also include the District's logo in equal size and symmetric relationship to any other logos. Maintenance responsibility for signage and benches shall be the responsibility of either the District or the City, according to which entity has installed the improvements.

11. This Agreement shall be for a period of 30 (thirty) years beginning on the date it is approved by the District Board of Directors. City may, upon written notice to District of intent to do so, given not less than ninety (90) days prior to the termination date, renew this Agreement for a like period upon the same terms and conditions. This Agreement may be terminated by either party upon ninety (90) days prior written notice to the other. Notice of intent to renew or to terminate may be given by the City's Director of Public Works for City. Notice of intent to terminate may be given by the District's Chief Executive Officer for the District.
12. Subject to the conditions and restrictions contained in this Agreement, City shall have the full control and authority, for purposes of this Agreement, over the use of the Premises, and City may restrict, or control, regulate and supervise the public use thereof. City may, in its discretion but consistent with the right of District hereinafter described, and without diminution of the flood control or conservation function or hazard thereto of the Premises as now existing or as may hereafter be altered, take any measures of every kind as may in the opinion of City be necessary for the safety of the users of the Premises for any lease purpose. Further, City shall have the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises for purposes of this Agreement.
13. District shall have the sole responsibility to maintain Regnart Creek for flood control and water conservation purposes, to repair and reconstruct the same where necessary for such purposes and to perform such periodic maintenance as may be appropriate to such purposes, including removal of silt, debris, and obstructive growth. It is expressly understood that District is engaged in flood control and the conservation of water and that the terms and conditions of this Agreement shall not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood control and water conservation purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to raise or lower the height of the water present upon the Premises; and it is further understood that nothing herein contained shall be construed as conferring a right upon City to have, or a duty upon District to provide, water upon the Premises at any time. In emergency situations, District will not be liable for damage to City improvements, structures, paving or facilities. Repair or restoration of such damage shall be in the discretion of and at the expense of City. It is also expressly

understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same, and that such fluctuations may require greater control over the use of the Premises by City and the public; provided, however, that City shall be responsible for informing itself thereof and of all other conditions of the Premises whether open or covered which may in anywise affect the health and safety of the users of the Premises hereunder. Notwithstanding the above, District shall make reasonable efforts to notify City in advance of any unusual flooding occurrences.

(a). City shall have the right to build any improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District's basis of approval or disapproval of improvements is limited to its responsibility to insure that the same shall not constitute an obstruction to flood flows and shall not interfere with the use of the Premises for flood control or water conservation purposes, and does not in anywise extend to consideration of the health and safety of users of the Premises, which latter consideration is the responsibility of City.

(b). Improvements built by City on the Premises shall remain the property of City and upon the termination of this Agreement shall be removed by City, leaving the Premises in a condition as near as reasonably possible to their condition prior to such improvements. If District, reasonably requires that such an improvement must be removed or relocated, the same shall be done at City's expense upon reasonable notice from District.

(c). City shall assume the defense of, indemnify and hold harmless, District, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature, or description directly or indirectly arising during the initial term of this Agreement, or any renewal thereof, and resulting from the public use of the Premises pursuant hereto or from public use of adjacent Premises of District occurring in consequence of City's or the public's use of the Premises or from acts, omissions, or activities of City's officers, agents, employees, or independent contractors employed by City, excepting claims, liability, loss, damage, or injury which arise from the willful or negligent acts, omissions, or activities of an officer, agent, or employee of District. Except as described above, This Agreement to defend, indemnify, and hold harmless the District shall operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of premises or any other cause of any kind or nature.

(d). District shall assume the defense of, indemnify, and hold harmless, City, its officers, agents, and employees from all claims, liability, loss, damage, and injury of any kind, nature or description directly or indirectly arising from District's exercise of its flood control or water conservation purposes on the Premises pursuant hereto or from acts, omissions, or activities of District's officers, agents, employees, or independent contractors employed by District excepting claims, liability, loss, damage, or injury which arises from the willful or negligent acts, omissions or activities of an officer, agent, or employee of City. Except as described above, This agreement to defend, indemnify, and hold harmless shall operate irrespective of the basis of the claim, liability, loss, damage, or injury, and irrespective of whether the act, omission, or activity is a condition of premises or any other cause of any kind or nature. Any and all notices required to be given hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City

District

City Of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Director of Public Works

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, California 95118
Attention: Clerk of the Board

This agreement, and all the terms, covenants, and conditions hereof, shall apply to and bind the successors and assigns of the respective parties hereto; provided, that City shall neither assign nor sublet this Agreement without prior written consent of District.

This agreement includes any and all exhibits, covenants, agreements, conditions, and understandings between City and District concerning the Premises. There are no covenants, agreements, conditions, or understandings, either oral or written, between the parties hereto other than herein set forth.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

"City"

"District"

CITY OF CUPERTINO

SANTA CLARA VALLEY WATER DISTRICT,
a public corporation

By: David W. Knapp 12.19.03
David W. Knapp
City Manager

By: Sig Sanchez
Chair/Board of Directors

ATTEST:

ATTEST:

Kimberly Smith
City Clerk

Lawrence L. Kella
Clerk/Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signature]
General Counsel

RESOLUTION NO. 03-228

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AUTHORIZING EXECUTION OF A JOINT USE AGREEMENT WITH THE SANTA
CLARA VALLEY WATER DISTRICT FOR THE REGNART CREEK TRAIL**

WHEREAS, a Joint Use Agreement with the Santa Clara Valley Water District is necessary because the Regnart Creek Trail passes over land owned by the District; and

WHEREAS, said agreement will allow for the use of the land for bicycle and pedestrian access,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino hereby authorizes the City Manager to negotiate and execute a Joint Use Agreement for bicycle and pedestrian access of the Regnart Creek Trail on behalf of the City of Cupertino.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of December, 2003, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
AYES:	James, Kwok, Lowenthal, Sandoval, Wang
NOES:	None
ABSENT:	None
ABSTAIN:	None

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

ATTEST December 22, 2003
CITY CLERK OF THE CITY OF CUPERTINO
BY Kevin A. Bernard
for CITY CLERK

ATTEST:

/s/ Kimberly Smith

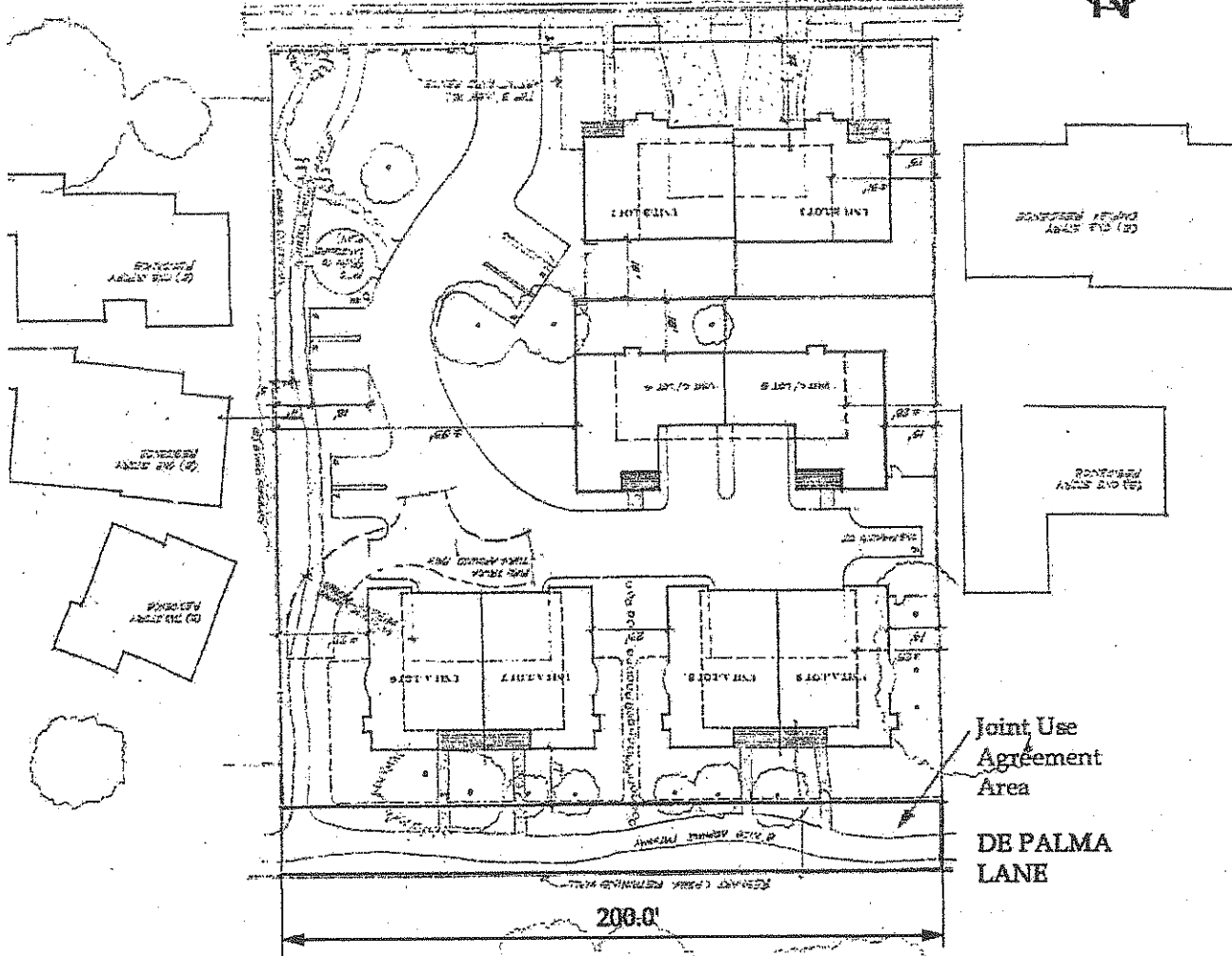
City Clerk

APPROVED:

/s/ Sandra James

Mayor, City of Cupertino

RODRIGUES AVENUE



Joint Use Agreement Area

DE PALMA LANE

200.0'

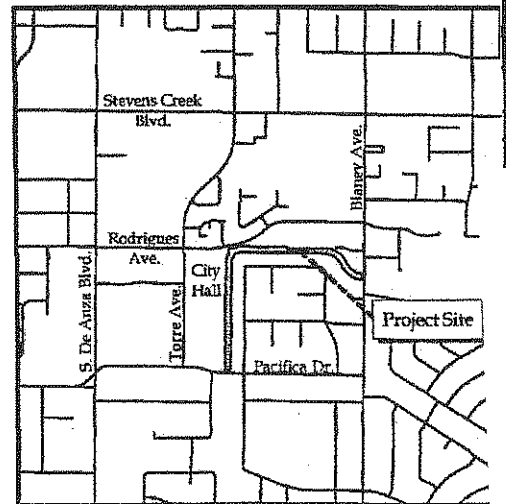


EXHIBIT A

APN-
369-32-036



City of Cupertino

Regnart Creek Trail

Prepared by the Community Development Department
Last Updated: September 18, 2003



10/1/03 10:15 AM



RODRIGUES AVE

S BLANEY AVE


Regnart Creek



LAS ONDAS WAY

BRITTANY CT

Id: 56
Creek: Regnart II
Agency: City of Cupertino
Term: 30
Expires: 01/19/34
APN: 369-32-036
Use: Public Pathway

 JOINT USE AGREEMENT AREA

